

Tribal Leader Briefing Materials

Expanding Tribal Self Determination Policies at USDA

Forestry, Meat Inspections, and Food Sovereignty
in Nutrition Programs



Drafted May 2024

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Expanding Tribal Self Determination Policies at USDA

Indigenous Food and Agriculture Initiative Tribal Caucus Facilitation
May 23, 2024 at 1 p.m. central

In late April 2024, the USDA Office of Tribal Relations announced it would host three Tribal consultations during the [NCAI Midyear event at Eastern Band of Cherokee Indians in Cherokee, North Carolina](#), with a virtual connection option. All attendees, including in-person, must register/RSVP and allow you to choose “Virtual” or “In-Person”.

Those consultations will take place:

- Monday, June 3: Forestry (1-4 p.m. eastern) - [Register Here for Forestry Consultation](#)
- Monday, June 3: Meat Inspections (4:30-7:30 p.m. eastern) - [Register Here for Meat Inspections Consultation](#)
- Wednesday, June 5: Food Sovereignty and Nutrition Programs (1-4 p.m. eastern) - [Register Here for Food Sovereignty and Nutrition Consultation](#)

USDA's [Tribal Invitation](#), [Proxy Letter Template](#), and [access to framing papers](#).

Find more information on Consultations:

usda.gov/tribalrelations/tribal-consultations

Expanding Tribal Self Determination Policies at USDA

If schedules do not allow for attendance, written comments can be submitted to tribal.relations@usda.gov.

Written comment deadlines:

- Forestry consultation written comments deadline: Wednesday, July 3, 2024
- Meat inspections written comments deadline: Wednesday, July 3, 2024
- Nutrition Programs written comments deadline: Friday, July 5, 2024



The Indigenous Food and Agriculture Initiative will facilitate a Tribal Caucus on May 23 from 1-4 p.m. central ahead of the USDA Consultations on Expanding Tribal Self Determination Policies taking place during NCAI Mid Year during the week of June 3 at the Eastern Band Cherokee Indians.

HIGHLIGHTED TOPICS

- ▶▶ 1 P.M. CST MEAT INSPECTION-RELATED (FSIS)
- ▶▶ 2 P.M. CST FOOD AND NUTRITION-RELATED (FNS)
- ▶▶ 3 P.M. CST FORESTRY-RELATED (USFS)

Register for Caucus:

[BIT.LY/MAY23CAUCUS](https://bit.ly/may23caucus)



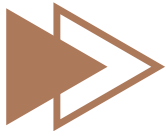
Tribal Briefing Materials

Food Safety Inspection Service (FSIS)

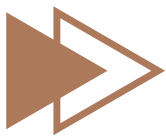
Tribal Self-Determination



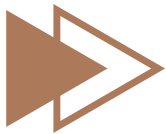
Background



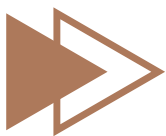
USDA Food Safety and Inspection Service is responsible for the inspection of meat and poultry products in the U.S. This includes foreign animal disease surveillance, and supervision of food inspectors to ensure compliance with federal regulations.



FSIS is underfunded and understaffed, employing 8,108 field staff in September 2023. Lack of access to federal inspectors is a huge barrier for processors in Indian Country and other small processors around the nation.



As it applies to Indian Country, there is a need for inspection personnel to understand how best to interact and work with Tribes, their citizens and communities.



USDA must also look beyond that short-term, limited-purpose funding and create a long-term plan to ensure FSIS has the necessary funding, staff, and training to support Indian Country processors and small processors in the U.S. more effectively.

Possible Solutions

Many Tribes look to self-determination principles to improve some or all of these issues. Policy pathways here could include application of “638” authority to FSIS, cooperative agreements between Tribes and FSIS, and treatment as state “TAS” application to FSIS. Two of these three items would require Congressional action (“638” and TAS).



“638” Self-Determination Contracting or Self-Governance Compacting:

This is a broad authority that could facilitate Tribal meat inspection programming, should a Tribe choose to create a full meat inspection program, including passage of food safety standards utilizing existing federal standards as a baseline.

