GOOD LAWS, GOOD FOOD:

PUTTING FOOD POLICY TO WORK IN THE NAVAJO NATION

May 2015
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INTRODUCTION

The Navajo Nation is the traditional heartland of the Navajo people, a tribe that has continually inhabited the region for nearly a millennium. Diné Bibee Nahaz’anii Bitsélí, or Navajo fundamental law, are principles that have guided the Diné people since long before European colonizers arrived on this continent 500 years ago. Today, Navajo fundamental law continues to be the principle framework that guides the Nation’s 174,000 residents.¹

Spread over 25,000 square miles, the Navajo Nation is the largest tribal jurisdiction in the United States.² Today, the food environment in the Navajo Nation is filled with highly processed, low-nutrition foods, and many Navajo residents have challenges accessing traditional foods and other healthy foods, which can be hard to find and more expensive. This food environment, coupled with high rates of unemployment and low-wage jobs, has led to many households within the Navajo Nation becoming food insecure, meaning that they lack access to enough food for an active, healthy life.³ Lack of access to healthy foods and many people’s disconnect from traditional Navajo foods contribute to significant health challenges among the Navajo people.⁴ Close to 26,000 Navajo—around 22% of the total population—are living with diabetes,⁵ and another 75,000 are prediabetic.⁶ Regions of the Navajo Nation have obesity rates ranging from 23-60%.⁷

In addition to its negative health impacts, the current food system also economically disadvantages the Navajo people. Because land and water are difficult to access, the Navajo people are now largely dependent on foods imported from outside the Navajo Nation. In addition, many Navajo residents no longer know how to grow and harvest traditional foods, and there are insufficient market opportunities for Navajo farmers to earn a living selling food.

Despite these challenges, the Diné people can rebuild a healthy, sustainable food system, and indeed many passionate advocates are already working towards the goal of Diné Food Sovereignty, defined by the Diné Policy Institute as

“[T]he right of people to define their own policies and strategies for sustainable production, distribution, and consumption of food, with respect to Diné culture, philosophy, and values, and is considered to be a precondition for food security on the Navajo Nation. Diné Food Sovereignty ensures the ability to establish our own culturally appropriate and sustainable systems of managing natural resources including lands, territories, waters, seeds, livestock and biodiversity. Diné Food Sovereignty empowers Diné people by putting the Diné people, cooks, farmers, ranchers, hunters and wild food collectors at the center of decision-making on policies, strategies, and natural resource management.”⁸

² Navajo Nation, Indian Health Serv., http://www.ihsv.gov/navajo/index.cfm/module=nao_navajo_nation (last visited Apr. 18, 2015).
⁷ Id.
The honorable Vice President Rex Lee Jim is a fierce advocate for policies and programs that promote Navajo food sovereignty and empower young Navajo leaders in this movement. Another group of Navajo food advocates recently helped to pass a 2% sales tax on junk food in the Navajo Nation, the revenues of which will go towards community wellness projects such as farmers markets and community gardens.\(^9\) And the many leaders and advocates interviewed for this toolkit bring their inspiring wisdom and energy to their daily efforts to improve the food system on the Navajo Nation.

This Toolkit aims to bolster the efforts to increase food sovereignty on the Navajo Nation by describing existing laws and policies that impact the Navajo food system, highlighting innovative efforts to improve food policy by other tribal and local communities, and offering strategies to advocate for policy change. The Toolkit is intended to serve as a reference for community leaders, food advocates, and members of the Navajo government, federal government, state governments, and local Chapter governments.

**What’s Inside?** This toolkit contains eight sections that cover a range of food policy topics. When using this toolkit, please keep in mind that it is designed so that every section can be a stand-alone document, and readers should feel welcome to focus on sections they are interested in rather that reading it cover-to-cover. There may be some overlap between sections in order to ensure that each section can stand alone. Also, in order to keep this toolkit to a manageable size, we have attempted to include sufficient detail while also acknowledging a limit in scope. We encourage you to visit the resources cited in our footnotes for more information. Where you see “Id.” in the footnotes, that means that it is referring to the same source as the footnote directly above. When you see “supra note X”, that means that it is referring to the resource first cited in footnote X.

- **Section I: Diné Food Ways** connects efforts to improve the food system to the principles that guide the Diné people, such as the belief in the spiritual connection with food. It describes traditional Navajo foods and the variety of spiritual and physical uses for those foods in the Navajo culture.

- **Section II: The Structure of the Navajo Nation Government** describes the branches of the Navajo Nation government and how they shape food policy. This section also discusses the Navajo Nation’s legislative process and the powers given to local chapters.

- **Section III: The Role of the Federal and State Governments** describes the interplay among Navajo, state, and federal law. It also highlights key government programs that affect the food system in the Navajo Nation.

- **Section IV: Food Production** highlights challenges related to water, land use, and agriculture infrastructure, and identifies ways to support a strong, sustainable food production system for both local consumption and export.

- **Section V: Food Processing, Distribution, and Waste** explores opportunities to support Navajo food producers through breaking down barriers to processing and distributing their food, and finding alternate uses for food that cannot make it to market.

- **Section VI: Access to Healthy Foods** identifies barriers to obtaining healthy food in the Navajo Nation and outlines policies that support greater consumption of fresh produce and other healthy products.

Section VII: Food Assistance Programs provides an overview of the different federal food assistance programs in the Navajo Nation and suggests ways to strengthen them.

Section VIII: School Food and Nutrition Education provides an overview of school food programs that operate in the Navajo Nation and suggests ways to increase access to healthy food in schools.

ABOUT THE AUTHORS

The primary authors of this toolkit are attorneys in the Harvard Food Law and Policy Clinic, including Sarah Downer, Clinical Instructor, Ona Balkus, Clinical Fellow, Emily Broad Leib, Director, and Kelliann Blazek, Visiting Fellow. The Harvard Food Law and Policy Clinic (FLPC) was established in 2010 to provide legal advice to nonprofits and government agencies seeking to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and reduce barriers to market entry for small-scale and sustainable food producers.

FLPC provides law students with opportunities to work with clients and communities on various food law and policy issues. Numerous students, interns, and volunteers contributed to this toolkit throughout the 2013-2015 academic years. These include: Rosana Aragón Plaza, Kristin Beharry, Kathleen Eutsler, Jason Heflin, Melanie Pugh, Daniel Rosenbaum, Corinne Smith, Michael Stein, Brittany Peats, and Jean Tanis. Portions of this toolkit are based on the previous FLPC publications, Good Laws, Good Food: Putting State Food Policy to Work in Our Communities, and Good Laws, Good Food: Putting Local Food Policy to Work in Our Communities.

The authors would like to thank all those who provided invaluable information and feedback for the development of this toolkit, including: Vice President Rex Lee Jim, Sonlatsa Jim-Martin, Sonya Shin, Gloria Begay, Evelyn Begody, Elvis Bitsilly, Rachel Conn, Crystalyne Curley, Larry Curley, Dana Eldridge, Carmen George, Jonathan Hale, Darrow Isaacman-VanWertz, Barbara Johnson, Tawnya Laveta, Kevin Lombard, Karl Lohmann, Amanda Morgan, Denise Miller, Roberto Nutlouis, Emily Piltch, Desta Reff, Pam Roy, Karen Sell, Caitlin Smith, Casey Smith, Chenoa Bah Stilwell-Jensen, Keisha Tatem, Nikola Toledo, Memarie Tsosie, Joan VanWassenhove-Paetzold, Brandon Velivis, Taylor Wilmot, and all members of the REACH Food Coalition and the Diné Food Sovereignty Alliance.

SECTION I: DINÉ FOOD WAYS

This section was developed by Sonlatsa Jim-Martin of the Community Outreach and Patient Empowerment (COPE) Project, through discussions with Navajo leaders and advocates. We include this Section at the beginning of this toolkit to name the importance of Diné Food Ways for the Navajo culture, and underscore the importance of the Diné people’s spiritual relationship to food. Food policies in the Navajo Nation should consider and reflect our spiritual connection with food and its importance in our culture.

OVERVIEW Diné (Navajo) elders promote a way of life that is balanced through Hozhooji (Beauty Way) and Nayeeji (Protection Way) teachings. These stories and cultural narratives have kept the Navajo people strong and resilient throughout history. These teachings are with the Navajo people today in the midst of drastic changes within modern society. One of the main teachings centers on Navajo health and well-being through the growth and nourishment from traditional foods.

Diné lifeways honor the four sacred main plants of Nadaa’ (Corn), Na’oli (Beans), Na’yizi (Squash) and Na’too’ (Tobacco). These plants bring the Navajo people Hozho (blessings of strength and goodness) for the path in life.

Traditional foods are honored in the movement known as food sovereignty. The Navajo people are ensuring that these traditional stories about Diné foods, plants, farming and harvesting are being honored in the current conversations, storytelling, policies, trainings and grower’s markets. Traditional foods include:

- Sacred Foods (Nanise Ch’iyaan)
  - Nanise’ altaas’ei – Variety of plant foods and healing plants revered as sacred
  - Nadaa’ (Corn)
  - Na’yizi (Squash)
  - Na’oli (Beans)
  - Na’too’ (Tobacco) – used for offering, cleansing and protection

- Traditional Foods Represented in Diné Clans
  - Naadaa Dine’e (Corn People Clan)
  - Ashiihi (Salt Clan)
  - Naayizi Dine’e (Squash People Clan)
  - Haashkaan Hadzoi (Yucca Fruit Clan)
  - Other Navajo clan names

Food is valued in many different ways in Navajo families such as:

- Medicinal plants/herbs for healing and protection;
- Protection from hunger and famine: corn is placed in the home on the wall or in a basket;
- Life blessings: salt rocks are provided during a baby’s Laughing Ceremony to honor the baby’s first laugh and lifelong wellness and strength;
- Offerings at dawn with Nadaa Ligai (white corn), offerings at mid-day with Nadaa Dootlizh (blue corn), offerings at sunset with Nadaa Litsoi (yellow corn pollen) and offerings in the evening with Nadaa Lizhin (black corn). Primarily Diné individuals offer Nadaa Ligai in the morning and Nadaa Litsoi at sunset;
- Nurturing for growth and development;
- Sustenance for energy;
- Honoring the natural elements: earth, water, air, sky and fire; and
- Gifts for family support celebrations.
Food as Part of the Environment: Laws and Rules for Reverence

Quoting Diné Policy Institute, Diné Food Sovereignty: A Report on the Navajo Nation Food System and the Case to Rebuild a Self-Sufficient Food System for the Diné People 27 (April 2014), available at

Diné oral narratives hold that when foods were placed on the earth for the people, laws or rules were provided to guide the people’s interaction with, and accessing of, these life beings. Earth, sky, plants and all living things in existence live according to Diné Bibee Nahaz’áanii Bitsésiléi (Fundamental Laws of the Diné).

These laws, as described by Nahasdzáán dóó Yádilhil Bits’áádéé Bee Nahaz’áanii (Diné Natural Law), call for the appropriate respect, reverence and protocol of offering for the accessing of natural elements, including our food sources. Our elders teach that Diné people were charged with the responsibility to care for and protect sacred life beings such as plants, animals and other life sustaining elements, as is described in Diné Natural Law:

The Diné have a sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward of these relatives through our use of the sacred gifts of language and thinking (1 N.N.C. § 205).
SECTION II: THE STRUCTURE OF THE NAVAJO NATION GOVERNMENT

The Navajo fundamental law is an ancient, traditional guiding principle for the Diné people and leaders. It informs the laws, policies and structures of the modern Navajo Nation government. Today, the Navajo government’s power is divided among its three branches: executive, legislative, and judicial. Power is further divided between the national government and local chapter governments.

OVERVIEW Navajo fundamental law is the principle framework that guides the Navajo people. To enact policies consistent with fundamental law and guide the course of the Navajo Nation, the Diné people have developed a sovereign Navajo Nation government that develops and enforces laws and policies affecting all people and natural resources within the Navajo Nation. In this section, we explore how the Navajo government is structured and what food laws and regulations may be enacted at the tribal and chapter level.

1. The Source of Law in the Navajo Nation This section explains how both unwritten fundamental law and codified laws guide the decisions of Navajo policymakers.

2. Navajo Nation Government This section describes the structure of the Navajo Nation government, including descriptions of the legislative, executive, and judicial branches of government. Food advocates will want to identify the legislative committees and executive divisions with the power to implement desired food system reforms.

3. Local Government Food advocates will want to learn what specific authority has been delegated to their local Chapter government by the Navajo Nation government. This section broadly outlines the authority local Chapter governments might have to reform or develop food policy.

THE SOURCE OF LAW IN THE NAVAJO NATION

Navajo fundamental law is the principle framework that guides the Navajo people. While fundamental law is not written down, the Foundation of the Diné is a written document which codifies some key Navajo traditional laws. The Foundation of the Diné was written in 2002 by Navajo medicine people, Navajo leaders, and Navajo lawyers, and includes Traditional Law, Customary Law, Natural Law, and Common Law of the Navajo people.

The Foundation of the Diné provides that “it is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy

“Diné Natural Law declares and teaches that . . . The Diné have a sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward of these relatives through our use of the sacred gifts of language and thinking . . .”

-1 NAVAJO NATION CODE § 205

11 NAVAJO NATION CODE ANN. tit. 1, § 201-06 (2009).
13 Id.
physical and mental environment, free from all abuse.” This guarantee of a healthy physical environment for children and elders could be read to include the right to a healthful food system and access to healthy, nutritious food.

The modern-day laws of the Navajo Nation are collected in the Navajo Nation Code, a copy of which is available in each Chapterhouse. The Code includes the Navajo Nation Bill of Rights, which codifies the basic rights to which all Navajo people are entitled, and cannot be changed without a vote of the people. The Code also includes the Foundation of the Diné, described above, which also provides that the Navajo Nation’s laws must be consistent with the traditional, customary, natural, and common laws of the Navajo people. Courts apply Navajo Nation statutes and regulations in light of Navajo fundamental law.

The Navajo Nation Code also includes all of the Nation’s other laws, including laws that describe the form of government, regulate agriculture and livestock, regulate health, and delegate power to local government bodies.

**Navajo Nation Government**

At the national level, the Navajo Nation government is divided into legislative, executive, and judicial branches.

**Navajo Nation Council**

The Navajo Nation Council is the legislative branch of the government and is responsible for making laws in the Navajo Nation. It consists of 24 delegates who serve four-year terms and are not subject to term limits. The Council is headed by the Speaker, who is elected to a two-year term by the full Council. Delegates are elected by precincts, which are approximately equal in population.

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14 1 Navajo Nation Code Ann. § 204(E).
27 Navajo Nation Code Ann. tit. 10, § 10 (2009). For information on your precinct, see http://www.navajoelections.navajo-nsn.gov for how to contact the Navajo Election Administration.
How a Bill Becomes a Law in Navajo Nation Council

1. **Drafting Legislation**: Delegates or Standing Committees can propose legislation. Any Navajo Nation member or Chapter House can urge delegates to propose a law.

2. **Legislative Intake**: After legislation is proposed, it is sent to the Office of Legislative Services (OLS). OLS checks the bill for accuracy, gives it a tracking number, and sends it to the Office of the Speaker.

3. **Office of the Speaker Review**: The Speaker assigns the bill to a Committee and approves legislation before returning it to OLS.

4. **Digital Distribution**: OLS posts it on www.navajonationcouncil.org and distributes copies to the President, Attorney General, and certain Executive Branch agencies.

5. **Public Comment**: The Executive Branch, Chapters, and the public then have five days to submit comments.

6. **Public Comment Review Process**: OLS compiles all the comments and writes comment analysis that will be attached to the bill going forward, and may include recommendations to Council or Committee.

7. **Standing Committee Assignments**: The Executive Director of OLS then analyzes the comments and sends the bill to the appropriate Standing Committees along with comments that he or she thinks are helpful. The Committees vote to send the legislation to the full Navajo Nation Council.

8. **Navajo Nation Council Legislative Procedure**: The Navajo Nation Council then votes on the legislation. If a majority of the Council votes to adopt the legislation, it then goes to the Navajo Nation President. If the President signs the legislation, it becomes law.

9. **Vetoed Legislation Procedure**: If the President rejects the legislation, that legislation can still become law if at least 2/3 of the Navajo Nation Council votes to override that veto. The Naabik’iyati Committee must first review vetoed legislation before it returns to the Council.

*Graphic and Content Source: Email from Crystalyn G. Curley with attached presentation: Diné Policy Institute, Navajo Nation Legislative Branch Presentation (Feb. 24, 2015) (on file with authors). For more information, see the current version of the Navajo Nation Code Title 2 § 164, available at http://www.navajocourts.org/Resolutions/CAP-10-11%20Engrossed.pdf.*
Delegates also serve on Standing Committees, which work on policy in specific areas. Most relevant to food advocates is the Health, Education & Human Services Committee. Among other responsibilities, this Committee can suggest legislation to the Council relating to health, environmental health, education, employment, and labor. The Committee’s meeting schedule is available on the Council website.

Notably, the Navajo Nation Council also has the authority to pass legislation that award grants to Navajo organizations, known as “638s”, that assist the Navajo government in carrying out certain functions. Under Public Law 93-638, the federal government supplies this funding to allow the Navajo government to “plan, conduct, and administer a program or service” that otherwise would have been provided by the federal government. 638s include organizations that provide health care services, social services, tribal enrollment, and housing improvement, among others. Food advocates should consider how 638s could be better supporting a healthy food environment, and pushing for them to make these changes.

The Executive Branch

The President of the Navajo Nation is the “Chief Executive Officer” of the Executive Branch. The President may serve up to two four-year terms. He or she is responsible for seeing that the laws of the Navajo Nation are faithfully executed and enforced. He or she also reviews legislation passed by the Council, and may either sign it, making it law, or veto it, sending it back to the Council for reconsideration.

Agencies within the Executive Branch oversee particular areas of law. These agencies are the Division of Community Development, Division of Economic Development, Division of Public Safety, Department of Health, Division of Natural

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Success story: Navajo Nation Junk Food Tax

In 2014, the Navajo Nation Council passed two policies: one that raises the sales tax for unhealthy foods sold on Navajo Nation, and a second that removes the sales tax from fresh fruits and vegetables. These policies were the result of years of advocacy by public health advocates concerned with high rates of diabetes and obesity among Navajo people.

To raise awareness about these bills, advocates published stories in the Navajo Times and reached out over the radio. They created a coalition of concerned parents and community members. They approached key stakeholders, like the Chair of the Division of Health, who publicly supported the bill. Notably, they gained local support through Chapter resolutions that urged the Council to pass the law. Lastly, they partnered with national organizations to gain helpful resources and statistics about the potential health benefits of the law.

This successful grassroots effort led to the passage of these bold new policies to improve Navajo health.

Source: Oral account from Gloria Begay at the REACH Food Coalition Workshop in Boston, MA (Feb. 9, 2015).

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37 NAVAJO NATION CODE tit. 2, § 1005(C) (2009).
38 NAVAJO NATION CODE tit. 2, § 1005(B) (2009).
Resources, Division of Transportation, Department of Education, Division of General Services, Division of Human Resources, Division of Social Services, Division of Finance, and the Navajo Environmental Protection Agency.\textsuperscript{38}

The Division of Health became the \textbf{Department of Health} following the passage of the Department of Health Act in November 2014. More than just a name change, the law gives the Department new authority and responsibilities, including developing the first tribally administered Medicaid agency.\textsuperscript{39} The Department also oversees issues that relate to food and the environment. For example, it administers the Supplemental Nutrition Program for Women, Infants and Children (WIC), a federal program that provides food and nutrition education to pregnant women and women with young children. It also houses the Navajo Area Agency on Aging, which runs the Senior Citizen Center Program that provides meals, transportation, and other support to Navajo elders.\textsuperscript{40} The Department also operates a Special Diabetes Project, which works with local chapters to develop programs to reduce new cases of diabetes and to assist those already living with the disease.\textsuperscript{41}

The Division of Natural Resources houses the \textbf{Department of Agriculture}, which runs the Grazing Management Office and ranch programs that regulate land use for ranching, grazing permits, and grazing lease fees.\textsuperscript{42} The Division also works with local Chapter governments and provides technical assistance and education to ranchers and farmers.\textsuperscript{43}

In addition to Navajo agencies, there are also \textbf{12 Navajo Nation enterprises}.\textsuperscript{44} Enterprises are owned and operated by the Navajo government, and paid for by Navajo tax dollars. This means that Navajo residents should have a say in how these enterprises are operated. Enterprises that are especially relevant to food policy include the Navajo Agricultural Products Industry (NAPI), the Navajo Housing Authority, and the Navajo Transit Authority. Advocates can push for these enterprises to adopt policies to promote Navajo food sovereignty. For example, the Navajo Housing Authority could ensure that housing developments include a store with fresh produce, or space for community gardens.

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\textsuperscript{38} Government, \textsc{Navajo Nation}, http://www.navajo-nsn.gov/govt.htm (last visited Apr. 18, 2015).

