

USDA Report Out on Tribal Consultation and Listening Session on Self-Determination in Meat and Poultry Inspection (Food Safety)

2024 Self-Determination Tribal Consultation and Listening Session Report-Out

U.S. Department of Agriculture (USDA)
Meat and Poultry Inspection (Food Safety)

June 3, 2024

In-Person and Virtual Meeting
Cherokee, North Carolina

Mission Area: Food Safety (FS)

Agency: Food Safety Inspection Service (FSIS)

USDA Consulting Officials:

- Sandra Eskin, Deputy Under Secretary, FS
- Paul Kiecker, Administrator, FSIS

I. Opening Remarks

- Liz Carr, Tribal Advisor to the Director, Office of Management and Budget, Executive Office of the President, welcomed Tribal leaders and acknowledged this consultation on Tribal self-determination is indicative of the intent of Executive Order (EO) 14112.
- USDA's Office of Tribal Relations (OTR) Director Heather Dawn Thompson welcomed Tribal leaders and highlighted the importance of this conversation to USDA, as evidenced by Secretary Vilsack's participation at the National Congress of American Indians (NCAI). His remarks were [broadcast live on Facebook](#).
- Director Thompson also commented that USDA supports Tribal self-determination and meeting the directives of EO 14112. She thanked NCAI and the Native Farm Bill Coalition for doing the hard work and getting us to these consultations today.
- Deputy Under Secretary Eskin expressed openness in exploring opportunities for expanding self-determination in food inspection through this discussion, noting the need to balance national consistency in internationally recognized food safety standards and new opportunities for working together in Indian Country.
- FSIS Administrator Kiecker thanked participants for allowing him to better understand Tribal perspectives on self-determination in meat and poultry inspection. He shared his appreciation for visiting Tribal nations, touring Tribal owned and operated establishments, and learning about Tribal perspectives and rituals, including through traditional bison harvest. To effectively manage State food inspection authorities, States have engaged in auditing, microbial testing, and enforcement actions. Administrator Kiecker expressed confidence that USDA and Tribes can identify similar partnerships which uphold Tribal sovereignty.

II. Nation to Nation Consultation (Tribal government officials)

A. Complexity of Existing Tribal Self-Determination Operations

- A Tribal leader commented that their Tribe operates multiple self-determination contracts and compacts with the U.S. Departments of the Interior, Health and Human Services, and the Department of Transportation including multiple health care facilities spanning multiple counties. This Tribe also manages a Food Distribution Program on Indian Reservations (FDPIR) self-determination project, supplanting USDA purchased foods with ground beef from their own meat processing facility.

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Reflecting on the detrimental health impacts from U.S. food programs, the Tribal leader noted that the Federal government has a trust and treaty obligation to support self-governance. The Tribal leader stated that USDA must be firm, fair, and consistent in its systems.

- FSIS noted that there may be different requirements between the Federal and Tribal systems. While inspection is fundamental for consumer protection, inspectors are only one component of a comprehensive food safety oversight system. The Federal system includes laboratories, recall management, and the Department of Justice to enforce the laws and regulation in addition to label approval staff.
- A Tribal official commented on the difference between sovereignty and self-determination. Food sovereignty is hard to achieve at the price levels of large distributors. The Tribe also manages software for a robust traceability and consumer confidence including through geospatial and radio frequency identification. They are looking at the potential for process verification through USDA for trademarking and packaging.