However, FSIS does not currently have this legal authority. It would take Congressional action to make this change, most likely through a Farm Bill.

This would be a new application of this law to USDA. Contract support costs, Tribal sovereign immunity, and applicability or availability of the Federal Torts Claims Act in this context, among other things, would all need to be discussion topics. If this authority were made available, Tribal meat inspectors training could be provided by the National Center that all other meat inspectors are trained through. This would likely require modified curriculum in consideration of Tribal cultural uses that current inspection practices require/result in the destruction or disruption of certain animal products (like the head or other body parts). The accredited lab system necessary for Tribal inspection programs for required product testing might also need expansion, as the lab list is limited currently.



Cooperative agreements:

This is likely the most effective tool available at this time in this mission area. While a cooperative agreement could not facilitate Tribal meat inspection programming currently, these legal instruments could enable Tribes to work in partnership with FSIS to develop and retain a culturally competent local workforce within their jurisdiction, improve service to Tribal producers and Tribally-owned meat processing facilities, or even address issues in times of crisis, such as the growing avian influenza emergency.

Possible Solutions

Under [FSIS Directive 2200.2](#), to establish cooperative agreements with FSIS, three things must be present:

1. FSIS must have existing legal authority to carry out the work contemplated in the agreement, and;
2. funding must be available for that work;
3. a cooperative agreement must be the most appropriate legal instrument under the terms of the [Federal Grant and Cooperative Agreements Act of 1977 \(31 U.S.C. 6301 et seq.\)](#)

FSIS guidance notes that CAs may be appropriate for areas that “further agricultural research and teaching programs,” and offers as one possible example “Developing training or outreach programs, for use by state and local regulators, that promote more effective hazard intervention for retail food stores and food service facilities handling meat and poultry.”

Hypothetically, just as one example, the development of a cultural competency training program for federal inspectors working with Tribes might fit underneath this framework, especially if a cooperator were proposing a strong link between improved cultural competency and improved hazard prevention.

Finding the necessary funding, however, would be key, and as outlined below, the FSIS budget outlook is currently grim.



Treatment as a state (TAS)

This has been utilized in [other legal contexts, such as environmental protection programs, enabling Tribes to assume legal authority for carrying out federal laws that impact their lands, like the Clean Air Act, Clean Water Act, and others.](#) These statutes include legal language specifically authorizing the Environmental Protection Agency (EPA) to enable Tribal governments to carry out federal programs just as states do in their jurisdictions. However, USDA-FSIS does not have this legal authority currently, so similar to “638” authority, Congress would have to change existing law to open this policy pathway.

Possible Solutions



Treatment as a state (TAS)

This has been utilized in [other legal contexts, such as environmental protection programs, enabling Tribes to assume legal authority for carrying out federal laws that impact their lands, like the Clean Air Act, Clean Water Act, and others](#). These statutes include legal language specifically authorizing the Environmental Protection Agency (EPA) to enable Tribal governments to carry out federal programs just as states do in their jurisdictions. However, USDA-FSIS does not have this legal authority currently, so similar to “638” authority, Congress would have to change existing law to open this policy pathway.

If TAS were implemented in these statutes, it could allow for meat and poultry items processed at Tribal-owned (or Tribal-based) plants to enter interstate commerce. This would follow existing restrictions, which limits availability to small or very small plants employing 25 or fewer individuals. States also must pay a cost-share to participate in these programs, with FSIS intended to pick up part of the share as well. TAS would also require a Tribal cost-share in that sense. Similar to 638 authority, if this became available, Tribes would also likely need to pass into Tribal law conforming provisions with the [Federal Meat Inspection Act \(FMIA\)](#) and [Poultry Products Inspection Act \(PPIA\)](#). This would include the need implement their regulations at the Tribal level.

