

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

001 FUND TO ADDRESS PFAS CONTAMINATION

Chapter 407: FINANCIAL SUPPORT FOR PFAS BLOOD SERUM TESTING

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**SUMMARY:** The 130th Legislature authorized a Fund to Address PFAS Contamination (7 M.R.S.A., Chapter 10-D). Permissible uses include monitoring the health of a person, and members of that person's household, whose agricultural land is found to be contaminated by PFAS. Consistent with the legislatively mandated PFAS Fund Implementation Plan, these rules establish the eligibility criteria and administrative procedures for obtaining financial support from the PFAS Fund for PFAS blood serum testing costs not otherwise covered by insurance.

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## § 1. OVERVIEW

The Fund to Address PFAS Contamination (PFAS Fund) may pay for costs not otherwise covered by health insurance for perfluoroalkyl and polyfluoroalkyl substances (PFAS) blood serum testing for persons who were exposed to PFAS through the land application of residuals in Maine.

## § 2. CONSISTENT WITH STATUTE

All terms used in this Chapter shall be defined as indicated in Title 7 M.R.S.A, Chapter 10-B unless specifically provided herein.

## § 3. DEFINITIONS

1. "Commercial farm" means a farm that produces any farm product with the intent that the farm product be sold or otherwise disposed of to generate income.
2. "Commercial farmer" means a person who operates a commercial farm.
3. "DACF" means the Maine Department of Agriculture, Conservation and Forestry.
4. "DEP" means the Maine Department of Environmental Protection.
5. "Farm worker" means a person employed by a commercial farm to perform farm labor.
6. "Impacted property" means real estate with DACF- or DEP-verified PFAS contamination of soil and/or groundwater.
7. "Land application" means the application of sludge, sludge-derived products, or septage to land, and where such application was licensed by the DEP under Chapters 419 or 420. This rule does not apply to unlicensed land applications of residuals.
8. "Maine CDC" means the Maine Center for Disease Control and Prevention.
9. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" has the same meaning as in Title 32, section 1732, subsection 5-A.

10. “Residuals” means sludge, sludge-derived products, and septage for purposes of this rule.
11. “Septage” shall have the same definition as contained in Maine DEP rule Chapter 400, *Maine Solid Waste Management Rules*, C.M.R. 06-096 Ch. 400 § 1(Aaa-1): waste, refuse, effluent, sludge and any other materials from septic tanks, cesspools or any other similar facilities. Septage is further defined as a mixture of liquids and solids derived from residential sanitary wastewater, and includes sanitary wastewater from tanks connected to commercial and institutional establishments which have inputs similar to residential wastewater. Septage also includes wastes derived from portable toilets.
12. “Sludge” shall have the same definition as contained in Maine DEP rule Chapter 400, *Maine Solid Waste Management Rules*, C.M.R. 06-096 Ch. 400 § 1(Ggg): non-hazardous solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or wet process air pollution control facility or any other such waste having similar characteristics and effect. The term does not include industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended.

#### **§ 4. FUNDING**

The Fund to Address PFAS Contamination is funded by an appropriation from State general funds as provided by Maine Public Laws, 2021, Chapter 635, and any subsequent appropriations, and, whenever possible, any additional funding that may be available from other sources.

#### **§ 5. ELIGIBILITY**

PFAS blood serum testing supported by the PFAS Fund is limited to (1) eligible persons who lived or worked (2) on PFAS-contaminated property (3) for any portion of the ten-year period preceding the discovery of PFAS contamination, (4) when the PFAS contamination is reasonably determined to be the result of the land application of residuals, as explained more fully below (see 7 M.R.S.A. §§ 320-K(4)(A-B)).

1. Eligible persons are,
  - a. Commercial farmers and their household members,
  - b. Farm workers, and
  - c. Residential inhabitants served by private wells.
2. PFAS-contaminated property is defined as agricultural or residential property having,
  - a. groundwater test results exceeding Maine’s enforceable interim drinking water standard for PFAS until superseded by either Maine’s Maximum Contaminant Level (MCL) for PFAS or a federal MCL for PFAS, whichever is lowest, for a well servicing the residence, farm, and/or fields; and/or
  - b. soil test results exceeding PFAS soil Remedial Action Guidelines (RAG) for residential use established by Maine DEP or any PFAS soil screening levels established by Maine CDC for farm workers.
3. Eligible persons must have lived or worked on a property with DACF-verified PFAS test results exceeding an applicable standard described in Section 5(2) within the ten years immediately preceding the date of the first DACF-verified test result exceeding a standard described in Section 5(2).