B. Budgetary Needs and MPI/CIS Reimbursement Rates

- A Tribal leader commented that Tribal meat processing facilities will be different from State or private facilities, including their structure. No one size fits all for Tribes—just as children have unique needs, each facility will have unique needs. The Tribe would like to form a consortium across Tribal nations to envision food sovereignty for Tribal nations.
 - FSIS noted its need for more appropriated funds every year, as more facilities start operation requiring more inspectors.
 - FSIS also agreed on the need to consider different options. The Meat and Poultry Inspection (MPI) program, which is the program FSIS operates with the States, is one option. State inspections recognized through the MPI program must have standards that are “at least equal” to USDA’s Federal standard. In order to ship across state lines, States must be approved for the Cooperative Interstate Shipping (CIS) program and must meet the requirement that their laws and standards are “the same as” USDA’s. With foreign governments, the United States requires “equivalency,” which is determined through an involved process.
 - Looking at the MPI model, FSIS reflected on whether reimbursement rates for meat inspection programs would be appropriate for Tribal governments. By current law, FSIS can provide up to 50 percent reimbursement to the States. However, in recent years, appropriated funds were not sufficient to support that reimbursement rate. Therefore, FSIS reimbursements to States have been less than 50 percent.
 - A new provision in the FY2024 budget provides reimbursement for voluntary inspection fees for bison on Native lands and in facilities owned by Tribal citizens.
- A Tribal leader expressed interest in establishing meat processing plant on trust lands to process buffalo and beef, commenting on the interest in receiving 100 percent reimbursement to alleviate the cost of providing this service.
- A Tribal Proxy commented that Tribes cannot build infrastructure projects without the additional funding. The Federal government needs to open up funding not just during times when we realize there is a problem with the system [such as supply

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chain disruptions]. Some [meat] processing facilities have 6 to 12-month backlogs. Infrastructure funding is important. Cooperative agreements are needed for Indian Country.

- OTR noted that these comments underscored the importance of having boots on the ground and that it might be easier to secure funding for inspectors than push for a law to be enacted.

C. *Workforce Development and Training*

- A Tribal leader noted that workforce development requires training. Their Tribe has robust career services department and partnerships with technical centers. Employees have the skills, including those who gained skill working at major meat processing facilities outside the Tribes. Funding is needed for partnerships. Scholarships put money back into Tribal citizen hands. The Tribe supported an academic program for trade careers through a multi-million contribution with integrated university partners.
 - FSIS agreed that Tribal inspection workforce development is important.
- A Tribal leader shared their history of ancestral homelands, where they lived for thousands of years with everything they needed. Other Tribes may be displaced from homelands and unable to harvest wild game. They would like to trade meat with other Tribes and are working to combat diet-related issues through healthier eating including through buffalo, which is often used in cultural ceremonies. The Tribe operates a mobile processing unit purchased during the pandemic, where processed meat will be served by to their people. The Tribe may need some assistance in workforce development. They are already working with local educational institutions to identify opportunities.
 - FSIS commented that they have also explored inspector training at colleges. Because FSIS needs inspectors to come prepared for the job on their first day, training programs at colleges can do a great job. FSIS would like to continue this conversation.
- A Tribal proxy commented that Tribal meat inspector training through USDA and cross-trained with Tribal food codes is key. They asked how USDA would recognize cross-training, as well as whether there could be a certification and more cooperative agreements for funding. The proxy expressed interest in USDA's commitment to offer a boot camp for Tribal meat inspectors given the shortage of meat inspectors available across the country. The Proxy also expressed interest in how USDA can get FDA in the room when talking about food safety and inspections to have all the right people in the conversations.
 - Liz Carr thanked the Tribal proxy for the comment on FDA participation and the importance of inter-agency coordination.
- A Tribal leader reflected on the importance of workforce development for cultural and commercial harvest. While their Tribe does more custom harvest, they want to move into USDA-inspected certifications so they can put local meat back into schools. The Tribe previously had Farm to School funding, but the local processing facility went under. This meant they had to transport animals further, putting stress on animals and people alike. The Tribal leader expressed hope that they could have inspectors available to harvest on lands with ceremonies that demonstrate appropriate respect [for animals and cultural practices] and also asked to have trainers ready to come to their lands.

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- FSIS asked for clarification about whether the impediment is the lack of inspectors or facilities. The Tribal leader stated that limitations impacted both issues.

