



COMPLIANCE GUIDE FOR PROPOSED REGULATIONS

Food Residuals - Organics Recycling and Waste Diversion

This compliance guide provides a clear and concise explanation of how certain small businesses that generate food residuals may comply with the proposed regulations. This compliance guide is for informational purposes and should not be construed as legal advice. If the proposed regulations are adopted by the Secretary of the Environment and become effective, affected small businesses should consult the law, Environment Article, Annotated Code of Maryland or Code of Maryland Regulations (COMAR), or consult legal counsel. This document is subject to change if the proposed regulations are substantively changed during the regulatory proposal process.

Table of Contents

| | |
|--|---|
| Summary of the Proposed Regulations | 1 |
| Definition of Key Terms | 2 |
| Entities Subject to the Proposed Regulations | 3 |
| Food Residual Diversion | 4 |
| Waiver | 7 |
| Reports to Counties | 9 |
| Frequently Asked Questions | 9 |

Summary of the Proposed Regulations

The state legislature passed a law in 2021 that requires, beginning January 1, 2023, certain persons who generate certain quantities of food residuals in Maryland to separate their food residuals from other solid waste and divert those food residuals from final disposal in a refuse disposal system (2021 Md. Laws 439 and 440). The law provides several waste diversion methods a person may implement to comply with the food residuals diversion mandate. Lastly, the law authorizes the Maryland Department of the Environment (MDE) to grant a waiver from the food residuals diversion mandate to a person under certain conditions and requires MDE to establish waiver application procedures. A [copy](#) of the law is available online on the General Assembly of Maryland website.

The regulatory proposal would establish new regulations under **COMAR 26.04.13 Food Residuals – Organics Recycling and Waste Diversion** to implement the 2021 law. The regulatory proposal 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;
- Clarify 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.

A comprehensive and detailed explanation of all proposed regulatory changes and their effect on the entire regulated community and the public is included in the Notice of Proposed Action published in the [Maryland Register](#) on September 23, 2022, a copy of which is available on MDE's Proposed Land Regulations [webpage](#).

Definition of Key Terms

The following key terms are defined in the proposed regulations and are used throughout this compliance guide:

Anaerobic digestion means the controlled anaerobic biological decomposition of organic waste material to produce biogas and digestate.

Animal mortality means an animal carcass that is generated:

- At a farm during the normal course of operations;
- At another location and managed by State or local government as part of roadway or other maintenance activities; or
- At a farm or other location and managed under an Emergency Exemption under COMAR 26.04.11.06.

Compostable products means containers, films, or food service items, such as bowls, plates, cups, or cutlery, composed of materials such as: vegetable matter; paper; cardboard; and 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.

Composting means the controlled aerobic biological decomposition of organic waste material.

Final disposal means the complete and ultimate disposal of solid waste.

Food residuals mean material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats. Food residuals does not include animal mortalities, compostable products, or wastewater that contains material derived from the processing or discarding of food.

Generates means creates material destined for management in a refuse disposal system if not otherwise diverted through reduction or recycling activities.

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. Organics recycling includes anaerobic digestion and composting.

Organics recycling facility means a facility where organics recycling takes place.

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. A person includes: an individual facility owned or operated by a local school system; an individual public primary or secondary school; an individual nonpublic school; a supermarket, convenience store, mini-mart, or similar establishment; a business cafeteria, school cafeteria, or institutional cafeteria; a cafeteria operated by or on behalf of the state or a local government; a manufacturer, processor, or similar establishment; and any other entity listed under item (b) that is not excluded under item (c).
- c. A person does not include: the aggregate of all school buildings and facilities in a local school system; or a restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.

Recyclable materials means those materials that: would otherwise become solid waste for disposal in a refuse disposal system; and may be collected, separated, composted, or processed and returned to the marketplace in the form of raw materials or products. Recyclable materials do not include incinerator ash.

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.

Refuse disposal system includes an incinerator, a transfer station, a landfill system, a landfill, a solid waste processing facility, and any other solid waste acceptance facility.

Entities Subject to the Proposed Regulations

Who is Subject to the Proposed Regulations?

An entity is subject to the proposed regulations if the entity meets the definition of “person,” as described above.

Examples of Affected Entities

The types of entities, including small businesses, that may meet the definition of “person” and be subject to the regulatory proposal include, but are not limited to:

- Commissary kitchens;
- Convenience stores, mini-marts, and similar retailers of food products;
- Wholesale distributors such as grocers, farmer’s markets, food and produce distributors, and similar entities that fall under the North American Industry Classification System (NAICS) Code 514 - Groceries and Related Products;
- One of the following entities with a cafeteria:
 - a. An individual public or private school that provides education and programs for preschool through grade 12;
 - b. An individual campus of a college, university, or vocational school;
 - c. An industrial building, manufacturing building, merchant building (e.g., mall or shopping center), or office building;
 - d. An individual institutional building or campus (e.g., a state or local government-owned or operated building, public or private correctional facility, or public or private health care facility);

- e. A religious institution (e.g., houses of worship and ancillary structures, faith-based schools, and other faith-based organizations);
- f. Airports and transit stations (e.g., a rail or light-rail station, ferry terminal, bus hub, or bus transfer station);
- g. Meeting venues, such as convention and conference centers;
- h. Entertainment and recreational venues such as a stadium, theater, performing arts center, theme park, fairground, or park; and
- i. Hotels, motels, and other lodging facilities; and
- The following entities involved in the manufacturing or processing of human food products:
 - a. Bakeries and tortilla manufacturers;
 - b. Dairy product manufacturers;
 - c. Fruit and vegetable preserving and specialty food manufacturers;
 - d. Grain and oilseed manufacturers;
 - e. Animal slaughters and processors, including meat packagers;
 - f. Seafood processors, including seafood packagers;
 - g. Sugar and confectionery product manufacturers; and
 - h. Similar entities that fall under NAICS Code 311 - Food Manufacturers.

