



# COMPLIANCE GUIDE FOR REGULATIONS

## Food Residuals - Organics Recycling and Waste Diversion

This compliance guide sets forth how certain schools, institutions, and businesses (including small businesses) that generate food residuals may comply with the Code of Maryland Regulations (COMAR) 26.04.13 Food Residuals – Organics Recycling and Waste Diversion. This document is for informational purposes and **should not** be construed as legal advice. Affected establishments should consult the law (Environment Article, §§9-1701 and 9-1724.1, Annotated Code of Maryland), and the regulations, or consult legal counsel. This document is subject to change.

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### Summary of the Regulations

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In 2021, Maryland passed a law 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 or Department) to grant a waiver from the food residuals diversion mandate to a person under certain conditions and requires MDE to establish waiver application procedures.

To implement this law, on December 6, 2022, the Secretary of the Environment adopted new regulations under COMAR 26.04.13 Food Residuals – Organics Recycling and Waste Diversion. The new regulations have an **effective date of December 26, 2022**.

### Definition of Key Terms

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The following key terms are defined in the 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. The U.S. Environmental Protection Agency (EPA) describes anaerobic digestion as a process through which bacteria break down organic matter, such as food wastes, in the absence of oxygen. Learn more on U.S. EPA's [website](#).

**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.

**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. Solid waste acceptance facilities include landfills, incinerators, transfer stations, and processing facilities whose primary purpose is to dispose of, treat, or process solid waste.

## Entities Subject to the Regulations

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### Who is Subject to the Regulations?

An entity is subject to the 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

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## Food Residuals Diversion Mandate

### Applicability Criteria

The 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 is 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.

### Source Separation

The 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. If food is packaged, compliance with this source separation mandate may require a person to arrange for the onsite or offsite depackaging of the food. However, food products that will be recovered for food donation or animal feeding may need to remain in packaging for food safety or quality until the food arrives at the recipient organization.

### Diversion Methods

#### *Allowable Diversion Methods*

Waste diversion means to prevent materials from being disposed of by reduction, reuse, or recycling. The regulations do not require a person to use specific diversion method, but instead requires a person to use one or a combination of the following methods to divert food residuals from disposal:

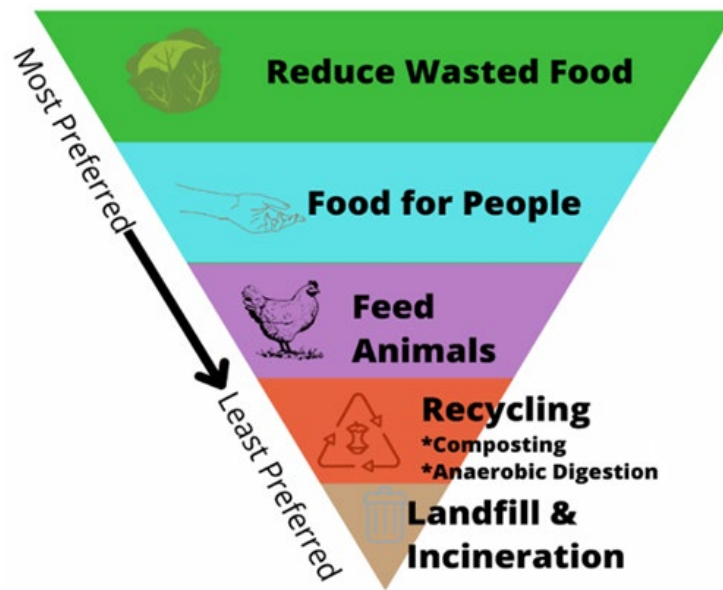
- Reduce the amount of food residuals generated by the person;
- Donate servable food for human consumption, including the donation of food to a nonprofit corporation, organization, or association;
- Manage the food residuals in an organics recycling system installed onsite in accordance with any applicable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

The regulations do not prevent the co-diversion of source separated food residuals and compostable packaging or service ware to an organics recycling facility willing to accept the non-food material. A person should consult with their contracted organics recycler before diverting food residuals and other compostable materials together.