Possible Solutions

Potential Solution	Barriers	Opportunities	Additional Considerations
"638" Contract/Compact	USDA does not have the legal authority to enter into these contracts or compacts now. FSIS also does not have the budget to continue its current operations, so additional funds from Congress would be needed.	Tribes use federal funds to carry out meat inspection (including required testing through Accredited Laboratories), workforce training/development.	This would require Tribal passage of meat inspection law utilizing existing federal standards as a floor, as well as the implementation of a meat inspection program. The National Center could provide Tribal meat inspectors' training, which is the same training that all other meat inspectors receive.
Cooperative Agreement	Funding availability is likely the most significant barrier here.	Address existing workforce training/cultural competency issues, improve workforce retention.	This would require Tribal passage of meat inspection law utilizing existing federal standards as a floor, as well as the implementation of a meat inspection program. The National Center could provide Tribal meat inspectors' training, which is the same training that all other meat inspectors receive.
Treatment as State	USDA does not have this legal authority. FSIS also does not have the budget to expand beyond its current operations in this space, so additional funds from Congress would be needed.	Enable Tribes to enter the Cooperative Interstate Shipment (CIS) program. Products inspected at these plants can move in interstate commerce. Employees are federally trained but would be employed by the Tribe.	The CIS program is only available to small/very small plants and would require a cost share as well as Tribal passage of the FMIA, PPIA, and accompanying regulations, just as participating states are required to do.

Potential Questions and Comments for USDA from Tribal Leaders

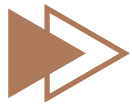
- Are there lessons learned or challenges presented from FSIS' work with state governments on the State MPI and State CIS programs that might inform any similar work with Tribal governments, if FSIS had the legal authority to work with Tribes in a similar way?
- If a Tribal government or organization wanted to seek a cooperative agreement with FSIS to develop cultural competency training materials for federal inspectors in order to improve workforce issues and hazard reduction for Tribal producers and Tribally owned meat processing plants, or for other similar issues that support agricultural research and teaching programs, who within FSIS would be the point of contact for that?

Food Safety Inspection Service (FSIS) - Additional Issues and Concerns



General Background

Although this consultation focuses on self-determination pathways at USDA, there are three additional concerns in the FSIS mission area that may impact Tribal producers, Tribal meat processing facilities, and Tribal food assistance programs.



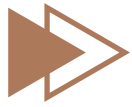
Avian influenza

- There is a current outbreak of [H5N1 - Highly Pathogenic Avian Influenza A](#) or avian influenza, in the U.S. Typically impacting poultry, this virus does cross species. As [of April 30, 2024](#), H5N1 had been documented in 34 herds of cattle in the US. This is currently limited to dairy cattle. In rare cases, this virus has also infected humans.
- FSIS is responsible for testing meat products and thus far confirms that [the U.S. meat supply is safe](#). However, there has been non-infectious viral RNA from H5N1 detected in milk.
- With so much of Indian Country ag production coming from beef cattle and poultry products, monitoring this situation and having a proactive plan to respond is important.
- FSIS is not the only USDA agency addressing this issue. The Animal and Plant Health Inspection Service (APHIS) is also a critical agency actor. However, Tribal leaders and staff with any concerns about this evolving situation may wish to take advantage of this opportunity to discuss the issue with FSIS officials.

Potential Questions and Comments for USDA from Tribal Leaders

- How can FSIS work with Tribal leaders and Tribal organizations to support Tribal meat and poultry producers during this crisis?
- If future testing does reveal any issues with the U.S. meat supply, not only will this be a concern for producers, but it will also impact sourcing of meat-based proteins for federal food assistance programs, like the [Food Distribution Program on Indian Reservations](#) (FDPIR). How are USDA agencies like FSIS, APHIS, and FNS working together to mitigate those potential impacts?

