

# Title 26

## DEPARTMENT OF THE ENVIRONMENT

### Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, [AND] SOLID WASTE, AND RECYCLABLE MATERIALS

#### 26.04.13 Food Residuals—Organics Recycling and Waste Diversion

*Authority: Environment Article, §§1-101, 9-201, 9-1701, 9-1702, and 9-1724.1, Annotated Code of Maryland*

#### Notice of Proposed Action

[22-184-P]

The Secretary of the Environment proposes to adopt new Regulations .01—.05 under a new chapter, **COMAR 26.04.13 Food Residuals — Organics Recycling and Waste Diversion**.

#### Statement of Purpose

The purpose of this action is to implement Chs. 439 and 440, Acts of 2021, entitled Organics Recycling and Waste Division — Food Residuals. The law requires, beginning in 2023, certain persons who generate certain quantities of food residuals to separate their food residuals from other solid waste and divert those food residuals through reduction and recycling activities from final disposal in a refuse disposal system. This food residuals diversion mandate applies to a person that: (1) generates at least 2 tons of food residuals per week, beginning January 1, 2023, and at least 1 ton of food residuals per week, beginning January 1, 2024, and (2) is located within 30 miles of an organics recycling facility with the capacity and willingness to accept the material for recycling. The law authorizes the Maryland Department of the Environment (MDE) to grant a person otherwise subject to the food residuals diversion mandate a waiver from the mandate if the person demonstrates, to the satisfaction of MDE, undue hardship because of the cost of diverting food residuals is more than 10 percent more expensive than disposing of the material in a refuse disposal system, or for other reasonable circumstances. MDE is required under the law to establish waiver application procedures. Lastly, MDE is required to annually report on the implementation of the law, including the impacts on waste diversion in the State.

The proposed action would:

- Define certain terms not defined under the 2021 law;
- Clarify that a person subject to the food residuals diversion mandate includes manufacturers and processors, as well as the types of materials considered to be food residuals;
- Prohibit a person from diverting food residuals in a manner likely to cause pollution or certain nuisance conditions;
- For a person subject to the food residuals diversion mandate, establish methods to be used by the person in determining the weight of food residuals generated, a schedule under which the person must begin diverting food residuals, and a requirement for the person to provide MDE with certain documentation demonstrating their compliance with the food residuals diversion mandate;
- Establish procedures for applying for a waiver, and conditions under which MDE may approve or deny a waiver request or revoke an approved waiver; and
- Require a person subject to the food residuals diversion mandate to annually report on their solid waste and recyclable materials management activities to each county where the solid waste and recyclable materials were generated.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 David Mrgich, Waste Diversion Division Chief, Land and Materials Administration, Maryland Department of the Environment, 1800 Washington Blvd., Suite 610, Baltimore, MD 21230, or call 410-537-3314, or email to [dave.mrgich@maryland.gov](mailto:dave.mrgich@maryland.gov), or fax to 410-537-3321. Comments will be accepted through October 24, 2022. A public hearing has not been scheduled.

#### **.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. *Clarifying the types of materials that meet the definition of “food residuals”;*
- C. *For a person required to divert food residuals from final disposal in a refuse disposal system, establishing:*
  - (1) *The methods for determining the weight of food residuals generated by the person;*
  - (2) *A schedule for complying with the food residuals diversion requirements;*
  - (3) *The documentation to be maintained by a person required to divert food residuals from final disposal in a refuse disposal system; and*
  - (4) *A requirement to submit a certain report annually to counties; and*
- D. *Establishing application and approval procedures for waivers issued to persons otherwise required to divert food residuals from final disposal in a refuse disposal system.*

#### **.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) "Animal mortality" means an animal carcass that is generated:
- (a) At a farm during the normal course of operations;
  - (b) At another location and managed by State or local government as part of roadway or other maintenance activities; or
  - (c) At a farm or other location and managed under an emergency exemption under COMAR 26.04.11.06.
- (3) "Compostable products" means containers, films, or food service items, such as bowls, plates, cups, or cutlery, composed of materials such as:
- (a) Vegetable matter;
  - (b) Paper;
  - (c) Cardboard; and
  - (d) Compostable plastics that are, within the length of time and process employed at the composting facility at which they are used, capable of biological decomposition to a degree that they result in marketable compost meeting the standards established by the Secretary of Agriculture under Agriculture Article, §6-221, Annotated Code of Maryland.
- (4) "Composting" means the controlled aerobic biological decomposition of organic waste material.
- (5) "Final disposal" means the complete and ultimate disposal of solid waste.
- (6) 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" does not include:
- (i) Animal mortalities;
  - (ii) Compostable products; or
  - (iii) Wastewater that contains material derived from the processing or discarding of food.
- (7) "Generates" means creates material destined for management in a refuse disposal system if not otherwise diverted through reduction or recycling activities.
- (8) 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.
- (9) "Organics recycling facility" means a facility where organics recycling takes place.
- (10) 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(10)(a) of this regulation that is not excluded under §B(10)(c) of this regulation.
- (c) "Person" does not include:
- (i) The aggregate of all school buildings and facilities in a local school system; or
  - (ii) A restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.
- (11) 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.
- (b) "Recyclable materials" does not include incinerator ash.
- (12) "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.
- (13) "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. General Provisions.**

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

(2) A person subject to the food residuals diversion requirements under §B of this regulation may not divert food residuals from final disposal in a refuse disposal system in accordance with the regulation in a manner likely to:

- (a) Be conducive to insect and rodent infestation or the harborage of animals;
- (b) Cause nuisance odors or air pollution in violation of Environment Article, Title 2, Annotated Code of Maryland, or involve the construction of a source of air pollution subject to a permit to construct or the operation of a source of air pollution subject to a permit to operate unless permitted by the Department under Environment Article, Title 2, Annotated Code of Maryland;
- (c) Cause a discharge of pollutants to waters of this State unless permitted by the Department under Environment Article, §9-323, Annotated Code of Maryland;
- (d) Impair the quality of the environment; or

(e) Create other hazards to the public health, safety, welfare, or comfort as may be determined by the Department.

