

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	02/23/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/1/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

15 15 14 .01-.13

3. Name of Promulgating Authority

Department of Agriculture

4. Name of Regulations Coordinator

Iva Benson

Telephone Number

410-841-5829

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50 Harry S. Truman Parkway, Suite 303

City State Zip Code

Annapolis MD 21401

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5. Name of Person to Call About this Document

Carol S. West

Telephone No.

(410) 841-5714

Email Address

carol.west@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Craig A. Nielsen, Assistant Attorney General, (telephone #(410) 841-5883) on February 22, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joseph Bartenfelder

Title

Secretary

Telephone No.

(410) 841-5884

Date

February 22, 2016

Title 15
DEPARTMENT OF AGRICULTURE
Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION
FOUNDATION

15.15.14 Renewable Energy Generation Facilities Approval for a Farm Subject to an Agricultural Land Preservation Easement

Authority: Agricultural Article §§2-504 and 2-513, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Agriculture proposes to adopt new Regulations .01-.13 under a new Chapter, COMAR 15.15.14 Renewable Energy Generation Facilities Approval for a Farm Subject to an Agricultural Land Preservation Easement

Statement of Purpose

The purpose of this action is to explain the Maryland Agricultural Land Preservation Foundation's requirements for approving renewable energy generation facilities on farms subject to an agricultural land preservation easement.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed regulation will provide an additional revenue source for landowners who own property subject to a MALPF easement. Generally, MALPF easements prohibit commercial uses on farmland, which restricts income sources for farm owners. This regulation, permits farm owners to operate renewable energy sources on their land for commercial profit (subject to MALPF approval).

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)		Unknown
(2)	(E-)		Unknown
B. On other State agencies:	NONE		
C. On local governments:	(E-)		Unknown

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1). Regarding revenue, the regulation requires the farm owner to pay MALPF a percentage of profits received from ARES owner who operates an ARES on land subject to a MALPF Easement.

A(2). Regarding expenditures, MALPF Staff will expend time reviewing and approving applications to place ARES facilities on MALPF easements.

C. Local governments will expend staff time reviewing and approving applications to place ARES facilities on MALPF easements.

D. The regulation imposes certain costs to landowners who wish to locate ARES facilities on their easement properties. These costs include: 1) survey costs; 2) costs to amend MALPF easements approved before June 30, 2014; 3) monitoring and enforcement fees charged by MALPF to ensure compliance with any ARES approval; 4) costs to secure a bond ensuring removal of the ARES facility if the ARES facility stops operating.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Carol S. West, Executive Director, Maryland Agricultural Land Preservation Foundation, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, or call (410) 841-5714, or email to carol.west@maryland.gov, or fax to (410) 841-5730. Comments will be accepted through May 1, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 16

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:
Special Funds

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

This regulation merely establishes the criteria and procedures for MALPF to permit alternative renewable energy sources on MALPF preservation easements. The regulation will impact landowners who are subject to MALPF easements, but the regulation will likely not impact small businesses.

G. Small Business Worksheet:

SMALL BUSINESS ANALYSIS WORKSHEET

1a. Intended Beneficiaries.

Landowners who own property subject to MALPF preservation easements.

1b. Intended Beneficiaries: Households.

N/A

1c. Intended Beneficiaries: Businesses.

Businesses that operate alternative renewable energy sources, such as wind turbines, solar panels and anaerobic digesters. The regulation will permit these businesses to place renewable energy sources on land where such commercial uses have been prohibited in the past.

2a. Other Direct or Indirect Impacts: Adverse.

The regulation will permit property owners whose land is subject to a MALPF preservation easement to use a limited portion of their land for commercial purposes. When MALPF acquires a preservation easement, it compensates the landowner for relinquishing the right to place commercial uses on easement properties. Permitting limited commercial uses (in this case ARES facilities) on MALPF easements has an adverse impact because the State has paid landowners not to engage in commercial activities.

2b. Other Direct or Indirect Impacts: Positive.

The regulation will permit property owners whose land is subject to a MALPF preservation easement an opportunity to generate additional revenue. MALPF will also generate revenue as the regulation requires the landowner to pay MALPF a certain percentage of any profits generated from ARES facilities on easement properties.

