

Legal Fact Sheet

New Hampshire Food Donation: Food Scraps for Animals

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Societies have incorporated food waste into animal feed for centuries.¹ This 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 to exclusively feeding livestock crops grown for that purpose. Repurposing otherwise wasted food has 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. Incorporating food scraps into animal feed can also reduce the demand for commercial feeds and the land, water, and other resources needed to produce them.

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

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)**² 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.³ 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.⁴ SHPA requires feeders to keep swine away from untreated food waste, and to keep treated food separate from untreated food.⁵ But SHPA does not prevent a household from feeding kitchen scraps to its own pigs, including those scraps containing untreated meat.⁶
- Transmissible Spongiform Encephalopathy (TSE)/Ruminant Feed Ban Rule**⁷ prohibits the feeding of any protein-containing portion of mammalian animals to ruminants in order to prevent TSE (“Mad Cow Disease”).⁸ Ruminants are animals that have a stomach with four chambers, such as cattle, sheep, and goats.⁹
- The Preventive Controls Rule for Animal Food in the Food Safety Modernization Act (FSMA)**¹⁰ regulates animal feed that consists of human food byproducts,¹¹ which are defined as foods fit for animal but not human consumption, such as culls, peels, trimmings, and pulp from vegetable manufacturing or processing.¹² 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.¹³ 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).¹⁴ Other facilities, such as those in compliance with the Preventive Controls rule for human food, are subject to modified requirements.¹⁵
- The Food, Drug, & Cosmetic Act (FDCA)**¹⁶ asserts that animal feed,¹⁷ like human food, cannot be filthy or decomposed, packaged or held under unsanitary conditions, or contain any poisonous or deleterious substance.¹⁸ Moreover, food labels cannot be false or misleading in any way, and they must comply with certain, sometimes product-specific, requirements.¹⁹ In general, an animal feed label must include the common or usual name(s) of the animal feed²⁰ and the name and place of the feed manufacturer, packer, or distributor.²¹

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. They commonly distribute this waste as animal feed. 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.²²

Preventing Liability

Donating food to feed animals is not covered under the federal Bill Emerson Good Samaritan Act. Thus, businesses that donate food to feed animals are not protected from liability under federal law. However, in New Hampshire, food donated for feeding of animals is protected from liability, if the donation is made in good faith and without gross negligence, recklessness, or intentional misconduct.²³

New Hampshire Law on Feeding Food Scraps to Animals

New Hampshire state law regulating feeding food scraps to animals only pertains to the feeding of swine. In particular, New Hampshire mirrors the SHPA by allowing the feeding of animal-derived food waste to swine provided that it has been heat-treated to at least 212 degrees Fahrenheit for 30 minutes or longer²⁴ and is fed by a permitted individual.²⁵ Individuals feeding animal-derived food scraps to swine must be permitted annually by the New Hampshire Department of Agriculture, Markets & Food.²⁶ These requirements do not apply to food waste that does not contain animal-derived scraps.²⁷ Individuals feeding household food waste to their own swine are also exempt from these requirements.²⁸

Any farmer or animal feed producer that does not meet the above requirements risks revocation of his or her permit,²⁹ quarantine of his or her hogs,³⁰ and/or a misdemeanor violation for each day the violation occurs.³¹ Farmers and animal feed producers must still follow all applicable federal laws even when there is no state law that applies to their practices.

Conclusion

Feeding food waste to animals has many economic and environmental benefits when done responsibly and in conformity with state and federal law. Individuals or businesses interested in the practice can learn more by consulting the New Hampshire Department of Agriculture, Markets, Food.

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

² 7 U.S.C. § 3801 et seq. (2016); 9 C.F.R. § pt. 166 (2016).

³ 7 U.S.C. § 3803(b); 9 C.F.R. §§ 166.2, 166.7.

⁴ 9 C.F.R. §§ 166.1, 166.2.

⁵ See e.g., 9 C.F.R. §§ 166.3(a), 166.4(a).

⁶ 9 C.F.R. § 166.1.

⁷ 21 C.F.R. §§ 589.1, 589.2000.

⁸ 21 C.F.R. § 589.2000.

⁹ 21 C.F.R. § 589.2000.

¹⁰ 21 C.F.R. § 507.

¹¹ 21 C.F.R. § 507.12(a).

¹² 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).

¹³ 21 C.F.R. § 507.

¹⁴ See 21 C.F.R. §§ 117.3, 117.5, 507.3, 507.5(d).

¹⁵ 21 C.F.R. §§ 507.12(a), 507.12(b).

¹⁶ 21 U.S.C. § 301 et seq..

¹⁷ 21 U.S.C. § 321(f).

¹⁸ 21 U.S.C. § 342(a)(1).

¹⁹ 2 U.S.C. § 343.

²⁰ 21 C.F.R. § 501.3(a)(2).

²¹ 21 C.F.R. § 501.5.

²² 21 C.F.R. §§ 507.12(a), 507.12(b).

²³ N.H. Rev. Stat. Ann. § 508.15 (2016).

²⁴ N.H. REV. STAT. ANN. § 435:36 (1985).

²⁵ *Id.* § 435:33.

²⁶ *Id.* § 435:34; *Application for Permit to Feed Garbage to Swine*, DEPARTMENT OF AGRICULTURE, MARKETS & FOOD, DIVISION OF ANIMAL INDUSTRY, <https://www.agriculture.nh.gov/publications-forms/documents/feed-garbage-swine.pdf> (last visited Oct. 30, 2018).

²⁷ *Id.* § 435:32(I).

²⁸ *Id.* § 435:33(II).

²⁹ *Id.* § 435:35.

³⁰ *Id.* § 435:36-a.

³¹ *Id.* § 435:40.