Food Residuals Diversion

Food Residuals Diversion Mandate

Applicability Criteria

The proposed regulations require a person meeting both of the following criteria to divert food residuals from final disposal in a refuse disposal system:

- A person generating:
 - a. Beginning 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. Beginning 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
- A person generating 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.

Compliance Schedule

Beginning January 1, 2023, a person would be required to start diverting their food residuals from final disposal in a refuse disposal system not later than 90 days after the person meets the applicability criteria.

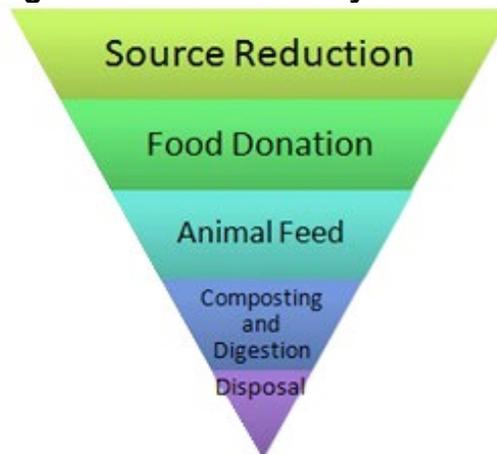
Diversion Methods

Waste diversion means to prevent materials from being disposed by reduction, reuse, or recycling. The proposed regulations require a person to separate their food residuals from solid waste and non-compostable materials, including separating food residuals from any film and containers, and to divert the food residuals from final disposal in a refuse disposal system. However, the proposal does not require a specific diversion method to be used.

Under the proposed regulations, one or a combination of the following methods may be used to divert food residuals from disposal:

- Reducing the amount of food residuals generated by the person;
- Donating servable food for human consumption, including the donation of food to a nonprofit corporation, organization, or association;
- Managing the food residuals in an organics recycling system installed onsite in accordance with any applicable regulations adopted by MDE;
- Providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed; and
- Providing for the collection and transportation of the food residuals for processing in an off-site organics recycling facility.

Figure 1. Food Recovery Hierarchy



Prohibited Activities

As described above, a person can comply with the food residuals diversion mandate by performing several diversion methods. However, poorly managed food residuals reduction, reuse, and recycling operations can result in issues like nuisance odors and insect and rodent infestations. In particular, improper processing of food residuals has the potential to generate leachate and other materials containing pollutants, such as nutrients and biochemicals, which can impair Maryland's surface waters and groundwaters. To prevent these issues, a person would be prohibited under the proposed regulations from diverting food residuals in a manner likely to:

- Be conducive to insect and rodent infestation or the harborage of animals;
- Cause nuisance odors or air pollution in violation of State air quality laws, or involve the construction or the operation of a source of air pollution subject to an [Air Quality Permit to Construct or Operate](#);
- Cause a discharge of pollutants to waters of this State unless authorized under a [State Discharge and/or National Pollution Discharge Elimination System Permit](#);
- Impair the quality of the environment; or
- Create other hazards to the public health, safety, welfare, or comfort as may be determined by MDE.

See question 30 in the FAQ section for more information on possible legal requirements applicable to installing and operating certain organics processing and organics recycling systems.