3. Long-Term Impacts.

The long-term impacts of the regulation are uncertain. The regulation does include a sunset provision, where MALPF may not approve ARES facilities on easement properties after June 30, 2019. This sunset provision provides the Foundation an opportunity to assess the benefits and consequences of permitting ARES facilities on properties subject to MALPF easements. The long-term impacts of the regulation can be assessed after June 30, 2019.

4. Estimates of Economic Impact.

A. Cost of providing goods and services.

N/A

B. Effect on the workforce.

N/A

C. Effect on the cost of housing.

N/A

D. Efficiency in production and marketing.

N/A

E. Capital investment, taxation, competition, and economic development.

N/A

F. Consumer choice.

N/A

Attached Document:

Title 15

DEPARTMENT OF AGRICULTURE

Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

Chapter 14 Renewable Energy Generation Facilities Approval for a Farm Subject to an Agricultural Land Preservation Easement

Authority: Agriculture Article, §§2-504 and 2-513, Annotated Code of Maryland

.01 Scope.

This chapter explains the Foundation's criteria to approve an authorized renewable energy source (ARES) for commercial profit on a farm subject to an agricultural land preservation easement. The Foundation may only accept applications to approve an ARES on a farm subject to an agricultural land preservation easement before June 30, 2018. The Foundation may not approve any ARES on a farm subject to an agricultural land preservation easement after June 30, 2019.

.02 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *"Authorized renewable energy source," or "ARES" means the following energy sources to generate electricity for commercial profit:*

(a) *Solar;*

(b) *Wind;*

(c) *Anaerobic digestion of poultry litter so long as the facility is placed on fallow land; and*

(d) *Anaerobic digestion of livestock manure so long as the facility is placed on fallow land.*

(2) *"Department" means the Maryland Department of Agriculture.*

(3) *"Easement" means an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.*

(4) *"Easement area" means the real property subject to an easement held by the Maryland Agricultural Land Preservation Foundation, which property may consist of a single tax parcel or multiple tax parcels.*

(5) *"Facility agreement" means any lease, license, management agreement or operating agreement between a farm owner and an ARES owner regarding an ARES on a farm.*

(6) *"Fallow land" means land that is plowed but left idle, uncultivated or unplanted.*

(7) *"Farm" means a farm or other real property subject to an easement held by the Maryland Agricultural Land Preservation Foundation, which property may consist of a single tax parcel or multiple tax parcels.*

(8) *"Farm conservation plan" means a soil conservation and water quality plan for the farm, approved by a soil conservation district.*

(9) *"Foundation" means the Maryland Agricultural Land Preservation Foundation.*

(10) *"Raw materials" means poultry litter or livestock manure.*

(11) *"Recording agreement" means an agreement between the Foundation and a farm owner, to be recorded among the appropriate land records, that states the duties and obligations between both parties consistent with the requirements of this chapter.*

.03 Eligibility Requirements.

The Foundation may not approve an application to place an ARES on land subject to an easement, unless all of the following conditions are satisfied as to the proposed ARES:

A. *The ARES shall conform to all federal, State and local laws, statutes and ordinances, unless such laws, statutes and ordinances are pre-empted by other law;*

B. *The local agricultural preservation advisory board established under §2-504.1 of the Agriculture Article, Annotated Code of Maryland, has provided a favorable recommendation to have the proposed ARES placed on the farm;*

C. *Any ARES that will create electricity from wind must satisfy the location and height restrictions provided in Regulation .06. of this chapter;*

D. *An ARES may not occupy more land than is necessary for its operation and maintenance, but in any case, the ARES may not occupy more than 5% or 5 acres, whichever is less, of the easement area. Permanent roads or structures necessary to operate and maintain the ARES are subject to the area restriction provided in this subsection. For any ARES conducting anaerobic digestion, the area restriction provided in this subsection shall also apply to effluent storage areas that are created to serve the ARES. Pre-existing effluent storage areas are not subject to the area restriction provided in this subsection.*