\textsuperscript{39} Press Release: President Shelly signs Healthy Diné Nation Act of 2014 into law, supra note 9.

\textsuperscript{40} Senior Citizens Center Program, \textsc{Navajo Area Agency on Aging}, http://www.naaa.navajo-nsn.gov/senior_citizen_cntr.html (last visited Feb. 6, 2015).

\textsuperscript{41} \textsc{Navajo Nation Special Diabetes Project}, http://www.mndsp.org/ (last visited Apr. 18, 2015).

\textsuperscript{42} Tribal Ranches Program, \textsc{Navajo Nation Dep’t of Agric.}, http://www.agriculture.navajo-nsn.gov/ranches.html (last visited Apr. 18, 2015).

\textsuperscript{43} NNDA Mission, \textsc{Navajo Nation Dep’t of Agric.}, http://www.agriculture.navajo-nsn.gov/nnda.html (last visited Apr. 18, 2015).

\textsuperscript{44} Tribal Enterprises on the Navajo Nation, \textsc{Navajo Nation Dep’t of Economic Dev.}, http://www.navajohamong.com/tribalDevelopment/TribalEnterprises.htm (last visited Apr. 17, 2015).
The Judicial Branch

The Judicial Branch is comprised of two levels of courts. The trial courts for the Navajo Nation are known as district courts. There are eleven district courts, each located in a different area of the Nation, staffed by a total of 18 judges. The Navajo Nation Supreme Court sits above the district courts and hears appeals of both district court and administrative agency decisions. Administrative agency decisions include, for example, decisions to issue permits or licenses for new businesses or revoke a permit due to health code violations. When the parties affected by agency decisions do not agree with the agency determination, they can appeal the decision to the Supreme Court. The Supreme Court is composed of a Chief Justice and two Associate Justices. The President appoints the Chief Justice, the Associate Justices, and the district court judges for initial two-year terms, after which the Judicial Committee of the Legislative Branch may recommend a permanent appointment, subject to the approval of the Navajo Nation Council.

In deciding disputes, the courts have established a hierarchy of relevant law. First, the courts use the Navajo Nation statutory laws and regulations, and use the Foundation of the Diné to aid in interpretation of statutes and regulations. Second, the Foundation is used to decide matters about which the Nation’s statutes and regulations are silent. Third, the courts use U.S. federal laws and regulations when they are applicable. Finally, if the previous three sources are silent, the court may consult state laws.

LOCAL GOVERNMENT

The Navajo Nation contains 110 Chapters. Each Chapter is within one of five Agencies: Western Navajo, Shiprock, Chinle, Fort Defiance, or Eastern. In addition to making decisions on the local level, Chapters also create a forum for local communities to express their views to their Navajo Nation Council delegates.

Chapter Authority

Through the Local Governance Act of 1998, the Council granted Chapters significant control over local issues. Chapters are required to adopt a “Five Management System,” which lays out standards of accounting, procurement, filing, personnel, and management. The Office of the Auditor General must review each Chapter’s Five Management System, and the Navajo Nation Council Transportation and Community Development Committee must certify it before the Chapter can exercise authority.

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42 Id.
43 Id.
44 Id.; see also The Supreme Court of the Navajo Nation, NAVAJO COURTS, http://www.navajocourts.org/indexsuct.htm (last visited Apr. 18, 2015).
45 Id.
46 NAVAJO NATION CODE tit. 7, § 335 (2009).
47 Id.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
54 Id.
56 Id.
Currently, 34 chapters are certified. Food advocates seeking change in Chapters that are not yet certified should consider working for certification to increase the amount of power local Chapters can exercise. Certified Chapters, by vote of the Chapter members, can enact local policies to improve the local food system.

For example:

- A Chapter can use its zoning authority to zone certain areas in the Chapter for agriculture, open spaces for physical activity, or food vendors selling healthy foods.
- A Chapter can raise and spend local tax dollars and other funding to strengthen the local food system, such as financing commercial kitchen spaces, financing community gardens, or having its local agencies or schools purchase Navajo-grown foods.
- Each Certified Chapter must develop a Community Based Land Use Plan (CBLUP) which

  “shall project future community land needs, shown by location and extent, of areas identified for residential, commercial, industrial and public purposes. The land use plan shall be based upon the guiding principles and vision as articulated by the community; along with information revealed in inventories and assessments of the natural, cultural, human resources, and community infrastructure; and, finally with consideration for the land-carrying capacity.”

With respect to food, Chapter governments can use the CBLUPs to improve the local food system by, for example, requiring that land near schools or community centers be designated for community gardens or

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Chapters could also develop new roadways or other paths to link food vendors to residential areas. Many Chapters have grazing committees and/or farm boards. These entities can be great resources, and advocates can work with them to make sure food and farming policies are priorities for the Chapter government. Section V: Processing, Distribution and Waste includes more detailed strategies for incorporating food infrastructure into CBLUPs. Food advocates can work to have CBLUPs reflect the broader goals of a healthy community — one in which everyone has access to healthy foods.

### Table II-1: How Chapters Can Use Community Based Land Use Plans to Improve Food Environment

<table>
<thead>
<tr>
<th>Community Based Land Use Plans Can Support</th>
<th>Role in Food Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community kitchens</td>
<td>Community kitchens provide shared kitchen facilities that can be used for production of locally-produced food, education, and event spaces, and thus can support local economies and promote food security. These can either be built from the ground up, or preferably existing structures can be converted into these kitchens.</td>
</tr>
<tr>
<td>Commercial kitchens</td>
<td>Commercial kitchens can serve small food businesses, as they are properly equipped to allow for safe handling of higher-risk foods. In order to process “potentially hazardous foods” for sale, including dairy products and refried beans, commercial kitchens must have a permit issued by the Navajo Nation Department of Healthy upon recommendation by a Health Advisor and comply with the provisions of the Navajo Code related to food service.</td>
</tr>
<tr>
<td>Community gardens</td>
<td>Community gardens provide nutritious local food, promote physical activity, and provide education on how food is grown. Gardeners can sell harvested crops at farmers markets or roadside stands. Gardens encourage intergenerational bonding and respect for the earth.</td>
</tr>
<tr>
<td>Farmers markets</td>
<td>Farmers markets serve as community retail outlets for healthy and traditional Navajo foods, as well as provide opportunities for community dialogue and connections.</td>
</tr>
<tr>
<td>Transportation</td>
<td>Food advocates can identify areas where the community will grow, and if certain areas are set to be developed, ensure that community members have ways to get to grocery stores, farmers markets, and other food vendors. Examples include planning for bus routes, sidewalks, and bicycle routes leading to such stores and markets.</td>
</tr>
<tr>
<td>Open space</td>
<td>Advocating for a healthy community can also involve promoting preservation of open space — not only for farmers markets and food production, but also for designated areas for outdoor physical activity, such as trails and exercise courses.</td>
</tr>
</tbody>
</table>

Giving food production and access a prominent place in local Chapter meetings and planning conversations will ensure that community plans support access to and knowledge of healthy and traditional foods for all members.

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62 See, e.g., Harvard Local Food Policy Toolkit, supra note 10, at 33 (the Seattle, Washington land use plan requires “at least one community garden for every 2,500 households in a[. . . neighborhood”).


64 NAVAJO NATION CODE, tit. 13, § 2, 331 (2009).

65 Lombard, supra note 4, at 1.

SECTION III: THE ROLE OF THE FEDERAL AND STATE GOVERNMENTS

It is important to understand the interplay among Navajo, federal and state laws. This section describes the relationship between the Navajo Nation law and federal law. It also describes some situations where state laws from Utah, Arizona and New Mexico apply to the Navajo Nation.

OVERVIEW While the Navajo Nation is a sovereign nation, certain U.S. federal and state laws do impact the food system in the Navajo Nation and must be discussed to gain a comprehensive understanding of the causes and potential solutions to the current Navajo food system. This section focuses on several topics:

1. The Interplay of Tribal and Federal Law provides a general overview of the legal relationship between tribal governments (like the Navajo Nation) and the federal government.
2. The Role of States describes the limited impact of state laws and policies on the Navajo Nation.
3. The Role of Tribal, State, and Federal Law on Specific Food Policies presents a chart to describe the role of tribal, federal, state, and Chapter policies on certain food issues.
4. Opportunities for Tribes in the U.S. Farm Bill presents an overview of provisions relevant to tribes in the U.S. Farm Bill, a federal law that regulates and provides funding for agricultural, food production, and nutrition assistance programs in the U.S. The major federal food assistance programs mentioned here are discussed in greater detail in Section VII: Food Assistance Programs.

THE INTERPLAY OF TRIBAL AND FEDERAL LAW

Under U.S. law, a tribe has the authority to form its own government, determine its own membership, pass its own laws, and enforce those laws on its members when they are on tribal land.\(^{67}\) While the Navajo Nation is a sovereign nation with primary authority within its borders, the federal government has the authority to preempt, or prevent, the Navajo Nation government from taking certain actions.\(^{68}\) Whenever the federal government acts in place of or on behalf of an Indian people, it owes “a distinctive obligation of trust” and has a fiduciary relationship to that people, which means that the federal government is required to act in the best interests of the tribe.\(^{69}\) Since the U.S. Constitution gives the federal government exclusive authority to pass laws that impact Indians on Indian country,\(^{70}\) states lack the authority to pass laws or regulate in tribal lands unless Congress gives them explicit permission to do so.\(^{71}\)

Citizens of the Navajo Nation born in the U.S. are also citizens of the United States, and are therefore entitled to all the protections of the U.S. Constitution.\(^{72}\) Further, any U.S. laws that apply to all citizens in the U.S. also apply to citizens of the Navajo Nation.\(^{73}\)

\(^{67}\) See 41 AM. JUR. 2D Indians; Native Americans §11 (2014).
\(^{68}\) See e.g. 41 AM. JUR. 2D Indians; Native Americans §184 (2014). In accordance with the Indian Major Crimes Act, a tribal member who creates one of several specified serious crimes must be tried in the same courts and in the same manner as all other U.S. citizens.
\(^{70}\) U.S. CONSTITUTION Article I, § 8, cl. 3.
\(^{73}\) See United States v. White, 237 F.3d 170, 173 (2nd Cir. 2001) (Sotomayor, J.).
The U.S. Constitution provides protections for all citizens against certain actions of federal government.\textsuperscript{74} Citizens of the Navajo Nation are also protected by a federal statute, the Indian Bill of Rights Act, from certain actions taken by the Navajo Nation government.\textsuperscript{75} Among other protections, under this Act the Navajo Nation may not take personal property for public use without compensating the owner fairly (termed “just compensation”), nor may it deny to any person within the Navajo Nation equal protection of its laws or deprive any person of liberty or property without giving the person the opportunity to exercise their legal rights (termed “due process of law”).\textsuperscript{76}

A tribal government like the Navajo Nation, in addition to its authority over its own members, generally has authority to regulate the activities of non-tribe members on tribal lands (through measures like taxation or licensing) when non-members enter relationships with tribal members through commercials dealings, contracts, leases, and other arrangements.\textsuperscript{77} For instance, tribes can impose taxes on mining activities conducted on their lands by non-tribe members.\textsuperscript{78} Similarly, tribes can issue water quality standards on tribal lands that non-tribe residents must follow.\textsuperscript{79} This authority is important for food advocates because it allows the Navajo Nation to impose regulations on non-members who sell food within the Navajo Nation, so long as these activities occur on land owned by the Navajo Nation or its members.\textsuperscript{80}

International Perspective

Several international treaties and guidelines speak to indigenous peoples’ right to food and to the preservation of their food cultures. While these international documents are not legally enforceable in the U.S., we mention them here because they can still be influential in framing the conversation about the Navajo food system with policymakers.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly in 1966, ensures the protection of economic, social and cultural rights of all people. Article 11 of the ICESCR stipulates that people have a right to adequate food and a fundamental right to be free from hunger. Unfortunately the U.S. signed, but never ratified the ICESCR, meaning that the treaty cannot be enforced in the U.S. In contrast, many other countries not only enforce the right to food but have incorporated it into their own constitutions and laws.

The UN Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007, outlines the rights of indigenous people around the world including “individual and collective rights; cultural rights and identity; rights to education, health, employment, language, and others.” The Declaration includes provisions about land, natural resources and subsistence activities, such as food production. The Declaration was adopted by 143 countries in favor, with only 4 voting against (one of which was the U.S.)

\textit{The full text of the ICESCR is available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx; the full text of the UN Declaration on the Rights of Indigenous Peoples is available at http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx.}

\textsuperscript{74} Am. Jur. 2d Indians; Native Americans § 5 (2014) (citing United States v. Cavanaugh, 643 F.3d 592 (8th Cir. 2011)).
\textsuperscript{77} Am. Jur. 2d Indians; Native Americans § 11 (2014).
\textsuperscript{78} See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 141 (1982); see also Peabody Coal Co. v. Navajo Nation, 75 F. 3d 457, 465 (9th Cir. 1996) (recognizing imposition of tax on mining operation as within Navajo Nation government authority).
\textsuperscript{79} See Montana v. EPA, 137 F. 3d 1135, 1141 (9th Cir. 1996) (upholding EPA decision to treat tribe as state for purposes of enforcement of the Clean Water Act).
\textsuperscript{80} Cf. Atkinson Trading Co., Inc. v. Shirley, 532 U.S. 645, 654 (2001) (holding that tribes may exercise authority over non-members on land owned by non-members within the reservation only where the non-member has entered into a consensual relationship with the tribe or where his or her actions endangers the tribe).
THE ROLE OF STATES
As U.S. citizens, members of the Navajo Nation are considered residents of the U.S. states in which they reside, even if they reside on the Navajo Nation. However, states generally cannot regulate activities on the Navajo Nation unless the federal government has explicitly given them permission to do so.

States do, however, have a role in administering some federal programs that are important for food advocates. For instance, states administer the federal Supplemental Nutrition Assistance Program (SNAP), which provides monthly benefits to increase recipients’ food purchasing power. Federal regulation requires state governments to consult tribes when administering SNAP benefits on a reservation. The current Farm Bill requires the federal government to release a study by the fall of 2015 on the feasibility of allowing tribes to administer food assistance programs currently administered by the states. Tribal governments have the ability to administer other food assistance programs, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the Food Distribution Program on Indian Reservations (FDPIR). See Section VII: Food Assistance Programs for more information.

Because the Navajo Nation overlaps with three U.S. states, Navajo people can be subject to different state laws depending on where they are located within the reservation. For example, Utah’s eligibility requirements for SNAP keep some residents from enrolling, even though they would be eligible for SNAP if they lived in the part of the Navajo Nation that overlaps with New Mexico or Arizona (see Section VII: Food Assistance Programs for more details.) This inconsistent enforcement across the Navajo Nation is an important reason that the Navajo government should administer its own programs whenever possible.

THE ROLE OF TRIBAL, STATE, AND FEDERAL LAW ON SPECIFIC FOOD POLICIES
The table below describes the authority that the federal government, states, Navajo government and Chapters have over certain key food policy issues. The information included here is not a complete treatment of these issues; each section merely offers some examples of how the different levels of government interact to shape each policy area.

### Table III-1: Role of Various Levels of Government in Food Policy

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>FEDERAL LEVEL</th>
<th>STATE LEVEL</th>
<th>TRIBAL LEVEL</th>
<th>CHAPTER LEVEL</th>
</tr>
</thead>
</table>
| FOOD SAFETY        | The U.S. Food and Drug Administration (FDA) creates the FDA Food Code, which recommends food safety provisions for retail stores and restaurants. It is not mandatory but has been adopted in some form by laws depending on where they are located within the reservation. For example, Utah's eligibility requirements for SNAP keep some residents from enrolling, even though they would be eligible for SNAP if they lived in the part of the Navajo Nation that overlaps with New Mexico or Arizona (see Section VII: Food Assistance Programs for more details.) This inconsistent enforcement across the Navajo Nation is an important reason that the Navajo government should administer its own programs whenever possible.

#### Notes
most states and by the Indian Health Service, which adopted the 2009 version of the Food Code. The federal government also regulates food safety for meat and poultry processing, monitors food safety, and has food recall authority. The Food Safety Modernization Act recently expanded the FDA’s authority to oversee some on-farm agricultural practices.

### Land Use and Zoning

Zoning and land use law are primarily state issues, with most states delegating zoning power to local governments. Tribes control land use on tribal land. However, federal law (particularly individual rights protected by the Constitution) can restrain state and local government land use regulations in some instances.

States generally will not have authority over zoning in the Navajo Nation, but zoning laws in communities bordering the Navajo Nation may be of interest to food advocates. While it is within the state’s power to regulate zoning, most states delegate this power to local governments.

The Navajo Nation government provides resources to assist Chapters in developing zoning and land use plans through the Division of Community Development. The central tribal government has authority over zoning in Chapters that are not yet certified. The Navajo government can also provide tax incentives for certain land uses, such as operating stores that offer fresh produce.

Certified Chapters have authority over zoning. Chapters can ensure that their zoning codes allow for food production, processing facilities, and farmers markets to operate in any appropriate spaces in their Chapter. Chapters can also promote shared use spaces, where facilities like schools are used to host local food markets or outdoor recreation.

### Geographic Preference in Food Procurement

Food purchased using federal dollars, such as meals under the National School Lunch Program (NSLP), must follow federal procurement guidelines. State-funded programs must follow federal purchasing guidelines. State agencies administering federal programs must follow federal purchasing guidelines. State-funded programs must follow federal purchasing guidelines.

When administering a federal program, tribes may prefer local food. When programs funded by the tribe, the Navajo Nation Code grants preference to Chapter can develop a policy that preferences Navajo-grown food at any local celebrations or events funded by the Chapter. Chapters can

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94 Navajo Nation Code Art. 13, §§ 2(D), 2(S), 31 (2009).
guidelines. Federal law now authorizes schools using NSLP dollars to prefer food grown locally. Programs funded directly by a tribe do not need to follow federal rules. Follow state procurement guidelines. Certified Navajo-owned businesses. Also approach institutional food purchasers in the Chapter, such as hospitals, prisons and schools, and urge them to work with local farms.

**FOOD ASSISTANCE BENEFITS**

Most food assistance programs, like SNAP and WIC, are authorized and funded at the federal level, though states may contribute funds for program administration or to increase the amount of benefits available to participants, and states play a role in program administration. State governments are responsible for administering some food assistance programs, like SNAP. States are required to consult with tribes when administering programs for tribal members. Tribes administer some programs, like the Food Distribution Program on Indian Reservations (FDPIR). They play a consultative role in the administration of other programs, like SNAP. The federal government is currently reviewing whether tribes can administer SNAP. Chapters play a vital role in outreach and distribution of food assistance programs. They can assist Chapter residents in signing up for these programs, and use their resources to do mobile delivery of food from these programs when necessary. They can also work to ensure that farmers markets within the Chapter accept SNAP/WIC benefits.

**OPPORTUNITIES FOR TRIBES IN THE U.S. FARM BILL**

The table below summarizes several important provisions related to tribes contained in the latest U.S. Farm Bill (the Agricultural Act of 2014). Typically renewed every 5-7 years, the U.S. Farm Bill is major legislation that covers many aspects of agricultural policy, from crop subsidies to food assistance programs. We focus on the Farm Bill below because it includes a number of programs that may provide resources for tribes seeking to increase the use of sustainable agriculture and/or access to food on tribal land.

<table>
<thead>
<tr>
<th>TABLE III-2: IMPORTANT PROGRAMS IN THE AGRICULTURAL ACT OF 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROGRAM</strong></td>
</tr>
<tr>
<td>SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)</td>
</tr>
</tbody>
</table>

96 Id.
### Food Distribution Program on Indian Reservations (FDPIR)

**Title IV**

FDPIR provides monthly shipments of food to Indians living on tribal lands who meet eligibility requirements. Tribes select the contents of their shipments from a list of over 70 food items. The 2014 Farm Bill provides grants to tribes for pilot demonstration projects which allow for the purchase of nutritious traditional foods (produced locally, when possible) through FDPIR.

### Traditional Foods Service Program

**Title IV**

This program allows donated traditional foods to be served in public and nonprofit nutrition programs that primarily serve Indian tribes, including school lunch programs, provided the programs meet certain requirements for storing and handling these foods. It also includes a waiver of liability for civil claims arising from serving traditional foods.

### Soil and Water Conservation Act Programs

**Title II**

The new Farm Bill modifies existing soil and water conservation programs by explicitly making tribes eligible entities. These programs provide financial and technical assistance for farmers’ conservation projects.

### Rural Development Programs

**Title VI**

The Farm Bill includes several programs intended to provide special assistance to rural areas. For example, the Rural Microentrepreneur Assistance Program (RMAP) provides grants to organizations that provide technical assistance, training, or loans to very small rural businesses. The USDA’s “StrikeForce” partners with local communities when administering these programs.

### Local Food and Food Access Programs

**Titles IV & X**

The Farm Bill includes many other programs of interest for food advocates and tribal government actors, including the Healthy Food Financing Initiative (HFFI), which provides grants to healthy food retailers serving underserved areas, and the Farmers Market and Local Food Promotion Program, which provides grant support for farmers selling directly to consumers.