### Food Recovery Hierarchy

A food recovery (or management) hierarchy is a graphical depiction of the order of preference for different methods of managing wasted food to achieve an optimal environmental outcome. MDE has developed a food recovery hierarchy that encourages, in order of preference, the management of food through source reduction (i.e., prevention of waste), providing food that was intended to feed people, feed animals, organics recycling (e.g., composting and anaerobic digestion), and, as a last resort, disposal.

Figure 1. Maryland Food Recovery Hierarchy



The food recovery hierarchy can be useful in providing general guidance in decision making when there are multiple potential ways of addressing a particular food waste stream. While MDE encourages a person to divert food residuals using the most preferable method, to achieve optimal diversion, all methods of diversion will need to occur. For example, while food donation may be the preferred method for grocers diverting unadulterated or spoiled food, organics recycling may be the preferred method for a slaughterhouse diverting meat scraps not suitable for human consumption. Visit MDE’s [website](#) to learn more about each diversion method, including contact information for known organizations and facilities offering food residual diversion services.

### 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 is prohibited under the 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 \(NPDES\) 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 37 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

### Procedures

**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.

- A person may use the following methods to calculate the weight 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.
- 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 is required to, using one of the methods described above, calculate the aggregate weight of the food residuals generated by all the facilities or buildings.

**Second**, a person must determine if any organics recycling facilities, located within 30 miles of their location, have the capacity and 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.

**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.

A person may initially determine they do not meet the applicability criteria and, therefore, are not subject to the food residuals diversion mandate. In such cases, it is the person's responsibility to periodically, but no less than once a year, reassess this determination. Food residuals generation may vary depending on season or as a result in change in operations. Additionally, as more establishments begin diverting food residuals in compliance with these regulations, it is expected more organics recycling facilities will begin operating in the state, and existing operators may increase their organics recycling facility's

capacity in order to process the increased volume of feedstock. Due to these factors, a person's applicability to the food residuals diversion mandate may change overtime.

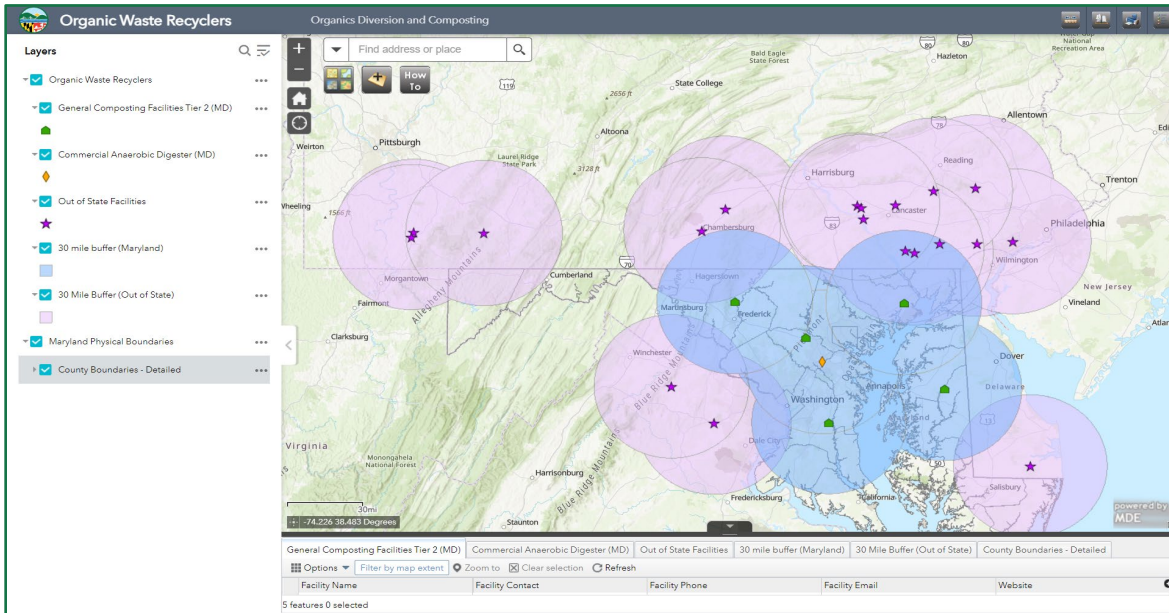
To remain in compliance with the 2021 law and regulations, an establishment actively generating food residuals should enact a program to periodically assess whether they are subject to the food residuals diversion mandate. Note, the regulations require a person to start diverting their food residuals not later than 90 days after the person meets the applicability criteria. To assess a person's compliance with the 2021 law and regulations, MDE may request a person not diverting food residuals provide documentation demonstrating that the person does not meet the food residuals generations thresholds or is not located within 30 miles of an organics recycling facility willing to contract with the person to recycle all of their food residuals.