E. *The area designated for an approved ARES on a farm must constitute one contiguous area and may not constitute multiple areas on the farm, unless the Foundation approves otherwise based on sufficient justification provided by the applicant;*

F. *An ARES may not interfere significantly with any agricultural use of the farm as determined by the Foundation in Regulation .05 of this chapter;*

G. *An ARES may not violate any federal, State or local restrictions applicable to the funds used by the Foundation to purchase the easement;*

H. If an ARES generates electricity by anaerobic digestion, a majority of the raw materials used to generate electricity from the ARES shall originate from the farm subject to the easement;

I. If an ARES generates electricity by anaerobic digestion, the ARES shall use only poultry litter or livestock manure;

J. If an ARES generates electricity by anaerobic digestion, the ARES shall be located on fallow land;

K. The farm owner and the ARES owner shall agree to make any ARES available for inspection by the Foundation during normal business hours (9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal and State holidays); and

L. The Foundation may approve no more than one type of ARES for any farm, unless the Foundation approves otherwise based on sufficient justification provided by the applicant. If the Foundation approves more than one type of ARES for any farm, the area restriction of Regulation .03.D of this chapter shall not be increased to account for multiple ARES.

.04 Application Requirements.

A farm owner shall submit a complete request to approve an ARES on a form approved by the Foundation no later than June 30, 2018. Each application submitted to the Foundation shall be complete and shall be signed by all farm owners and include all of the following:

A. A written statement providing:

(1) The nature of the proposed ARES;

(2) The name and contact information of the owner or operator of the proposed ARES, if owned or operated by any person or entity other than the farm owner;

(3) The basis for determining that the proposed ARES will not interfere significantly with any agricultural use of the farm;

(4) The method the farm owner or ARES owner will use to satisfy the bond requirement provided in Regulation .12 of this chapter;

(5) The method the farm owner or ARES owner will use to comply with existing soil and water conservation plans and forest stewardship plans while the ARES is being constructed, installed or operated;

(6) An acknowledgment that the farm owner and ARES owner agree to comply with all licensing and regulatory requirements to operate any proposed ARES; and

(7) An acknowledgment that the farm owner and ARES owner agree to allow the Foundation's representatives to inspect the ARES and any related records during normal business hours (9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal and State holidays).

B. A courses and distances survey outlining the entire easement area, which survey shall include:

(1) The proposed location of the ARES;

(2) The number of acres subject to the easement;

(3) A brief statement explaining how the proposed ARES satisfies the area restriction provided in Regulation .03.D of this chapter;

(4) The proposed location of any new permanent roadways to serve the ARES;

(5) The proposed location of any temporary roadways used to construct the ARES;

(6) The proposed location of any temporary staging areas used to construct the ARES; and

(7) The location of, and access to, all dwellings, lot exclusions and farm buildings.

C. A written statement from the applicable county zoning administrator stating that the proposed ARES is a permitted use, subject to county laws, statutes or ordinances, unless such laws, statutes and ordinances are preempted by other law;

D. A written statement from the applicable local agricultural preservation advisory board providing a favorable recommendation to have the proposed ARES placed on the farm;

E. A written statement from the applicable local conservation district certifying that the farm complies with any water quality and soil conservation plan;

F. A written statement from the Department certifying that the farm currently complies with all applicable nutrient management requirements;

G. A written statement from the Department certifying that the farm owner currently complies with all applicable cost share agreements with the Department;

H. A written statement from the Foundation certifying that the farm owner currently complies with the applicable easement; and

I. A copy of all existing and proposed facility agreements regarding the ARES, which agreements must include the following terms and information:

(1) The name of the lessee, licensee, manager and/or operator of the proposed ARES;

(2) An acknowledgment by all parties to a facility agreement that any conflict between the facility agreement and the Foundation easement (as amended by the terms and conditions of the Foundation's approval to locate an ARES on a farm subject to such Foundation easement) shall be resolved in favor of the Foundation easement;

(3) An acknowledgment by all parties to a facility agreement that the facility agreement must comply with the terms and conditions of the Foundation's approval to locate an ARES on a farm; and

(4) A requirement that all parties to a facility agreement provide the Foundation with notice of any assignment, renewal, modification or termination of such agreements.