### Specialty Crop Block Grant Program

**Title X**

This grant program aims to increase the competitiveness of specialty crops, defined as “fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops (including floriculture).” State and tribal agencies responsible for agriculture are eligible to apply for this funding.

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Food law and policy in the Navajo Nation is shaped by federal, state, and tribal actions. Tribes have significant authority to control local food production and distribution and can also take advantage of opportunities embedded in federal legislation (like the Farm Bill) to help meet their food policy goals.

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SECTION IV: FOOD PRODUCTION

Although farming has deep roots in Navajo culture, land and water challenges currently make it difficult for Navajo farmers to produce healthy foods. The Navajo Nation government can promote policies that encourage agricultural development in Navajo communities to produce healthy foods for sale on and off the reservation.

OVERVIEW

Healthy food production requires access to arable land, clean water, and better agricultural infrastructure. Building food system infrastructure based on Diné culture, philosophy, and values is an important part of achieving food sovereignty in the Navajo Nation. This section discusses challenges to food production and identifies opportunities for the Navajo government to increase production of healthy food for both local consumption and export. Other segments of the Navajo Nation’s food system infrastructure will be discussed in Section V: Food Processing, Distribution, Waste and Section VI: Access to Healthy Food.

In 2012, there were 14,456 operating farms in the Navajo Nation, which had an average product market value of $6,380 per farm. Many of these farms grow healthy foods like fruits and vegetables, with crops like corn, cantaloupes, honeydew melons, squash, and watermelons topping the list by volume. Navajo producers also raise livestock including cattle, sheep, horses, goats, and llamas. There are about 345,800 registered head of livestock in the Navajo Nation. Table IV-1 displays the number and types of farm operations in the different regions of the Navajo Nation. These current food producers are a key resource who can share their expertise and wisdom with policymakers and aspiring farmers in the Navajo Nation.

It is important to note that some of the food production challenges on the Navajo Nation are the result of hundreds of years of U.S. policies that diminished the quality of water, and discouraged the traditional ways that Navajo people produce and harvest food on their land. Thus, it will take a coordinated, long-term effort to recreate a healthy, sustainable food production system on Navajo lands; the policy suggestions included here could be small steps in this process.

1. Water This section describes water quality and access issues that Navajo currently farmers face, as well as opportunities to advocate for policy changes that address these issues.

2. Land Use A significant barrier to food production on the Navajo Nation is access to farmland. This section identifies ways to reform land use policy, encourage farmers to create land management plans, educate farmers about land status and farm transitions, and support community cultivation.

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114 See Diné Food Sovereignty report, supra note 8.
116 Id. at 121.
117 Sabrina Tuttle et al., Publication AZ1470: The Navajo Nation and Extension Programs, UNIV. OF ARIZ. COOP. EXTENSION (October 2008).
118 Id.
3. Agricultural Infrastructure  This section suggests ways that advocates could foster better agricultural infrastructure on the Navajo Nation, including increased funding for agriculture from the Navajo Nation government and better awareness of existing funding opportunities.

### Table IV-1: Farms with American Indian or Native Alaskan Operators in Counties Covering the Navajo Nation

<table>
<thead>
<tr>
<th>State</th>
<th>County</th>
<th>Number of Farms</th>
<th>Top Livestock Inventory Items (Number)</th>
<th>Top Crop Items By Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Coconino</td>
<td>2,000</td>
<td>Goats (12,149)</td>
<td>vegetables, squash, watermelons, cantaloupes and muskmelons</td>
</tr>
<tr>
<td></td>
<td>Navajo</td>
<td>3,463</td>
<td>Sheep and lambs (39,751)</td>
<td>vegetables, squash, dry edible beans, watermelon</td>
</tr>
<tr>
<td></td>
<td>Apache</td>
<td>5,354</td>
<td>Sheep and lambs (63,853)</td>
<td>vegetables, forage, watermelons, squash</td>
</tr>
<tr>
<td>New Mexico</td>
<td>San Juan</td>
<td>1,681</td>
<td>Sheep and lambs (15,446)</td>
<td>vegetables, forage, corn, dry edible beans, winter wheat</td>
</tr>
<tr>
<td></td>
<td>McKinley</td>
<td>2,060</td>
<td>Sheep and lambs (22,661)</td>
<td>vegetables, forage, squash, watermelons</td>
</tr>
<tr>
<td></td>
<td>Cibola</td>
<td>313</td>
<td>Cattle and calves (4,779)</td>
<td>vegetables, forage, squash, pumpkins</td>
</tr>
<tr>
<td></td>
<td>Sandoval</td>
<td>395</td>
<td>Horses and ponies (1,723)</td>
<td>vegetables, forage, oats, peppers (incl. chile), watermelons</td>
</tr>
<tr>
<td>Utah</td>
<td>San Juan</td>
<td>438</td>
<td>Sheep and lambs (5,107)</td>
<td>vegetables, squash, watermelons, sweet corn</td>
</tr>
</tbody>
</table>

**WATER**

In a survey of Navajo growers conducted by the Diné Policy Institute in 2014, growers commonly cited limited water resources and poor water management as barriers to food production. The challenges of water resources are multi-faceted and include mismanagement of funds and natural resources by the federal

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120 Diné Food Sovereignty report, supra note 8, at 31.
government on Navajo lands, as well as numerous problems associated with climate change, including prolonged drought, windy conditions, a decline in monsoons, and a shorter than average growing season.

The Navajo Nation’s desert region encompasses over half of the reservation’s land mass and is home to most of its residents and agriculture. Up to 40% of Navajo Nation residents lack access to potable water. Water scarcity is particularly severe due to recent droughts and water contamination from years of mining and coal production. For agriculture, the primary water sources for farmers include natural sources such as local springs and rain.

Because of the importance and complexity of protecting and improving the waters of the Navajo Nation, advocates should start by letting their elected officials know that they want policymakers to prioritize comprehensive water management policy solutions. As mentioned in Section III, advocates have representatives at the federal, state, tribal and chapter level that have a responsibility to represent their constituents’ interests. At the Chapter level, Chapter houses can pass resolutions encouraging the Navajo government to take more proactive action on water issues.

It should be noted that the Food Safety Modernization Act (FSMA), the largest U.S. food safety reform since 1938, will set new water quality and testing requirements for food producers. Based on the proposed FSMA rule, many smaller farms, depending on their annual produce sales, will be exempted from these requirements. FSMA will also set new food

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**Supporting Beginning Farmers at Red Willow Farm**

Red Willow Farm is located on 938 acres of land in Tohatchi, New Mexico. The farm is managed by the Red Willow Farm Board, which acts as a mediator between the farmers, BIA, and county and state government. Red Willow Farm typically has 20 to 30 farmers that farm on 2 to 3 acre plots. While most of the farmers currently use the crops for their own consumption, the long-term plan is to help farmers make agriculture an economic endeavor.

Improving water access has been on Red Willow Farm’s radar for a long time. The farm uses water from a lake reservoir that is located 3 miles upstream. Drought is frequently a problem but in the last few years, the reservoir has actually run dry. After years of seeking funding, the farm secured $600,000 from the State of New Mexico to fund a water well project, the first of its kind on Navajo Nation. The water well is expected to be in place after summer 2015.


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125 Ashley Seta et al., Linking farmers to community notes to increase consumption of local produce: a case study of the Navajo Nation, PUBLIC HEALTH NUTRITION, 14(09), 1658-1662 (2011).
127 Id.
safety standards for food processing. The FSMA final rule will be released in fall 2015, so advocates should stay informed about how FSMA will affect Navajo food producers and processors.

The following recommendations around water quality and water access can be recommended to policymakers as initial steps to addressing water challenges in the Navajo Nation.

**Encourage or incentivize water quality monitoring at unregulated water sources, including private wells, used by producers for livestock or irrigation.**

Producers that use water from unregulated wells risk providing their livestock with contaminated water or irrigating their crops with contaminated water. For example, one 2008 study by Diné College and the University of Nevada found that unregulated water supplies had levels of uranium, fluoride, arsenic and fecal coliform that exceeded the EPA Maximum Contaminant Levels (MCL). This is troubling not only for livestock health but also human health if the livestock are then slaughtered to produce meat for human consumption.

Consistent water quality monitoring and data collection are important steps to improve water quality. More frequent monitoring will provide insight as to what pollutants are in the water and where these pollutants are coming from. With this data, advocates will be better equipped to discuss solutions with those polluting the waterways, promote policies that penalize polluters, and take legal action if necessary.

**Make comprehensive water sampling and quality reports publicly available.**

Under the Clean Water Act, states are required to submit to EPA a list of impaired and threatened waters, referred to as a 303(d) list, every two years. Navajo Nation government should be sure to submit a 303(d) list to EPA and make this list publicly available so that Navajo Nation agencies and people have access to comprehensive water sampling and quality reports. Promoting public access to water reports, maps, and data collection would help Chapters and Navajo officials make informed decisions about water priority usages and address upstream pollution sources that are regulated by state or federal authorities. Additionally, this information would promote public safety by making Navajo producers aware of contaminated water sources that should not be used for livestock or human consumption. Lastly, this information would empower advocates with concrete data that can be used to show the need for policies that better support water quality.

**Empower Chapters to pass local water policies.**

There is significant opportunity for advocates to focus their efforts at the local level and encourage Chapters to pass local water conservation policies that influence Navajo Nation, state, and federal reform. For example, Chapters could enact policies that require food producers to use stream buffers. A stream, or riparian, buffer is an “undisturbed naturally vegetated strip of land that lies along a stream, river, or lake and provides such functions as protecting water quality, providing wildlife habitat, and storing flood waters.” Advocates could ask Chapters to pass local policies that require food producers to incorporate stream buffers on their farm.

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129 Id.
131 40 C.F.R. § 130. See also *What is a 303(d) list of impaired waters?*, ENVTL. PROT. AGENCY, http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/overview.cfm (last visited May 6, 2015).
132 Email from Tawnya Laveta, Farm to Table (Apr. 24, 2015) (on file with authors).
**Support and encourage watershed restoration.**

Watershed restoration efforts can improve food production capacity as they bring dry and barren fields back into production. To fully restore a watershed, it takes significant funding as well as years to properly rehabilitate the soil. While these efforts can be costly, they have positive economic impact and job-creation potential. 134 For example, a University of Oregon study found that forest and watershed restoration projects in Oregon could “create or retain 20 jobs and generate over $2.3 million in total economic activity performing equipment-intensive activities such as river and road restoration, per $1 million invested.” 135

Advocates can urge the Navajo Nation government to establish a comprehensive Navajo Watershed Restoration Initiative, bringing together government resources, organizations, and federal agencies. To this end, the Navajo government can work to allocate funds for long-term watershed restoration. It can also play a role in helping watershed organizations and Chapters to develop watershed restoration plans.

**Support dryland farming by funding organizations that provide education and technical assistance.**

Dryland farming is a traditional Navajo Nation farming approach, and many Navajo farmers have experience with dryland farming techniques like no-till production and crop rotation. 136 In order to implement dryland farming practices successfully, food producers need access to equipment that reduces the need for water, such as hoop houses, 137 mulch, and drip irrigation systems. 138 They may also need guidance and support via programs and educational outreach on establishing best practices to maximize production in water-challenged areas.

Advocates can encourage the Navajo government to create a grant program that provides money to producers transitioning to dryland farming or to organizations that can provide training for producers about dryland farming techniques. Advocates can also work at the Chapter level to host education programs for producers about dryland farming.

**Resources**

- The Navajo Department of Agriculture leads planning, coordination, and management of programs aimed at protecting and preserving Navajo rangeland, livestock, and agricultural resources. 139 In the past, the Department has organized workshops addressing agricultural water conservation and drip irrigation.

- The Río Puerco Alliance in Santa Fe, New Mexico, partners with Hasbídító, a Navajo community development group, to identify food and energy needs and develop programs to

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135 Id.

136 Setala, supra note 126.

137 Hoop houses reduce a crop’s need for water by slowing evaporation of moisture from the soil and returning moisture that has condensed on the structure to the crop. *See High Tunnel Hoop Houses, CSA UTAH*, available at http://www.csautah.org/whats-a-csa/7-high-tunnel-hoop-houses (last visited Mar. 31, 2015).


Fundamental to a discussion about land use on Navajo Nation is a description of the federal grazing permit reached of the Rio Puerco watershed and across the continental divide into the Rio San Juan watershed. The Río Puerco Alliance and Hasbídító seek to “build a local food system in the Navajo lands in the northern reaches of the Rio Puerco watershed and across the continental divide into the Rio San Juan watershed.”

The Black Mesa Water Coalition (BMWC) has worked with the Navajo Nation to establish a Navajo Green Economy Fund and Commission, which support the creation of green jobs. BMWC also facilitates a Community Food Security Project in Piñon, AZ, working to capture and slow the runoff of monsoon rain through brush dams and tiered fields.

There is also guidance and assistance available through the USDA. The National Resource Conservation Service (NRCS), under the USDA, operates the Conservation Stewardship Program (CSP), which helps agricultural producers maintain and improve their existing conservation systems and adopt additional conservation activities to address priority resources concerns, such as water. Participants earn CSP payments for conservation performance – the higher the performance, the higher the payment. The USDA also operates a Conservation Technical Assistance Program (CTA). CTA is available to assist the Navajo Nation, and individuals, with conserving water and other natural resources while sustaining agricultural production.

The U.S. Environmental Protection Agency offers a downloadable handbook for watershed organizations, tribes, and agencies that lays out, step-by-step, a process for developing watershed plans.

The Utah Watershed Restoration Initiative is an organization focused on conserving, managing, and restoring Utah’s watersheds. UWRI combines the resources of state and federal agencies and organizations with long histories of ecosystem management and restoration endeavors in Utah into a single, functional partnership. The Chapters of the Navajo Nation that lie within Utah could seek to join with UWRI to promote watershed restoration within the Navajo Nation.

**LAND USE**

Land use on the Navajo Nation can greatly affect food producers’ economic and environmental viability. Fundamental to a discussion about land use on Navajo Nation is a description of the federal grazing permit

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141 Johnson, supra note 138. Hoop houses are “greenhouses made by covering a plastic or metal hoop structure with one layer (or sometimes two) of clear plastic. They are low-tech and low-cost compared with glass greenhouses.” See also Steve Maxwell, Build This Easy Hoop House to Grow More Food, MOTHER EARTH NEWS (Oct./Nov. 2011), http://www.motherearthnews.com/diy/hoop-house-zm0z11mat.aspx.


148 Id.

system, which many Navajo farmers and ranchers cite as having a significant impact on farming in the Navajo Nation. Established by Congress in 1934 through the Taylor Grazing Act, the grazing permit system requires individuals and organizations to obtain a permit for livestock grazing. Major shifts occurred on Navajo Nation due to this federal regulation of grazing lands. Livestock could no longer be moved from place to place to graze depending on drought conditions without risking trespass on someone else’s grazing permit land. Likewise, Navajo people could no longer gather berries and nuts without the risk of infringing on someone else’s grazing permit.

Navajo farmers have identified a lack of access to land as a significant barrier to food production; some farmers attribute this problem to the grazing permit system. For example, the grazing permit structure promotes individual management rather than collective management, and has resulted in fractionization of Navajo land, familial conflicts over land and resources, overgrazing, and a reduction in traditional activities such as gathering. Advocates that do not believe the Taylor Grazing Act takes traditional Navajo customs into account could push to amend or remove the grazing permit system. In the meantime, advocates can seek local reforms that address land use issues, such as:

Prioritize the passage and implementation of a new comprehensive Navajo Nation land use policy.

Many Navajo farmers are calling for comprehensive land use policy reform. A new comprehensive land use policy could help to address all of the land use issues that Navajo producers currently face, including livestock overgrazing, soil degradation, the lengthy process required to obtain a grazing permit, and trespass of cattle onto fertile cropland. With a new Navajo Nation President and Navajo Nation Council taking office in Spring 2015, this change of administration is an ideal time to make a new land use policy a priority. As of the publication date of this toolkit, a proposed land use policy, the Navajo Rangeland Improvement Act, remains in draft form. Advocates can organize to edit provisions in the proposed land use policy and generate new ideas to add to the proposed policy.

Provide education and resources for Navajo farmers to create land management plans.

Drought and overgrazing due to livestock has been detrimental to soil health on Navajo lands. Land management plans would help Navajo land users be more intentional about their land management practices and better address water use, soil health, and sensitive habitat protection issues. Land use permit applications and numerous USDA grant and loan programs require that applicants submit a land management or conservation plan, so having land management plans would also help Navajo farmers prepare for these applications. Advocates can encourage the Navajo Department of Agriculture to make land management plans a priority and provide technical assistance to Navajo farmers creating land management plans.

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150 25 C.F.R. § 166.200. The Act indicates that, “Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a permit under these regulations before taking possession of Indian land for grazing purposes.”
151 Telephone interview with Roberto Nutlouis, Black Water Mesa Coalition (Mar. 12, 2015).
152 Id.
153 Id.
154 Diné Food Sovereignty report, supra note 8, at 31.
156 Diné Food Sovereignty report, supra note 8, at 34.
Encourage the creation of a mobile livestock auction.

One of the provisions in the proposed Navajo Rangeland Improvement Act would create a mobile livestock auction.\textsuperscript{158} Carrying capacities on grazing lands are determined by the Bureau of Indian Affairs (BIA), with the concurrence of the Navajo Nation, and fluctuate depending on available natural resources.\textsuperscript{159} A farmer’s livestock allocation may fall below the number of livestock that they graze, which would require them to cull livestock quickly.\textsuperscript{160} Because many farmers do not have the equipment to transport livestock to auction markets, which are often far from their grazing lands, their options are limited: spend a significant amount of money to transport the livestock to an auction or sell the livestock to a neighboring farmer for an amount below the livestock’s worth. A mobile livestock auction would provide farmers with a convenient outlet to sell livestock and would help small Navajo livestock producers to maintain profitable businesses. Advocates can support the creation of a mobile livestock auction in the proposed land use policy.

Develop a guide for Navajo farmers to better understand land status.

Land status on the Navajo Nation is a complex topic that involves federal law and Navajo law. The majority of reservation land is held in trust by the Navajo Nation.\textsuperscript{161} Since this trust land cannot be owned in fee simple (meaning that individual owners cannot have total control over their land), those wishing to use the land must obtain a permit to do so.\textsuperscript{162} A guide explaining the different types of land status and permits, as well as what can or cannot be done on land with a certain status, would be helpful to people interested in farming in the Navajo Nation. Advocates can encourage the Navajo Department of Agriculture, or other Navajo governmental entities, to create a guide on land status.

Assist Navajo farmers with farm transitions.

As Navajo farmers age, it is helpful to ensure that their farmland will be protected for the next generation. Without a strategy for how to pass down land assets, farmers in the Navajo Nation risk undergoing the lengthy process of asset distribution in probate court when trying to pass down their lands. This would not only mean that the land could be split up among many different owners, but also that it could be developed for uses other than farmland, or left unoccupied. Engaging younger generations is essential during farm transitions; connecting retiring Navajo farmers to younger Navajo members interested in farming will help to preserve traditional farming practices and provide younger Navajo farmers with access to farm land.

Many national resources, some of which are listed below, exist to help farmers navigate farm transitions. These resources are useful as a starting point for farmers in the Navajo Nation, but there are issues that are unique to Navajo farmers that will not be addressed in these resources. For example, special estate planning considerations may be necessary for land that is held in trust. Consequently, it would be beneficial for the Navajo Department of Agriculture to develop a farm transition guide that is catered to the needs of Navajo farmers.

Identify and reserve land for community cultivation.

Building community gardens can increase availability of affordable healthy food. The operation of community gardens in the Navajo Nation has been shown to promote food access, nutritional health, and

\textsuperscript{158}Navajo Rangeland Improvement Act of 2014, supra note 157, at § 217.

\textsuperscript{159}25 CFR § 161.204. \textit{See also} 25 CFR § 161.800 (listing ways that the Navajo Nation can provide concurrence to BIA).

\textsuperscript{160}Navajo Rangeland Improvement Act of 2014, supra note 157, at § 217.


\textsuperscript{162}Telephone interview with Elvis Bitsilly, Red Willow Farm (Mar. 16, 2015).
Community gardens not only increase access to fresh, healthy foods, but also present opportunities to build stronger clan bonds by fostering increased communication and interaction. Community gardens can be used to create space for an educational forum by teaching gardening skills that emphasize culture, tradition, and how to work with the unique Navajo terrain. A study conducted by Johns Hopkins Center for Human Nutrition and the Navajo Special Diabetes Project (NSDP) found that communities learning about traditional foods and nutrition together tend to make healthier food choices.

Community gardens come in various shapes and sizes, can be private or public, and can be operated for profit or non-profit. The common thread is that members of the community, rather than a single individual, cultivate these gardens together. The produce, herbs, and plants from the garden are harvested by garden members for their own use or sold to others, including at farmers markets, schools, and local restaurants. Each community garden can decide how to use the crops it grows.