D. Tribal Interest in Inspecting Non-Amenable, Terrestrial Animal Species

- A Tribal leader noted that their Tribe is positioned to further food sovereignty/food security, which they started as a response to the COVID-19 outbreak. The Tribe started a robust animal processing facility at that time to accommodate cattle, bison, hogs, and seasonal deer. Bison are a culturally significant species for their Tribe. Through negotiations with USDA, the Tribe hopes to receive reimbursement for bison processing, support the needs of unique facilities, and be positioned to internalize inspection. The Tribal leader expressed interest in both state and Federal inspection and that bison inspectors have only been made available one to two days per week.
 - FSIS acknowledged inspection-workforce limitations.
- A Tribal leader described how their Tribe leases several range units to Tribal members for their ranches to run cows, horses, and buffalo. Their Tribe is tied to the buffalo culturally and through their creation story. The Tribe currently pays for inspections for buffalo and want to change the law so that buffalo inspection fees are covered without making buffalo inspections mandatory. Where USDA's Indigenous Animals Grant was offered at \$50 million, the leader commented that total funding requests totaled over \$300 million. The Tribal leader commented on the need for increased funds for that program, as well as for the Indian Health Service to consider "prescribing" buffalo meat.
- Tribes need field inspections and inspectors to come onsite and do inspections in the field. The Tribal leader commented that Native people often do not believe in stressing the animal by moving it indoors for harvest or running animals through a chute. Lastly, the Tribe requested parity with States, with the ability to do more throughout Indian Country whether its trade or sales.
 - FSIS agreed that a State-like meat and poultry inspection program might meet Tribal goals, as a starting place for conversations.
 - USDA officials also commented that Congress did not provide additional funding for another round of Indigenous Animals Grants.
 - Field harvest is currently allowed and is available under Federal inspection as well.
 - Congress directed FSIS to conduct listening sessions on whether bison should be considered an amenable species. However, neither the bison industry nor Tribal groups expressed interest in doing so.
 - Federal grants of inspection enable establishments to process products at Federally inspected facilities and Tribal facilities (with amendments to existing law). The costs of Federal inspection, which is free for eight hours of service each day for amenable species such as cattle, are covered by taxpayers. Congress requires USDA to inspect cows, pigs, chickens, turkeys, and goats. Again, buffalo are not currently an amenable species. Inspections of any other animals are fee for service. Some States treat bison as an amenable species and do cover the costs of that inspection, using State funding.
 - USDA received a one-year appropriation for FY2024 to cover the cost of fees charged for bison inspection. Future years will depend on appropriated funds to continue that new program.

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- A Tribal Proxy commented that the Indigenous Animals Grant should receive annual funding. Their Tribe maintains elk and deer, as well as bison. Having a unit to be able to process that not only for Tribal subsistence foods but also to be able to get the meat into school systems is vital, so that youth can access their indigenous foods.
 - OTR responded that the Indigenous Animals Meat Processing and Harvesting Grant and similar programs would also need to be funded by Congress.
- A Tribal leader commented on the cultural importance of bison and the necessity to support traditional diets, particularly for Tribal elders who are not accustomed to contemporary, western foods.

III. Listening Session

- A commenter stated that when speaking of inspectors, Native members have long known how to look for disease when processing a deer, including before a life was taken. The commenter stated that in Alaska, there are over 220 Tribes, many of whom are very remote. The commenter encouraged USDA staff to come to Alaska to have these conversations, as (those in North Carolina) cannot speak on others' behalf. Tribal elders are stating that moose are less plentiful because tourists are coming in to shoot moose on motorized vehicles and then fly them out. The commenter encouraged USDA ask for Tribal elders' input on their rules and recognized that changes to legislation may be necessary to affirm traditional practices.
- A commenter stated that their organization worked with many Tribes and several Tribal colleges in implementing workforce development grants. The organization has worked with over 1,300 non-Tribal processing plants from around the United States. Many Tribes working on these issues are very early in the process. In 2017, there was only one Tribal [meat] processing plant and today, there are nearly a dozen. The commenter reflected on the benefits of implementing regulatory considerations with consistency and parity, particularly as many Tribal lands remain checkerboarded or fractionated. The commenter further stated that many States do consider bison an 'amenable species,' and this variation requires Tribal members to manage bison processing considerations on a case-by-case basis. Tribes aim to feed people, be respectful of the animals, feed the community efficiently and safely.
 - FSIS asked if the commenter could estimate the funding needed for Tribal slaughter, as well as non-Tribal bison slaughter. They noted that funding to assist with this has been available only very recently. Previously, the cost was based on the amount of time it took to do the inspection.
 - FSIS also noted that their food safety regulations [Hazard Analysis Critical Control Point (HACCP) and Sanitation Standard Operation Procedures (SSOP)] provide flexibility for plants to implement what works best for them, which means that everything is not going to be the same. States with their own programs sometimes want to be more stringent than the Federal government. Facilities can decide whether to operate under State or Federal inspection. It is challenging to get 7,500 people to do the same thing in facilities that are not doing things in the same way.

