

Legal Fact Sheet

New York Food Donation: Feeding Food Scraps to Animals

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The use of food scraps as animal feed has been commonplace for centuries.¹ The practice declined in the 1980s, when state and federal laws tried to limit the feeding of food scraps 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 scraps to animals.

Using food scraps as animal feed in a safe, resource-efficient way can be an environmentally-friendly and energy-efficient option that benefits both 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 feed and the land, water, and other resources needed to produce it.

This guide will examine the federal and New York laws that regulate the use of food scraps in animal feed. For more information, see *Leftovers for Livestock: A Legal Guide to Using Food Scraps as Animal Feed*.²

Federal Laws on Feeding Food Scraps to Animals

The federal government regulates the use of food scraps in animal feed by setting requirements that 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 scraps 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 scraps 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 scraps, and to keep treated food separate from untreated food.⁵ SHPA does not prevent a family farm from directly supplementing the diet of its pigs with kitchen scraps, including those that contain 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.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 including feed that consist of human food byproducts,¹¹ which are 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) follow current good manufacturing practices (CGMPs), (2) develop and implement Hazard Analysis and Risk-based Preventive Controls (HARPC), and, (3) if the facility receives food from a supply chain, coordinate with other entities in the chain to control identified hazards.¹³ 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)** 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.¹⁶ Moreover, food labeling cannot be false or misleading in any way, and it must include required information.¹⁷ In general,



an animal feed label should include the common or usual name(s) of the animal feed,¹⁸ and the name and place of the feed manufacturer, packer, or distributor.¹⁹

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.²⁰ Because these byproducts are not derived from meat or animal products, they do not need to be heat-treated under New York state law, and they do not fall under the federal 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.²¹*

New York Law on Feeding Food Scraps to Animals

New York law regulating the feeding of food scraps to animals within the state pertains to the feeding of cattle, swine, and poultry. Under New York law, animal-derived food scraps²² may be fed to cattle, swine, and poultry only if the food scraps have been heat-treated at a rendering plant²³ at a temperature high enough to make them commercially sterile.²⁴ Non-animal derived pre-consumer food scraps, such as those produced from the processing and preparation of fruits, vegetables, grains, or dairy, do not need to be heat-treated before being used as animal feed.²⁵ The New York State Department of Agriculture and Markets may quarantine cattle, swine, and poultry on the premises where they are kept if there is reason to believe the animals were fed untreated animal-derived food scraps.²⁶ Additionally, animal feed operations must apply for a beneficial use determination (BUD) from the New York State Department of Environmental Conservation (DEC).²⁷ Use of bread and grain products for animal feed is a predetermined beneficial use, meaning that a BUD application is not required.²⁸

Individuals feeding household food scraps to their own cattle, swine, or poultry on their own property are exempt from these requirements.²⁹ In addition, farmers and animal feed producers must also follow all applicable federal laws, even if no state law applies to their practices.

Preventing Liability

Donating food scraps to feed animals is not covered under the federal Bill Emerson Good Samaritan Act, and therefore businesses that divert food scraps to feed animals are not protected from liability under federal law. Under New York 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.³⁰ 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 scraps to animals can have many economic and environmental benefits. Individuals or businesses interested in the practice can learn more by consulting the New York Department of Agriculture and Markets and the Department of Environmental Conservation.³¹

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

² HARVARD LAW SCH. FOOD LAW & POLICY CLINIC, FOOD RECOVERY PROJECT, & UNIV. OF ARK. SCH. OF LAW, *LEFTOVERS FOR LIVESTOCK: A LEGAL GUIDE TO USING FOOD SCRAPS AS ANIMAL FEED* (Aug. 2016), https://www.chlpi.org/wp-content/uploads/2013/12/Leftovers-for-Livestock_A-Legal-Guide_August-2016.pdf.

³ 9 C.F.R. §§ 166.2, 166.7 (2018).

⁴ *Id.* §§ 166.1, 166.2.

⁵ See, e.g., *id.* §§ 166.3(a), 166.4(a).

⁶ *Id.* § 166.1.



⁷ 21 C.F.R. § 589.2000 (2018).

⁸ See *id.*

⁹ *Id.*

¹⁰ 21 C.F.R. § 507.

¹¹ *Id.* § 507.12(a).

¹² See *id.* § 507.3.

¹³ 21 C.F.R. § 507.31.

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

¹⁵ 21 C.F.R. § 507.12(a), (b).

¹⁶ 21 U.S.C. § 342 (2012).

¹⁷ 21 U.S.C. § 343.

¹⁸ 21 C.F.R. § 501.3(b).

¹⁹ 21 C.F.R. § 501.5.

²⁰ *Questions and Answers for Brewers/Distillers on the Original FSMA Proposed Rule for Preventive Controls for Animal Food*, FDA (Apr. 2014), <https://wayback.archive-it.org/7993/20170404184755/https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm394991.htm>.

²¹ 21 C.F.R. § 507.12(a), (b).

²² New York law specifically refers to the feeding of “garbage,” meaning animal or poultry waste created during food processing and preparation; offal, waste created during butchering; and animal and poultry carcasses. N.Y. AGRIC. & MKTS. LAW § 72-a(2)–(3) (McKinney 2017). The feeding of garbage, offal, and carcasses to animals is prohibited, but properly treated animal feeds are not considered to be garbage. *Id.*

²³ Rendering plants are plants where animal bodies and meat products are heat-treated and must be licensed by the New York State Department of Agriculture and Markets. N.Y. AGRIC & MKTS LAW §§ 96-y, 96-z-1 (McKinney 2017).

²⁴ N.Y. AGRIC. & MKTS. LAW § 72-a(2)(e) (McKinney 2017).

²⁵ N.Y. STATE DEP’T OF ENVTL. CONSERVATION, REVIEW OF BENEFICIAL USE DETERMINATION (BUD) PETITIONS FOR ANIMAL FEED DERIVED FROM FOOD SCRAPS OR FOOD PROCESSING WASTE 2.

²⁶ N.Y. AGRIC. & MKTS. LAW § 76(2) (McKinney 2017).

²⁷ N.Y. COMP. CODES R. & REGS., tit. vi, § 360.12 (2018). The food scrap generator is typically the entity that applies for the BUD, but other involved parties, such as the farm that feeds the food scraps to animals, may also obtain the BUD. See *telephone* interview with New York State Department of Environmental Conservation environmental engineers (May 18, 2018). If a generator receives a beneficial use determination, food scraps are no longer treated as solid waste for the purposes of the Solid Waste Management Regulations. See *Beneficial Use Determinations (BUDs)*, N.Y. ST. DEP’T OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/chemical/8821.html> (last visited Feb. 1, 2018).

²⁸ N.Y. COMP. CODES R. & REGS., tit. vi, § 360.12 (2018).

²⁹ N.Y. AGRIC. & MKTS. LAW § 72-a(3)(b) (McKinney 2017).

³⁰ N.Y. AGRIC. & MKTS. LAW §§ 71-Y, 71-Z (McKinney 2017).

³¹ Agriculture and Markets, NEW YORK STATE, <https://www.agriculture.ny.gov/> (last visited April 5, 2018); Department of Environmental Conservation, NEW YORK STATE, <https://www.dec.ny.gov/> (last visited April 5, 2018).