Ideal land for community gardens includes vacant lots, particularly land adjacent to Chapterhouses or health centers, as well as land owned by schools, churches, or housing developments. Gardens can even be built on the roofs of apartment buildings, offices and restaurants. Residents of certified Chapters can create Community Based Land Use Plans that reserve space for community gardens so that even if the resources to develop the garden are not immediately available, the land remains reserved for that purpose and community members can work toward starting a garden as a longer-term goal.

Support gardening education and raise awareness of resources.

There are a wide variety of resources available to build community gardens. The Navajo Nation government or advocates could create and distribute outreach materials that give basic information on beginning a garden and highlight some successful models.

Resources

- The Native American Food Sovereignty Alliance is a group seeking to “develop a movement that gives voice to issues of Native sovereignty, food-system control and policy development, and serves as a strong network for collaboration among various organizations engaged in Native food-system control.” Advocates can join the Alliance to network with food advocates in other tribes, better understand policy strategies, and develop advocacy skills.
- The Oneida Nation, First Nations Development Institute and the W.K. Kellogg Foundation held the first Food Sovereignty Summit in 2013. Now an annual event, the Summit is a “forum for sharing and collaboration to build healthy food systems within our communities.” Advocates can attend the Summit to learn about agricultural practices, gain

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164 Id.
165 Joel Gittelsohn et al., A Food Store-Based Environmental Intervention Is Associated with Reduced BMI and Improved Psychosocial Factors and Food-Related Behaviors on the Navajo Nation, THE JOURNAL OF NUTRITION 143, 9 (Summer 2013), available at http://jn.nutrition.org/content/early/2013/07/16/jn.112.165266.full.pdf.
167 Id.
170 Id.
community outreach skills, and network with members of other tribes that are engaged in similar food sovereignty work. There are scholarships available to help tribal members and nonprofit organizations attend the event. 171

- The Farm Transitions Network is a network of organizations with expertise in farm transfer and succession. 172 Member organizations offer a wide array of services: financial planning, legal assistance, insurance, and farm transition coaching.

- The Land Stewardship Project, a member of the Farm Transitions Network, is a nonprofit organization that supports sustainable agriculture and has developed an online Farm Transitions Toolkit. 173 The Toolkit provides a robust list of resources for farmers to start planning a farm transition.

- Many educational institutions provide technical assistance and education on extending vegetable growing seasons in an arid climate. New Mexico State University (NMSU) hosts build-your-own hoophouse events and offers plans and instructions for building hoophouses on its website. 174

- The Mountain View Market in Las Cruces, NM hosts composting workshops, drip irrigation workshops, and other important skill-building workshops. 175

- The USDA Food Distribution Program on Indian Reservations (FDPIR) Grants for Nutrition Education Programs in Tribal Communities provides grants for nutrition education that can be used to support community gardens, among other initiatives. 176

**Agricultural Infrastructure**

A major challenge for Navajo producers is the lack of agricultural infrastructure. In particular, Navajo producers would benefit from the creation of seed banks and increased funding from the Navajo Nation government for infrastructure improvements.

**Encourage the creation of seed banks.**

A seed bank is a library of diverse seeds for seed bank members to save, improve and exchange. 177 Seed banks encourage local experimentation and promote seeds that are adapted to the local environment, allowing producers to avoid buying seeds from large seed companies that often have strict intellectual property agreements preventing farmers from saving or improving seeds. 178 Holding seed exchanges can also help to promote seed diversity and connect farmers to other farmers. 179 For example, Native Seeds/SEARCH is a non-profit organization based in Tucson, Arizona that collects and preserves endangered traditional seeds. 180 Native Seeds/SEARCH has a seed bank with 2,000 varieties of arid lands-adapted seeds, which are available to purchase. The organization would also be a good resource for information about starting a seed bank.

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171 Id.
178 Id.
179 Id.
Advocates can encourage individual Chapters, or groups of Chapters, to establish seed banks to benefit Navajo farmers. Creating a seed bank could help the Navajo Nation avoid using commercial seeds and preserve traditional seeds that are becoming increasingly rare.

**Increase Navajo Nation government funding for agricultural development.**

Navajo food producers have reported a lack of equipment, such as tractors, tools and irrigation piping.\(^{181}\) For many small and beginning farmers, a relatively small grant could help them purchase the land, equipment, or other resources needed to start or expand their farm. For example, the Missouri Department of Agriculture issues $5,000 grants to farmers growing specialty crops like fruits and vegetables, tree nuts, and honey through its Specialty Crop Block Grant Program.\(^{182}\) In 2014, the Program awarded over $390,000 in grant funding.\(^{183}\)

Advocates can ask for a stronger commitment from the Navajo Nation government for sustainable agriculture development. Navajo Nation could invest more money in agriculture by offering grants to farmers and food business owners or providing more funding to the Navajo Department of Agriculture to offer technical assistance and resources to farmers. Navajo Nation could offer grants specifically to farmers that are growing traditional Navajo crops, or following sustainable practices that protect and improve Navajo’s natural resources. The federal programs listed in the Resources section below could also be used by the Navajo Nation government as models to design new Navajo-administered funding programs. Navajo Nation could also start a tribally-owned farm business that produces healthy, fresh food for tribal members and offers educational opportunities for tribal youth to learn from elders. The Mississippi Band of Choctaw Indians formed a 100 percent tribally-owned farm business in 2012 and distributes the produce to tribal members through community supported agriculture (CSA) boxes or mobile markets (discussed in Section VI: Access to Healthy Food).\(^{184}\)

**Increase farmers’ awareness of existing funding opportunities for farming infrastructure support and technical assistance.**

Infrastructural changes may take a long time to establish and get off the ground. In the meantime, farmers in the Navajo Nation can take advantage of a wide array of funding and technical assistance programs for agricultural and food infrastructure projects available through different branches of the USDA. The tribal government can distribute materials and publicize these programs. Interested Chapter governments can also invite representatives from each program to deliver presentations or provide materials on application requirements and procedures. State and county Extension agents are also often knowledgeable about application procedures for USDA programs and could provide educational presentations.

**Develop a Navajo Nation voluntary food safety certification program.**

As mentioned earlier, FSMA will require food producers to comply with new food safety regulations.\(^{185}\) Based on the proposed rule, small farms with a certain amount of annual produce sales will be exempt from FSMA requirements. For these unregulated small farms, voluntary food safety certification programs are valuable because they show food buyers that the farms are meeting a minimum level of food safety standards.

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\(^{181}\) Diné Food Sovereignty report, *supra* note 8, at 33.


\(^{183}\) Id.


\(^{185}\) FSMA Proposed Rule for Produce Safety, *supra* note 89.
The federal government provides a voluntary food safety certification; however, it can be expensive and overly burdensome for small farmers to meet. This certification is based on Good Agricultural Practices (GAP) and Good Handling Practices (GHP) that aim to minimize and reduce microbial contamination during growing, harvesting, packing, and processing of fresh produce.\textsuperscript{186} GAP/GHP is completely voluntary for producers and processors and helps to instill confidence in buyers that their food purchases have been grown and handled with food safety in mind.\textsuperscript{187} In Iowa, the Iowa State University Cooperative Extension has also developed state food safety certification guidelines, called the “Iowa Food Safety Checklist,” to meet the needs of buyers looking to purchase local food products specifically; these guidelines are also voluntary and serve as an alternative to GAP/GHP.\textsuperscript{188} Many public and private institutions in states across the country use the checklist, because it is similar to GAP/GHP but less expensive for producers.

Advocates can encourage the Navajo Nation government to develop a voluntary food safety certification program that is tailored to the needs of Navajo farmers and food processors, less expensive than other programs, and allows for better technical assistance. It might be useful to use the “Iowa Food Safety Checklist” as a starting point and then adapt it to meet the needs of Navajo farmers and food processors. Specifically, it would be beneficial to incorporate traditional farming practices in the food safety certification program so that producers can better document these practices and buyers have a better understanding of how these practices relate to food safety. This would help schools and other institutions have confidence in purchasing traditional food from Navajo farmers and processors, rather than procuring non-traditional food from outside of the Navajo Nation. Opportunities for increased farm to institution purchasing will be discussed in Section VIII: School Food and Nutrition Education.


\textsuperscript{187} Id.

\textsuperscript{188} Id. (providing a link to the Checklist for Retail Purchasing of Local Products that was developed by Iowa State University Cooperative Extension).
Resources

- The **USDA Office of Tribal Relations (OTR)** consults American Indian and Alaskan Native Governments on USDA policies that may have tribal implications. The consultation process is meant to ensure strong partnerships that will preserve tribal sovereignty and result in high quality service for farmers, ranchers, consumers, and other constituents. The OTR serves as the liaison for securing funding from various USDA programs, including the Rural Development, Electric Program, and the Telecommunications Program, which provided $447,000 to support distance learning and telemedicine in the Navajo Nation in 2014.

- The **USDA Natural Resources Conservation Service (NRCS)** has a statutory mandate to work directly with farmers and ranchers to address resource issues on tribal lands among other locations. All five NRCS offices in the contiguous Navajo Nation are operated under the Arizona office’s umbrella, although one is located in New Mexico and one in Utah. The NRCS office that serves non-contiguous Navajo Nation is operated by New Mexico NRCS staff. NRCS administers the **Conservation Innovation Grants (CIG)**. The Conservation Innovation Grants reward innovative approaches to agriculture by supporting the development of new technology and other techniques that enhance and protect the environment.

- NRCS also administers the **Environmental Quality Incentives Program (EQIP)**. Through this Program, NRCS will reimburse or provide advanced funding for a portion of Navajo food producers’ costs to implement conservation practices or to “improve soil, water, plant, animal, air and related resources on agricultural land.” Owners of farmland or those engaged in “livestock, agricultural or forest production” are eligible to participate in EQIP. For example, Navajo producers could receive funding through EQIP for installation of fencing or set up of drip irrigation kits. NRCS annually sets regional cost rates for conservation practices such as fencing. If the producer is eligible for support, NRCS will either provide advanced funding of 50% of the cost or reimbursement of 90% of that cost. Applications require setting goals for conservation and supplying financial documentation to prove eligibility for financial assistance.

- **USDA StrikeForce for Rural Growth** funding can be used to fund large-scale tribal projects. StrikeForce projects link community partners to public entities, such as NRCS, to address...
problems associated with rural poverty. In order to take advantage of this resource, tribes must identify priorities and set specific goals. NRCS, for example, would then provide technical assistance toward achieving those goals. NRCS could also provide free guidance to farmers from locally-based, professional conservationists, who perform assessments to identify and evaluate resource concerns; develop a conservation plan in partnership with the producer, over which the producer has final say; and show the producer how to apply for financial assistance through NRCS.

- The USDA National Institute of Food and Agriculture (NIFA) offers a number of grants, such as the Community Food Project Competitive Grant, which is designed to fund projects that “increase the self-reliance of communities in providing for the food needs of the communities.” A database of available grants can be found on the NIFA website. NIFA grants help fund agricultural research and education, and NIFA provides program leadership in these areas. Navajo farmers can seek to partner with researchers in order to study the effectiveness of new farming techniques.

- Anyone living in a rural community, such as the Navajo Nation, may apply for a USDA Rural Development Loan or Grant. Each year Congress mandates that a portion of USDA Rural Development’s funding be available exclusively for Federally Recognized Tribes. There are several different loans and grants available through Rural Development including Business loans and grants, Cooperative grants, Community Facilities grants, Water grants, and Community and Economic Development programs. Many of these grant programs also offer technical assistance.

- The USDA Farm Service Agency Microloan Program helps to provide direct farm operating loans to help meet the needs of smaller operations. Many of the farmers in the Navajo Nation would meet the eligibility requirements to apply for assistance from this program.

- The USDA Rural Microentrepreneur Assistance Program provides grants and loans to organizations that provide training, offer technical assistance, or make small loans available to rural small businesses. Organizations that are eligible for funds through this program include: nonprofit organizations, public institutions of higher education, and tribal governments that are not served by a nonprofit development organization.

- The USDA Farmers Market and Local Food Promotion Program (FMLFPP) offers grants to increase consumption of and access to locally and regionally produced foods. Tribal governments, producer networks, regional farmers market authorities, agricultural cooperatives, and nonprofits are all eligible to apply for awards between $15,000-$100,000.

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107 Tatem, supra note 191.

108 Id.


112 Id.


114 Rural Microentrepreneur Assistance Program, supra note 109.


116 Id.
SECTION V: FOOD PROCESSING, AGGREGATION, WASTE

This section will focus on the processing, distribution, and waste segments of the Navajo food system. Navajo farmers that produce healthy food need processing facilities and distribution channels so that consumers can access the food on and off the reservation. The Navajo Nation government can promote policies that encourage the development of food processing and strengthen distribution channels. Policies should also aim to reduce and divert food waste at every part of the Navajo food system.

OVERVIEW Once food is grown, access to certified processing facilities is necessary to prepare the food for sale. Food producers also need to get their products to a market where they can be sold. Sustainable food systems need robust aggregation and distribution networks, as well as access to local retailers. Food producers and distributors also need guidance and support in order to minimize the amount of waste produced by their business. An in-depth look at how to promote consumer access to healthy food through various retail outlets is in Section VI: Access to Healthy Food.

1. Processing This section describes tribal and federal food processing regulations and suggests ways to lessen the financial burden of building a new food processing facility.

2. Meat Processing After describing tribal, state and federal regulations for slaughtering and processing meat, this section recommends that advocates encourage the Navajo Nation government to invest in mobile slaughtering units.

3. Aggregation The geographic vastness and hot climate of the Navajo Nation make it important to increase the efficiency of food aggregation and distribution. Advocates can tackle this challenge by encouraging farmers to form cooperatives and creating food hubs.

4. Managing Food Waste This section identifies ways to reduce and divert food waste by incentivizing food waste diversion efforts and educating consumers about date labels on food.

PROCESSING

Processing involves adding value to a product by changing it to add characteristics that are more preferred in the marketplace. This can include washing, chopping, drying, freezing, packaging, or otherwise preparing food in order to ready it for sale. Access to food processing infrastructure is essential to building a sustainable local food system. Even minimal processing of foods, such as washing and chopping vegetables, or washing the rinds of watermelons and squash, can help make the products more desirable to consumers and increase the take-home pay of producers. Increased pay not only encourages more individuals to grow and produce food, but it also benefits the community by bringing more money into the local economy.

For example, processing allows for more local goods to be prepared and sold within the Navajo Nation, which decreases reliance on infrastructure outside of the region and creates more local jobs. The promotion of locally produced healthy foods can also help to alleviate some of the food insecurity and health issues faced by people within the Navajo Nation by providing more minimally-processed foods, instead of the heavily-processed and packaged foods often brought in from outside the Navajo Nation. Examples of food processing infrastructure include cold storage facilities; shared-use food processing centers for grading, storing, and packaging foods; dairy processing facilities for milk bottling and cheese-making; meat and poultry slaughter and processing facilities, including mobile processing facilities; and certified community kitchens.

To develop a food processing facility, a Chapter must work with the Navajo Office of Environmental Health as well as the USDA and/or the Food & Drug Administration (FDA) to obtain the proper certification. If the products will be sold in other states or outside of the Navajo Nation, federal certification of the facility by the proper agency will be required. If the facility plans to produce food only for local consumption (keeping the product within the borders of the Navajo Nation), it need only comply with the rules laid out by the tribal government.

The type of certification required for a facility that plans to sell food outside of the Navajo Nation depends on the food product to be processed. Meat processing falls under the jurisdiction of the USDA and “require[s] pre-market inspection and approval before production,” while processed foods other than meat fall under the jurisdiction of the U.S. Food & Drug Administration (FDA) and do “not require a pre-market inspection [or] approval before production, but still require[s] registration before production.” No matter where the food products will be sold (in the Navajo Nation or outside its borders), all food processing establishments in the Navajo Nation require a permit issued by the tribe’s Health Advisor or his or her designated representative. The Food Service Sanitation Code contains the food care, personnel, equipment and utensil, and facility requirements that these establishments must meet to obtain a sanitation permit. In addition to properly registering the facility, the individual operating the processing facility generally must be licensed as a food handler.

New federal food processing requirements will be implemented under the Food Safety Modernization Act (FSMA), the first major U.S. food safety reform since 1938. FSMA will also set new food safety standards for food production on the farm. Since President Obama signed FSMA into law in 2011, some tribes have requested that FDA exempts tribes from FSMA regulations. Although these requests have been unsuccessful, FDA has consulted with tribes to receive their input and food advocates should stay informed about FSMA to understand how the final rule will impact food production and processing on the Navajo Nation. FDA will release the FSMA final rule in fall 2015.

To support local food processing capacity, the Navajo Nation government and food advocates can:

**Encourage local Chapter Community Based Land Use Plans to incorporate food system infrastructure goals, like reserving land for processing facilities near food production areas.**
Under the Local Governance Act, once Navajo Chapters are certified to administer land, they have the authority to enact local zoning ordinances, pursuant to Chapter-developed Community Based Land Use Plans, and are responsible for enforcing these zoning ordinances. Currently, 34 Chapters have been certified. Certification results in greater autonomy for the Chapters, allowing them to make more decisions about financial and community planning matters.

Healthy food access can be one of the guiding principles and vision articulated by the community and endorsed by the Chapters. The Navajo Nation can encourage all Navajo Chapters to promote health and food security by including food based land use in their plans. To improve food processing capacity, land use plans could reserve public spaces for food processing facilities, or ensure zoning allows for food processing facilities near farms or retail outlets where people purchase food.

Support development of shared-use commercial kitchens and other food processing facilities.

Expanded availability of commercial kitchens will increase local food processing capacity in the Navajo Nation. Building and operating a commercial kitchen is extremely costly. Shared-use kitchens minimize start-up costs and reduce the financial risk for food entrepreneurs by allowing businesses or individuals to rent a fully equipped, commercially licensed food facility only for the hours they need to produce their goods.

The Navajo Office of Environmental Health, under the direction of the Navajo Department of Health, can help to promote the development of commercial kitchens and other food processing enterprises by providing clear directions to members of the Navajo Nation that would like to engage in these types of enterprises. The process of becoming certified to process foods can be difficult to navigate, and a guidance document or courses on how to become a licensed food producer could help to strengthen the food production capabilities of the Navajo Nation. For example, the Pueblo of Acoma Health and Wellness Department teaches food handler classes to provide community members with the knowledge and skills necessary to become licensed food producers.

Support food processing facilities by providing funding or promoting joint use agreements.

Constructing, retrofitting, or enhancing food processing facilities can be costly. Many of the USDA grants and programs mentioned below can be used to support the development of food processing facilities, and some are aimed specifically at food processing.

The significant financial barriers to building a new food processing facility can also be alleviated by encouraging joint use of existing facilities. Joint use, also referred to as shared use, occurs when “government entities, or sometimes private, nonprofit organizations, agree to open or broaden access to facilities, and programs mentioned below can be used to support the development of food processing facilities, and some are aimed specifically at food processing.

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227 Telephone interview with Brandon Velvis, Project & Grant Development, Hashidító (Feb. 13, 2014).


their facilities for community use.\textsuperscript{231} Schools, for example, are prime locations for joint use agreements because commercial kitchens in schools are only used during the school day. School-community kitchens establish joint use agreements between schools and community groups or food-based enterprises that use the school kitchen for food processing and preparation, culinary education, or community events.\textsuperscript{232} Advocates can support joint use agreements for community groups to be able to use existing processing, packing, washing, cold/dry storage, and cooking facilities in schools or other governmental entities with commercial kitchens.

Resources

- The USDA’s Value Added Producer Grants (VAPG) program is designed to “help agricultural producers enter into value-added activities related to the processing and/or marketing of bio-based value-added products.”\textsuperscript{231} It aims to help farmers generate new products, find new marketing opportunities, and increase farmer income. Funding priority is given to beginning farmers or ranchers, socially-disadvantaged farmers or ranchers, family farms, or farmer or rancher cooperatives. Grant funds can only be used to conduct feasibility studies and develop business plans (not for property, equipment, or construction). Eligible working capital expenses include processing costs, marketing and advertising expenses, and some inventory and salary expenses.\textsuperscript{234}

- The USDA Small Socially Disadvantaged Producer Grants (SSDPG) program provides “technical assistance to small, socially-disadvantaged agricultural producers through eligible cooperatives and cooperative development centers.”\textsuperscript{235} Funds can be used for market research, product improvement, legal advice, business plan development, and training.\textsuperscript{236}

- The Navajo Nation is also eligible for the USDA Rural Business Development Grant (RBDG) Program, which aim to promote sustainable economic development in rural communities.\textsuperscript{237} Grant funds can be used for rural projects focused on community economic development, technology-based economic development, feasibility studies and business plans, leadership and entrepreneur training, rural business incubators, and long-term business strategic planning. Projects focused on developing a food-related business would be eligible.\textsuperscript{238}

- The primary objective of the USDA Rural Cooperative Development Grants program is to “improve the economic condition of rural areas by assisting individuals or entities in the startup, expansion or operational improvement of rural cooperatives and other business entities.”\textsuperscript{239} Grants are awarded to educational institutions and non-profit organizations that provide technical assistance to individuals and entities attempting to develop a cooperative, including agricultural and food processing cooperatives.