Determining if the Food Residuals Diversion Mandate Applies to You

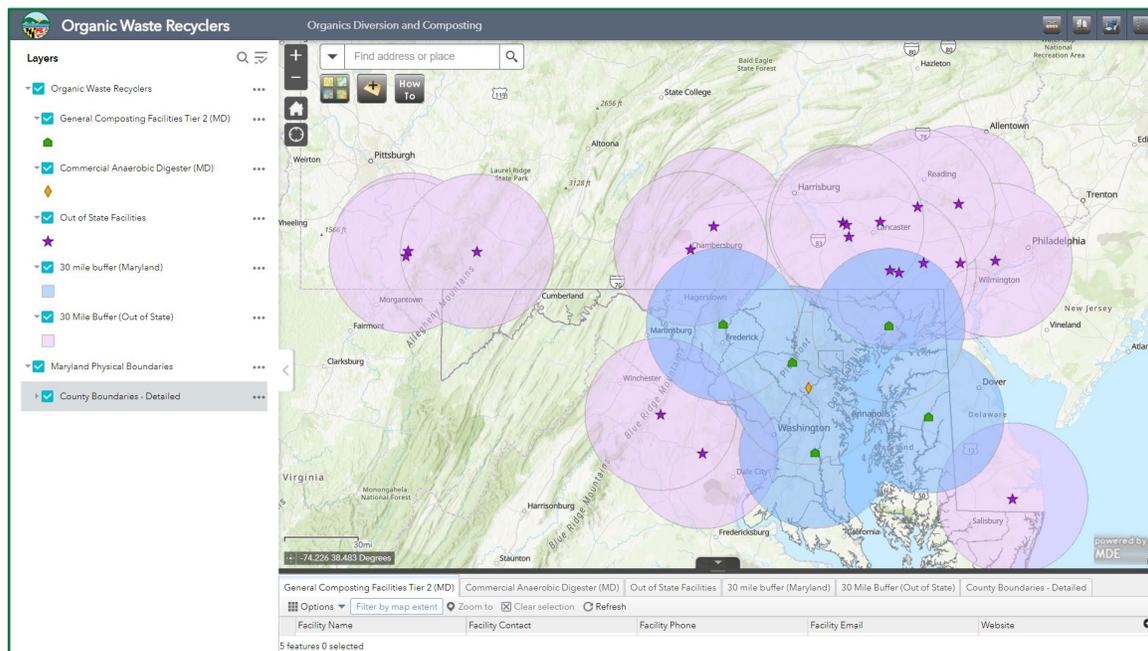
First, a person must calculate the amount of food residuals they generate in order to determine if they meet or exceed the weekly 2 tons or 1 ton generation threshold. This can be accomplished by using any of the following methodologies provided in the proposed regulations to calculate the tonnage of food residuals generated:

- Weighing the food residuals generated to obtain an actual measurement in tons;
- If the actual weight is unknown, estimating the weight based on volume using a volume-to-weight conversion factor acceptable to MDE; or
- If the actual weight and volume are unknown, estimating the weight based on a conversion factor appropriate for the type of food residuals generator acceptable to MDE.

The proposed regulations require 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 to, using one of the methods described above, calculate the aggregate weight of the food residuals generated by all the facilities or buildings. MDE recommends an entity that meets the definition of “person” enact a program to assess the weight of food residuals generated on a weekly basis to ensure compliance with the proposed regulations. Information on how various industry types can estimate the amount of food residuals they generate is available on MDE’s [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals](#) webpage.

Second, a person must determine if any organics recycling facilities located within 30 miles of their location have the capacity and a willingness to accept for recycling, and enter into a contract to accept and process, all of their food residuals. It will be the responsibility of a person to directly contact organics recycling facilities to determine their ability to accept the person’s food residuals for recycling. To stay current on new Maryland-based organics recycling facilities permitted by MDE, [sign up](#) for email notifications.

Figure 2. Online Map of Organics Recycling Facilities



Click on the image to access the online map.

MDE has developed an online map that displays the location and contact information for organics recycling facilities known to MDE that are located in Maryland and neighboring states, as well as each facility's 30-mile radius (see figure 2). It should be noted that this map is to be used for informational purposes. The map will not contain real-time available capacity information for organics recycling facilities. If you would like your in-state or out-of-state organics recycling facility to be included on this map, please [contact](#) the Resource Management Program at MDE.

Third, if a person meets or exceeds the food residuals generation threshold after December 31, 2022, and is located within 30 miles of an organics recycling facility that is willing to contract with the person to recycle all of their food residuals, the person is required to divert their food residuals from disposal unless they receive a waiver from MDE. The Department has developed a [fact sheet](#) to assist a person in determining if they meet the applicability criteria and are required to divert food residuals from disposal. The fact sheet is available on MDE's [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals](#) webpage.

Recordkeeping

A person would need to maintain certain documentation demonstrating the person's compliance with the food residuals diversion mandate. Under the proposed regulations, a person must provide the following documentation to MDE within 30 days of receiving a request from MDE, or by an alternative deadline set by MDE:

- The actual or estimated weight of food residuals generated by the person each week;
- Any correspondence between the person and an organics recycling facility located within a 30-mile radius of the person that demonstrates 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
- Any correspondence from all of the organics recycling facilities located within 30 miles of the person that demonstrates an organics recycling facility is not able or unwilling to enter a contract with the person to accept and process all of the person's food residuals.

Waiver

Waiver Conditions

Under the 2021 law, MDE may grant a waiver from the food residuals diversion mandate if a person demonstrates, to the satisfaction of MDE, undue hardship because of the following reasons:

- 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
- For other reasonable circumstances as determined by MDE.

In addition to the reasons for a waiver provided under the 2021 law, the proposed regulations would also authorize MDE to grant a waiver if a person generates food residuals identified by a federal or State agency as having biosecurity concerns (e.g., eggs laid by hens infected with avian influenza) or food safety concerns (e.g., food product recalled due to reports of salmonella contamination). This waiver would not apply to other food residuals not impacted by a biosecurity or food safety concern that are generated by the person.

The proposed regulations would authorize MDE to grant a waiver for a period that is the shortest of one of the following:

- A period established by MDE not to exceed 12 months;
- Until an alternate organics recycling facility becomes available that is located within a 30-mile radius of the person and is willing to and capable of entering into a contract to accept and process all of the person's food residuals; or
- A period that ends upon the date of a notification that MDE has revoked an approved waiver.

Application Procedures

The proposed regulations would establish application procedures for a person requesting from MDE a waiver from the food residuals diversion mandate due to undue hardship. These application requirements would not apply to a waiver for food residuals impacted by biosecurity and food safety concerns.