.05 Application Evaluation Criteria.

The Foundation shall review each ARES application on a case-by-case basis to determine whether the proposed ARES complies with the requirements of this chapter for approval. In addition to the eligibility factors provided in Regulation .03 of this chapter, the Foundation shall also consider the following factors to determine whether the proposed ARES interferes significantly with any agricultural use of the farm.

A. The proposed ARES may not conflict with the terms of the deed of easement applicable to the farm, including but not limited to the following:

(1) The area approved for any ARES may not be subdivided from the farm, unless such area is part of an agricultural subdivision approved by the Foundation pursuant to COMAR 15.15.12; and

(2) The ARES may not have a detrimental impact on drainage, flood control, erosion control, forest stewardship, water conservation or soil conservation on the farm.

B. The proposed ARES may not negatively impact the agricultural use of a farm beyond the approved ARES area.

C. The proposed ARES shall be located and configured in a manner that maximizes the farm's agricultural use, meaning that:

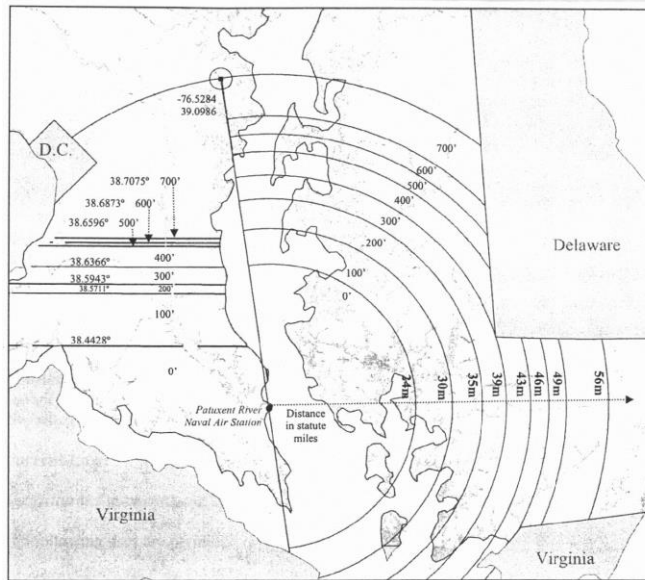
(1) It may not be constructed or installed on prime farmland, consisting of United States Department of Agriculture Soil Capability Classes I, II, and III or Woodland Groups 1 and 2 and shall be located along field edges, unless the Foundation approves otherwise based on sufficient justification provided by the applicant;

(2) It shall be located and configured to avoid dividing larger fields into smaller fields and to avoid isolating areas of the farm so that they are no longer viable or efficient for agricultural use, unless the Foundation approves otherwise based on sufficient justification provided by the applicant; and

(3) In compliance with Regulation 03.E of this chapter, the area approved for an ARES on a farm must constitute one contiguous area and may not constitute multiple areas on the farm, unless the Foundation approves otherwise based on sufficient justification provided by the applicant.

.06 Wind Turbine Restrictions.

An ARES that generates electricity from wind shall not be located in an area where the wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station. The following map identifies areas of the State, measured from the Reference Point on the Patuxent River Naval Air Station as defined by Agriculture Article 2-513(c)(1)(III), where wind turbines are restricted by height or otherwise prohibited on a farm. A wind turbine located on a farm shall not exceed the specified height above ground level in the areas specifically described in Agriculture Article 2-513(c)(5).



.07 Modifications to Foundation Approved ARES.

After the Foundation approves an ARES on a farm, the farm owner may need to modify the terms and conditions of the Foundation's approval to satisfy federal, State or local requirements. If the farm owner seeks to modify the terms and conditions of the Foundation's approval for an ARES, the following process shall apply:

A. The farm owner shall apply to the Foundation to request the desired modifications to the approved ARES;

B. Foundation staff shall review the proposed modifications to the approved ARES and may either approve or deny the proposed modifications administratively. Foundation staff may recommend that the Foundation Board of Trustees consider and decide upon any proposed modification to an approved ARES.