- The USDA offers Community Facility Grants to support development of essential community facilities in rural areas, which can include commercial kitchens. Tribal governments and non-profits are both eligible to apply, and funds can be used to “construct, enlarge, or improve community

\textsuperscript{231} Shared Use, CHANGELAB SOLUTIONS, http://changelabsolutions.org/shared-use (last visited May 2, 2015).
\textsuperscript{234} Id.
\textsuperscript{236} Id.
\textsuperscript{239} Id.
facilities for health care, public safety, and community and public services. Funds can also be used to purchase equipment. The program actively seeks to fund “Native American community development efforts.”

**MEAT PROCESSING**

Many Navajo ranchers and farmers raise livestock to sell as meat, including cattle, sheep, and goats. Raising animals has long been a staple business for the Navajo economy, and supporting Navajo farmers can keep more dollars within the Navajo Nation while promoting the raising of meat using traditional methods. Currently, Navajo ranchers and farmers must send their livestock to slaughter and processing facilities outside of the Navajo Nation. Both the transportation of livestock and payment to these facilities can be costly and significantly reduces profits for Navajo livestock producers.

With a few exceptions, only USDA-inspected meat products may enter into interstate commerce. Meat that is state-inspected can only be sold in the state where the product was inspected. State meat inspection regimes must be at least as rigorous as the federal regime with respect to “ante mortem and post mortem inspection, re-inspection, and sanitation requirements.” For meat that will be sold only within the borders of the Navajo Nation, Navajo law requires that livestock producers comply with physical space requirements, sanitation requirements, equipment handling procedures and restrictions, and animal handling procedures. All meat products used in commercial food production within the Navajo Nation must be USDA- or state-inspected or approved.

*Current Meat Slaughter Inspection Standards for Meat Slaughtered and Sold in the Navajo Nation*

The Navajo Nation Code contains provisions related to the slaughter of cattle, sheep, goats, and pigs. Any establishment that slaughters these animals is required to have a Sanitation Permit, obtained from the Health

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241 Id.
242 Tuttle, supra note 117.
and Social Services Committee after inspection of the facility by the Navajo Nation Health Advisor. \textsuperscript{249} The permit to operate a slaughter establishment must be displayed on the premises, along with reports issued after each inspection. \textsuperscript{250}

The Navajo Department of Agriculture, which regulates livestock, also has requirements for meat slaughter. Prior to slaughter of an animal the local livestock officer or inspector must be notified. \textsuperscript{251} If an inspector is not available to conduct a brand inspection of an animal before slaughter, the slaughterhouse must retain the hide for inspection. \textsuperscript{252} Accurate records of the number of animals slaughtered and their brands must also be kept for inspection. \textsuperscript{253}

The Code does not contain provisions pertaining to the slaughter and processing of poultry. Therefore, this is one area that advocates could focus on by encouraging the Navajo Nation government to enact regulations for poultry slaughter and processing, which may create new market opportunities for poultry producers.

**Invest in Mobile Slaughter Units (MSUs).**

Many meat slaughter and processing facilities are far from the Navajo Nation and are difficult for Diné ranchers to access. \textsuperscript{254} Constructing a slaughterhouse that complies with USDA requirements is extremely expensive. Mobile Slaughter Units (MSUs), while still expensive, are a potential solution for rural producers who want to process and sell their meat to local consumers. A MSU can serve multiple small producers in areas where slaughter services might be unaffordable or unavailable. Because MSUs travel to farms, they can reduce the transportation costs for farmers. MSUs are also less expensive to build than a fixed location slaughter facility, often consisting of a processing room and a cooler room within a trailer. \textsuperscript{255}

The USDA offers webinars on how to develop MSUs that are compliant with meat and poultry slaughter and processing regulations. \textsuperscript{256} A USDA-inspected MSU must be approved by the USDA district office, \textsuperscript{257} and must also comply with all the USDA requirements for any slaughter facility, with the notable exceptions that slaughter and bleed-out may occur outside. \textsuperscript{258} As part of these requirements, USDA Food Safety and Inspection Service inspection personnel must be present during slaughter operations, which is often costly to slaughter facilities and MSUs. \textsuperscript{259}

Advocates can encourage the Navajo Nation government to invest in MSUs. Although the Navajo Nation Code allows for the use of mobile slaughtering units, there are currently no MSUs operating in the Navajo Nation. \textsuperscript{260} MSUs can be somewhat expensive to outfit and operate, but federal resources are available to defray the cost. Further, the benefits of local slaughter capability are worth a long-term investment. For

\textsuperscript{249} \textit{Navajo Nation Code Ann.} tit. 13, § 501(F), § 504 (A-E) (2009). (2009). The Indian Health Service, Window Rock Office, Medical Officer in Charge, or a designated representative can serve as the Health Advisor, who – along with the President and Area Director – are able to enter the establishment for inspection at any time (not less than once per year).


\textsuperscript{251} \textit{Navajo Nation Code Ann.} tit. 3, § 1262(a) (2009).

\textsuperscript{252} \textit{Navajo Nation Code Ann.} tit. 3, § 1262(a) (2009).

\textsuperscript{253} \textit{Navajo Nation Code Ann.} tit. 3, § 1262(a) (2009).

\textsuperscript{254} \textit{Diné Food Sovereignty report}, supra note 8, at 71–72.


\textsuperscript{258} Id.

\textsuperscript{259} 21 U.S.C. § 603.

example, in rural Sullivan County, NY, the Sullivan County Agricultural Local Development Corporation applied for and received a $50,000 Rural Businesses Opportunity Grant from USDA to hire a consultant to help develop a red meat processing facility.261

Resources

- The USDA offers technical assistance to small meat producers and local regulatory agencies via a help desk.262 The USDA help desk can provide information about agency requirements by connecting producers to staff specialists. The USDA also published a Mobile Slaughter Unit Compliance Guide that provides information on the requirements for setting up and operating a MSU.263
- The Niche Meat Processor Assistance Network website offers a wealth of information on regulations, design, construction, management, financing and other issues faced by small meat processors.264
- The USDA Value-Added Producer Grant can be used for planning, research, construction, equipment, marketing, and working capital.265 Wisconsin Lamb, a lamb processing facility was started with help from the USDA Rural Development Value-Added Producer Grant.266
- The USDA Business and Industry Guaranteed Loan Program can be used by the Navajo Nation for construction, land, equipment, working capital, and investment in rural infrastructure and agriculture projects.267 The Navajo Nation can also use the USDA program to support a MSU.268

Original Sweetmeats Inc. is a USDA inspected slaughterhouse and meat market that operates just outside of the Navajo Nation in New Mexico. Working primarily with sheep, the organization butchers about 1,000 animals a month. Sweetmeat specializes in mutton cut to suit Navajo tastes, as well as liver, heart, and two varieties of 'ach'ii'. The proprietor also owns a refrigerated trailer which can be used to transport carcasses, one of the important components of a MSU.

As a USDA inspected meat processing business, Original Sweetmeats could be helpful in expanding meat production in Navajo Nation. Original Sweetmeats has the skills, knowledge, and equipment necessary to expand meat slaughter and production into the Navajo Nation. The organization already caters to Navajo customers, purchases sheep from Navajo ranchers, and has an established relationship with the Navajo Nation Department of Fish and Wildlife.


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262 The help desk can be reached at 1-877-FSISHelp (1-877-374-7435) or InfoSource@fsis.usda.gov.
263 Mobile Slaughter Unit Compliance Guide, supra note 257.
265 Value-added Producer Grants, supra note 233.
269 Id.
York received this funding to provide local ranchers access to mobile slaughter and processing
equipment.270

❖ The Taos Community Economic Development Corp (TCEDC) is a community-based food
and agriculture organization in Taos, NM, which has
operated a USDA-inspected MSU since 2006.271 Funding
for the MSU was provided through an award from the
state of New Mexico and First Nations Development
Institute. In addition to the MSU, the TCEDC also
operates a hang-and-age and a cut-and-wrap facility at their
food center, and has a refrigerated truck for meat
transportation.272 In combination, these services allow
local ranchers and livestock growers in northern New
Mexico to provide niche markets with locally grown
meats. The TCEDC could offer technical assistance to the
Navajo Nation on operating a MSU.

AGGREGATION

Whether or not food items are processed, getting local foods to
market within the Navajo Nation remains a challenge. The
geographic vastness, rural communities, and hot climate contribute
to these challenges. A strong food aggregation and distribution
sector can help meet these challenges by transporting locally
produced foods effectively and efficiently, getting the foods to
more communities, and helping small producers make more
profits.

Food advocates can support the development of local food
aggregators, such as food hubs or cooperatives that sell products
from multiple producers under one brand name. Some Navajo
products are already aggregated and sold to the domestic U.S.
market, often by the Navajo Agricultural Products Industry (NAPI)
under the “Navajo Pride” label.273 NAPI has a policy of encouraging
agricultural exports as a means of boosting the Navajo economy.274
To increase the sale of locally grown healthy foods within the
Navajo Nation, the tribal government can partner with NAPI and
with other tribal organizations to help establish local food hubs and build markets for local products.

Encourage the formation of agricultural cooperatives.

Agricultural cooperatives could help to organize Navajo farmers so that they can market, brand and sell
their products under a single brand name. An agricultural cooperative is a social enterprise where farmers

Ramah Navajo Foods, a
USDA meat processing and
wholesale distribution center in
McKinley County, New
Mexico, is a joint venture
between Blue Mountain Meats of
Monticello, Utah and the Ramah
Navajo Chapter. This joint venture
enables Navajo ranchers to sell
their animals to a relatively nearby
processing plant. The benefits of
Ramah Navajo Foods could extend
beyond the meat-processing plant
into the greater Navajo Nation.

Source: Navajo Meat Processing Plant to Open in
Spring, INDIAN COUNTRY TODAY MEDIA NETWORK
(Nov. 24, 2010),
http://indiancountrytodaymedianetwork.com/articl e/0/navajo-meat-processing-plant-to-open-in-spring-

272 Id.
274 See Edward Gresser, Navajo Farm Exports: $2-$3 Million Per Year, PROGRESSIVE ECONOMY (Sept. 4, 2013), http://progressive- economy.org/2013/09/04/navajo-farm-exports-2-3-million-per-year/: International Trade, NAVAJO NATION DIV. OF ECON. DEV.,
pool their resources to produce and market their products.\textsuperscript{275} Cooperatives benefit farmers by providing a range of services, such as technology and communication, and helping farmers gain market power.\textsuperscript{276} For example, farming equipment is often costly and could be shared among farmers in a certain area. Forming a cooperative can help because aggregating products in a cooperative could help to reduce transportation costs and aid smaller producers in reaching larger markets, such as selling to schools or hospitals. For example, the \textbf{Wisconsin Grass-fed Beef Cooperative} aggregates grass-fed beef from 130 small family farmers across Wisconsin to sell under the Wisconsin Meadows brand name.\textsuperscript{277} Robust cooperatives could also help Navajo farmers rely less on funding from federal sources, such as USDA, by providing producers with a consistent outlet to which they sell products and enabling them to gain market power. Advocates can encourage their Chapters to form agricultural cooperatives with farmers from one or multiple Chapters.

\textbf{Work toward creating a food hub in the Navajo Nation.}\n
“Food hubs”, which can be run by non-profits, entrepreneurs, or cooperatives, can “offer a combination of production, distribution, and marketing” that allow small producers “to gain entry into new and additional markets that would be difficult or impossible to access on their own.”\textsuperscript{278} The first tribally-owned food hub is currently being developed by the \textit{Acoma Tribe’s Acoma Business Enterprise} in New Mexico, about 75 miles southwest of Albuquerque.\textsuperscript{279} The company received a grant from the USDA Rural Business Enterprise Grant (RBEG) Program, which “promotes development of small emerging businesses in rural areas.”\textsuperscript{280} The funding “will be used to develop a comprehensive business plan and marketing study to create a Native Food Hub.”\textsuperscript{281} The Pueblo of Acoma may be able to provide advice and/or technical assistance for establishing a Navajo Food Hub.

Navajo advocates can encourage the Navajo government to provide financial support or apply for federal funding to develop a Navajo food hub. To decrease costs of development, Navajo advocates can look within their communities for existing public and private buildings, kitchen spaces, equipment and vehicles that could be converted and used as places for aggregation, processing, storage and distribution.

\textbf{Resources}\n
\textbullet\ The \textit{USDA Rural Business Development Grant Program (RBDG)} aims to “support targeted technical assistance, training and other activities leading to the development or expansion of small and emerging private businesses in rural areas that have fewer than 50 employees and less than $1 million in gross revenues.”\textsuperscript{282} Rural public entities are eligible to apply for competitive grants through this program, which range in value from $10,000 to $500,000. For example, RBDG supported the Pueblo of Acoma in developing their food hub.\textsuperscript{283}

\textsuperscript{276} \textit{id.}
\textsuperscript{277} \textit{Wisconsin Grass-fed Beef Cooperative}, http://wisconsingrassfed.coop/ (last visited May 1, 2015).
\textsuperscript{280} \textit{id.}
\textsuperscript{281} \textit{id.}
\textsuperscript{282} \textit{Rural Business Development Grants, supra note 237.}
\textsuperscript{283} \textit{id.}
The **First Nations Development Institute (FNDI)** recognizes that accessing healthy food is a challenge for many Native American children and families.²⁸⁴ FNDI provides assistance in the form of financial and technical support, including training materials, to projects that address agriculture and food sectors in Native communities, such as establishing a food hub and otherwise strengthening distribution networks.

The **Farm Storage Facility Loan Program** provides low-interest financing to help producers build or upgrade permanent facilities to store commodities such as grains, oilseeds, peanuts, pulse crops, hay, honey, renewable biomass commodities, fruits and vegetables.²⁸⁵ As of 2014, it can also “cover the structure and equipment required to get fruits and vegetables washed, treated and packed along with the cold storage that had been previously covered exclusively.”²⁸⁶ The maximum loan amount through this program is $500,000 and interested farmers should visit the USDA FSA website to view eligibility requirements.²⁸⁷

### Managing Food Waste

An estimated 40 percent of food that is produced in the United States goes uneaten.²⁸⁸ Americans waste 160 billion pounds of food every year; food is also wasted on farms, in stores, schools, and restaurants.²⁸⁹ As a result, there is tremendous potential to divert wasted food. The Environmental Protection Agency (EPA) has a Food Recovery Hierarchy that prioritizes actions that organizations and individuals can take to reduce the amount of wasted food.²⁹⁰ This is a helpful resource in determining which policies will encourage the most preferred channels of food recovery. First, we should focus on reducing the sources of excess food (i.e. large portion sizes). Second, we should recover food that is still edible and wholesome and provide it to humans. When food is no longer safe for human consumption, it can be processed and fed to animals. It can also be used for industrial purposes (like creating energy) or composted and reused on farmland. The last and least preferable option is for it to be sent to landfills, where it decomposes and releases methane, a powerful greenhouse gas.

**Incentivize food establishments to donate underutilized food to food recovery organizations.**

Feeding hungry people is the second highest priority action in EPA’s Food Recovery Hierarchy. One way to divert wasted food is to encourage businesses to donate underutilized food to food recovery

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²⁸⁷ *Farm Storage Facility Loan Program, supra note 287.
organizations. Federal law provides tax incentives to eligible C corporations that donate food to certain non-profit organizations. Because the federal tax incentive is limited to certain businesses, several states have created more expansive tax incentives that include additional businesses and farmers. The Navajo Nation could similarly provide a tax incentive to all businesses that donate food to non-profit organizations.

Require or incentivize food establishments to divert wasted food.
The Navajo Nation government could require supermarkets, restaurants, and other businesses that operate within the Navajo Nation to divert wasted food instead of sending it to a landfill. For example, in 2014 the Massachusetts Department of Environmental Protection (DEP) banned the disposal of food waste into landfills by organizations and businesses that produce one ton or more of organic waste per week. DEP is working to develop best management practices to make sure that these large supermarkets, conference centers, and other establishments are not only developing composting plans, but working to ensure edible food is donated or sold rather than going to waste.

Any such policy should keep the EPA Food Recovery Hierarchy in mind. For example, policies should prioritize donating food to food banks or other organizations that serve the hungry. When food is no longer edible by humans or animals, it can be used as compost. Composting is a process often used in organic farming and involves using decomposed organic matter, such as plants and food waste, as fertilizer for crop growth. Composting is vastly preferable to other common methods of waste disposal because composted material enriches the soil rather than decomposing in landfills. Composting can prevent further pollution; remedy polluted soil; prevent erosion; generally reduce the amount of water, pesticides, and fertilizers needed; and increase overall food production. In the Navajo Nation, compost could also be used to rehabilitate lands that are no longer fertile due to erosion, overgrazing, or industrial uses. Advocates should work with the tribal and state government to provide funding and support for composting facilities, and pilot programs collecting compost from residents and businesses.

Make consumers aware that date labels found on most food products are not reflective of food safety.
Date labels are the dates on food packaging that are accompanied by phrases such as “use by,” “best before,” “sell by,” “enjoy by,” and “expires on.” Date labels can lead to food waste because they are misleading to consumers and result in safe, wholesome food being needlessly thrown away. Furthermore, date labels likely impact access to healthy foods in the Navajo Nation, because edible, wholesome food near or past its date label is often thrown out rather than sold at a reduced price or donated. This increases the price of foods and decreases the amount of food available for consumption in the Navajo Nation.

291 Id.
294 See, e.g., Colo. Rev. Stat. § 39-22-536 (providing a 25% tax credit of the wholesale market price, not to exceed $5,000, or 25% of the most recent sale price, not to exceed $5,000, to a taxpayer who makes a food contribution to a hunger relief charity organization).
Date labels on food are generally not federally regulated nor are they indications of food safety; infant formula is the only product that has a federally regulated date label phrase because the nutrients may deteriorate over time.\(^{298}\) Companies do not follow any uniform guidelines when choosing a date label, and these dates are generally unrelated to safety. Instead, companies choose dates that indicate when their products will be at their peak quality.\(^{299}\) In the absence of federal law, states have stepped in to pass laws that regulate date labels on certain products, but these laws are inconsistent and cause confusion for consumers. For example, Arizona’s date labeling law only requires that eggs be marked with a “best by” or “buy thru” date.\(^{300}\) Yet in New Mexico, eggs do not have to be labeled, but some dairy products do have to be labeled with a “pull date”.\(^{301}\) In New Mexico, these dairy products cannot be sold after that date, even though the law leaves it up to the milk producer to determine the date for pasteurized dairy products.\(^{302}\) Utah does not require date labels on any foods, and does not restrict the sale of past date foods.\(^{303}\)

The different scopes of these three state laws shows the inconsistency around the country, and it is easy to see how consumers and retailers could be confused and throw away perfectly wholesome, good food. Food advocates should first work to amend the New Mexico law to allow for the sale or donation of past date milk, since milk that is refrigerated properly can last long after the date chosen by the producer. Properly pasteurized milk will never make a person sick, so consumers can easily use their eyes and nose to ensure that a product is still good.

Second, food advocates should educate consumers about date labeling, emphasizing that the date label is not related to the safety of the product, and encouraging retailers to sell close to or past date food at a discount, or donate it to those in need. Consumers should also know that since the date is not a safety indicator but rather a freshness indicator, they can safely smell and taste past date food and use their personal preferences to decide whether to eat a product. Education efforts should emphasize that consumers can save a significant amount of money by not needlessly throwing away past date food. The New Mexico Recycling Coalition has worked with communities, businesses, schools, and grassroots activists in New Mexico to provide information about recycling, including ways to reduce wasted food.\(^{304}\) This coalition may be helpful for advocates to receive training and resources around food waste reduction efforts.


\(^{299}\) The Dating Game, supra note 289.

\(^{300}\) ARIZ. REV. STAT. ANN. § 3-701 (2013).

\(^{301}\) N.M. CODE R. § 21.34.5.7 (2013); N.M. CODE R. § 21.34.5.9 (2013).

\(^{302}\) For summary of all state date labeling laws, see The Dating Game, supra note 289.

SECTION VI: ACCESS TO HEALTHY FOOD

Advocates can promote policy change at the Chapter level and at the tribal government level to broaden access to the foods that make up a healthy diet. For example, they can support the development of farmers markets, take steps to increase healthy options in corner stores, and promote mobile food vending.