Method of Submission

A person must submit the waiver request to MDE electronically, in a format required by MDE.

Contents of the Waiver Request

A person must include the following information in the waiver request.

- A description of the basis for the waiver request.
- All of the following documentation if submitting an undue hardship waiver request based on the cost of diverting food residuals from a refuse disposal system being more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system:
 - a. 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;
 - b. A quote or other supporting documentation provided by one or more recyclable materials hauler detailing the cost to collect and haul the person's food residuals to an off-site organics recycling facility if the hauler is owned/operated by an entity that is separate from the off-site organics recycling facilities described under item (a);
 - c. 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
 - d. A quote or other supporting documentation provided by one or more solid waste hauler detailing the cost to collect and haul the food residuals to a refuse disposal system if the hauler is owned/operated by an entity that is separate from the refuse disposal systems described under item (c).
- Any other information considered necessary or required by MDE.
- A certification that the information provided in the waiver request is true and correct to the knowledge of the person signing the waiver request.

Reapplication for a Waiver

The proposed regulations would not limit the number of times MDE may grant a particular person a waiver from the food residuals diversion mandate. A person granted a waiver would need to reapply for a waiver the earliest of the following: at least 60 days before the end of the period for the current waiver term; whenever an alternate organics recycling facility located within 30 miles of the person becomes available; or upon notification that MDE revoked the waiver. If reapplying for

a waiver based on undue hardship due to diversion costs, the person would also need to include in the reapplication up-to-date versions of: (1) the list of organics recycling facilities located within a 30-mile radius; and (2) quotes from haulers, organics recycling facilities, and refuse disposal systems. These up-to-date documents need to be obtained by the person not earlier than 30 days before the waiver reapplication is submitted to MDE.

Reports to Counties

Under the proposed regulations, on or before March 1, 2024, and annually thereafter, a person required to divert their food residuals from disposal must submit a report:

- On the person’s solid waste and recyclable materials management activities during the preceding calendar year (i.e., the reporting period);
- To each county where the solid waste and recyclable materials were generated in a format required by MDE; and
- That includes all of the following information:
 - a. The total amount, by weight, of solid waste and recyclable materials generated during the reporting period;
 - b. The total amount, by weight, of solid waste disposed of during the reporting period;
 - c. The total amount and types, by weight, of recyclable materials diverted from disposal during the reporting period;
 - d. The name and location of each refuse disposal system that accepted solid waste for disposal;
 - e. The name and location of each recycling facility that accepted recyclable materials for recycling; and
 - f. Any other information required by MDE.

To obtain the information required to be reported, a person may need to request the information from their contracted solid waste and recyclable materials service providers annually. MDE is developing an online portal where a person can submit the required reports to counties; this online reporting portal will be available for use for the calendar year 2023 reporting period.

Frequently Asked Questions

Scope and Application of the Food Residuals Diversion Mandate

1. Do the proposed regulations establish a food waste disposal ban?

No, the proposed regulations do not establish a ban on the disposal of food waste generated in Maryland. The 2021 law established that certain entities meeting the law’s definition of “person” are required to divert their food residuals through reduction, reuse, and recycling activities from final disposal in a refuse disposal system if the entity (1) generates at least 2 tons of food residuals per week, beginning 2023, and at least 1 ton of food residuals per week, beginning 2024, and (2) is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the material for recycling. The proposed regulations implement the requirements of the 2021 law.

Entities not considered a “person” under the 2021 law would not be subject to food residuals diversion mandate and, therefore, not be prohibited from disposing of food residuals. Additionally, if an entity considered a “person” under the law does not meet the food residuals generation thresholds or isn’t located within 30 miles organics recycling facility

with the capacity and willingness to accept their food residuals, the person would not be required to comply with the food residuals diversion mandate nor prohibited from disposing of food residuals.

2. Are packaged foods subject to the food residuals diversion mandate?

Yes, food residuals within packaging are subject to the mandate if generated by a person meeting the food residuals generation thresholds and located within 30 miles of an organics recycling facility with the capacity and willingness to accept their food residuals. Food residuals must be separated from packaging at the point of generation or hauled off-site to a facility that can remove the packaging.

3. Does the food residuals diversion mandate apply to a load of food residuals with contamination that gets rejected from a composting or anaerobic digestion facility?

It depends on the circumstance as follows:

- If the person that generated the food residuals can reasonably separate the food residuals from contaminants in accordance with the load acceptance requirements of their contracted organics recycling facility, the person is subject to the mandate as long as they meet the food residuals generation threshold.
- If it is not possible to separate the food residuals from contaminants to the criteria of the organics recycling facility rejecting the load and there is an alternate organics recycling facility located within 30 miles with the capacity and willingness to accept the food residuals, the person is subject to the mandate as long as they meet the food residuals generation threshold.
- If it is not possible to separate the food residuals from contaminants to the criteria of the organics recycling facility rejecting the load and there is not an alternate organics recycling facility located within 30 miles with the capacity and willingness to accept the material, the person generating the food residuals would not be subject to the mandate.

A final determination of whether the person can reasonably separate the food residuals from contaminants will be made by MDE.

4. Are liquid food residuals (e.g., process wastewater, liquid dairy products, and grease) subject to the food residuals diversion mandate?