C. If the farm owner disagrees with a staff administrative decision regarding desired modifications to the approved ARES, the farm owner may petition the Foundation Board of Trustees to consider the desired modifications. The Foundation Board of Trustees may grant or deny such petition.

.08 Required Recording Agreement.

If the Foundation approves an ARES on a farm, the farm owner and the Foundation shall execute a recording agreement, to be recorded among the appropriate land records, that states the duties and obligations between the parties, consistent with the requirements of this chapter. The recording agreement shall run with the land and bind all future owners of the farm. An approved ARES may not be constructed on a farm until a recording agreement is recorded in the appropriate land records. The recording agreement shall, at a minimum, include the following terms and conditions:

A. The construction, installation and operation of the ARES shall take place only within the area approved by the Foundation and shall be conducted to ensure that the land can readily be returned to active agriculture use after the ARES is removed;

B. Site disturbance, land clearing, grading, top soil removal, subsoil removal and soil compactions are allowed only if necessary to construct, install, operate or maintain the ARES;

C. Topsoil from the approved ARES site may not be removed from the farm but shall be spread or stockpiled elsewhere on the farm as approved by the Foundation and consistent with a farm's approved conservation plan;

D. The use of concrete, asphalt or other impervious surface material on the farm is prohibited within the approved ARES area except to mount wind turbines, solar panels and any necessary associated equipment, or to construct and operate an anaerobic digestion facility or any system components;

E. The use of existing roadways to provide access to the ARES shall be maximized to avoid constructing new onsite roadways;

F. New permanent roadways on the farm to serve the ARES shall use gravel or other pervious material to minimize soil disturbance, water runoff and soil compaction on the farm, and shall meet the following conditions:

(1) Such roadways shall be the minimum width necessary to accommodate construction traffic;

(2) Such roadways shall be no greater than 16 feet wide;

(3) If such roadways cross agricultural fields, they shall be located along ridge tops, hedgerows or field boundaries to the maximum extent possible;

(4) Such roadways shall be constructed so they are level with adjacent fields to facilitate crossing by farm equipment to the maximum extent possible; and

(5) To protect agricultural soils from damage, such roadways may not be constructed during wet conditions.

G. Temporary roadways to construct an ARES are permitted, provided that such roadways are prepared with gravel or other pervious material and such roadways are removed once the ARES starts to operate;

H. When it is not possible to use the approved open space of the ARES area on the farm for agricultural use, the same area shall be maintained with vegetative cover to prevent soil erosion and shall be managed to prevent weeds or other invasive species from growing or spreading to other areas of the farm;

I. During the construction, installation, operation and maintenance of the ARES, appropriate measures shall be taken to ensure compliance with existing soil and water conservation plans and forest stewardship plans;

J. During the construction of the ARES, the following restrictions shall be implemented:

(1) All construction-related vehicle and equipment traffic and parking shall be restricted to an access road or designated area, unless prior written approval has been provided by the Foundation;

(2) Crane set-up and breakdown activities must be restricted to designated work areas on the farm;

(3) The farm owner shall dispose of all wire, bolts and other unused material related to the ARES to ensure these objects do not mix with any soil; and

(4) All vehicles used to construct, serve or maintain any ARES shall not be serviced or washed on the farm, unless the Foundation approves otherwise; and

K. Any other terms and conditions the Foundation deems appropriate for the recording agreement.

.09 Easement Amendment to Authorize an ARES.

A. The Foundation may amend the terms of an easement approved by the Board of Public Works before June 30, 2014 to authorize an ARES on the farm if:

(1) The Foundation approves an application for an ARES on a farm in accordance with the requirements of this chapter; and

(2) The farm owner agrees to pay the cost of all title work, title insurance premiums, surveys, and documents necessary to complete the easement amendment;

B. For any easement amendment authorized by this Regulation, the Foundation may require other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and future profitability of the farm.

.10 Assessment of Costs and Fees.