OVERVIEW People are more likely to buy healthy food if it is affordable and convenient. Yet as of 2014, there were only ten full service grocery stores in the Navajo Nation, an area the size of West Virginia. Within one of these grocery stores, 80% of food was unhealthy, processed food. For the rural communities on the Navajo Nation that do not have grocery stores, convenient food retail locations are limited to gas stations and convenience stores or are not available at all. The foods available at gas stations and convenience stores are predominantly high calorie, heavily processed food items. This leads to around 50% of Navajo residents driving outside of the Navajo Nation to do their grocery shopping, which can often be 155 miles or more roundtrip. Navajo consumers report that they shop outside the Navajo Nation due to lower prices, higher quality, and greater options, despite long driving distances.

1. Farmers Markets and Other Direct-To-Consumer Sales Advocates can promote the consumption of fresh, healthy produce by creating a guide to starting a farmers market and ensuring that consumers can use food assistance benefits at farmers markets.

2. Healthy Corner Store Initiatives Advocates and governmental representatives can work with existing retailers to increase the amount of healthy foods sold in their stores.

3. Mobile Food Vending, Delivery Services and Transportation Advocates can also support the development of additional alternative retail options, such as mobile fresh food vending and improved transportation options.

Española Farmers Market

In Española, New Mexico the Española Farmers Market partnered with Wholesome Wave to develop a Fruit and Vegetable Prescription Program (FVRx), where community healthcare workers provide health and nutrition counseling coupled with prescriptions for fruits and vegetables that can be redeemed at the local farmers market.


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305 Diné Food Sovereignty report, supra note 8, at 54.
306 Id.
307 Id.
308 Id.
FARMERS MARKETS AND OTHER DIRECT-TO-CONSUMER SALES

Direct-to-consumer food sales can simultaneously spur local economic activity and boost food access.309 In 2013, successful farmers markets operated in Shiprock, Ramah, Tsaile, and Tuba City.310 Advocates can work with the tribal and Chapter governments to fund or facilitate the creation of new farmers markets and can work to enable farmers markets to accept benefits from food assistance programs like SNAP and WIC. They can also create incentive programs that encourage people to use their food assistance benefits at farmers markets. (See Section VII: Food Assistance Programs for more information about SNAP and WIC.)

Create a Best Practices Guide for establishing and operating farmers markets.

Advocates interested in starting a farmers market may not know what the relevant regulations and permitting processes are. Farmers market resources can be created for distribution by local organizations and made available online, outlining the permitting process and helping market managers and participants to understand relevant laws. The tribal governments and advocates can also work together to develop a Best Practices Guide that describes how to overcome barriers to setting up new markets or expanding existing ones.

Push for local farmers markets to accept federal food assistance benefits as payment.

Low-income customers that receive federal food assistance benefits, such as SNAP or WIC, may not be able to afford the healthy produce offered at farmers markets if they are not able to use their benefits at the market. To accept SNAP benefits, farmers markets or individual farmers must obtain a USDA Food and Nutrition Service (FNS) license to operate an EBT machine.311 Applicants must fill out the FNS SNAP application and submit supporting documents to receive an FNS license.312 Once the application is approved, the applicant will receive a training video, a manual from FNS, and an EBT card machine that can process the payment.313 Typically a farmers market, rather than individual farmers, will receive an FNS license to process transactions on a centralized EBT machine and then give consumers vouchers to spend on produce, which the farmers then trade with market staff for payment.314 Using one centrally located point-of-sale terminal to accept SNAP benefits ensures that consumers can use SNAP benefits at every farmers market booth and allows farmers markets to offer incentives to SNAP recipients, which will be discussed in the next recommendation.

310 Diné Food Sovereignty report, supra note 8, at 74.
313 Id.
314 Id.
For example, since 2010, the New Mexico Human Services Department has administered the EBT machines at two farmers markets in Farmington and Aztec. Consumers get tokens from farmers market staff, which they can use to pay vendors at both farmers markets. This was helpful for farmers market customers as people frequently traveled back and forth between these cities for other purposes.

To ensure that federal food assistance recipients have access to the fresh fruits and vegetables available at farmers markets, advocates can make sure that farmers markets are equipped to accept federal food assistance benefits.

**Incentivize the use of food assistance benefits at farmers markets.**

Farmers markets can also use incentive programs to attract customers. For example, some organizations provide funds that effectively double the amount of SNAP dollars program recipients can spend on fresh produce from a farmers market. They often set a cap on the amount of dollars that can be doubled, for example, allowing a customer to receive a dollar-for-dollar matching incentive for all SNAP purchases up to $10 per market day. Navajo Nation could use government funds to match or otherwise augment dollars spent on fresh fruits and vegetables. Advocates could also apply for a grant under the **Food Insecurity Nutrition Incentive (FINI) Grant Program** to fund a project that aims to increase fruit and vegetable purchases at farmers markets among SNAP recipients through incentives. Incentive programs are also discussed in Section VII: Food Assistance Programs.

To underscore the connection between food and health, health clinics can also offer patients “prescriptions” for fruits and vegetables that can be redeemed at local farmers markets. For example, Wholesome Wave’s fruit and vegetable program, or FVRx has partnered with healthcare providers in Española, New Mexico to work with children at risk of obesity by providing them vouchers to buy fresh produce at the Española Farmers Market. In addition, children receive nutrition counseling and families are offered wellness classes, including cooking classes.

**Tri-Community Mobile Farmers’ Market**

In 2014, the Tri-Community Mobile Farmers’ Market was started by Navajo community members in the Eastern Navajo Nation. The market is a trailer pulled by a pick-up truck, and all of the produce is grown by Navajo families in the area. There are three markets every week during the growing season (June to October). The goal of this project is to rebuild and enhance a local food system for this region, which is in a highly isolated food desert. In 2014, five Navajo families supplied food for the market. This number has grown to ten families in 2015.

Source: Email from Taylor Wilmot, Hábédító AmeriCorps VISTA (Apr. 6, 2015) (on file with authors).

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115 Interview with Denise Miller, Executive Director, New Mexico Farmers Market Association (Mar. 4, 2014).
116 Id.
118 **Food Insecurity Nutrition Incentive, supra note 104.**
119 **Fruit and Vegetable Prescription Program (FVRx), WHOLESOME WAVE,** https://www.wholesomewave.org/our-initiatives/fruit-and-vegetable-prescription-program/ (last visited Apr. 20, 2015).
The **USDA Farmers Market and Local Food Promotion Program (FMPP)** offers federal funds to assist tribes in promoting farmers markets. Funding from this program can also support direct producer-to-consumer marketing at roadside stands, including advertising, consumer outreach and education, and strategic planning, allowing small-scale producers to operate roadside stands as small businesses. FMPP can also help fund the purchase, transportation, and delivery of equipment used in these markets and stands. In the 2014 Farm Bill, funding for this program increased from $33 million over five years to $150 million over five years. The **Shiprock Farmers Market** used FMPP funds for a project that brought elders and youth together around agriculture. The project entailed filming elders doing traditional prayers while planting crops. Youth learned about traditional farming methods and crop production.

The **New Mexico Farmers’ Market Association** assisted tribal members in opening a farmers market in Shiprock. Some initial activities included encouraging nearby roadside vendors to sell at the market to increase consistency of products and business hours for the customers. The market offered benefits for both customers and vendors, including the ability to accept WIC benefits or SNAP EBT cards. The **New Mexico Farmers Market Association** also assists with administration and technical assistance of WIC Farmers Market Nutrition Program (WIC FMNP) and the Senior Farmers Market Nutrition Program (S-FMNP), and has a hotline for seniors in need of food assistance. WIC FMNP and S-FMNP are two federal food assistance programs that offer vouchers specifically for use at farmers markets. In 2012, “[S-FMNP] programs put $369,371 into the pockets of 1,045 farmers across the Navajo Nation, building partnerships between communities and clinics, offering chronic disease prevention outreach, and improving the diet and health of Navajo families.”

**Fruit and Vegetable Prescription Program**

After being awarded a grant from the U.S. Centers for Disease Control and Prevention to improve the food environment in the Navajo Nation, Partners in Health’s Community Outreach and Patient Empowerment (COPE) project partnered with Wholesome Wave to bring the Fruit and Vegetable Prescription Program (FVRx) to Navajo Nation. Using the FVRx Program model, the collaboration’s focus is on increasing healthy food access in the Navajo Nation, building partnerships between communities and clinics, offering chronic disease prevention outreach, and improving the diet and health of Navajo families.

COPE’s Navajo FVRx Program partners clinic providers and community health workers to identify families with diet-related diseases and invite them to participate in the program. Families learn about healthy eating habits and receive prescription vouchers to buy fruits and vegetables at local healthy Navajo stores. The Navajo FVRx Program has quickly gained interest and community support on Navajo with 11 community health teams and 6 retailers recruited and trained to participate in spring 2015. The Navajo FVRx Program will grow over time to reach more Navajo communities, as well as promote and increase access to healthy local traditional Navajo food for all.

Source: Email from Amanda Morgan, Wholesome Wave (Apr. 29, 2015) (on file with authors).

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322 Id.
323 Farmers Market Promotion Program, supra note 112.
325 Miller, supra note 315.
326 Id.
327 Programs, N.M. FARMERS MKTG. ASS’N, http://www.farmersmarketnm.org/NM Farmers/Programs/programs.php (last visited Mar. 31, 2015). As of April 1, 2015, the outreach coordinator is Katlyn Jennings.
also often managed by Navajo residents, and thus supporting these businesses can help to support the
Corner stores are often the most accessible food vendors
Healthy corner store initiatives help corner stores to stock healthy food through providing guidance, resources, and incentives. Encouraging these stores to carry more nutritious foods through a healthy corner store initiative would both increase food access in the Navajo Nation and also support these local business owners by enabling them to increase profits through the sale of these healthy foods. For example, some businesses participating in the Healthy Corner Store Initiative in Philadelphia, Pennsylvania reported an increase in weekly profits and an increase of 10 to 20 percent in customer traffic.
In Cleveland, Ohio, the Health and Nutrition Working Group successfully started the Cleveland Corner Store Project to address food insecurity, and many corner stores continue to sell healthy items as demand rises. The Corner Store Project included cooking demonstrations, distribution of healthy recipe cookbooks at corner stores, a formal way to share best practices in stocking and selling healthy food.

**Healthy Corner Store Initiatives**

Corner stores are often the most accessible food vendors in communities in the Navajo Nation. They are also often managed by Navajo residents, and thus supporting these businesses can help to support the Navajo economy. However, currently many of these stores offer a limited selection of fresh produce and other healthy staple foods, or not at all.

Healthy corner store initiatives take a multifaceted approach to increase the availability and awareness of healthy foods in corner stores. Initiatives often incentivize stores to participate by providing tax reductions, priority access to grant programs, or free or low-cost equipment for stocking healthy food. A healthy corner store initiative could also provide networking opportunities among corner stores and encourage collaborative purchasing among smaller stores. Collaborative purchasing allows multiple stores to purchase food as a group, thereby lowering the price for both the stores and ultimately the consumers.

Increase healthy foods in small stores through a healthy corner store initiative that provides technical assistance and resources to stores.

In Cleveland, Ohio, the Health and Nutrition Working Group successfully started the Cleveland Corner Store Project to address food insecurity, and many corner stores continue to sell healthy items as demand rises. The Corner Store Project included cooking demonstrations, distribution of healthy recipe cookbooks at corner stores, a formal way to share best practices in stocking and selling healthy food.

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between stores, and assistance with procuring local healthy foods by connecting store owners to local farmers.\textsuperscript{335} The initiative also had the effect of reducing tobacco and alcohol signage in corner stores.

Healthy corner store initiatives can also help corner stores connect with smaller suppliers of healthy foods. For example, a local farm might not grow enough produce to sell to a large grocery store, but their smaller weekly harvests throughout the growing season could be a manageable size for a corner store. Since local produce is fresher, it will also last longer on the store shelves. In Eugene, Oregon, a nonprofit collaborated with corner stores to start a seasonal farm stand that provides fresh produce to customers on a weekly basis in front of the store, which increases foot traffic in the store and purchases of other goods as well.\textsuperscript{336} Similarly, a healthy corner store initiative could help corner stores become pick-up locations for farms that have community supported agriculture (CSA) programs.

Advocates can ensure a healthy corner store initiative has a long-lasting positive influence in the Navajo Nation by institutionalizing it in policy. The Navajo Nation government could provide funding to sustain a healthy corner store initiative that provides technical assistance and initiatives to corner stores.

**Use tax measures to incentivize corner stores to purchase and stock healthy food, or discourage consumer purchasing of unhealthy food.**

Some municipalities, such as Baltimore, Maryland, provide tax breaks to stores that carry produce.\textsuperscript{337} To be eligible for the tax credit, grocery stores in Baltimore must derive 20\% of gross receipts from the retail sale of fresh produce.\textsuperscript{338} This is an example of using tax policy to influence the behavior of business-owners and incentivize them to carry and promote the sale of healthy produce. Taxes can also be imposed on certain foods to change consumer purchasing; this has proven to be a successful strategy in the Navajo Nation. The Healthy Diné Nation Act imposes a 2 percent tax increase on sweetened beverages and foods with little to no nutritional value that are purchased on the reservation.\textsuperscript{339} See Section II: The Structure of the Navajo Nation Government for a case study on the Healthy Diné Nation Act. Funds generated by the junk food tax will be used to provide grants to Chapters to implement health and wellness initiatives.

**Encourage nutrition education and other healthy activities at corner stores.**

Hosting educational activities at corners stores can both increase a store’s customer base and arm consumers with nutrition knowledge. A team of researchers from John Hopkins University worked with nutritionists and health workers from Navajo Nation Special Diabetes Project to implement the following interventions as part of a Healthy Corner Store Initiative: demonstrating healthier cooking methods, taste-testing healthy foods, giving away promotional healthy items, responding to questions from store customers, working with store owners, and setting up marketing materials.\textsuperscript{340} The team worked with store owners to overcome barriers to stocking healthier foods. They found that the more customers were encouraged to interact with the healthy foods, the more likely it was that the store would purchase and stock healthier food items.

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\textsuperscript{338} See S. 252(A)(ii), Maryland HB 1135 (Feb. 7, 2010), http://mlis.state.md.us/2010rs/bill/hb/hb1135f.pdf.

\textsuperscript{339} Press Release: President Shelly signs Healthy Diné Nation Act of 2014 into law, supra note 9.

exposed to these measures, the more likely they were to change their purchasing behaviors. Advocates can ask the Navajo Nation government to provide funding for grants that would support nutrition education at corner stores.

**Leverage private sector investments to create funds for healthy food initiatives.**

In February 2010, the Obama Administration launched the Healthy Food Financing Initiative, which uses private sector investments to increase access to healthy, affordable food. Similar efforts on the state level have been in place for over a decade. For example, in 2004, Pennsylvania created the Fresh Food Financing Initiative (FFFI) to attract supermarkets and grocery stores to underserved communities.

Similarly, in 2009, New York State established the New York Healthy Food and Healthy Communities Fund to provide grants and loans for food markets. The Navajo Nation could seek investments from the private sector to create a fund that promotes the creation of new stores to bolster healthy food access.

**Prioritize food-related proposals in awarding funds from Navajo government programs.**

The Navajo Nation has already made great strides in supporting Navajo businesses by creating the Navajo Business and Industrial Development Fund (BIDF) and the Micro-Enterprise Loan Program (MELP), both profiled below. The government can further increase the efficacy of these two programs in promoting food access by prioritizing food-related proposals for a certain portion of available funding.

**Require corner stores to stock healthy foods.**

Some municipalities have used city ordinances to require grocery stores to improve their healthy food selection. Some require that all convenience stores offer a certain amount of produce, either in absolute terms or as a certain percentage of all goods sold. An ordinance in Minneapolis, MN requires grocery stores to stock a certain amount of healthy so-called “staple” foods, such as fresh fruits and vegetables, at any given time. The ordinance exempts filling stations having not more than 300 square feet of retail sales floor area and specialty food stores. Notably, corner stores owners in Minneapolis resisted this law and many were found to be non-compliant after the first year. The local Department of Health that implemented the law found that they needed to provide support for these corner store owners to bring them into compliance, such as through financial incentives, infrastructure support, and marketing. Chapter governments could push convenience store owners to carry healthier food by tying the issuance of business permits and licenses to stores stocking a minimum level of healthy staple products.

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341 Id.


346 MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.10 (2012).

347 MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.30 (2012).


349 Id.

Resources

- **Diné Community Advocacy Alliance (DCAA)** is the coalition of advocates that spearheaded efforts to eliminate taxes on healthy foods and impose taxes on junk foods on the Navajo Nation. The DCAA has worked with the Navajo Tax Commission to determine how to spend funds created by the junk food tax, which will be awarded to Chapters to implement wellness initiatives. The DCAA is an excellent resource to discuss potential wellness initiatives that could be funded, as well as community advocacy and organizing strategies.

- The **Navajo Business and Industrial Development Fund (BIDF)** is a low interest loan program that supports new or expanding 100% Navajo owned businesses on the Navajo Nation. The loans range from $10,000 to $100,000 for new businesses and $10,000 to $150,000 for existing businesses. The loans are usually used for new business start-up, working capital, purchase of existing business interest(s), equipment purchase, or permanent improvements. The minimum requirements for the BIDF loan include having good credit history, not being in violation of the Navajo Business Procurement Act or any Navajo Nation laws, and working on a business start-up or expansion.

- The **Navajo Micro-Enterprise Loan Program (MELP)** is a loan program for small businesses. The loans for new businesses range from $2,500 to $7,500. The minimum requirements include employing fewer than five people, having good credit history, not being in violation of the Navajo Business Procurement Act or any Navajo Nation law, and providing 10% equity for each loan.

- The **Bik’eh Hozho Community Development Corporation** is a private non-profit lending organization that “offers micro-loans and technical support for new businesses.”

- The **Healthy Food Financing Initiative** provides funding and technical assistance to organizations that increase access to healthy, affordable food in communities. Funded projects develop and equip grocery stores, small retailers, corner stores, and farmers markets selling healthy food. The program has distributed over $140 million in grants to over 100 projects since 2011.

- The **U.S. Small Business Administration** offers loan guarantee programs for general small business loans and micro-loans that can be used for many healthy food promotion projects, such as improving corner stores’ ability to stock fresh produce by supporting the purchase of refrigerated cases, new shelving, and display mechanisms.

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351 Schmidt, supra note 224, at 11.
353 See Schmidt, supra note 224, at 14.
355 Id
The USDA Rural Development Business Program offers guarantees on loans from local banks for new business owners. This program could be used to support the establishment of new healthy corner stores.  

Growing Food Connections is a project led by the University at Buffalo and the Buffalo School of Architecture and Planning that seeks to enhance food security by “building the capacity of local governments to remove public policy barriers and deploy innovative public policy tools.” The website includes a searchable policy database of public policies that support community food systems, which may be helpful to better understand the range of policy opportunities.

Elephant Energy is a non-profit organization that aims to provide access to sustainable energy technologies in developing communities. Under the name Eagle Energy, the organization works with local Navajo activists to develop ways to finance and distribute affordable sustainable energy technologies. Eagle Energy partners with local businesses on the Navajo Nation to “provide better-quality light, lower the cost of monthly energy expenses, and improve health.”

**MOBILE FOOD VENDING, DELIVERY SERVICES AND TRANSPORTATION**

Even when healthy products are available in the grocery stores in the Navajo Nation and surrounding areas, the ability to purchase them is limited in many cases by lack of transportation. Many people in the Navajo
Nation have to drive over 50 miles to shop, and this transportation cost can be especially burdensome for low-income people. 662 Many do not have cars; in fact, in the Navajo Nation, there is only one vehicle for every 5.6 people. 661

Mobile food vending, delivery service programs, and improved transportation services can increase the distribution and sale of healthy foods in areas that are known as “food deserts,” meaning that they lack permanent healthy food vendors. 664 For example, the Mississippi Band of Choctaw Indians has seen tremendous success using mobile food vending to reach tribal members that live in remote areas. In 2012, the tribe established Choctaw Fresh Produce, five farms that grow fruits and vegetables in high tunnels (also known as hoop houses). 665 A year later, the tribe received a $37,500 grant from the First Nations Native Agriculture and Food Systems Initiative (NAFSI) to start a mobile farmers’ market. 666 The mobile market served 1,000 customers in summer 2014 and sold 5,000 pounds of fresh produce. 667

One mobile grocery store operating in northern New Mexico is the Santa Fe Community Foundation’s MoGro. 668 The mobile grocery store currently serves several Pueblo communities including Jemez, Cochiti, Santa Domingo, San Felipe, and Laguna. 669 A mobile grocery store could bring healthy fresh produce to more remote areas of the Navajo Nation. The effectiveness of mobile grocery stores for Native communities could be further expanded by offering locally produced and traditional foods. 670 For example, in the Eastern Navajo communities, advocates are working to create the Tri-Community Mobile Farmers Market 671 (for more information, see textbox in Section IV: Processing, Aggregation, and Managing Waste). Food advocates should urge Navajo policymakers at the tribal and Chapter level to provide grants and funding for the development of mobile markets.

Support mobile food vendors by developing resources that explain the permitting process for mobile vending.