## Online Resources

The following are several online resources that can assist a person in determining whether they are required to divert their food residuals from final disposal in a refuse disposal system:

- [Determination of Applicability of the Food Residuals Diversion Requirement](#) – MDE guidance document to assist a person in determining if they meet the applicability criteria and are required to divert food residuals from disposal.
- [Maryland Food Residual Generation Factor Estimates by Industry Sector](#) – MDE guidance document that contains information on how various industry types can estimate the amount of food residuals they generate.
- [EPA Opportunities for Excess Food Map](#) – This map identifies and displays facility-specific information about potential excess food generators and recipients, nationwide, in the industrial, commercial, and institutional sectors and also provides estimates of excess food by generator type. Additionally, the map also displays the locations of communities with source separated organics programs, as well as about 5,000 potential recipients of excess food such as recycling facilities and food banks. (Note, this map is for informational purposes only, and the map is under the control of U.S. EPA).
- [MDE Organics Recycler Map](#) – MDE has developed an online map that displays the location and contact information for organics recycling facilities known to MDE that are in Maryland and neighboring states, as well as each facility's 30-mile radius. This map is to be used for informational purposes only and 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 at 410.537.3314 or [LMA.WDD@maryland.gov](mailto:LMA.WDD@maryland.gov)

**Figure 2. MDE Organics Recycler Map**



*Click on the image to access the online map.*

## Recordkeeping

### Requirement

A person needs to maintain certain documentation demonstrating the person's compliance with the food residuals diversion mandate. Under the 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;
- Any correspondence from all of the organics recycling facilities located within 30 miles of the person that demonstrates an organics recycling facility is unable or unwilling to enter a contract with the person to accept and process all of the person's food residuals; and
- Any other information MDE deems necessary.

Records should be maintained for at least 3 calendar years from the date of creation or receipt.

### Types of Records to Maintain

To comply with the recordkeeping requirements, at a minimum, a person should document:

- The waste assessment methodology or practices used, such as records of calculations made, photos of source separation or assessment activities, industry/business practices factors considered, or statistics tracked;
- The dates that waste assessment and/or weight measurements occurred, including the weight (actual or estimated) and type of food residuals assessed and/or weighed, and the name and title of the person who performed the waste assessment;
- The total amount, by weight and type, of food residuals diverted through source reduction, food donation, agricultural uses (animal feeding or land application), and organics recycling;



- The name, physical address, and contract information for the organizations and facilities accepting diverted food residuals (e.g., food bank, farm, composting facility, etc.);
- Any written agreements or contracts with - or - receipts or invoices from food recovery organizations, haulers, and organics processing or recycling facilities that accept or process the diverted food residuals; and
- If applicable, copies of any approved waivers issued by MDE.

Documents received from food recovery or recycling entities must (1) include an official letterhead or their name, address, and contact information, or (2) be signed and dated by a person responsible for the food recovery or recycling entity.

## Methods of Recordkeeping

Recordkeeping can be accomplished using one or a combination of methods, such as:

- Maintaining electronic or written spreadsheets or logs (e.g., EPA's Waste Logbook);
- Using free or commercially available software or applications that track food waste generation or diversion activities (note, these technologies must provide a means of downloading or printing records); or
- Maintaining copies of written agreements and acknowledgments from the organizations and facilities accepting diverted food residuals.

## Waiver

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### 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.