IV. Tribal Caucus Report-Out

- The caucus facilitator commented that food safety is critical to Tribes and inherent in Tribal harvest and handling of food products, including those regulated under the Food Safety and Inspection Service (FSIS) inspection authority. Tribes care deeply about this

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issue, as it will impact their communities, family members and neighbors directly. The inspection services they seek under 638 authorities would feed Tribal communities. There are many examples of food safety practices incorporated into traditional foodway. One example was the Hidatsa people's fishing practices include distributing and eating fish on the day of catch, preventing opportunity for spoilage. Many Tribes engage in food preservation using smoke pits or smokehouses to preserve fish and meat, a method which reduces pathogenic and spoilage bacteria. Food safety practices are frequently inherent in our traditional and cultural foodways.

IV. Closing Remarks

- OTR closed the consultation by noting that the depth and substance of the conversation reflects significant thinking. OTR thanked Tribal leaders for challenging us to consider these issues and thanked FSIS for its partnership on these topics.

V. Written Comments

- A commenter noted that Tribes have the capacity to administer food safety programs. In addition to traditional and cultural foodways practices, many Tribes work regularly with the Indian Health Service (IHS) Sanitation inspectors for retail offerings. Tribes have the ability and capacity to enforce food safety requirements or can readily build capacity when presented with regulatory authority. Requiring Tribes to leverage state inspection to enter product into commerce is an infringement of Tribal sovereignty. Assertions of limited Tribal capacity to administer inspection to support or justify rationale preventing expansion of Tribal self-governance over food safety are “red herrings.” As sovereigns, Tribes regularly hire and/or train qualified individuals in areas requiring expertise. For example, Cherokee Nation's Department of Health employs Tribal epidemiologists tasked with investigation and critical and statistical analysis of conditions impacting the health of individuals served by the Cherokee Nation. The position is enabled pursuant to a self-governance compact authorized by the Indian Self-Determination and Education Assistance Act. Just as meat inspection requires credentialing like education, training and experience, Cherokee Nation epidemiologists are also required to be credentialed to perform epidemiological work. Tribes are not just capable of but have demonstrated sophistication in meeting the demands of technical compliance through staffing and development.
- Tribes already have proven capacity to administer regulatory authority, demonstrated through Tribal permitting processes and inspection services on issues that may impact their jurisdictions. Expanding those efforts for those Tribes interested is a simple next step, especially when technical assistance is available through federal and non-federal partners. Even when statutorily exempt, some Tribes are independently utilizing regulation and technology to meet market demand but also their own preferences in areas like traceability, disease outbreak management, and labeling compliance. Radiofrequency identification (RFID) traceability software utilized by Tribes can identify animals down to the pasture level to isolate data specific to any potential food pathogen outbreaks. Tribes also can leverage the American Indian Foods Program housed at the Intertribal Agriculture Council for trademarking, labeling and market compliance assistance in domestic and international fora.

