

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Agriculture
(DLS Control No. 16-022)**

Overview and Legal and Fiscal Impact

The regulations establish an approval process and requirements for constructing, operating, and removing a renewable energy generation facility on farm land that is subject to an agricultural land preservation easement in accordance with Chapter 287 of 2014.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Agriculture:

Maryland Agricultural Land Preservation Foundation: Renewable Energy Generation Facilities Approval for a Farm Subject to an Agricultural Land Preservation Easement: COMAR 15.15.14.01-.13

Legal Analysis

Background

Chapter 287 of 2014 authorized the Maryland Agricultural Land Preservation Foundation (MALPF) to approve the use of land subject to an agricultural easement for the generation of electricity by a facility using an authorized renewable energy source (ARES) under specified conditions and subject to specified requirements. MALPF must approve the ARES before June 30, 2019. The ARES owner is required to remit annually 5% of any lease payment paid to the farm owner to the Maryland Agricultural Land Preservation Fund. Any lease entered into between the ARES owner and the farm owner must include provisions to require the facility owner to remove the facility when the facility is no longer intended to be used to generate electricity. MALPF is authorized to charge reasonable fees to cover costs associated with implementation of Chapter 287 and must adopt implementing regulations.

Summary of Regulations

The regulations implement Chapter 287 of 2014, establishing an approval process and requirements for constructing, operating, and removing a renewable energy generation facility on

farm land that is subject to an agricultural land preservation easement. More specifically, among other things the regulations:

- authorize MALPF to accept applications to approve an ARES before June 30, 2018 and prohibit MALPF from approving applications after June 30, 2019;
- specify eligibility requirements for an ARES application, including requiring that the area designated for the ARES constitute one contiguous area unless otherwise approved by MALPF and requiring the farm owner and the ARES owner to make the ARES available for inspection during normal business hours;
- require a farm owner to submit a complete request for approval of an ARES no later than June 30, 2018;
- specify the contents of the application, including requiring that any existing or proposed facility agreement include an acknowledgement by all parties to the agreement that any conflict between the facility agreement and the MALPF easement be resolved in favor of the MALPF easement;
- specify the factors that MALPF must consider when determining whether a proposed ARES interferes significantly with the agricultural use of the land subject to the easement;
- prohibit an ARES that generates wind from being located in areas identified in § 2-513(c) of the Agriculture Article;
- establish a process for modifying the terms and conditions of an ARES approval;
- require MALPF to execute a recording agreement for an approved ARES and provide for the terms and conditions of the agreement;
- prohibit an approved ARES from being constructed until a recording agreement is recorded;
- authorize MALPF to amend the terms of an easement approved by the Board of Public Works before June 30, 2014 under specified circumstances and assess a fee for the amendment;
- require MALPF to charge a farm owner an annual fee for monitoring and enforcement;
- require an ARES owner who enters into a facility agreement to pay annually 5% of any payment made to the farm owner under the facility agreement to MALPF;
- establish requirements and processes for removing an ARES; and

- specify civil penalties for a violation of specified laws or the terms and conditions of an ARES approval.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Agriculture cites §§ 2-504 and 2-513 of the Agriculture Article as statutory authority for these regulations. Section 2-504 grants the department broad authority to adopt regulations necessary to implement the provisions of Subtitle 5 of the Agriculture Article pertaining to MALPF. Section 2-513(c) implements the provisions of Chapter 287 of 2014 as discussed above.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The regulations authorize MALPF to accept an application to approve an ARES before June 30, 2018, thereby prohibiting MALPF from accepting an application after July 1, 2018. However, § 2-513(c) of the Agriculture Article prohibits MALPF from approving an application after June 30, 2019. The Department of Legislative Services inquired whether MALPF needs an entire year to review an application. The department responded that they anticipate the approval process to take several months since it is unlikely that a farm owner's application will meet all of the necessary requirements to be considered complete and some back and forth with the farm owner is likely. Additionally, the department indicated that once a complete application is received, the department will need to consult with other agencies to ensure that all necessary requirements are met. Lastly, the department noted that applications for easements that have already been approved will need to go through the corrective easement process, which may take several months.

The Department of Legislative Services also notified the department regarding several grammatical and typographical errors throughout the regulations which the department has agreed to correct.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that State revenues increase as a result of the regulations due to payments made to MALPF of 5% of payments made by an ARES owner to a farm owner as a result of a lease, license, management agreement, or operating agreement. The Department of Legislative Services disagrees with this assessment because the regulations implement Chapter 287 of 2014 (Senate Bill 259), the fiscal impact of which was accounted for in the fiscal and policy note for Senate Bill 259. The fiscal and policy note indicated that special fund revenues increase as a result of the bill's cost recovery and payment provisions. These regulations should not have an independent impact.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs; the regulations implement Chapter 287, the small business impact of which was accounted for in the fiscal and policy note for Senate Bill 259.

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