Mobile food vendors can often serve a larger geographic area than stationary retailers and they have fewer fixed costs. The Navajo Nation could contract with an existing food retailer to set up a mobile grocery store in a public-private partnership. The Navajo Nation could also support farmer and community-based cooperatives that would like to establish a mobile grocery store by providing technical assistance or other resources.

Mobile food vendors must abide by all regulations set forth in the Navajo Nation’s Food Service Sanitation Code, with some exemptions for those vendors selling only non-potentially-hazardous foods 672 (excluding

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664 The USDA defines food deserts as urban neighborhoods and rural towns without ready access to fresh, healthy, and affordable food (census tracts with a substantial share of residents who live in low-income areas that have low levels of access to a grocery store or healthy, affordable food retail outlet). See Food Deserts, U.S. DEP’T OF AGRIC., available at http://apps.ams.usda.gov/foooddeserts/fooddeserts.aspx (last visited Mar. 31, 2015).
666 Mississippi Choctaw Put Fresh Farm Produce on Wheels, INDIAN GIVER (Mar. 18, 2015), http://indiangiver.firstnations.org/n150304-01/.
667 Id.
669 Id.
670 Diné Food Sovereignty report, supra note 8, at 74.
672 The FDA’s definition of “potentially hazardous food” can be found at FDA 1999, pt. 1-201.10(B)(61).
foods that meet the FDA Food Code’s definition of “potentially hazardous food” as well as meat, poultry, dairy products, beans and refried beans, and potatoes, according to Navajo Nation law). 373 The requirements for mobile vendors can be found in the Navajo Nation Code, title 13 §§ 271-278. The government can generate resources that describe how to establish these entities, including outlining the permitting process and how to comply with the law regarding equipment and other requirements.

**Expand the Navajo Transit System.**

The Navajo Nation can work with advocates, planning commissions, and the Navajo Nation Department of Transportation to expand low cost public transportation options. Decisions concerning the development of roads, traffic signals, and street lighting may be made at the Chapter or tribal level depending on how much authority has been delegated to the Chapter government. The Navajo Nation Department of Transportation and local Community Development Committees, which play formal roles in approving Community Based Land Use Plans from certified Chapter governments, can issue guidance and provide technical assistance on planning for expansion or creation of transportation routes. 374

The Navajo Nation can expand the Navajo Transit System, a bus service that currently operates along state highways and Navajo routes, to more expressly and frequently connect people directly with food retailers. 375 Some municipalities around the United States have responded to shortages in established public transportation routes by operating dedicated “grocery buses.” 376 For example, Austin, Texas advocates lobbied their local government to establish a “grocery bus” route that connected low-income areas of Austin to several of Austin’s large supermarkets. 377 These grocery buses could be established in partnership with a private retailer, lightening some of the burden on public funds and increasing consumer traffic and sales at certain grocery stores.

**Resources**

- **First Nations Development Institute** manages the Native Agriculture and Food Systems Initiative (NAFSI). NAFSI has a Native American Food Security grant project that administers competitive grants to “support Native organizations working to eliminate food insecurity among tribal seniors and elders in rural and/or reservation-based Native American communities.” 378 Examples of grant-supported projects include community gardens, senior nutrition, food banks and/or food pantries, or other projects related to expanding Native community control of food systems. 379

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377 Id.
379 Id.
SECTION VII: FOOD ASSISTANCE PROGRAMS

Food assistance programs serve people with limited financial resources, either by providing financial resources that can be used to purchase food or by distributing actual food items. Food assistance programs can be improved and expanded to make healthy food items more available and affordable for the participants of these programs.

OVERVIEW This section discusses three U.S. food assistance programs that operate in the Navajo Nation: the Supplemental Nutrition Assistance Program (SNAP); the Food Distribution Program on Indian Reservations (FDPIR); and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The Diné Policy Institute’s (DPI) 2014 Diné Food Sovereignty report found that among survey participants, 63% reported participating in at least one food assistance program. While these programs are largely funded by the federal government, Indian Tribal Organizations have some authority to decide how the programs are administered.

1. SNAP This section describes the administration of SNAP, eligibility requirements, and the types of food included in the program. It identifies opportunities to expand tribal control over the administration of SNAP, standardize eligibility requirements among the three states surrounding the Navajo Nation, and ensure SNAP recipients can use SNAP benefits at farmers markets.

2. FDPIR This section describes the administration of FDPIR, eligibility requirements, and the types of food included in the program. It recommends advocating for more traditional foods on the FDPIR list of eligible foods, improving distribution of FDPIR foods, and streamlining data sharing among other federal food assistance programs.

3. WIC This section describes the administration of WIC, eligibility requirements, and the types of food included in the program. It recommends incorporating more healthy, traditional foods into the WIC food list, and facilitating transportation for women traveling to WIC appointments.

SNAP

The Supplemental Nutrition Assistance Program (SNAP) is the largest food assistance program in the United States, with more than 46 million people participating as of January 2015. The Food Stamp program, a predecessor to SNAP, started in the Navajo Nation in 1977. Statistics on Navajo participation in SNAP are not readily available; however, in 2008 American Indians and Alaskan Natives accounted for 2 percent of all participants in the program and received an estimated $55 million in benefits. DPI’s Diné Food Sovereignty report found that among 120 participants in the survey, more than 100 reported receiving SNAP assistance. SNAP offers crucial nutrition support in the Navajo Nation; in 2010, one study found that households on the Navajo Nation were twice as likely to receive assistance through SNAP as neighboring Arizona state residents.

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Administration: Although SNAP is a federally-funded program, the federal government splits the costs and responsibilities of administering the program with states. The federal government, through the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) sets the basic application filing and processing, vendor qualifications, eligible food items, and eligibility requirements; however, states do have the ability to customize eligibility requirements through a series of complicated options and waivers created by federal rules.

States typically have control over conducting SNAP outreach, distributing and collecting SNAP applications, certifying that households are eligible for benefits, and distributing benefit funds. In the Navajo region, SNAP benefits are administered through the following state agencies: Arizona Department of Economic Security, New Mexico Human Services Department Income Support Division, and Utah Department of Workforce Services. As discussed below, the SNAP eligibility and application requirements vary from state to state. This makes it very confusing for Navajo residents to try to enroll in SNAP and for Navajo Nation agencies to conduct outreach.

<table>
<thead>
<tr>
<th>Table VII-1: SNAP Benefits by State</th>
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<tbody>
<tr>
<td><strong>Administrator</strong></td>
</tr>
<tr>
<td>Arizona</td>
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<tr>
<td>New Mexico</td>
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<tr>
<td>Utah</td>
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<tr>
<td><strong>State Program Name</strong></td>
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<tr>
<td>Arizona Department of Economic Security</td>
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<tr>
<td>New Mexico Human Services Department Income Support Division</td>
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<tr>
<td>Utah Department of Workforce Service</td>
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<tr>
<td><strong>EBT Card</strong></td>
</tr>
<tr>
<td>QUEST card(^{389})</td>
</tr>
<tr>
<td>EBT card(^{390})</td>
</tr>
<tr>
<td>Horizon card(^{391})</td>
</tr>
<tr>
<td><strong>Policy Differences</strong></td>
</tr>
<tr>
<td>- A proposed 2015 bill would cancel the work requirement waiver for able-bodied adults without dependents(^{392})</td>
</tr>
<tr>
<td>- The state must process a SNAP application within 45 days (as opposed to 30 days in Utah)(^{393})</td>
</tr>
<tr>
<td>- Asset limit of $2,250 to be eligible for SNAP benefits(^{394})</td>
</tr>
<tr>
<td>- No work requirement waiver for able-bodied adults without dependents</td>
</tr>
<tr>
<td><strong>For More Information, Go To</strong></td>
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<tr>
<td><a href="https://www.azdes.gov/nutrition_assistance/">https://www.azdes.gov/nutrition_assistance/</a></td>
</tr>
<tr>
<td><a href="http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program__SNAP__a.aspx">http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program__SNAP__a.aspx</a></td>
</tr>
</tbody>
</table>

\(^{385}\) Building a Healthy America, supra note 83.


\(^{388}\) Building a Healthy America, supra note 83.

Program Eligibility: The federal government requires that a household must have a gross monthly income less than 130% of the federal poverty level to be eligible for SNAP. Thus, a four-person household currently may qualify for SNAP benefits with a gross monthly income of $2,584 or less. For the purpose of determining eligibility, expenses like shelter and health care are deducted from applicants’ incomes while income from Supplemental Security Income is not.

SNAP policy options and waivers provide states with the ability to adjust eligibility requirements. For example, there is a federal asset requirement that may be waived by states indicating that people who have more than $2,250 in assets are not eligible for SNAP. Utah follows the federal asset requirement. In Utah, assets may include bank accounts, cash, houses or land that are not used as the primary home, and personal property; however, cars are exempt from Utah asset calculation. On the other hand, Arizona and New Mexico have waived the federal asset requirement so residents do not have to remain under a certain asset threshold to be eligible for SNAP.

Benefit Distribution: SNAP participants receive their benefits through Electronic Benefit Transfer (EBT) cards that are automatically loaded with their entire monthly benefit allotment on a designated date each month. The date that benefits are disbursed is dictated by state specific issuance schedules. The maximum allotment of benefits in 2015 for a one-person household was $194 dollars.

Vendor Qualifications: To qualify as a vendor that can accept SNAP, a store must either “(A) offer for sale on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories: meat, poultry or fish; bread or cereal; vegetables or fruits; and dairy products … or (B) [m]ore than 50% of the total dollar amount of all retail

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201 Id.
202 Id.
208 Id.
sales (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods. Staple foods are defined as: breads, dairy, fruits and vegetables, and protein. Once the 2014 Farm Bill goes into effect, vendors will have to offer a variety of at least 7 foods in each of the four categories of staple foods, including perishable foods in at least 3 of the categories.

Vendors must also accept payment via EBT cards. A variety of retailers accept SNAP, including grocery stores, gas stations, and corner stores. Some farmers markets can also accept SNAP. Farmers markets must meet the same eligibility requirements as other vendors. In some cases, markets that conduct sales of more than $100 per month may be eligible to receive a free EBT reader. As discussed in Section VI: Access to Healthy Food, advocates can apply for funds through the USDA Farmers Market Promotion Program to equip farmers markets with EBT machines. States may also have funds to subsidize the purchase of EBT readers, and in limited number of cases, farmers markets may be allowed to use manual vouchers where EBT capability cannot be established.

Eligible Food Items: A SNAP beneficiary may purchase “any food or food product intended for human consumption” as well as seeds and plants that will grow food for home consumption. This wide net includes breads, fruits, vegetables, and meats but also sugary beverages and processed snack foods. SNAP benefits may not be used for purchasing alcohol, tobacco products, hot prepared foods, food to be eaten in the store, non-food items, or vitamins and supplements.

Continue to push for tribal control over SNAP administration.
In 2001 and again in 2013, the National Congress of American Indians called on the U.S. Congress to allow for tribal administration of the SNAP program. Notably, the 2014 Farm Bill requires the Secretary of Agriculture to conduct a study to “determine the feasibility of tribal administration of Federal food assistance programs, services, functions, and activities … in lieu of State agencies or other administering entities.” In conducting the study, the Secretary is required to consult with tribes and issue a report that contains a list of programs that tribes could administer, with a description of policy changes needed to transfer these roles to tribal governments.
Because of the 2014 federal mandate, there may be opportunities going forward for tribes to be more involved in administration of SNAP. The Navajo Nation can work with the USDA throughout the process of conducting the study by helping to develop study protocols, offering data and data collection services to the USDA, and drafting the required report. The final feasibility report is due to House of Representatives Committee on Agriculture and Senate Committee on Agriculture, Nutrition, and Forestry on August 7, 2015.

The law already allows for Indian Tribal Organizations (ITOs) to take over the administration of SNAP from a state in certain situations. According to federal regulations, a state government can contract certain administrative duties out to an ITO. Although the state retains full responsibility for the program administration and must continue to do certification activities such as interviews or eligibility determinations, ITOs may participate in actions such as prescreening, offering interpretative services and providing other non-certification functions. The Navajo Nation does not currently perform any non-certification functions; however, advocates can lobby the federal government as well as Arizona, New Mexico, and Utah state governments to put the Navajo Nation in charge of these functions.

ITOs may administer SNAP if the USDA Secretary makes a finding that: (1) the state failed to adequately administer SNAP on the reservation and (2) the ITO is capable of handling such a responsibility. FNS can investigate the state’s management of SNAP on tribal land based on their own discretion or at the request of an ITO or state agency. To date, FNS has not found that a state failed in its duties to administer SNAP effectively.

Chapterhouses can ask the Navajo Nation Council to make Navajo administration of SNAP a priority. Advocates can also write to members of Congress encouraging Navajo administration of SNAP on the grounds that it will increase efficiency, create uniformity of SNAP administration on the Navajo Nation, and decrease the burden on states to administer SNAP. Advocates should remain informed about the feasibility study required by the 2014 Farm Bill, the results of which will affect the likelihood of tribal control over SNAP.

**Encourage Utah to remove the asset limit for the purpose of determining SNAP eligibility.**

The federal government sets an asset limit of $2,250 to determine SNAP eligibility, but allows states to define assets and gives them the option to waive the asset limit. Unlike Arizona and New Mexico, Utah has not waived the asset limits, and requires participants to have less than $2,250 in assets in order to be eligible to receive SNAP benefits. Utah does not count cars or other motorized vehicles toward the asset limit. Research shows that removing asset limits increases efficiency, reduces errors, and can even reduce

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421 7 C.F.R. § 281.2.
422 7 C.F.R. § 281.2.
424 7 C.F.R. § 281.3(a).
428 Id.
By removing this criterion, families are encouraged to save rather than spend down their financial assets before applying for SNAP. Advocates should push for Utah to waive the asset limit on SNAP benefits, as Arizona and New Mexico have done, to ensure that those in need of food assistance are receiving it. Alternatively, advocates can lobby the federal government to drop the default asset limitation for SNAP altogether.

Encourage New Mexico and Arizona to keep work requirement waivers in place and push Utah to drop its work requirements for able bodied adults without dependents.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits SNAP benefits to 3 months in a 3 year period for able-bodied adults with dependents who are not working or complying with the requirements of a work program for at least 20 hours each week. States can request a waiver of these provisions for areas with high rates of unemployment. While New Mexico and Arizona already have these waivers in place, Utah does not. In New Mexico and Arizona, recent efforts have been made to eliminate these work requirement waivers. In New Mexico, a judge struck down a provision put forth by the New Mexico Human Services Department seeking to re-implement work requirements and to expand those requirements to people aged 16 to 59 and to parents with children over the age of 6. Because the provision was struck down based on a procedural issue, the Department intends to propose a similar provision in the future. Meanwhile in Arizona, state senators voted to block a renewal of the waiver. At this writing, the measure was sitting in Arizona State House of Representatives waiting for a final vote. With high rates of unemployment in the Navajo Nation, the absence of these waivers may put SNAP recipients without children at risk of losing their benefits. Advocates should lobby Utah state representatives to implement work requirement waivers for SNAP recipients and push Arizona State House members to vote for renewal of their current waiver.

Push for local farmers markets to accept SNAP benefits as payment and incentivize the use of SNAP benefits at farmers markets.

Healthy, fresh food is difficult to access in most parts of the Navajo Nation. At one of the ten full service grocery stores on the Navajo Nation, junk food and sweetened beverages comprise 80 percent of the food offered. Farmers markets are a good alternative to grocery stores and trading posts, as they can offer a fresher selection of foods, and include locally-grown and traditional food items. As the number of farmers markets on the Navajo Nation increases, these markets have the potential to provide more customers with fresh, locally-grown foods.

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431 Id.
433 Id.
435 Id.
436 Diné Food Sovereignty report, supra note 8, at 56.
437 Id.
As discussed in Section VI: Access to Healthy Food, for a farmers market to accept SNAP benefits, it must apply to become an authorized SNAP retailer through the USDA and then acquire the proper equipment to process EBT cards. To encourage farmers markets to accept SNAP benefits, states can subsidize or offer immediate tax deductions for the purchase of EBT card readers.

Farmers markets administering SNAP can double the benefits that SNAP recipients receive when they purchase food at farmers markets. At farmers markets where these types of incentive programs have been implemented, SNAP recipients may, for example, swipe their EBT cards for $10 and receive $20 to purchase farmers market products. Both SNAP recipients and local farmers benefit from these programs. While SNAP recipients are able to purchase more food, local farmers gain a new source of revenue.

As suggested in Section VI: Access to Healthy Food, advocates can ensure that federal food assistance recipients have access to the fresh fruits and vegetables available at farmers markets by pushing farmers markets to accept and incentivize the use of federal food assistance benefits. The Food Insecurity Nutrition Incentive (FINI) Program embedded these incentive programs in federal funding for the first time in the 2014 Farm Bill; advocates could apply for a FINI grant to increase fruit and vegetable purchases by SNAP recipients at farmers markets through incentives.

Advocate for SNAP retailers to carry more healthy options and be able to sell healthy prepared foods.

In November 2014, the Navajo Nation passed a 2 percent sales tax on junk food that will remain in effect until at least 2020. The tax aims to lower rates of diabetes and obesity on the Nation by making junk foods more expensive to purchase. SNAP benefits can currently be used to purchase junk foods, such as cookies, chips, and sugary drinks. One study shows that in the U.S., sugar sweetened beverages accounted for 58% of all purchases made by SNAP households and that SNAP benefits were annually used to pay for between 1.7 to 2.1 billion dollars of sugar-sweetened beverages.

There is evidence that customers, especially those receiving SNAP benefits, are more likely to buy fruits and vegetables if there are more varieties offered in corner stores. Advocates could push for the federal government to place more rigorous food stocking standards on SNAP retailers. The 2014 Farm Bill expanded how much fresh foods vendors must stock, requiring stores to carry at least seven varieties of produce (fruits and vegetables) up from three varieties under the current regulations; however, these requirements can still be made more robust by further increasing the number of varieties of fruits, vegetables, and other healthy staple products that vendors must stock. This recommendation would also

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441 Food Insecurity Nutrition Incentive, supra note 104.
442 Navajo Lawmakers Approve Junk Food Tax, ASSOCIATED PRESS (Nov. 15, 2014), http://bigstory.ap.org/article/61e49b62cec3a6ca8a86066a8ca3a/navajo-lawmakers-approve-junk-food-tax.
443 Id.
445 Martin, et al., If you stock it, will they buy it? Healthy food availability and consumer purchasing behavior within corner stores in Hartford, CT, USA, PUBLIC HEALTH NUTRITION 1973 (Oct. 2012).
align with the junk food tax by making healthier options more available to SNAP recipients and junk foods less appealing.

SNAP participants currently cannot use their benefits to purchase prepared foods, such as rotisserie chickens, food from hot bars in grocery stores, or food that will be eaten in the store. This provision does not recognize the challenges many SNAP recipients face of having limited kitchen equipment and time to prepare meals at home. Advocates should encourage federal policymakers to continue to pilot programs where SNAP recipients can purchase prepared foods with their benefits, and consider extending SNAP for the purpose of purchasing hot and prepared foods in grocery stores.\(^4^4^8^\)

**FDPIR**

The Food Distribution Program on Indian Reservations (FDPIR) provides foods purchased by the USDA to low-income households living on Indian reservations or in approved areas nearby.\(^4^4^7^\) FDPIR was created as an alternative to food stamps (now SNAP) in the 1977 Farm Bill,\(^4^5^0^\) after tribes expressed concern about the availability of stores accepting food stamps on reservations.\(^4^5^1^\)

In 2012, 75,608 people participated in FDPIR nationwide.\(^4^5^2^\) Individuals and households can switch back and forth between receiving SNAP and receiving FDPIR, but can only participate in one of these programs in any given month.\(^4^5^3^\) In 2011, FNS contracted with Urban Institute, University of Chicago, and Support Services International, Inc. to conduct a three-year study regarding demographic breakdown of the FDPIR program, barriers, key aspects, and participant experiences.\(^4^5^4^\) Advocates could use this study’s results for future policy recommendations. The final report will be released in 2016.\(^4^5^5^\)

**Administration:** At the federal level, FDPIR is administered by USDA FNS, which regulates program eligibility and eligible food items.\(^4^5^6^\) An ITO is the preferred administrator.\(^4^5^7^\) Navajo Nation controls administration of FDPIR for the Navajo people. The Navajo Food Distribution Program (Navajo FDP) manages seven food distribution outlets (four in Arizona and three in New Mexico) and one central food-


\(^4^5^0^\) Id. at 8.

\(^4^5^1^\) Kevin Concannon, Under Secretary, Food, Nutrition, and Consumer Services, Statement before the House Committee on Agriculture Subcommittee on Department Operations, Oversight, Nutrition, and Forestry (June 23, 2010), available at https://www.cnfs.gov/ps=program&mode=form&t=step1&id=50e16b148a8be253b2d2bfa923a6b (last visited Mar. 31, 2015).

\(^4^5^2^\) Id.


