

# Legal Fact Sheet

## Maine Food Donation: Feeding Food Scraps to Animals

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The use of food waste as animal feed has been commonplace for centuries.<sup>1</sup> The practice declined in the 1980s, when state and federal laws tried to limit the feeding of food waste to animals following several disease outbreaks linked to animal products in livestock feed. Recently, there has been renewed interest in the practice of feeding safe, properly treated food waste to animals.

Using food scraps as animal feed in a safe, resource-efficient way can be an environmentally friendly and energy-efficient alternative with multiple benefits for regional farmers and food waste generators, such as retailers, restaurants, and educational institutions. These entities can partner to enhance the sustainability of their operations and reduce feed and disposal costs. This practice can also reduce the demand for commercial feeds and the land, water, and other resources needed to produce them.

Federal and Maine laws regulate the use of food waste in animal feed. This guide will examine both types of law.

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### Maine Law on Feeding Food Scraps to Animals

Maine law lists feeding food scraps to animals as third in the food recovery hierarchy, behind source reduction and feeding hungry people.<sup>2</sup> Maine law regulating feeding food scraps to animals only pertains to the feeding of swine. Maine mirrors the Federal Swine Health Protection Act (SHPA) by allowing the feeding of animal-derived food waste, termed garbage,<sup>3</sup> to swine if it has been heat-treated to at least 212 degrees Fahrenheit for 30 minutes or longer<sup>4</sup> and is fed by a licensed person.<sup>5</sup> Individuals feeding household food waste to their own swine, kept for personal use, are exempt from these requirements.<sup>6</sup> Farmers and animal feed producers must follow all applicable federal laws even when no state law applies to their practices.<sup>7</sup>

### Federal Laws on Feeding Food Scraps to Animals

The federal government regulates the use of food scraps in animal feed by setting requirements which largely concern the type of animals that may be fed food scraps and the kind of food scraps that may be fed to animals. The federal regulations function as a floor that allows state regulations to go beyond them. Relevant federal laws include:

- **The Federal Swine Health Protection Act (SHPA)** mandates that, before being fed to swine, food waste containing meat and animal byproducts must be heat-treated (212 degrees Fahrenheit/100 degrees Celsius at sea level) for at least 30 minutes by a licensed facility.<sup>8</sup> Food waste containing only certain processed items—including industrially processed and rendered animal products, bakery waste, candy, eggs, domestic dairy products, and certain types of fish—need not be heat-treated.<sup>9</sup> SHPA requires feeders to keep swine away from untreated food waste, and to keep treated food separate from untreated food.<sup>10</sup> But SHPA does not prevent a family farm from directly supplementing the diet of its pigs with kitchen scraps, including those that contain untreated meat.<sup>11</sup>
- **Transmissible Spongiform Encephalopathy (TSE)/Ruminant Feed Ban Rule**<sup>12</sup> prohibits the feeding of any protein-containing portion of mammalian animals to ruminants in order to prevent TSE.<sup>13</sup> Ruminants are animals that have a stomach with four chambers, such as cattle, sheep, and goats.<sup>14</sup>
- **The Preventive Controls Rule for Animal Food in the Food Safety Modernization Act (FSMA)**<sup>15</sup> regulates animal feed that consist of human food byproducts,<sup>16</sup> which are defined as foods fit for animal but not human consumption, such as culls, peels, trimmings, and pulp from vegetable manufacturing or processing.<sup>17</sup> In general, facilities processing food that will be fed to animals must (1) establish current good manufacturing practices (CGMPs), (2) develop and implement Hazard Analysis and Risk-based Preventive Controls (HARPC), and, if the facility receives food from a supply chain, (3) coordinate with other entities in the chain to control identified hazards.<sup>18</sup> But not all facilities must comply with all three requirements. Some facilities are completely exempt from the rule, including certain farms

and other facilities that are not required to register with the Food and Drug Administration (FDA).<sup>19</sup> Other facilities, such as those in compliance with the Preventive Controls rule for human food, are subject to modified requirements.<sup>20</sup>

- **The Food, Drug, & Cosmetic Act (FDCA)** asserts that animal feed, like human food, cannot be filthy or decomposed, packaged or held under unsanitary conditions, or contain any poisonous or deleterious substance.<sup>21</sup> Moreover, food labeling cannot be false or misleading in any way, and it must include required information.<sup>22</sup> In general, an animal feed label should include the common or usual name(s) of the animal feed,<sup>23</sup> and the name and place of the feed manufacturer, packer, or distributor.<sup>24</sup>