A. Easement amendment costs - the Foundation shall assess and the farm owner shall agree to pay the costs of amending an agricultural land preservation easement approved for purchase by the Board of Public Works prior to June

30, 2014 in a manner that permits the uses allowed by this chapter. The costs shall be determined on a case-by-case basis.

B. *Monitoring and enforcement fees* – if the Foundation approves an ARES for a farm, the Foundation shall assess the farm owner an annual fee to reimburse the Foundation for monitoring and enforcement costs associated with the uses provided by this chapter. This fee is payable to the Foundation on January 1st of each year following the approval of the ARES, and may be modified from time to time. The fee will continue to be assessed each year until the facility agreement is terminated, the ARES is dismantled and the land reclaimed for agricultural use, as determined by the Foundation.

.11 Required Lease Payments to the Foundation.

A. If an ARES owner enters into a facility agreement with a farm owner, the ARES owner shall annually pay the Foundation five (5) percent of any payment made to the farm owner as a result of a facility agreement. The payments required under this Regulation shall be pro-rated for any partial year in which payments are made to the farm owner as a result of a facility agreement. Any facility agreement between an ARES owner and a farm owner must include an express term to require this mandatory payment to the Foundation.

B. Both the ARES owner and the farm owner shall provide the Foundation with a copy of all facility agreements concerning the ARES facility on the farm.

C. Both the ARES owner and the farm owner shall notify the Foundation, in writing, of any amendments, modifications, renewals or terminations to facility agreements concerning the ARES on the farm.

.12 Required Removal of ARES and Bond Requirement.

A. If an ARES is scheduled to stop operations, the farm owner and the ARES owner or operator shall notify the Foundation, in writing, no less than thirty (30) days prior to the date when the ARES will cease to operate.

B. If the ARES owner enters into a facility agreement with the farm owner, the facility agreement shall require the ARES owner to remove all materials related to an ARES within 180 days of the last operation date of the ARES.

C. If an ARES is not subject to a facility agreement, the farm owner shall remove all materials related to the ARES within 180 days of the last operation date of the ARES.

D. The ARES, along with any related structures or equipment, shall be removed in a manner to ensure that the agricultural productivity of the soil is restored to the greatest extent possible, including but not limited to, the following:

(1) Removal shall be done in accordance with an approved conservation plan that addresses soil and water resource concerns;

(2) All facilities, structures and equipment shall be removed from the farm, including underground foundations and cables; and

(3) Excavated areas shall be backfilled with clean sub-grade material covered by a layer of topsoil, with the depth of restored topsoil consistent with the depth of topsoil of the surrounding land.

E. If the Foundation approves an ARES on a farm, and before construction of the ARES begins, the farm owner or ARES owner shall post a bond or other security in favor of the Foundation to ensure that all materials related to the ARES can be removed from the farm property as required by this Regulation. The Foundation, in its sole and absolute discretion, may release the bond or security required by this Regulation only after determining that all obligations to remove material related to the ARES from the farm property are satisfied. The bond or security required by this Regulation may be satisfied by a comprehensive decommissioning bond posted by the ARES owner, so long as such bond satisfies the criteria of this Regulation. The required bond or security shall satisfy the following requirements:

(1) The amount of the bond or security required by this Regulation shall be sufficient to pay all costs to remove from the farm any material related to the ARES;

(2) The amount of the bond or security shall be established by a good faith estimate, prepared by a business qualified to remove the ARES from the farm. The farm owner or ARES owner is responsible for acquiring the good faith estimate;

(3) The bond or security shall account for inflation over the term of the facility agreement or the projected life of the ARES if there is no facility agreement;

(4) The bond or security shall be issued by an entity licensed to do business in Maryland; and

(5) The bond or security shall expressly state that the Foundation may enforce the instrument in Maryland State court under Maryland law.

13. Violations.

A. A farm owner who violates any federal, State or local laws regarding the operation of an ARES is in violation of the easement and is subject to civil penalties under Agriculture Article §2-519.

B. A farm owner who violates the Foundation's approval conditions for an ARES is in violation of the easement and is subject to all legal remedies available to the Foundation to enforce the terms of the easement, including civil penalties under Agriculture Article §2-519.