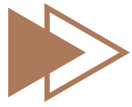
Food Safety Inspection Service (FSIS) - Additional Issues and Concerns



FSIS Budget Constraints

- According to USDA's Office of Budget and Program Analysis (OBPA), FSIS needs approximately \$86m from Congress for the next fiscal year (FY25), or the agency will not be able to maintain current federal inspections. Without that, [FSIS will likely scale back operations and is unlikely to backfill or possibly eliminate 800 positions.](#)
- This is a nationally significant issue that could impact plants across the country. In [February 2024, the National Association of State Departments of Agriculture \(NASDA\)](#) alerted its membership to this issue and passed an action item on it, stating “[...]states have seen a recent reduction in funds... If federal funding continues to be reduced – challenging the solvency of state programs – the Food Safety Inspection Service would be required to assume inspection responsibilities along with the full cost. Federal and state government funding aimed at supporting independent meat and poultry processing businesses have contributed to a surge in state inspected slaughter establishments. However, the recent reduction in federal funding jeopardizes state services critical for assisting small to medium-sized processors to meet federal and state food safety regulations cost-effectively.”
- If FSIS does have to slow down federal inspections because of budget concerns, this will have a serious negative economic impact on Tribal producers and Tribally owned processing plants alike. In its [FY 2025 explanatory notes to Congress](#), FSIS listed the following as potential consequences of not receiving this funding, due to the necessity of not backfilling approximately 800 positions:
 - Potentially, slaughter and processing operations will slow down, be less efficient, and subject to fewer inspection personnel, resulting in potential stoppage workflow slowdown resulting in industry incurring additional costs for disruption of the farm to establishment pipeline (feeding and storing animals longer than anticipated) as well as inefficiencies associated with processing oversized animals.
 - Reduced FSIS pathogen, veterinary drug, and chemical verification testing programs, resulting in the increased potential of unsafe food on American tables
 - Reduced criminal and civil investigation capabilities, reducing our ability to enforce safe food standards and increased risk of unsafe products entering the food supply.
 - Inability to provide sufficient humane handling oversight resulting in high-profile incidents.

Food Safety Inspection Service (FSIS) - Additional Issues and Concerns



FSIS Budget Constraints

- Inability to provide sufficient humane handling oversight resulting in high-profile incidents.
- Delay of export certifications which could result in short and long-term loss of international markets.
- Reduced import inspections, resulting in limitation of meat and poultry coming into this country further constraining the available food supply. This could also increase importer costs due to import processing delays, which may be construed as an international trade barrier.

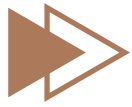
Potential Questions and Comments for USDA from Tribal Leaders

- If FSIS does not receive the necessary funding, how does it plan to determine which positions are not backfilled?

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Food Safety Inspection Service (FSIS) - Additional Issues and Concerns



\$700,000 for Tribal bison inspection in FY2024

- For [FY2024](#), [Congress appropriated \\$700,000](#) to cover voluntary meat inspection fees for the slaughtering or processing of bison/buffalo at Native American-owned establishments or establishments operating on Tribal lands: “Sec. 765. Notwithstanding the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 et seq.) and 9 CFR part 352, the Committee provides an additional \$700,000 to the USDA Food Safety and Inspection Service to cover voluntary meat inspection fees for the slaughtering or processing of bison/buffalo at Native American owned establishments or establishments operating on tribal lands.”
- It is important to note: the appropriations language does not authorize funds for these inspections to Tribal producers. The appropriations language authorizes the funds for these inspections to go to Native-owned plants, or plants operating on Tribal lands, that are processing bison. USDA must follow that statutory language.
- Delayed Congressional appropriations for FY24 meant USDA did not receive these funds until March 2024. These funds *still must be spent* by September 30, 2024 unless Congress issues a Continuing Resolution.
- In April 2024, USDA sought feedback in consultation with Tribes on definitions listed in the appropriations bill on how to define “Native American-owned establishments,” and “establishments operating on Tribal lands.” USDA asked for this feedback before moving forward with spending funds.

Potential Questions and Comments for USDA from Tribal Leaders

- It has been more than a month since the USDA Barriers Consultation, when the fiscal year 2024 funding for Tribal meat inspections for bison/buffalo was discussed with Tribal leaders. What progress has USDA made on spending those funds?
- If funds have not been spent, or progress has not been made: what is the detailed plan and timeline to disburse these funds?

