



U.S. DEPARTMENT OF AGRICULTURE

US DEPARTMENT OF AGRICULTURE (USDA):
TRIBAL CONSULTATION ON SELF-DETERMINATION IN MEAT INSPECTION
JUNE 3, 2024

Hybrid - Virtual and In-Person - Consultation

FRAMING PAPER

Location:

Monday, June 3, 2024
4:30-7:30 pm Eastern Daylight Time
[National Congress of American Indians Midyear Convention](#)
Room 112

Registration link:

[Please register HERE](#) Select Virtual (Zoom) or In-Person Attendance

USDA Consulting Officials

Sandra Eskin, Deputy Under Secretary, Food Safety
Paul Kiecker, Administrator, Food Safety Inspection Service

White House attendees (virtually or in person)

Rose Petoskey, Director of Tribal Affairs for the Office of Intergovernmental Affairs
Morgan Rodman, Senior Policy Advisor for Native Affairs, Domestic Policy Council
Elizabeth Molle-Carr, Tribal Advisor to the Director of the Office of Management and Budget

Background. Pursuant to the President's [Executive Order on Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination](#) (December 6, 2023), and USDA's previously announced commitment to expand [USDA's Tribal self-determination policies](#) (November 15, 2021), the White House Council for Native American Affairs (WHCNA) and USDA are hosting a series of consultations during the week of June 2, 2024, to further explore opportunities to expand and advance Tribal self-determination policies in USDA programs. USDA has been leaning into supporting Tribal self-determination policies within our laws governing processing of meat and poultry products. This support is clearly reflected in USDA's recent [Tribal Progress Reports](#). We welcome your input at this consultation on what additional flexibilities you think we could be leaning into to support Tribal self-determination policies within our current statutory authority.

We also appreciate it is the expansion of our current statutory authorities supporting self-determination/self-governance policies that are of interest for further dialogue and we look forward to discussing those as well. We hope these consultations create space for open and creative conversations.

Executive Branch agencies are subject to statutory and other restrictions regarding proposed legislation. Executive Order 14112 nevertheless encourages agencies to consult to identify any

None of the content of this Framing Paper is official USDA or Administration Policy, nor is USDA advocating for any specific legislation with Congress. These are concepts and ideas for discussion in Tribal consultation.

statutory and regulatory changes that are necessary or may be helpful to ensure that Federal funding and support programs effectively address the needs of Tribal Nations, and recommend legislative changes, where appropriate. USDA welcomes this opportunity to do so, while still respecting the legislative process. The information presented in these upcoming consultations does not reflect official Administration positions, nor is USDA advocating any specific positions with Congress. The topics in these framing papers are concepts and ideas, presented for nation-to-nation discussion, in Tribal Consultation to facilitate better understanding.

The goal of this series of consultations is to be transparent with each other about thoughts and ideas, so that all parties leave with a better understanding of how to work together to further Tribal self-determination.

Tribal Self-Determination: Meat Processing and Inspection

This framing paper focuses on opportunities to expand Tribal self-determination policies in meat and poultry slaughter and processing inspection. When COVID-19 disrupted meat processing supply chains, many Tribal governments used their Federal COVID-19 and other funds to invest in the creation of Tribal government owned meat processing facilities. Before the pandemic, there was only one Federally inspected Tribal owned meat processor. Projections now show at least 10-15 Tribal government owned meat processing facilities.

Goals. Below are the goals that served to guide USDA's development of potential opportunities to expand Tribal Self-Determination in the area of meat and poultry inspection:

- **Parity.** Ensure that Tribal governments have parity with State governments and the same opportunity to enter into cooperative agreements with USDA's Food Safety and Inspection Service (FSIS) to establish Meat and Poultry Inspection (MPI) programs to oversee Tribal processing plants.
- **Consistency.** Ensure consistency across all domestic (Federal, State, and Tribal) meat and poultry inspection requirements. FSIS must maintain consistency in food safety across the nation and with imports.
- **Creativity.** Explore other issues that are important to Tribal governments that relate to meat and food inspection. Some potential examples include:
 - Inter-Tribal trade.
 - The MPI and Cooperative Interstate Shipment (CIS) inspection programs.
 - Technical resources available to Tribes to support training, workforce development, and technical assistance.
 - FSIS inspection of non-amenable indigenous animals and Tribal resources.

Balancing/Limiting Parameters. There are challenges to balancing USDA's commitment to expanded Tribal self-determination with FSIS' statutorily mandated responsibilities to ensure meat and poultry safety for the general public.

- Need for new, increased, and ongoing USDA appropriations and staff for sustained financial investment to support Tribal governments, similar to those provided to States

None of the content of this Framing Paper is official USDA or Administration Policy, nor is USDA advocating for any specific legislation with Congress. These are concepts and ideas for discussion in Tribal consultation.

running an MPI or CIS program as well as funds to create and administer training and workforce development programs.