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- While it is foreseeable that a Tribe may own and/or operate a meat processing facility and perform meat inspection services, Tribes are also adept at addressing needs for independent authority to regulate. Tribes may choose to form a consortium or create an independent Tribal body to leverage authority, capacity, and resources to administer meat inspection services across the agreed Tribal jurisdictions. Tribes can agree to be bound by and authorize the application of the regulatory oversight performed by the consortium or independent Tribal body. Section 5 (viii) of Executive Order 14112—"Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination" ("EO 14112") directs USDA to "provide Tribal Nations with the flexibility to apply for Federal funding and support programs through intertribal consortia or other entities..." The directives in the Executive Order align with expansion and funding support for Tribal meat inspection services and regulation.
- Like many proposals of non-negotiable self-determination options limited to existing programs and authorities outside of statutorily authorized self-contracting or self-compacting provisions (colloquially referred to as "638 Light"), treatment as a state does not adequately address Tribal needs. Treatment as a state within MPI and CIS programs to allow Tribes to engage in off-reservation intrastate commerce infringes on Tribal sovereignty by requiring Tribes to be subject to the Federal Meat Inspection Act, Poultry Products Inspection Act and the accompanying regulations which are intended for intrastate compliance. Second, options are limited to small/very small plants. With the potential for Tribal growth to easily exceed that limitation in the near future, imposing this would impose a cap on expansion for successful Tribal operations. Third, treatment of as a state does not address on-reservation Tribal trade across state lines and traditional Tribal trade networks that have had international borders drawn between them. Some Tribal jurisdictions cross state lines, thus CIS opportunities would not match the current construct to even facilitate intra-Tribal inspection wholly within the jurisdictional boundaries of that Tribe without changes to legislative language.
- Under EO 14112, USDA should also examine funding shortfalls in programs supporting Tribal Nations and find ways to offer more flexibility to Tribes in specific federal programs. While addressing funding shortfalls may be a lengthy process considering the budget and appropriations cycle, USDA FSIS should use the most immediate power granted via this EO: waivers of federal regulations to enhance access for Tribes by reducing administrative burdens and barriers, promote co-management or co-stewardship agreements, and account for the unique needs of Tribal Nations by providing needed accommodations and exemptions.
- 638 compacted or contracted IHS operations across the country frequently provide services to Tribal members and non-Tribal citizens alike. Tribal self-determination opportunities like IHS healthcare and Tribally administered federal programs like Summer EBT regularly benefit more than just Tribal citizens. The broad impact of self-determination provisions beyond Tribal citizens is not a constraint but a benefit. In the instance of meat processing, secondary and tertiary impact to the local and regional food economy is an intentional application. Better availability of inspection and sourcing opportunities within the reservation and jurisdiction areas are critical goals to provide resiliency and redundancy in Tribal

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food economies by broadening market access and sourcing opportunities influencing Tribal nutrition and food systems which impact Tribal citizens and non-Tribal citizens food access and food security alike.

- Questions about redressability, or the ability of a court to offer a remedy for an injury were raised as concerns by FSIS, specifically in the context of jurisdiction and the application of federal, state, or Tribal laws and the application of Tribal sovereignty. Existing and widely accepted methods to address remedies for injury or harm resulting from Tribally administered functions can be replicated and applied in the context of Tribal meat inspections. Existing 638 contracts especially those dealing with IHS/Heath services already address these matters via Federal Tort Claims Act adoption and application.
- BIA/IHS' Title I 638 statute maximizes Tribal flexibilities and minimizes Departmental authority. Such authority has resulted in concerns by USDA staff that those provisions could result in inconsistency of nationally applicable food safety standards. This can be addressed by developing a Tribal scheme where in a Tribe would adopt minimum food safety standards in parity with federal minimum standards, similar to how Tribal Hemp Plans are contemplated in the 2018 Farm Bill. Additionally, the Model Tribal Food and Agriculture Code, developed and hosted by the Indigenous Food and Agriculture Initiative, reflects compliance with minimum federal food safety standards that any Tribe can access, customize, and adopt. Tribal adoption of food safety standards in parity with federal standards will address the concerns regarding FSIS' fears of a lack of consistency across all governments' inspection programs and concern with limited oversight.