

Title 26

DEPARTMENT OF THE ENVIRONMENT

Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, AND SOLID WASTE

26.04.13 Food Residuals - Organics Recycling and Waste Diversion

Authority: Environment Article, §§1-101, 9-201, 9-1701, and 9-1724.1, Annotated Code of Maryland

.01 Purpose.

The purpose of this chapter is to establish certain requirements pertaining to the diversion of food residuals from final disposal in a refuse disposal system pursuant to Environment Article, §9-1724.1, Annotated Code of Maryland, including:

- A. Clarifying the types of entities and individuals that meet the definition of “person”, for the purpose of complying with the food residuals diversion requirements;
- B. Outlining the types of materials a person shall divert from disposal;
- C. Specifying the documentation to be maintained by a person required to divert food residual from disposal;
- D. Establishing application and approval procedures for waivers issued to persons otherwise required to divert food residuals from disposal; and
- E. Establishing annual reporting requirements for an entity or individual required to divert food residuals from disposal under this chapter.

.02 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
 - (1) “Anaerobic digestion” means the controlled anaerobic biological decomposition of organic waste material to produce biogas and digestate.
 - (2) “Composting” means the controlled aerobic biological decomposition of organic waste material.
 - (3) Food Residuals.
 - (a) “Food Residuals” means material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats.
 - (b) “Food Residuals” include all material generated including material that is packaged or unpackaged.
 - (4) “Generates” means creates material destined for management in a refuse disposal system if not otherwise diverted through reduction or recycling activities.
 - (5) Organics Recycling.
 - (a) “Organics recycling” means any process in which organic materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products.
 - (b) “Organics recycling” includes anaerobic digestion and composting.
 - (6) “Organics recycling facility” means a facility where organics recycling takes place.
 - (7) Person.
 - (a) “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.
 - (b) “Person” includes:
 - (i) An individual facility owned or operated by a local school system;
 - (ii) An individual public primary or secondary school;
 - (iii) An individual nonpublic school;
 - (iv) A supermarket, convenience store, mini-mart, or similar establishment;
 - (v) A business cafeteria, school cafeteria, or institutional cafeteria;
 - (vi) A cafeteria operated by or on behalf of the State or a local government;
 - (vii) A manufacturer, processor, or similar establishment; and
 - (viii) Any other entity listed under §B(7)(a) of this regulation that is not excluded under §B(7)(c) of this regulation.
 - (c) “Person” does not include:
 - (i) The aggregate of all school buildings and facilities in a local school system; and
 - (ii) A restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.
 - (8) Recyclable Materials.
 - (a) “Recyclable materials” means those materials that:
 - (i) Would otherwise become solid waste for disposal in a refuse disposal system; and
 - (ii) May be collected, separated, composted, or processed and returned to the marketplace in the form of raw materials or products.

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- (b) “Recyclable materials” does not include incinerator ash.
- (9) “Recycling” means any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products.
- (10) “Refuse disposal system” includes:
 - (a) An incinerator;
 - (b) A transfer station;
 - (c) A landfill system;
 - (d) A landfill;
 - (e) A solid waste processing facility; and
 - (f) Any other solid waste acceptance facility.

.03 Food Residuals Diversion Requirement.

A. Except as provided in a waiver issued by the Department under Regulation .04 of this chapter, a person shall divert food residuals from final disposal in a refuse disposal system in accordance with this regulation if:

- (1) The person generates:
 - (a) On or after January 1, 2023, at least an average of 2 tons of food residuals each week that they are in operation and generating food residuals; or
 - (b) On or after January 1, 2024, at least an average of 1 ton of food residuals each week that they are in operation and generating food residuals; and
- (2) The person generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that:
 - (a) Has the capacity to accept and process all of the person’s food residuals;
 - (b) Is willing to accept all of the person’s food residuals for recycling; and
 - (c) Is willing to enter into a contract to accept and process the person’s food residuals.

B. Determining the Weight of Food Residuals Generated. For the purpose of determining if a person generates the amount of food residuals specified under §A(1) of this regulation:

- (1) A person may use any of the following methodologies:
 - (a) An actual measurement of the weight of food residuals generated;
 - (b) If the person does not have an actual measurement of the weight of food residuals generated, an estimate of weight based on volume using a volume-to-weight conversion factor acceptable to the Department; or
 - (c) If the person does not have an actual measurement of the weight or volume of food residuals generated, an estimate of weight using a conversion factor appropriate for the type of food generator that is acceptable to the Department; or
- (2) A person that owns or operates multiple facilities or buildings located at a single location or campus that have a common system or contract for waste management shall use the aggregate weight of the food residuals generated by all the facilities or buildings, calculated using one of the methods specified under §A(1) of this regulation.