- Note: FSIS has had declining budgetary resources, which has impacted its ability to support the growth of State MPI and CIS programs. States have not been reimbursed at their desired levels.
- Recognition that BIA/IHS' Title 1 638 statute applies only to BIA/IHS programs that are operated for the benefit of Tribes, so applying the statute's purpose and terms outside of the direct Tribal program context raises complicated questions, including how to address the following:
 - FSIS' programs are not operated specifically for Tribes, on Tribal lands, or for Tribal-only consumption.
 - Beneficiaries of the contracting out of specific programs, functions, services or activities (PFSA's) are not limited to Tribal members.
 - Jurisdiction and the application of federal, state, or Tribal laws. Current operating budget is not based on a particular Tribe.
 - Ensuring avenues of redressability for the public (i.e. the ability of a court to offer a remedy for an injury).
 - Title I maximizes Tribal flexibilities and minimizes Departmental authority which can be in tension with food safety standards that need to be consistent nationally.
- Recognition that applying DOI and HHS' Title IV Self-Governance Act outside of the DOI context raises complicated questions within the national Meat Inspection system, including how to address the following:
 - The Title IV Self-Governance Act grants Tribal governments broad discretion to reallocate, redesign, and tailor decision-making to its own needs, and those concepts are incorporated throughout that statute.
 - As with Title I, such broad discretion does not fit well with the legal mandate for FSIS to maintain consistency across all governments' inspection programs (including Federal, State, and international) for meat and poultry products, both domestic and imported.
 - Limited Departmental oversight is in tension with food safety standards that need to be consistent nationally.
- Recognition that the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT) have tailored authorizations for Tribal self-determination and self-governance in their programs.

APPENDIX A:

USDA’S MEAT INSPECTION AUTHORITIES

Under the [Federal Meat Inspection Act \(FMIA\)](#), the [USDA Food Safety and Inspection Service \(FSIS\)](#) provides mandatory inspection for all amenable meat products sold in interstate commerce and exported to foreign markets. The [Agricultural Marketing Act \(AMA\)](#) authorizes FSIS to provide reimbursable voluntary inspection services for exotic livestock species not amenable to the FMIA, such as bison. FSIS is also responsible for enforcing the [Humane Methods of Slaughter Act \(HMSA\)](#), which requires that livestock species amenable to the FMIA (cattle, sheep, swine, and goat) are handled and slaughtered using humane methods. Finally, FSIS derives inspection authority from the [Poultry Products Inspection Act \(PPIA\)](#) and [Egg Products Inspection Act \(EPIA\)](#), and the scenarios and approaches that apply to meat inspection could be extended to include poultry and egg products under these Acts.

Much of FSIS’ food safety and labeling requirements are embodied in its regulations and policy manuals, which are available at <https://www.fsis.usda.gov/policy>.

Scope of USDA’s Food Safety Responsibilities

FSIS’ authorities to ensure food safety extend beyond the doors of Federally regulated establishments. In addition to Federal meat inspectors and veterinarians working in Federally-regulated establishments, FSIS’ infrastructure includes three Federal food safety laboratories, staff responsible for surveillance and response to foodborne outbreaks, staff that manage recalls of FSIS-regulated products, and staff and authorities to enforce Federal food safety laws. FSIS also administers a prior label approval system to ensure that labels are truthful and not misleading.

FSIS also takes enforcement action to protect consumers if a product already in commerce is determined to pose a food safety risk. For example, if a product is found to be adulterated, misbranded, or the cause of a foodborne illness outbreak, FSIS can recommend a recall of that product and initiate detention and seizure actions. In addition, the Department of Justice (DOJ) has criminal, civil, and administrative authorities over products crossing State lines.

APPENDIX B:

CURRENT MODELS OF OVERSIGHT OF OTHER GOVERNMENTS' INSPECTION AND FACILITIES

There are two relevant existing models for how FSIS conducts oversight of product inspected by other domestic jurisdictions: State Meat and Poultry Inspection (MPI) program (which allows for intra-state trade) and the Cooperative Interstate Shipment (CIS) program (which allows for inter-state trade). FSIS also regulates international governments' inspection processes that wish to import to the US through a process called “equivalence.”

FSIS Inspection Budget and MPI/CIS State Budgets. While the President’s FY 2024 budget requested \$1.29 billion for FSIS, Congress only appropriated \$1.19 billion to the Agency. Tighter appropriations put FSIS in a precarious position, making it increasingly challenging to support the expansion of meat and poultry slaughter and processing in State and local communities. FSIS has little flexibility in its budget, as approximately 80 percent goes toward salaries and benefits for its 8,700 employees. FSIS’ budget to support State MPI programs has remained relatively flat since FY 2020, and requests to Congress for increases in the budget to support the growth of State MPI programs have gone unfunded. FSIS’ total budget for the State inspection programs is approximately \$67 million, about 5% of the FSIS budget, which supports 29 State MPI programs and 10 State CIS programs.