Yes, if the liquid would otherwise be disposed of in a refuse disposal system and is generated by a person that meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the person's food residuals. State regulations only allow liquid wastes and wastes containing free liquids to be disposed of at a solid waste acceptance facility that is specifically authorized by MDE to handle those wastes ([COMAR 26.04.07.03B\(8\)](#)). To be disposed of in a solid waste acceptance facility, the liquid must pass the Paint Filter Liquids Test ([Method 9095B](#)) as detailed by the US Environmental Protection Agency.

5. Do I need to comply with the food residuals diversion mandate if I transport my waste to an out-of-state refuse disposal facility?

If your food residuals are generated in Maryland and you meet the average weekly tonnage thresholds and are located within 30 miles of an organics recycling facility with the capacity

and willingness to accept all of your food residuals, you must comply with the food residuals diversion mandate even if your solid waste is disposed of out-of-state.

6. If a person reduces, reuses, or recycles sufficient amount food residuals to drop below the 2 tons or 1 ton per week threshold, are they still required to divert the remainder of their food residuals?

Yes, the requirement to divert food residuals is based on the tonnage of food residuals generated before any reduction, reuse, or recycling activities occur.

7. Are homeowners or tenants of residential properties subject to the food residuals diversion mandate?

Because a single or multi-family residential property is not expected to generate the tonnage of food residuals that trigger the requirement to divert food residuals from final disposal, individual households would not be subject to the food residuals diversion mandate.

8. Are local school systems responsible for complying with the food residuals diversion mandate?

No, the 2021 law excludes from the definition of “person” the aggregate of all school buildings and facilities in a local school system. Therefore, local school districts are exempt from the food residuals diversion requirement. However, individual schools are subject to the food residuals diversion mandate if at any time in the average weekly tonnage thresholds are met and they are located within 30 miles of an organics recycling facility with the capacity and willingness to accept all their food residuals.

9. Are adult and senior assisted living and/or care facilities subject to the food residuals diversion mandate?

While the residents of these facilities are not required to arrange for food residuals diversion, an assisted living or care facility that offers or serves food to residents must comply with the mandate if at any time in the average weekly tonnage thresholds are met and the facility is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all their food residuals.

10. Are one-time or special events subject to the food residuals diversion mandate?

Yes, a one-time or special event would be subject to the food residuals diversion mandate if at any time in which the event is occurring the average weekly tonnage thresholds are met and the event is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all the event’s food residuals. Either the owner/operator of the site where the event is located or the event organizers would need to arrange for the food residuals to be diverted from final disposal in accordance with the proposed regulations.

11. Are seasonal businesses subject to the food residuals diversion mandate?

Yes, a seasonal business would be subject to the food residuals diversion mandate if at any time throughout the year that the business is in operation, the average weekly tonnage thresholds are met and the business is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the business’ food residuals. If there

are times during the year when a seasonal business no longer meets these criteria, then the business would not be required to comply with the mandate during those periods.

12. Are food trucks subject to the food residuals diversion mandate?

A food truck may be required to divert its food residuals from final disposal in a refuse disposal system.

- If food served by a food truck is prepared in a commissary kitchen under the control of the food truck owner/operator and the commissary kitchen meets the average weekly tonnage thresholds and located within 30 miles of an organics recycling facility with the capacity and willingness to accept of all the location's food residuals, the owner/operator of the food truck would be required to comply with the food residuals diversion mandate for that site.
- If the food truck owner/operator leases a commissary kitchen where the food truck's food is prepared and the commissary kitchen otherwise meets the applicability criteria, the food residuals generated at the commissary kitchen would be subject to the mandate. The owner/operator and lessees of the commissary kitchen would need to determine who will be responsible for diverting food residuals in compliance with the mandate.
- An owner/operator of a property would be required to comply with the food residuals diversion mandate if the property where the food truck serves food otherwise meets the applicability criteria for complying with the food residual diversion mandate. The property owner would be responsible for diverting food residuals generated by customers of the food truck along with other food residuals generated onsite.

13. Does the food residuals diversion mandate apply to food residuals generated on airplanes, trains, buses, and cruise ships?

Airports, transit centers, and cruise ports are subject to the food residuals diversion mandate if the property as a whole meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all its food residuals. Therefore, it is the responsibility of the transportation property owner/operator to ensure any food residuals removed from vehicles (e.g., airplanes, trains, buses, cruise ships, etc.) to be managed by the transportation property are diverted from final disposal in accordance with the requirements of the proposed regulations. The entity that owns the vehicles would be required to comply with the transportation property's food residuals diversion requirements, provided there is no conflict with federal requirements for managing solid waste generated on these vehicles. In cases of conflict, vehicle owners and transportation properties should follow federal requirements.

14. The 2021 law establishes that the definition of "person" includes business, school, and institutional cafeterias, but excludes a restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals. What is the difference between a cafeteria and a restaurant?

Table 1, provided for informational purposes, may assist an entity in determining whether they operate a cafeteria and are subject to the food residuals diversion mandate, or operate as a restaurant that is not subject to the mandate. MDE has the discretion to reevaluate an entity's determination to ensure compliance with the food residuals diversion mandate.