**B. Food Residuals Diversion Mandate.**

(1) Except as provided in a waiver issued by the Department under Regulation .04 of this chapter, a person shall divert their food residuals from final disposal in a refuse disposal system in accordance with this regulation if the person meets all of the following criteria:

(a) The person generates:

- (i) 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
  - (ii) 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
- (b) The person generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that:
- (i) Has the capacity to accept and process all of the person's food residuals;
  - (ii) Is willing to accept all of the person's food residuals for recycling; and
  - (iii) Is willing to enter into a contract to accept and process the person's food residuals.

(2) A person shall begin diverting their food residuals from final disposal in a refuse disposal system not later than 90 days after the person meets the criteria under §B(1) of this regulation.

**C. Determining the Weight of Food Residuals Generated.** For the purpose of determining if a person meets the food residuals generation thresholds specified under §B(1)(a) of this regulation:

(1) A person shall calculate the amount of food residuals generated using a methodology provided by the Department and based on one of the following measurements:

- (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 that is 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 residuals 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 each week by all the facilities or buildings, calculated using one of the methods specified under §C(1) of this regulation.

**D. Methods of Diversion.** A person subject to the food residuals diversion requirements under §B of this regulation shall:

- (1) Separate food residuals from other solid wastes and non-compostable materials, including separating food residuals from any film or containers; 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 for human consumption, including the donation of food to a nonprofit corporation, organization, or association;
  - (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.

**E. Documentation.**

(1) In order to administer and enforce the food residuals diversion requirements of this regulation, the Department may request that a person subject to the food residuals diversion requirements under §B of this regulation provide documentation of:

- (a) The actual or estimated 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 an organics recycling facility located within a 30-mile radius of the person that the organics recycling facility is unable or 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 §E(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:

(1) A person demonstrates, in accordance with §D(2) of this regulation, undue hardship for the following reasons:

- (a) The cost of diverting food residuals from a refuse disposal system is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system; or
  - (b) For other reasonable circumstances as determined by the Department; or
- (2) A person generates food residuals identified by a federal or State agency as having a biosecurity or food safety concern.

**B. Waiver Conditions.**

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

- (a) A period established by the Department not to exceed 12 months;
  - (b) If the waiver was granted for an undue hardship as described under §A(1) of this regulation, 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; or
  - (c) A period that ends upon the date of a notification that the Department had revoked a previously approved waiver.
- (2) There is no limit to the number of times the Department may grant a person a waiver.

**C.** The application requirements established under §D of this regulation do not apply to a waiver requested by, or granted to, a person that generates food residuals identified by a federal or State agency as having a biosecurity or food safety concern.

**D. Application Procedures for Undue Hardship Waiver Requests.**

(1) A person shall submit a written waiver request to the Department electronically, in a format required by the Department.

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

- (a) A description of the basis for the waiver request;
- (b) If the waiver request is based on undue hardship due to diversion costs as described under §A(1)(a) of this regulation:

(i) A list of all off-site organics recycling facilities located within a 30-mile radius of the person and a quote or other supporting documentation provided by each off-site organics recycling facility on the list 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 one of the off-site organics recycling facilities described under §D(2)(b)(i) of this regulation, a quote or other supporting documentation provided by one or more recyclable materials haulers detailing the cost to collect and haul the person's food residuals to an off-site organics recycling facility;

(iii) A quote or other supporting documentation provided by one or more refuse disposal systems 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 systems described under §D(2)(b)(iii) of this regulation, a quote or other supporting documentation provided by one or more solid waste haulers 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 waiver request.

(3) Reapplication for a Waiver:

(a) A person granted a waiver shall reapply for a waiver:

(i) At least 60 days before the end of the 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; and

(ii) In accordance with the application procedures established under §D(1) and (2) of this regulation.

(b) If the waiver request is based on undue hardship due to diversion costs as described under §A(1)(a) of this regulation, a person shall include in the waiver request up-to-date versions of the documents listed under §D(2)(b) of this regulation, which shall be obtained by the person not earlier than 30 days before the waiver request is submitted to the Department.

E. Conditions for Approval, Denial, or Revocation of a Waiver:

(1) Notification of the Department's Decision.

(a) The Department shall notify a person in writing of the Department's decision to approve or deny a waiver request or to revoke a waiver previously approved by the Department.

(b) In a notification that a waiver request has been approved, the Department shall state the term of the waiver period.

(2) The Department may deny a waiver request or revoke a previously approved waiver if the Department determines:

(a) A violation of a requirement of this regulation, Regulation .03 of this chapter, or Environment Article, §9-1724.1, Annotated Code of Maryland, has occurred;

(b) False or inaccurate information or data was provided in an application for a waiver request; or

(c) Any other good cause exists for denying a waiver request or revoking an approved waiver.

#### **.05 Reporting.**

On or before March 1, 2024, and each March 1 thereafter, a person subject to the food residuals diversion requirements under Regulation .03 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 format 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.

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Secretary of the Environment