State Meat and Poultry (MPI) Inspection Programs (Standard = “At Least Equal To”)

FSIS enters into Cooperative Agreements with States to operate their own State MPI inspection programs. These agreements retain Federal involvement, including oversight to ensure that State operations meet “at least equal to” USDA’s Federal food safety standards. FSIS conducts an initial review of State MPI programs, followed by onsite audits every three years. FSIS also conducts at least annual comprehensive desk reviews of each State program.

State MPI programs are an integral part of the nation's food safety system. State MPI programs are characterized as providing more personalized guidance to establishments in developing their food safety operations.

Under a Cooperative Agreement, a state program must demonstrate capacity for the following:

- Inspection: Enforce requirements "at least equal to" those under the Federal Meat Inspection Act and the Poultry Products Inspection Act.
- The existence of State authority and food safety regulations.
- Humane Handling. Ensure that livestock are treated humanely through humane handling requirements that are “at least equal to” the requirements FSIS has established under the Humane Methods of Slaughter Act.
- Compliance
- Adequate staffing, training, and supervision.
- Sampling and Lab Testing: Conduct sampling and maintain approved laboratory quality assurance programs and methods. Policies and procedures for laboratory testing.

None of the content of this Framing Paper is official USDA or Administration Policy, nor is USDA advocating for any specific legislation with Congress. These are concepts and ideas for discussion in Tribal consultation.

- Surveillance of products in commerce.
- Financial accountability.
- Civil rights (certain provisions may not be applicable under sovereign Tribal laws).
- Enforcement.

Cooperative Interstate Shipping Program (Standard = “Same as”)

The Cooperative Interstate Shipment (CIS) program is limited to plants located in the 29 States that have established a Meat and Poultry Inspection Program (MPI). There are a number of key steps that a State needs to take in order to be eligible to participate in CIS beyond operating their own MPI. The CIS program promotes the expansion of business opportunities for State-inspected meat and poultry establishments. Under CIS, state-inspected establishments that meet federal food safety standards are permitted to ship their product in interstate commerce and may have the opportunity to export them to foreign countries, provided the CIS participating State has entered into a supplemental agreement that addresses the export of CIS inspected products. No states currently have a supplemental agreement for exporting product.

While not a requirement for the State MPI program, plants in the CIS program must apply to participate as a CIS establishment. The State evaluates submissions and determines whether to recommend a plant to participate in the CIS program. To be considered for CIS, plants must employ 25 or fewer employees, have an adequate food safety system, and meet appropriate facility standards. Once the State determines that a plant qualifies to participate, a recommendation is submitted to FSIS’ local district office for review and approval. Once approved by FSIS, the CIS plant must comply with the same requirements as plants that have Federal grants of inspection. These plants are inspected by State-appointed, Federally trained inspectors.

Foreign Governments (Standard = “Equivalence”)

FSIS has an established “equivalence” process required of any foreign country wishing to import product to the U.S. Under this process, a foreign country is not required to develop and implement the same regulations or inspection procedures as FSIS, but rather the country must objectively demonstrate how its laws, regulations and procedures meet an equivalent level of public health protection to FSIS’ inspection system.

After conducting an initial equivalence determination, FSIS continuously evaluates and verifies the equivalence of an exporting country’s food safety inspection system through document reviews conducted at least annually, onsite verification audits at least once every three years, and point-of-entry reinspection of each shipment of meat, poultry, and egg products. When a country wishes to change a procedure in their food safety system, FSIS must first undertake an equivalence determination for that individual sanitary measure.

APPENDIX C:

TRIBAL PARITY

Tribal MPI and CIS Parity: Statutory changes to provide parity to Tribal governments to enter into Cooperative Agreements with FSIS in the same manner as State governments to operate their own Meat and Poultry Inspection (MPI) programs.

Congress could amend the FMIA and the PPIA to allow the Secretary to cooperate with Tribes in administering their own MPI and CIS programs. Currently, the FMIA and PPIA limit the use of MPI cooperative agreements and the CIS program to States and U.S. territories. The statutes make no mention of Tribes.

Tribal representatives have expressed interest in developing and operating their own MPI and CIS programs. The option to amend the FMIA and PPIA in this manner would place Tribal inspections on par with State government inspections. Like States, Tribal governments would meet “at least equal to” USDA’s Federal food safety standards, while also having the ability to design a program to suit their needs.

FSIS currently has MPI cooperative agreements with 29 States. Under this parity option, Federally-recognized Tribes would have the opportunity to develop their own MPI programs and enter into a Cooperative Agreement with FSIS. Currently, under 20 Tribes are known to be developing their own meat processing facilities.