Table 1. Cafeteria and Restaurant Comparison

| | Cafeteria | Restaurant |
|--|--|--|
| Who controls the dining tables/seating | Property owner/operator who <u>may be</u> separate from food establishment(s) preparing and serving food | The food establishment preparing and serving food |
| ^a Types of food service offered | Self-Service | Banquet Service Buffet Service Self-Service Semi-Self Service Waiter Service |
| Number of food establishments located onsite | One or more separately owned/operated food establishments | One food establishment |
| Customer types | Customer and/or employee of a business, institutional, or government operation specifically served by the food establishment. Attendee or resident of a school Customers of one or more food establishments located onsite | Customer of the food establishment preparing and serving the food |

^a Learn more by reviewing Unilever Food Solutions' Chefmanship Academy module entitled [5 Types of Food Service](#).

15. A food establishment is located within a larger property and alone does not meet the 2 tons or 1 ton food residuals generation threshold. The property as a whole is required to comply with the food residuals diversion mandate. Are the food residuals generated by the food establishment required to be diverted from disposal? If yes, who is responsible for arranging for the diversion of the material?

If the food establishment contracts for waste management independently from the rest of the property, the food establishment would not be required to divert its food residuals from final disposal. If the property owner/operator contracts for waste management for the food establishment, then the property owner would be responsible for ensuring food residuals generated by the food establishment and the property overall are diverted from disposal.

16. How does the food residuals diversion mandate apply to a business that is a part of a chain or franchise that has multiple locations?

The food residuals diversion mandate would apply to individual locations, not all Maryland-based locations a part of the franchise or chain. A single location would be subject to the mandate if the average weekly tonnage thresholds are met and the business is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of its food residuals. Businesses that are part of a chain or franchise may have a centralized production kitchen that prepares food for delivery to individual locations. If the centralized production kitchen meets the above criteria, it would be required to comply with the mandate.

17. How does the food residuals diversion mandate apply to an institution with multiple satellite campuses or locations, such as a university or health care organization?

Similar to businesses a part of a chain or franchise, the application of the mandate would be based on individual campuses or locations, not for all of the campuses or locations combined. An individual campus or location would be subject to the food residuals diversion mandate if the average weekly tonnage thresholds are met and the site is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the site's food residuals.

18. How does the food residuals diversion mandate apply to a campus or institutional property with multiple buildings onsite?

Each building located at the property would not need to meet the applicability criteria in order for the property to be subject to the food residuals diversion mandate. If the property as a whole meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of its food residuals, then the property would be subject to the food residuals diversion mandate.

19. I am a building or shopping center owner with multiple businesses/tenants located at the property. How would the food residuals diversion mandate apply to my property?

The property would be subject to the food residuals diversion mandate if (1) the property owner or operator contracts for solid waste management for the entire property, and (2) the property as a whole meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all food residuals generated by businesses/tenants at the property. If the businesses/tenants at the building or shopping center manage their waste independently, the owners of the property and businesses/tenants would both be responsible for ensuring food residuals generated by each business/tenant are diverted from disposal in accordance with the proposed regulations.

Food Residuals Diversion Requirements

20. What type of outreach or technical assistance will MDE provide regarding how to separate and divert food residuals from final disposal in a refuse disposal system?

MDE will host webinars and present at external meetings to provide guidance on how the regulated community may comply with the food residuals diversion mandate. Online, the MDE will provide outreach and technical assistance resources such as:

- Fact sheet on how to determine if the food residuals mandate applies to your operation;
- A methodology document detailing how a person can determine the average weekly weight of food residuals generated by the person;
- Sharable outreach materials that may be utilized by an organization or business required to divert food residuals from disposal;
- Information on how to manage food residuals, including links to toolkits, guidance documents, outreach materials, and webpages created by MDE and other organizations on the topic of food residuals management; and
- Information on grants, loans, and tax credits that may be used for the purpose of diverting food residuals from final disposal.

These resources will be available on MDE's [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals](#) webpage.

21. Who is responsible for separating food residuals from other solid waste and non-compostable materials?

The generator subject to the food residuals diversion mandate is responsible for separating the food residuals from other solid waste and non-compostable material. The generator must arrange for their food residuals to be source separated at the point of generation or off-site at a facility under the control or contracted by the generator to source separate the material.

22. Are post-consumer food residuals that would otherwise be deposited in indoor and outdoor trash bins at a property required to be included in determining how much waste is generated on a weekly basis?

Yes, food residuals deposited by the public in trash bins under the control of a food residuals generator must be included in weight generation measurements and diverted from final disposal. The owner/operator of the property should place organics collection bins in areas where food is consumed or may be disposed of on the premise to allow for source separation. Signage can be used to encourage customers to deposit food residuals in organics collection bins. Also, signage can educate customers on the appropriate materials to be placed in organics collection bins, reducing contamination and assisting with source separation.

23. If a business partners with a food recovery or recycling program that only accepts certain types of food residuals, can that business limit the types of food residuals divert from final disposal?

No, a business subject to the food residuals diversion mandate would be responsible for arranging for the source separation and diversion of all of their food residuals generated. The 2021 law and proposed regulations provide that a person may divert food residuals through a combination of reduction, reuse, and recycling activities. Therefore, a business may need to implement several diversion strategies in order to divert all types of food residuals it generates from final disposal.