**Example Scenario:** *I own a small microbrewery. What practices should I follow when distributing byproducts from my business as animal feed?*

A: *Breweries produce spent grain, brewery mash, fruit or vegetable peels, and liquid whey as byproducts of alcoholic-beverage brewing and distilling, and commonly distribute this waste as animal feed.<sup>25</sup> Because these byproducts are not derived from meat or animal products, they do not fall under the other SHPA or the Ruminant Feed Ban Rule. Under the Preventive Controls rule, brewers must (1) be in compliance with the human food processing CGMPs, (2) not further process the brewing byproducts, and (3) follow those specified CGMPs for preventing physical and chemical contamination when holding and distributing brewing byproducts.<sup>26</sup>*

## Preventing Liability

Donating food to feed animals is not covered under the federal Bill Emerson Good Samaritan Act, and therefore businesses that donate food to feed animals are not protected from liability under federal law. Under Maine law, food donors are only protected from liability when they are donating food to non-profits and when they believe that the food is fit for human consumption.<sup>27</sup> Therefore, donating food scraps to feed animals likely would not be protected from liability under state law. Thus, businesses distributing food to feed animals must ensure that their practices are not negligent and align with all federal and state laws applicable to distributing food to feed animals.

## Conclusion

When done responsibly and in conformity with state and federal law, feeding food waste to animals has many economic and environmental benefits. Individuals or businesses interested in the practice can learn more by consulting the Maine Department of Agriculture, Conservation, and Forestry, Division of Animal and Plant Health.

<sup>1</sup> See TRISTRAM STUART, *WASTE: UNCOVERING THE GLOBAL FOOD SCANDAL* 243–44 (First American Edition 2009).

<sup>2</sup> Me. Rev. Stat. Ann. tit. 38, § 2101-B (West 2017).

<sup>3</sup> Me. Rev. Stat. Ann. tit. 7, § 1813 (1) (West 2017).

<sup>4</sup> Me. Rev. Stat. Ann. tit. 7, § 1814-A (1) (West 2017).

<sup>5</sup> *Id.* § 1814-A (2). Person is defined as “the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership or other entity.” *Id.* § 1751(4) (West 2017).

<sup>6</sup> *Id.* § 1814-A(1).

<sup>7</sup> While Maine animal feed regulations only pertain to feeding swine, Maine also has strict rules regarding cull potatoes, potatoes used for animal feed. To prevent the potential spread of the A2 strain of late blight to other potato crops, cull potatoes must be disposed of in accordance with state regulations before June 10<sup>th</sup> of a given year, unless given special exemption. See Me. Rev. Stat. Ann. tit. 7, § 1007-A (West 2017); Me. Code R. tit. 06-096 Ch. 401, § 8 (2017); Me. Code R. tit. 01-001 Ch. 600, § 2 (2017).

<sup>8</sup> 9 C.F.R. §§ 166.2, 166.7 (2017).

<sup>9</sup> 9 C.F.R. §§ 166.1, 166.2.

<sup>10</sup> See e.g., 9 C.F.R. §§ 166.17, 166.3(a), 166.4(a).

<sup>11</sup> 9 C.F.R. § 166.1.

<sup>12</sup> 21 C.F.R. § 589.2000 (2017).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 21 C.F.R. § 507.

<sup>16</sup> *Id.* § 507.12(a).

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<sup>17</sup> Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals, Final Rule, 80 Fed. Reg. 56169 -56356 (Sept. 17, 2015) (to be codified at 21 C.F.R. chapter undefined), <https://www.federalregister.gov/articles/2015/09/17/2015-21921/current-good-manufacturing-practice-hazard-analysis-and-risk-based-preventive-controls-for-food-for>, (last visited Jun. 9, 2016).

<sup>18</sup> 21 C.F.R. § 507.

<sup>19</sup> See 21 C.F.R. §§ 117.3, 117.5, 507.3, 507.5(d).

<sup>20</sup> 21 C.F.R. §§ 507.12(a), 507.12(b).

<sup>21</sup> 21 U.S.C. § 342 (2012).

<sup>22</sup> 2 U.S.C. § 343.

<sup>23</sup> 21 C.F.R. § 501.100(a).

<sup>24</sup> 21 C.F.R. § 501.5.

<sup>25</sup> *Questions and Answers for Brewers/Distillers on the Original FSMA Proposed Rule for Preventive Controls for Animal Food*, FDA, Apr. 2014, <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm394991.htm>.

<sup>26</sup> 21 C.F.R. §§ 507.12(a), 507.12(b).

<sup>27</sup> Me. Rev. Stat. tit. 14, § 166 (2) (2009).