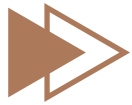


Tribal Briefing Materials

The Emergency Food Assistance Program (TEFAP)



The Emergency Food Assistance Program (TEFAP)



Background

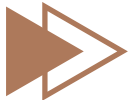
- The [Emergency Food Assistance Program](#) (TEFAP) is a federal food assistance program that provides foods directly to [low-income households, typically through food banks, food pantries, soup kitchens, and other emergency feeding sites](#).
- TEFAP is a commodity assistance program, similar to programs like the FDPIR and [Commodity Supplemental Food Program](#) (CSFP). USDA purchases domestically produced foods for food packages for these types of programs, and individual program sites order, receive, and distribute those food packages to qualifying households.
- TEFAP cannot be administered by Tribes, but only by State agencies. This means a Tribe cannot set eligibility standards or manage distribution sites (recipient agencies). This is a statutory issue, meaning that to change it, Congress would have to act.
- Under current [law](#), Tribes can be recipient agencies for TEFAP, meaning that they can receive and distribute foods, and may receive some funding support for distribution costs, but must go through State agencies to do so.
- This also means that when additional funds are made available, they are often limited to State agencies when it comes to TEFAP supports, such as the “[Reach and Resiliency](#)” grants in 2022 and 2023. This \$100 million investment from USDA encouraged State agencies to “re-envision” partnerships that expanded TEFAP access, especially to rural, remote, and Tribal areas. These funds came from the [American Rescue Plan Act, Sec. 1001\(b\)\(4\)](#), which did not actually require funds go to States.²
- [Reach and Resiliency grant eligibility for TEFAP was limited to State agencies when USDA rolled out the program](#).
- Some Tribal Nations and States have understandably fraught relationships, and have difficulty working together. This creates gaps in service to Tribal communities, whose citizens may be unserved by a critical food assistance program.



Possible Solutions

Opportunities to support Tribal sovereignty, or create opportunities for Tribally produced foods to enter TEFAP, are unfortunately very limited unless Congress takes steps in. Tribal leaders have previously commented that the current legal framework essentially subjugates Tribal sovereignty to that of the States, and while USDA can encourage States to work with Tribes on TEFAP – that encouragement does not always necessarily close service gaps, especially if it doesn’t come with training and support.

The Emergency Food Assistance Program (TEFAP) Possible Solutions



Possible Solutions Continued

- USDA-FNS can work directly with State agencies to provide training and guidance on effective, meaningful [consultation](#) with Tribes on improving partnerships through TEFAP.
- Where USDA receives extremely flexible funding support from Congress, such as [ARPA's Sec. 1001\(b\) funding](#), and intends to use that to support TEFAP, USDA can create Tribal set-asides, within the boundaries of the law, to ensure that Tribes are served.
- If funds are being offered to State agencies that are intended to support Tribes, such as the Reach and Resiliency grants, USDA could require a Tribal resolution, letter from a Tribal elected official or their designee, or other official documentation to ensure that Tribes are actually served by these funds.
- If funds are being offered to State agencies to address service gaps for Tribes, as the Reach and Resiliency grants were, USDA can require that any State agency applying for those funds have a Tribal recipient agency as a funded partner on the award in order for the State to be eligible.

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Potential Questions and Comments for USDA from Tribal Leaders

- If Tribes or Tribal entities have challenges in signing up to be Eligible Recipient Agencies for TEFAP with a State, who specifically within FNS should they contact to get resolution on this issue?
- What training is currently available to State agencies who work with Tribes in this context?
- For example, the [National Indian Health Board](#) has a [free training module](#) designed for state and federal officials on working with Tribes. [USDA-FNS Tribal Affairs Specialists have been provided with many additional resources](#) as part of their onboarding.
 - Can USDA make these or other resources a requirement for State agency staff, or at least share them as available resources with States?



Thank You!