In order to implement this option, Congress would have to amend the FMIA and PPIA to add the term “Tribes” or “Tribal” adjacent to the term “States” throughout the statutes, as defined in the Federally Recognized Indian Tribe List Act of 1994. Similarly, language referencing State laws would also need to be amended to add Tribes.

Some Unique Tribal Considerations with MPI and CIS Parity:

- Consideration of traditional (field) animal processes and their incorporation into humane handling rules
- Consideration of Intra- and Inter- Tribal trade opportunities (see next section)
- Ensuring sufficient Tribal appropriations and resources
- Tailoring of Ethics rules to Tribes
- Tailoring of Civil Rights rules to Tribes
- Tribal sovereign immunity and liability issues
- FSIS and Tribes can work together to think through what the “unmet budget need” would look like to fully fund Tribal MPI and CIS Parity.

APPENDIX D:

OTHER OPTIONS: QUESTIONS FOR DISCUSSION

In addition to the MPI and CIS parity ideas for Tribal governments outlined in Appendix C, we are aware that Tribes are interested in exploring additional topics. Some topics that we have heard about from Tribes, and we request additional input include:

A: What Types of Tribal Trade are of Interest? Products inspected under State governments in the MPI program can only be sold within a State (intrastate) and cannot be sold across State boundaries (interstate), unless the State government participates in the CIS program which allows for interstate commerce for specific establishments.

Tribal leaders have shared with USDA that they have a variety of trade interests ranging from commerce throughout the country to trade directly between Tribal nations. We have heard various ideas and proposals from Tribal leaders in meetings and consultations, and the Native Farm Bill Coalition has noted that options may look different depending on what each sovereign Nation chooses.

Questions:

- What are the most important trade goals for Tribes in the context of meat inspection? For example:
 - The ability to sell a Tribe's products within the State where a Tribes' processor is located.
 - Trade between Tribal nations.
 - Access to markets across the country and interstate commerce, generally.
 - International export markets.
- How would we achieve these goals using our existing authorities?

B: What are the Appropriate MPI and CIS Reimbursement Rates for Tribal Governments? The current reimbursement rate available to State governments is up to 50% of operating funds for the MPI program and at least 60% for States operating a CIS program. It is important to acknowledge that FSIS' recent funding levels have not been sufficient to support the growth of these programs.

Question:

- Keeping in mind that the current FSIS budget is insufficient to support the growth of the current state programs, what reimbursement rates would Tribes find reasonable?

C: What Tribal Workforce Development is Needed? Tribal nations across the country are standing up new meat processing facilities to service their and surrounding communities. The new Tribal meat processing facilities that want to participate in commerce will require inspectors. The requirements to serve as a USDA meat and food inspector broadly include a four-year degree in a relevant field or a high school diploma with one-year of relevant

None of the content of this Framing Paper is official USDA or Administration Policy, nor is USDA advocating for any specific legislation with Congress. These are concepts and ideas for discussion in Tribal consultation.

experience. For awareness, USDA's Food Safety and Inspection Service (FSIS) is coordinating with OTR, the American Meat Science Association and Tribal Agriculture Fellowship to develop and host two bootcamps in targeted locations in Indian Country that will provide aspiring Tribal food inspectors with the tools to competitively apply for Federal food inspection positions. The intent is to build a pipeline for skilled Tribal inspectors available to staff new Federally inspected establishments on Tribal lands, which are expected to increase in number in the coming years. The bootcamp is being funded from OTR's appropriated funding and is focused on increasing Tribal self-determination.

Questions:

- What would it take for Tribes to be able to meet these requirements and be in a position for Tribal members to be hired into these types of roles?
- What would be a good design for workforce development efforts/training?
- Would an Indian hiring preference be needed to assist in these efforts?

D: Fees for voluntary FSIS inspection of bison and other non-amenable terrestrial indigenous species for Tribes. FSIS provides voluntary inspection services for non-amenable species for a fee, such as bison, in Federally inspected establishments. Tribes have expressed frustration that many of the indigenous animals important as their protein sources come with a federal processing fee. Tribes have expressed interest in defraying costs to Tribal processing plants, or to Tribes processing indigenous animals in any Federally inspected facility. While Congress provided \$700,000 in one-time funding through fiscal year 2024 for FSIS to discount fees for voluntary FSIS inspection of bison/buffalo at Native American owned establishments and establishments on Tribal land, maintaining the program and expanding the reach of these services is not something the FSIS budget supports without additional funding such as what was provided in FY24.

Questions:

- How often would Tribes use voluntary FSIS inspection services for non-amenable species if available?
- What species are of most interest?
- Recognizing that these services do cost money, how should these services be financed and what are Tribes willing and able to pay for voluntary FSIS inspection of Tribal processed non-amenable species?