24. What is servable food that may be donated?

The Center for EcoTechnology (CET) explains in their [Food Rescue Guidance Document](#) that “[most] categories of food can be donated, as long as the food is ‘apparently wholesome’ or ‘fit for human consumption’ and that “[donated] food should be properly packaged and stored to prevent contamination and spoilage”. To ensure diverted food is being handled in a manner so it’s considered servable food appropriate for food donation, a person can consult guidance published by organizations that outline safe food handling practices for food recovery and donation programs. Individual food donation organizations may have specific criteria for the food donations they will accept.

Examples of guidance on safe food handling practices and establishing food recovery programs, including the CET document linked above, include:

- The Conference for Food Protection's [Comprehensive Guidance for Food Recovery Programs](#) provides guidance to food retailers wanting to participate in food recovery programs and provide safe food to needy people, and
- The US Department of Agriculture's [Gleaning Toolkit](#) provides guidance on establishing programs to collect excess fresh produce for donation to needy people.

25. How can a person diverting food residuals for animal feed ensure they're meeting animal food safety standards?

It is the responsibility of the food residual generator and recipient to determine what legal animal food safety requirements may apply to their food recovery operation. Federal animal feeding laws (1) establish that animal feed may not be adulterated or handled in unsanitary conditions nor may food labels be false or misleading, (2) prohibit feeding food residuals containing mammalian protein to ruminant animals, and (3) require a person feeding food residuals containing animal products to swine to obtain a license and to boil the food residuals prior to feeding (21 USC §§342 and 343; 9 CFR §166; and 21 CFR §589.2001). Additionally, food residuals diverted for commercial animal food production may be subject to the US Food and Drug Administration's [Food Safety Modernization Act's Preventive Controls for Animal Food](#) rules, which require certain animal feed and pet food production facilities utilizing diverted food residuals to implement additional planning and preventive control measures (21 CFR §507.12).

A person can learn more about safely diverting food residuals for animal food by:

- Contacting your [county agricultural extension office](#) or public health agency;
- Contacting farms, zoological parks, wildlife sanctuaries, and animal feeding operations to learn about the nutritional and food safety standards for their animals; and
- Reviewing [Leftovers for Livestock: A Legal Guide for Using Food Scraps as Animal Feed](#), developed by the Harvard Food Law and Policy Clinic and the University of Arkansas School of Law's Food Recovery Project.

26. Is the use of food residual processing technologies such as grinders, pulpers, dehydrators, and aerobic digesters considered recycling?

Under the Maryland Recycling Act, "recycling" is defined as any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products (Environment Article, §9-1701, Annotated Code of Maryland). As long as the material that goes through a grinder, pulper, dehydrator, or aerobic digester is returned to the marketplace in the form of raw materials or products it is considered recycling. For example, pulpers mechanically process food residuals into a semi-dry pulp that can be transported to a composting facility.

27. Is rendering considered recycling?

Animal waste tissue or solid fat that has been converted or melted down by heating can be considered recycling if the material (1) is returned to the marketplace as a raw material or product, and (2) is not converted to biofuel.

28. Is the production of biofuel or biogas considered recycling?

No, the production of biofuel or biogas is not considered recycling. However, if the process that converts food residuals into fuel also produces another by-product that can be returned to the marketplace as a raw material or product, then the production of the by-product is considered recycling. For example, anaerobic digestion generates two outputs: biogas and digestate. Digestate can be returned to the market as a fertilizer, soil amendment, or animal bedding. If an anaerobic digestion facility accepts food residuals, any production of digestate that is returned to the marketplace would be counted as recycling.

Note, haulers transporting waste kitchen grease for conversion into biofuel must be registered with the Maryland Department of Agriculture. Learn more [here](#).

29. Are you required to send your food residuals to an organics recycling facility located within 30 miles, or can you send food residuals to any organics recycling facility with the capacity and willingness to accept the material?

Even if you're located within 30 miles of an organic recycling facility(ies) documented as having the capacity and willingness to accept all of your food residuals, making you subject to the food residuals diversion mandate, you are not obligated to send your food residuals to that specific organics recycling facility. You may send your food residuals to any organics recycling facility and remain in compliance with the food residuals diversion mandate. You may also send your food residuals to any organization that recovers food residuals for an activity that satisfies the food residuals diversion methods allowed under the proposed regulations.

30. Do I need a permit or other approval to install and operate an organics processing system or organics recycling system onsite?

A person managing food residuals onsite by installing and operating a food residuals processing technology or organics recycling system is responsible for identifying and complying with any laws, regulations, and permits/approvals applicable to the activity. Table 2 may be used as a first step in identifying Maryland legal requirements. (Note, Table 2 is for informational purposes only and may not list all applicable federal, State, and local requirements). MDE has also published dedicated [composting facilities](#) and [anaerobic digestion facilities](#) permit guidance documents that identify several legal requirements for Maryland-based facilities.

Certain organics processing and recycling systems produce a liquefied food residuals or wastewater. The material can be disposed of into a sanitary sewer system or an onsite disposal system (i.e., septic system), or containerized and hauled offsite to a wastewater treatment plant or anaerobic digestion facility. A person must manage wastewater generated from organics processing and recycling systems in accordance with federal, State, and local wastewater discharge permitting requirements. Visit MDE's [Maryland Water Permit Applications and Other Forms](#) webpage for more information. Additionally, the discharge of industrial (non-domestic) wastewater to a publicly owned wastewater treatment (POTW) system may require a separate pretreatment permit issued by local municipal wastewater treatment utility. Contact information for local municipal wastewater treatment utilities can be found [here](#).