C. Methods of Diversion. A person subject to the food residuals diversion requirement under §A of this regulation shall:

- (1) Separate food residuals from other solid wastes; and
- (2) Divert food residuals from final disposal in a refuse disposal system through any combination of the following methods:
 - (a) Reducing the amount of food residuals generated by the person;
 - (b) Donating servable food;
 - (c) Managing the food residuals in an organics recycling system installed on-site in accordance with any applicable regulations adopted by the Secretary of the Environment;
 - (d) Providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed; and
 - (e) Providing for the collection and transportation of the food residuals for processing in an off-site organics recycling facility.

D. Documentation.

- (1) In order to administer and enforce the food residuals diversion requirements of this regulation, the Department may request that a person provide documentation of:
 - (a) The weight of food residuals generated by the person each week;
 - (b) Any correspondence between the person and an organics recycling facility located within a 30-mile radius of the person demonstrating the organics recycling facility’s willingness to accept all of the person’s food residuals or enter into a contract to accept and process all of the person’s food residuals; and
 - (c) Any correspondence from all organics recycling facilities within proximity of the person that they are not able or are unwilling to enter a contract with a person and accept and process all of the person’s food residuals.
- (2) If the Department requests that a person provide the documentation described under §D(1) of this regulation, the person shall submit the requested documentation to the Department not later than 30 days after the request, unless an alternative deadline is provided by the Department.

.04 Waiver from the Food Residuals Diversion Requirement.

A. The Department may grant a waiver from the requirement to divert food residuals from final disposal in a refuse disposal system under Regulation .03 of this chapter if a person demonstrates, in accordance with §C(2) of this regulation, undue hardship for the following reasons:

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(1) The cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system; or

(2) For other reasonable circumstances as determined by the Department.

B. Waiver Conditions.

(1) The Department may grant a waiver to a person for a period that is the shorter of the following:

(a) 12 months; or

(b) Until an alternate organics recycling facility becomes available that is:

(i) Located within a 30-mile radius of the person subject to the waiver;

(ii) Capable of accepting and processing all of the person's food residuals; and

(iii) Willing to enter into a contract to accept and process the person's food residuals.

(2) There is not a limit to the number of times the Department may grant a person a waiver.

C. Application Procedures.

(1) A person shall submit a waiver request to the Department electronically, in the form of a letter.

(2) A person must include in a waiver request:

(a) A description of the basis for the waiver request;

(b) If the request is based on financial hardship as described under §A(1) of this regulation:

(i) A list of all organics recycling facilities located within a 30-mile radius of the person and a quote or other supporting documentation provided by each organics recycling facility detailing the cost to accept and process all of the person's food residuals;

(ii) If owned or operated by an entity that is separate from the organic recycling facilities described under §C(2)(b)(i) of this regulation, a quote or other supporting documentation provided by a recyclable materials hauler detailing the cost to collect and haul the person's food residuals to an organics recycling facility;

(iii) A quote or other supporting documentation provided by a refuse disposal system detailing the cost to accept all of the person's food residuals for final disposal; and

(iv) If owned or operated by an entity that is separate from the refuse disposal system described under §C(2)(b)(iii) of this regulation, a quote or other supporting documentation provided by a solid waste hauler detailing the cost to collect and haul the food residuals to a refuse disposal system;

(c) Any other information considered necessary or required by the Department; and

(d) A certification that the information provided is true and correct to the knowledge of the person signing the letter.

(3) A person granted a waiver must reapply for a waiver at least 60 days before the end of the 12-month period for the current waiver term, or whenever an alternate organics recycling facility becomes available that meets the criteria in §B(1)(b) of this regulation, whichever occurs sooner.

.05 Reporting.

On or before March 1st of each calendar year, a person subject to the food residual diversion requirement under Regulation .03A of this chapter shall submit a report:

A. On the person's solid waste and recyclable materials management activities during the preceding calendar year to each county where the solid waste and recyclable materials were generated;

B. In a form required by the Department; and

C. That includes all of the following information:

(1) The total amount, by weight, of solid waste generated;

(2) The total amount and types, by weight, of recyclable materials generated;

(3) The total amount, by weight, of solid waste disposed;

(4) The name and location of each refuse disposal system that accepted the solid waste for disposal;

(5) The total amount and types, by weight, of recyclable materials diverted from disposal;

(6) The name and location of each recycling facility that accepted the recyclable materials for recycling; and

(7) Any other information required by the Department.

.06 Enforcement.

A. The Department may inspect a site or business owned or operated by a person suspected or known to be subject to Regulations .03 and .04 of this chapter in accordance with Environment Article, §1-404(k), Annotated Code of Maryland.

B. A person found in violation of Regulation .03 or .04 of this chapter is subject to the enforcement provisions established under Environment Article, §9-1724.1(e), Annotated Code of Maryland.