In addition to the reasons for a waiver provided under the 2021 law, the regulations 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 does not apply to other food residuals not impacted by a biosecurity or food safety concern that are generated by the person.

The regulations 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 regulations establish application procedures for a person requesting from MDE a waiver from the food residuals diversion mandate due to undue hardship. These application requirements do 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 the Department.

### 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 haulers 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.

See the FAQ #39 for more information regarding the types of expenses that are eligible and ineligible for a 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 of the food residuals in a refuse disposal system.

### Reapplication for a Waiver

The regulations do 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 needs 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 also needs 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

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### Requirement

Under the regulations, on or before March 1, 2024, and every March 1 annually thereafter, a person required to divert their food residuals from disposal must report to counties on the person's solid waste and recyclable materials management activities during the preceding calendar year (i.e., the reporting period). A person must submit a report:

- 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.

### Compliance with Local Reporting Requirements

MDE recognizes that some counties or municipalities have local requirements in which certain establishments must report their solid waste and/or recycling activities to the local government. A person subject to MDE's and a local reporting requirement will need to comply with both, and ensure they are satisfying the most stringent reporting requirements and submission deadlines of MDE and the local government. If a person has confusions regarding how to comply with a MDE and local reporting requirement, they may contact [the Department](#) or the [local government](#) for clarification.

## Frequently Asked Questions

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### Scope and Application of the Food Residuals Diversion Mandate

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

No, the 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 regulations implement the requirements of the 2021 law.

Entities not considered a "person" under the 2021 law are not subject to the food residuals diversion mandate and, therefore, not 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 is not 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 all of a person's food residuals. It is the responsibility of the generator to ensure that food residuals are depackaged in order to comply with the requirement to separate food residuals from other solid waste and non-compostable materials, including films and containers. Food residuals must be separated from packaging at the point of generation or hauled off-site to a processing facility or organics recycling facility contracted to 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 is not 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 amounts of 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 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 are not expected to be subject to the food residuals diversion mandate.

**7b.** Individual residents of multi-family residential properties are not expected to be subject to the food residuals diversion mandate, but a multi-family residential property 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.

**8. Are federally-owned properties subject to the food residuals diversion mandate?**

Yes, a federally-owned property that generates food residuals is subject to the food residuals diversion mandate if at any time the average weekly tonnage thresholds are met and the property is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the federally-owned property's food residuals.

**9. Are military installations subject to the food residuals diversion mandate?**

Yes, a military installation that generates food residuals is subject to the food residuals diversion mandate if at any time the average weekly tonnage thresholds are met and the property is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the property's food residuals.

Department of the Environment, 1000 E. Baltimore Street, MD 21230 | 1-800-633-6101 | 410-537-3000 | TTY Users 1-800-735-2258

[www.mde.maryland.gov](http://www.mde.maryland.gov)

**10. 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.

While local school districts are not responsible for diverting food residuals generated by school buildings and facilities located within their local school system, nothing in the regulations prevents a local school district from establishing food residuals diversion programs for one or more of the schools a part of their local school system. It will be the ultimate responsibility of individual schools subject to the food residuals diversion mandate to ensure they remain in compliance with the regulations while they participate in a food residuals diversion program implemented by a local school district.

**11. 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.

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

Yes, a one-time or special event is 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 organizer needs to arrange for the food residuals to be diverted from final disposal in accordance with the regulations.

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

Yes, a seasonal business is 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 is not required to comply with the mandate during those periods.

**14. Are food trucks and caterers subject to the food residuals diversion mandate?**

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

- If food served by a food truck or caterer is prepared in a commissary kitchen owned/operated by of the food truck caterer, and the commissary kitchen meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept of all the location’s food residuals, the