4. The land application of residuals will be reasonably determined to be the source of PFAS contamination when,
  - a. DEP records indicate that PFAS impacts to soil and/or groundwater at an impacted property were primarily caused by land application, or
  - b. DEP records indicate that PFAS impacts to soil or groundwater at an impacted property were primarily caused by land application on a property that is adjacent to, abuts, or is upgradient of an impacted property, or
  - c. DEP records indicate that PFAS impacts to soil or groundwater at an impacted property were primarily caused by land application on a property with hydrogeological attributes that DEP advises has the potential to be the source.

## **§ 6. REQUIRED DOCUMENTATION**

Applicants for financial support from the PFAS Fund for blood testing must provide the following documentation:

1. A completed DACF application, as may be updated from time to time; and
2. Documentation of validated groundwater and/or soil test results exceeding an applicable threshold identified in Section 5(2). The results of groundwater or soil samples collected and validated by DACF or DEP are sufficient to document PFAS contamination of soil and/or groundwater. Likewise, a letter from Maine DEP or Maine CDC notifying the applicant that groundwater and/or soil test results exceed screening thresholds is acceptable documentation; and
3. Documentation from Maine DEP indicating that the land application of residuals has been reasonably determined to be the primary source of PFAS contamination of an impacted property; and
4. Proof of residency at an impacted property, such as a deed, lease, or utility bill in the applicant's name or evidence of employment by an impacted commercial farm, such as a W-2 form, signed federal tax return, or paystub; and
5. Statement or invoice from the applicant's insurance company documenting the portion of the cost not covered by the applicant's insurance policy or a written statement from the applicant indicating that they have no health insurance. In the latter instance, applicants must also provide an invoice for the service(s) provided.

## **§ 7. LIMITATIONS**

1. DACF is limited to paying costs of PFAS blood serum testing that are not covered by an eligible person's health insurance.
2. DACF will pay for testing no more frequently than annually.
3. DACF may pay for follow-up testing only when the applicant provides documentation from a medical provider indicating that initial test results revealed blood serum levels above that of the general population (i.e., currently above 20 nanograms per milliliter (ng/mL)) and that follow-up testing is recommended.
4. DACF will not pay for at-home finger-prick PFAS testing.

5. Blood may be drawn for testing in a healthcare provider's office or by a laboratory approved by the Maine Department of Health and Human Services.
6. Blood samples drawn by a health care provider or laboratory to test for blood levels of PFAS must be analyzed by a facility approved by the Maine Department of Health and Human Services.
7. Applications for PFAS blood serum testing will be reviewed by DACF PFAS Fund staff, including the PFAS Fund director. PFAS Fund staff may consult with the Maine CDC and Maine DEP to verify PFAS exposure. Decision-making authority rests with the PFAS Fund director.
8. DACF reserves the right to assess each application on a case-by-case basis and to prioritize persons who have not previously had their blood serum tested for PFAS and those exposed to PFAS for durations exceeding twelve cumulative months.
9. DACF reserves the right to limit the amount of funding for all requests based on available resources.

**§ 8. RIGHT TO APPEAL**

1. If an application is denied in whole or in part, DACF must send the applicant a written notice of its decision. Such notice must include an explanation of why the application was denied.
2. Upon receipt of such notice, an unsuccessful applicant may appeal to DACF. The notice of appeal must be in writing, signed by the applicant, and received by DACF within 45 days of receipt of the denial notice.
3. Within 90 days of the receipt of a written request for appeal, DACF will either grant the appeal or schedule a hearing.
4. Appeal hearings will be held before a DACF hearing officer who has been designated by the Commissioner of the DACF. The hearing officer will make a recommended decision. Final decisions on the appeal will be made by the Commissioner after a review of the record.
5. Appeal hearings will be held in accordance with the adjudicatory proceedings provisions of the Maine Administrative Procedures Act, 5 M.R.S.A. §§ 9051-64.
6. Final decisions will be in writing and contain notice of a right to petition the Superior Court for judicial review.