Table 2. Potential Legal Requirements for Organics Processing and Organics Recycling Systems

| Subject/Activity | Maryland Permits and Approvals | COMAR |
|--|---|-----------------------------|
| MDE – Recyclable Materials | | |
| Composting Facility | Composting Facility Permit | 26.04.11 |
| MDE – Water | | |
| Storm Water Discharge from Industrial Activities | General Permit for Discharges of Stormwater Associated With Industrial Activity | 26.08.04 |
| Groundwater Discharges | State Groundwater Discharge Permit (Municipal & Industrial) | 26.08.04 |
| Surface Water Discharges | State/NPDES Surface Water Discharge Permit (Municipal) | 26.08.04 |
| | State/NPDES Surface Water Discharge Permit (Industrial) | 26.08.02.09 |
| Discharges of Industrial Wastewater to POTW | Pretreatment Permit | 26.08.08 |
| Water & Sewerage Treatment Infrastructure Construction | Water and Sewerage Construction Permit | 26.03.12 |
| MDE – Air | | |
| Construct Source of Air Pollution | Air Quality Permit to Construct | 26.11.02 |
| Operate Source of Air Pollution | Air Quality State Permit to Operate | 26.11.02 |
| Maryland Department of Agriculture – Soil Amendments | | |
| Soil Conditioner or Fertilizer Quality and Sale/Distribution | Soil Conditioner or Fertilizer Registration | 15.18.03 |
| Compost Quality and Sale/Distribution | Compost Registration | 15.18.04 |
| Composting Facility Operator | Composting Facility Operator Certification | 15.18.04 |

Waiver Requests

31. When applying for a waiver for undue hardship, what types of expenses may not be used to demonstrate that the cost of diverting food residuals is more than 10% more expensive than disposing of the material in a refuse disposal system?

A person may not submit any costs related to implementing an onsite (i.e., point of generation) food residuals diversion program, including:

- The purchase and maintenance of food residuals storage and collection containers, refrigeration, pre-treatment or processing technologies, or organics recycling equipment to be installed onsite;

- Providing education and training to employees or lessees on performing source separation of food residuals and conducting any onsite food residuals reduction and recycling activities; and
- Costs of conducting outreach to customers and other patrons regarding the entity's food residuals diversion program, such as costs to purchase signage directing customers and patrons to discard food residuals in organics collection bins.

Additionally, a person may not submit the costs of hauling food residuals to a food donation if the person is located within 30 miles of an organics recycling facility documented as being willing and having the capacity to accept the person's food residuals for organics recycling.

32. What is the rationale behind the waiver for biosafety or food safety concerns?

MDE recognizes that due to biosafety or food safety concerns, a person may temporarily generate food residuals that are not suitable for food donation or agricultural use, and the organics recycling facility contracted to accept the person's food residuals may not be willing or have the capacity to accept the additional food residuals impacted by the concern. Additionally, guidance from a federal or State agency overseeing the biosafety or food safety concern may recommend or require alternative waste management or treatment methods that do not involve the food residuals diversion methods allowed under the proposed regulations. In these circumstances, MDE would be able to issue an exemption for those food residuals impacted by the biosafety or food safety concern.

33. The proposed regulations require a person subject to the food residuals diversion mandate to submit annually to counties a report on the person's solid waste and recyclable materials management activities for the preceding calendar year. How will the information reported to counties be used?

Counties are required under existing law to submit to MDE annual county reports describing their solid waste management and diversion activities for the preceding calendar year (Environment Article, §9-1705, Annotated Code of Maryland). The 2021 law requires MDE to annually report on the implementation of the law's requirements, including how implementation of the law impacts waste diversion in the State (Environment Article, §9-1724.1(e), Annotated Code of Maryland). Any information reported by food residual generators to a county under the proposed regulations can be included by their county report submitted to MDE, which in turn would be used by MDE when reporting on the impact of the food residuals diversion mandate on waste diversion in the State in accordance with the 2021 law.

Enforcement

34. Who is responsible for enforcing the food residuals diversion mandate?

MDE is responsible for enforcing the requirements of the 2021 law and proposed regulations. MDE will investigate any complaints of alleged noncompliance received from other government agencies and the public. Also, MDE has the authority to inspect the premises of any person subject to the food residuals diversion mandate. As the proposed regulations implement a new requirement that potentially applies to thousands of entities that may not currently be familiar with food residuals diversion, MDE will focus efforts in the initial year primarily on education and compliance assistance on how to comply with the food residuals diversion mandate. If a person issued warnings or offered compliance

assistance continues to not comply with the food residuals diversion requirement, MDE is authorized under the 2021 law to collect civil penalties.

35. Can the local jurisdictions take enforcement actions against a noncompliant facility required to divert food residuals from disposal?

No, the 2021 law only authorizes MDE to enforce the food residuals diversion mandate. However, MDE is developing a form that can be used by county health inspectors to notify MDE if they believe a facility may not be in compliance with the 2021 law and proposed regulations.