- food truck or caterer is required to comply with the food residuals diversion mandate for that site.
- If the food truck or caterer owner/operator leases a commissary kitchen where the food truck's or caterer's food is prepared and the commissary kitchen otherwise meets the applicability criteria, the food residuals generated at the commissary kitchen is subject to the mandate. The owner/operator of the commissary kitchen is responsible for diverting food residuals in compliance with the mandate. However, the owners/operators of the commissary kitchen and food truck or caterer may enter into an agreement in which the owner/operator of the food truck or caterer agrees to divert some or all of its food residuals it generates when preparing meals.
  - An owner/operator of a property is required to comply with the food residuals diversion mandate if the property where the food truck or caterer serves food otherwise meets the applicability criteria for complying with the food residual diversion mandate. The property owner is responsible for diverting food residuals generated by persons consuming the food truck's or caterer's food, along with other food residuals generated onsite. However, the owner or operator of the property may enter into an agreement in which the food truck or caterer agrees to divert all or some of its post-consumer food residuals

**15. 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 regulations. The entity that owns the vehicles is 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.

**16. Does a facility without a cafeteria have to divert food residuals generated onsite?**

The regulations broadly defines "person" to mean an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity. As part of this definition, school cafeterias, business cafeterias and institutional cafeterias are included, among other things, as a type of person; however, this list is not exhaustive and the absence of a facility on this list does not exclude it from being a person unless explicitly excluded by the regulations. The only two types of entities excluded from being defined as a "person" are: (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.

Regardless if a facility has a cafeteria, unless it's excluded from being defined as a "person", the facility would be required to divert any food residuals 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 facility's food residuals.

- 17. 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 does MDE consider to be a cafeteria? What does MDE consider to be a restaurant establishment that is excluded under the law from being considered a person?**

MDE considers a cafeteria to be a food service business, restaurant, or dining room located within a government facility, school, or a business in which customers serve themselves or are served from a counter before eating. These types of establishments are persons under the law and subject to the food residuals diversion mandate if they (1) meet the average weekly tonnage thresholds, and (2) are located within 30 miles of an organics recycling facility with the capacity and willingness to accept all the establishment’s food residuals.

MDE considers a place equipped with a dining room where people sit and eat meals that are prepared and served on the premises to be a restaurant establishment that is not a person under the law, and therefore not subject to the requirements of the regulations.

- 18. 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?**

A food establishment not meeting the food residuals generation thresholds would not be required to divert its food residuals from final disposal in a refuse disposal system if: (1) the food establishment is not owned or operated by the owner/operator of the larger property; and (2) the food establishment’s solid waste is not managed using a waste management system or contract under the control of the larger property owner/operator.

- 19. 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 applies to individual locations, not all Maryland-based locations a part of the franchise or chain. A single location is 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 is required to comply with the mandate.

- 20. 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 is based on individual campuses or locations, not for all of the campuses or locations combined. An individual campus or location is 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.



**21. How does the food residuals diversion mandate apply to a military installation, school campus, or institutional/commercial/manufacturing property with multiple buildings or cafeterias onsite?**

If all of the buildings and cafeterias located at the site have a common system or contract for waste management, each building or cafeteria does not individually need to meet the applicability criteria in order for the site to be subject to the food residuals diversion mandate. If the site 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 the site's food residuals, then the site is subject to the food residuals diversion mandate. When determining the weight of food residuals generated at the site, the owner/operator of the site would need to use the aggregate weight of the food residuals generated each week by all buildings and cafeterias located at the site.

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

The property is 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 are both responsible for ensuring food residuals generated by each business/tenant are diverted from disposal in accordance with the regulations.

## **Food Residuals Diversion Requirements**

**23. 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 web pages 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.

**24. 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.

**25. 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.

**26. Does a food establishment have to divert “front of the house” food residuals?**

The regulations define “food residuals” as “material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats” (COMAR 26.04.13.02B(6)). Therefore, post-consumer food residuals from front of the house, the part of a food establishment or cafeteria where food is served to and/or consumed by customers, must be diverted from final disposal.

**27. Are health care facilities required to divert food residuals generated in a kitchen but served in patient rooms and not in a cafeteria or other food establishment at a facility?**

Yes. A health care facility subject to the food residuals diversion mandate is required to divert all food residuals generated onsite, including food served to patients in their room that is not consumed. The health care facility as a whole is considered a person under the law, not just the cafeteria or individual food establishments located at the facility. If at any time the health care facility becomes subject to the food residuals diversion mandate, the facility must include in weight generation measurements all food residuals discarded by health care facility’s patients, visitors and employees, regardless of where the food was discarded on the property, and diverted those food residuals from final disposal.

**28. 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 diverted from final disposal?**

No, a business subject to the food residuals diversion mandate is responsible for arranging for the source separation and diversion of all of their food residuals generated. The 2021 law and 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.

## 29. 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.

## 30. Are food recovery organizations (food pantries, food banks, soup kitchens, shelters, etc.) required to accept any food offered for donation?

No, the regulations do not require a food donation organization to accept all food offered for donation. As stated above, individual food recovery organizations may have specific criteria for the food donations they will accept, or due to fiscal or operational resources may be limited to the types or amount of donated food they can accept. MDE recommends food residuals generators and food recovery organizations establish agreements that outline the frequency of donations, the maximum or minimum quantity of donations, the types of food to be donated, and any nutritional or quality standards donated food must satisfy.

## 31. 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 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.

### **32. 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 as a raw material or directly land applied as a soil amendment product.

### **33. Is food donation considered recycling? What about diverting food residuals to a farm for agricultural use?**

The Maryland Recycling Act defines "recycling" as any process in which recyclable materials are (1) collected, separated, or processed and (2) returned to the marketplace in the form of raw materials or products (Environment Article, §9-1701, Annotated Code of Maryland). Food donation is not considered recycling because the food recovered for reuse to feed humans. Recovered food for donation is not processed into a raw material or product, and the recovered food is not returned to the marketplace because it was used for the original intended purpose of feeding people.

The following are examples in which food residuals diverted for an agricultural use is considered recycling:

- Vegetable waste generated by a food manufacturer or processor diverted to a farmer for use as a substitute for other animal feed is considered recycling.
- Corn silage or grain waste generated by an agricultural operation diverted to a farmer for use as animal feed would be considered recycling ONLY if the primary purpose of generating the corn silage or grain waste was NOT to feed animals.
- Food residuals diverted to a farmer for land application would be considered recycling if it serves as a substitute for a commercial soil conditioner or fertilizer.

### **34. 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.

### **35. 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 will 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](#).

**36. 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 organics recycling facility(ies) documented as having the capacity and willingness to accept all 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 regulations.

**37. 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 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 1. Potential Legal Requirements for Organics Processing and Organics Recycling Systems**

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

**38. The 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 regulations can be

included by their county report submitted to MDE, which in turn will 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.

## Waiver Requests

### **39. When applying for a waiver for undue hardship, what types of expenses may 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?**

The primary expenses associated with disposing of food residuals in a refuse disposal system are transportation costs and tipping fees. The diversion costs most comparable to those associated with disposing of food residuals in a refuse disposal system would be the transportation costs and tipping fees related to diverting food residuals to an organics recycling facility. For this reason, MDE will only accept costs associated with transporting and paying the tipping fees of refuse disposal systems and organics recycling facilities when considering a waiver request for undue hardship because the cost of diverting food residuals is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system.

### **40. What types of reasonable circumstances can a person submit a waiver request for undue hardship?**

The 2021 law and regulations allow for a person to request a waiver if the person demonstrates, to the satisfaction of MDE, undue hardship because of “other reasonable circumstances”. If the diversion of food residuals results in a person experiencing a significant operational or financial difficulty that is not generally applicable to other persons required to divert their food residuals, the person may choose to apply to MDE for a waiver for undue hardship. MDE has the discretion to request additional or specific documentation from the requestor when considering if the “other reasonable circumstance” constitutes an undue hardship. Note, for this type of waiver request, the other reasonable circumstance may not be related to the cost of transporting to, or paying the tipping fees of, a refuse disposal system or organics recycling facility.

### **41. 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 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 regulations. In these circumstances, MDE is able to issue an exemption for those food residuals impacted by the biosafety or food safety concern.

## Enforcement

### **42. Who is responsible for enforcing the food residuals diversion mandate?**

MDE is responsible for enforcing the requirements of the 2021 law and 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 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.

**43. 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 regulations.