\(^4^5^4^\) Email from Bob Dalrymple, Senior Analyst, Dep’t of Agric. Food and Nutrition Serv., SNAP Research and Analysis Division (Apr. 1, 2015, 7:58 EST).

\(^4^5^5^\) 7 C.F.R. § 253.4(a).

\(^4^5^6^\) 7 C.F.R. § 253.4(b)(1).
receiving warehouse.\textsuperscript{458} In addition to allowing recipients to pick up food packages at FDPIR warehouses, FDPIR is distributed from trucks that park in specific locations, usually once a month, known as the tailgate distribution method.\textsuperscript{459} The Navajo Nation’s Chapterhouses are common pick up sites.\textsuperscript{460} Distribution options employed by other tribes include grocery style facilities and home delivery.\textsuperscript{461} For example, the Sherwood Valley Pomo, Chickasaw Nation and Choctaw Nation programs partner with their tribal Community Health Representatives (CHR), who can both bring elderly or disabled clients to pick-up locations or deliver food to their homes.\textsuperscript{462}

**Program Eligibility:** The income eligibility criteria are slightly different for FDPIR than for SNAP. To be eligible for the FDPIR, households must have a net income of less than the SNAP Net Monthly Income Standard plus the SNAP Standard Deduction.\textsuperscript{463} In 2013, a household of four qualified with a gross income of $2,126 per month or less. To calculate net income, recipients can deduct certain amounts for earned income, dependent care, child support, medical costs, providing meals for a home care attendant, and shelter/utility expenses from their gross income.\textsuperscript{464} Households must recertify their eligibility every 12 months or, for elderly and disabled households, every 24 months.\textsuperscript{465}

This program is restricted to households that live on or near a reservation.\textsuperscript{466} If a family lives in an approved area near a reservation, at least one member of the household must be an enrolled member of a Federally Recognized Tribe.\textsuperscript{467} Additionally, residents of communities with populations of over 10,000 cannot participate in the program unless that community is on a reservation, was already participating in the program when its population grew above 10,000, or has a waiver from FNS.\textsuperscript{468}

**Eligible Food Items:** USDA makes almost 100 different foods available through FDPIR\textsuperscript{469} and the ITOs are responsible for choosing which of the available foods to include in the food packages within their borders.\textsuperscript{470} Each package must include foods from several pre-determined food categories, including meat,
grains, fats, and fruit and vegetables. Fresh fruits and vegetables are available as an alternative to canned products for most tribes.

Participants may choose a certain amount of food from each category, offering some consumer choice. The food package has been updated multiple times to reflect advancements in nutrition science. The 2014 Farm Bill also provides for grants to one or more tribes for pilot demonstration projects that focus on purchasing traditional, nutritious foods (produced locally, when possible) for distribution through FDPIR.

**SNAP v. FDPIR: Both Important Resources**

Although FDPIR was designed to be a reasonable alternative to SNAP, the programs are different in several important ways. First, the two programs differ in how they distribute benefits to eligible persons. While FDPIR ships mostly predetermined food packages to the Navajo Nation, SNAP benefits can be used to purchase almost all food items at eligible retail locations.

FDPIR and SNAP also differ in their eligibility requirements. First, FDPIR is limited to those who live on or near reservations. Second, the income limits for SNAP and FDPIR are slightly different. One study found that more households overall were eligible for FDPIR than SNAP, while about 85% of households were eligible for both. The study also found that a majority of households eligible for both programs would receive larger benefits from SNAP than from FDPIR, unless the household included elderly or disabled members for whom SNAP benefits were reduced due to receiving fixed Social Security income. However, some people found that the quantity of food in FDPIR packages was larger than what they could buy with SNAP benefits. It is easier to apply for FDPIR overall because SNAP requires more documentation. However, if an applicant has a variable monthly income and makes too much in one month, they may exceed the monthly cut off for FDPIR, but not the annual cut-off for SNAP.

Other factors may determine how households eligible for both programs choose to participate in one program over another, including the difficulty of enrollment process and recertification procedures, cultural compatibility, choice in food selection, and access to stores with competitive pricing and wide selections.

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473 Id. at 2.
474 FDPIR Food Package Nutritional Quality: Report to Congress, supra note 449, at 8.
475 Id. at 15.
476 Id. at 8.
479 Id. at 3.
480 Id. at 4.
481 Id. at 7.
482 Id. at 6.
483 Id. at 5.
484 Id. at 5-6.
485 Id.
The Intertribal Bison Cooperative (ITBC) provides bison distribution to 56 tribes in 19 states. This cooperative formed in 1990 in order to assist tribes that wish to consume this food. In the early 2000s, in response to cultural, economic, and health concerns brought to the attention of the federal government by food policy advocates, FDPIR began to incorporate bison into its food packages.

Up to 20% of people eligible for both FDPIR and SNAP will switch back and forth between the two programs. Reasons for such a switch are diverse. Some may switch periodically to amass food items that may only be available through one food program; for instance, some switch to SNAP for one month to be able to buy coffee and sugar, which are not eligible food items through FDPIR. Others switch due to extreme weather limiting access to supermarkets.

FNS contends that individuals consuming only FDPIR foods in the provided amounts would achieve a significantly healthier diet than the average American or SNAP participant. The exclusion of soda and processed foods from FDPIR food packages may explain this difference.

Research has shown that older generations have a preference for FDPIR. Potential reasons for this include FDPIR offices having staff fluent in native tongues, seniors having more proficiency with cooking than younger generations, and seniors’ inexperience with the EBT cards distributed through SNAP. Participation in either program also seems contingent on how participants view the programs. Some view SNAP as undesirable welfare and FDPIR as more of an entitlement for the relinquishment of tribal lands.

Ultimately, the decision of which program to utilize should remain flexible so that it can be tailored to individuals based on their unique needs and circumstances.

Continue to push for more Navajo traditional foods to be included in the FDPIR list.

The FDPIR list of eligible foods is currently based on the Dietary Guidelines for Americans (DGA). The Navajo Nation can push for the inclusion of healthy traditional foods that align with the DGA, such as whole grains (blue corn products), vegetables (such as squash and beans), as well as fruits, nuts and lean meats. The Indian Health Service created My Native Plate to identify how to satisfy the current DGA with traditional foods. While the IHS plate was created for all tribes, Navajo advocates or policymakers could develop a list of traditional Navajo foods that meet existing FDPIR requirements. If advocates believe some traditional Navajo foods that do not currently meet existing FDPIR requirements should be included on the FDPIR food list, advocates can submit a petition to the FDPIR Food Package Review Work Group or communicate with the tribal representative that sits on the Work Group. Since the DGA affect foods offered through FDPIR (as well as other food assistance programs), advocates can also submit public

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487 Id. at 6.
488 Id. at 6-7.
489 Id.
491 Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP), THE URBAN INSTITUTE and SUPPORT SERVICES INTERNATIONAL, INC., 6-7 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.
492 Id.
493 Id.
495 Id. Contact information for the Working Group and tribal representatives can be found at http://www.fns.usda.gov/sites/default/files/fdpir/FDPIR_Food_Package_Review_Work_Group_Contact_List_1_06_2015.pdf.
comments for the next version of DGA to recommend an evidence-based, culturally-appropriate MyPlate for American Indian tribes. 496

The Indian Health Service developed these My Native Plate visual guides to help people and eat balanced meals of reasonable portion sizes using traditional foods. The Navajo Department of Health could develop similar resources with Navajo traditional foods.


Push for improved delivery and distribution of FDPIR foods.

Although the tailgate distribution method may decrease the distance required for some to travel to receive their FDPIR benefits, the variety of foods available at these drop off sites is sometimes reduced because of the difficulty of transporting fresh foods.497 Another difficulty with tailgate distribution is delivery trucks breaking down, causing uncertainty as to when recipients will receive their benefits. Vulnerable populations, such as the elderly, are disparately impacted by the tailgate pickup method currently employed in the Navajo Nation. For the elderly and disabled, it may be difficult to get to FDPIR delivery trucks on time to receive their food allocations or to arrive early enough in the day to have an ample selection of foods from which to choose.

Chickasaw Nation, Fond du Lac, Crow Creek, and Lower Brule deliver to the elderly and disabled who are not able to pick up their foods at warehouses or stores.498 The Navajo Nation could create a similar system. Advocates can push for Chapters to pass resolutions creating a policy of utilizing Navajo Community Health Representatives (CHR) to distribute FDPIR packages to vulnerable individuals. CHRs are healthcare workers who live and work in the Nation and are employees of the Navajo Nation government.499 They are already on the ground providing hands on care to individuals as well as educating

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498 Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP), THE URBAN INSTITUTE AND SUPPORT SERVICES INTERNATIONAL, INC. 8 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.

499 Navajo Public Health Workers Receive Certificates, INDIAN HEALTH SERV., (June 18, 2009), http://www.ihs.gov/chr/index.cfm/module=awards_2.
larger groups on health issues, thus they would make ideal candidates for distributing foods to more vulnerable groups.\textsuperscript{500}

**Implement streamlined data sharing procedures with SNAP and other food assistance programs.**

Currently the Navajo FDPIR does not practice electronic data sharing with SNAP or other food assistance programs.\textsuperscript{501} Thus, to verify that participants are enrolled in only one program at a time, FDPIR warehouse supervisors must individually call the Arizona, New Mexico, and Utah SNAP offices.\textsuperscript{502} To make the implementation of food assistance programs more efficient, advocates should urge the federal government as well as Arizona, New Mexico, and Utah state governments to develop a formalized electronic data sharing system to track enrollment in food assistance programs.

**WIC**

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides money for food, nutrition education, and health service referrals to low-income women, infants and children. It is the third largest federal food assistance program,\textsuperscript{503} after SNAP and the National School Lunch Program.\textsuperscript{504} Over 13,000 Navajo citizens participated in WIC in 2012.\textsuperscript{505}

**Administration:** FNS regulates eligible food items at the federal level, while states or ITOs are responsible for administering the program at the state and local levels. The federal government and state governments or ITOs both play a role in determining who is eligible for the program.\textsuperscript{506} The Navajo Nation Department of Health is responsible for administering the WIC program for Navajo residents. This includes coordinating nutrition education and financial management, working with vendors, and conducting outreach to potential participants.\textsuperscript{507} The Navajo Nation WIC program works with the Arizona WIC program and Inter Tribal Council of Arizona (ITCA) to develop one food list for these three programs.\textsuperscript{508} This is helpful for the region’s vendors who sell WIC products, and for WIC recipients that can purchase the same products no matter where they are shopping.\textsuperscript{509} To be on the food list, food items must meet federal nutrition requirements, and be available for purchase in all three regions.\textsuperscript{510}

\textsuperscript{500} Email from Claudeen Tallwood, Program Manager, Food Distribution Program on Indian Reservations (Mar. 12, 2015, 8:33 MST).

\textsuperscript{501} Email from Claudeen Tallwood, Program Manager, Food Distribution Program on Indian Reservations (Mar. 12, 2015, 8:33 MST).


\textsuperscript{506} Email from Henry (Hank) Haskie, Navajo Nation Dep’t of Health (March 31, 2015) (notes on file with authors); Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

\textsuperscript{507} Email from Henry (Hank) Haskie, Navajo Nation Dep’t of Health (March 31, 2015) (notes on file with authors); Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

\textsuperscript{508} Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

\textsuperscript{509} Email from Henry (Hank) Haskie, Navajo Nation Dep’t of Health (March 31, 2015) (notes on file with authors); Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).
**WIC Clinics in Navajo Nation**
draft a bi-annual outreach plan tailored to the needs of the community. Outreach includes attending tribal fairs, traditional ceremonies, and health fairs, and is conducted in English, Navajo, and Spanish.


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**Program Eligibility:** WIC benefits are available for pregnant, postpartum, and breastfeeding women, infants, and children up to age 5. The family income must fall at or below 185% of the federal poverty level and WIC applicants must also be deemed to be at nutritional risk by a qualified health professional. WIC applicants must be able to prove residency in the state or tribal land in which they apply.

**Eligible Food Items:** The WIC food package provides food items designed to meet the nutritional needs of low income pregnant, postpartum, and breastfeeding women, infants, and children up to age 5. The categories of WIC beneficiaries are designated by federal regulations, and food packages are tailored to meet the specific needs of each category. The most recent Arizona WIC Food Programs food list, which applies to the Navajo Nation, went into effect on April 1, 2015.

Each WIC recipient has benefits distributed either by paper checks called Food Instruments (FI) or by EBT card, with which they can obtain certain foods comprised of a selection the following (depending on category): iron-fortified infant formula; iron-fortified infant cereal; infant food fruits and vegetables; infant food meat; adult cereal; vitamin C-rich fruit juice and/or vegetable juice; eggs; milk; cheese; peanut butter and/or dried beans; tuna (or sometimes other canned fish); whole wheat bread or other whole grains; and fruits and vegetables. State agencies and ITOs have the ability to tailor an individual’s food package based upon their nutritional risk factors, food restrictions, intolerances and preferences.

**Encourage the inclusion of more traditional foods in the Arizona WIC food list.**

Food advocates can encourage Navajo Nation WIC and Arizona WIC to include more healthy traditional foods in the WIC package. While all foods on the WIC food list must meet federal nutrition standards, state and tribal programs can include any foods that meet these requirements in their food list. The Arizona WIC Programs website provides a form for suggestions of food items to be added to the WIC food list. The Navajo Nation WIC can bring items to the Committee of Arizona, Navajo, and ITCA representatives and propose that these food items be added into the food list.

Incorporating these foods into WIC could introduce traditional foods to children at a young age. Research shows that children develop their food preferences early in life, so the foods they are exposed to could

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511 7 C.F.R. § 246.7(g).
512 7 C.F.R. § 246.7.
513 Id.
514 Id.
515 Id.
517 7 C.F.R. Part 246.10.
518 Id.
impact their eating habits into adulthood.\textsuperscript{520} Navajo food advocates should refer to Table VII-3 to see the types of foods that federal government allows in WIC food lists, and determine what Navajo traditional foods would fit into these categories.

**Support subsidized transportation to WIC appointments.**

Since the Navajo Nation has not yet transitioned to using EBT, women must attend regular WIC appointments in order to receive WIC benefits. Because of large distances and the low number of vehicles in the Navajo Nation, transportation has been cited as the most common reason for missing a WIC appointment.\textsuperscript{521} Subsidizing or otherwise providing transportation to these appointments would allow more women and children to avoid losing vital benefits. In *Santa Barbara, California*, WIC partnered with a local nonprofit to provide participants with free rides to their WIC appointments.\textsuperscript{522} Advocates can similarly push for the Navajo WIC to provide WIC recipients with subsidized or free transportation to their appointments. Partnering with CHRs may also be a viable option for transporting WIC participants to their appointments. Alternatively, advocates can develop groups at the Chapter level that will be responsible for transporting women to their WIC appointments.


\textsuperscript{521} Joanne McCloskey and Melvatha Chee, *An Ethnographic Study of the Factors Affecting the Nutritional Patterns of Navajo Women and Their Children in the WIC Program*, UNIVERSITY OF NEW MEXICO 4 (June 22, 2006), \url{http://www.nptao.arizona.edu/pdf/UNMWICERSreport2006.pdf}.

\textsuperscript{522} Community, *UNIV. OF CAL. SANTA BARBARA, NONTRADITIONAL STUDENT RES. CTR.*., \url{wgse.sa.ucsb.edu/nontrade/community.aspx} (last visited Apr. 2, 2015).
Encouraging Breastfeeding in the Navajo Nation

Since the primary purpose of the WIC program is to promote the health of mothers and young children, we included this section on breastfeeding in this section of the toolkit. Yet we also realized that breastfeeding is culturally significant and raises its own challenges and opportunities for policy change, and thus have devoted this separate section to this important topic.

Pass and enforce policies that encourage and facilitate breastfeeding.

There are cultural, health, and economic reasons to support breastfeeding in the Navajo Nation. Navajo beliefs about breastfeeding include that: it was provided by the Holy People as the proper way to feed an infant; it provides a symbol of the relationships between people; it passes on maternal attributes; it promotes growth; it makes a child feel loved; and it promotes self-discipline and a better life. Research consistently shows that breastfeeding benefits both mother and baby. Breastfeeding benefits infants by protecting them from range of illnesses, reducing the risk of Type 2 diabetes, certain types of cancer, bacterial infections, asthma and allergies, and increasing dental health. Notably, breastfeeding is linked to significantly lower rates of obesity. For mothers, breastfeeding reduces the risk of breast cancer and other cancers, and Type 2 diabetes. It also has been shown to reduce rates of maternal obesity by increasing postpartum weight lost. Lastly, breastfeeding can help strengthen the bond between parents and children.

Breastfeeding can also economically help families. Mothers that breastfeed save on the cost of formula and on the indirect healthcare expenses associated with formula feeding. One study found that for every 1,000 infants that are not breastfed, there are 2,033 more medical visits, 212 additional days of hospitalization, and 609 extra prescriptions the first year of an infant’s life. Additionally, WIC participants who are breastfeeding are eligible to receive additional food (see Table VII-2) as well as individual breastfeeding counseling and support, educational materials, and breast pumps to support a mother when she may be

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526 Katrina Krause et al., Effects of Breastfeeding on Weight Retention at 3 to 6 Months Postpartum: Data from North Carolina WIC Programme, 13 PUBLIC HEALTH NUTRITION 2019, 2021 (2010).
528 Thomas Ball et al., Cost of Formula-feeding in the First Year of Life, 103 PEDIATRICS 870 (1999); Increasing Breastfeeding Rates in Mississippi, DELTA DIRECTIONS and HARVARD FOOD LAW AND POLICY CLINIC (2014).
The Navajo Healthy Start Act of 2008, supported by the Navajo Nation Breastfeeding Coalition, mandates that all employees doing business in or with the Navajo Nation provide working mothers with the opportunity to breastfeed their infant child or use a breast pump at the workplace. Furthermore, the Act requires that breastfeeding mothers be allocated a clean and private area, not a bathroom, and a sufficient number of unpaid and flexible breaks within the workday to allow them to breastfeed or pump.


away from her child. Breastfeeding also increases the duration of time that a mother is eligible to participate in WIC.

In 2012, 81% of WIC participants in the Navajo Nation reported breastfeeding, which was higher than the national WIC average of 67%. Yet notably only 33-38% of women breastfed for six months or more, even though longer-term breastfeeding is healthy for the child and mother. To encourage longer-term breastfeeding and further increase breastfeeding rates, the Navajo Nation WIC can follow the example of California WIC by requiring that a staff member conduct an evaluation to determine if there is a health or nutritional condition that would decrease breast milk’s ability to help an infant grow and develop normally, discuss the risk to mother and baby of not breastfeeding, and provide counseling and nutrition education.

The Navajo Nation has taken other steps to support breastfeeding. The Navajo Healthy Start Act of 2008, supported by the Navajo Nation Breastfeeding Coalition, mandates that all employees doing business in or with the Navajo Nation provide working mothers with the opportunity to breastfeed their infant child or use a breast pump at the workplace. Furthermore, the Act requires that breastfeeding mothers be allocated a clean and private area, not a bathroom, and a sufficient number of unpaid and flexible breaks within the workday to allow them to breastfeed or pump. The creation of this law speaks to the importance of breastfeeding in Navajo culture; however, because the law is unfunded, enforcement of the Act may be challenging. Advocates should push for additional enforcement of this law by including the imposition of a fine on any employer that does not follow the law.

Because young mothers and families may not know what rights they have regarding breastfeeding, a publically displayed Breastfeeding Bill of Rights should be displayed in hospitals, doctors’ offices, WIC clinics, and other spaces frequented by pregnant or new mothers. In 2009, the state of New York passed the Breastfeeding Mother’s Bill of Rights, which includes the right to be informed on the benefits of breastfeeding. The bill further requires maternity care facilities post the list of rights and help mothers

533 Bryan Johnson, supra note 505, at 141, 145.
534 Id. At 152.
537 Navajo Nation Healthy Start Act, 15 NAVAJO NATION CODE ANN. §804 (A).
538 Navajo Nation Healthy Start Act, 15 NAVAJO NATION CODE ANN. §804 (B).
understand the information in the bill.\textsuperscript{540} To further encourage breastfeeding, the Navajo Nation could pass a similar law, which would be applicable to hospitals as well as WIC facilities. In addition, the Navajo WIC could be required to provide information about the Healthy Start Act to new mothers at their first WIC appointment.

Advocates can also partner with community leaders to share with communities the fundamental Navajo teachings about the importance of breastfeeding.\textsuperscript{541} For example, medicine men and spiritual leaders could disseminate information on the benefits of breastfeeding. Research on breastfeeding in the Navajo Nation found that cultural interventions, including creation of a marketing campaign to raise awareness about the role of breastfeeding in traditional Navajo culture and training WIC caseworkers to provide support to mothers having difficulty breastfeeding, were able to significantly increase breastfeeding rates within just a year.\textsuperscript{542} WIC and the Navajo government can create a Nation-wide breastfeeding campaign and encourage Navajo WIC clinics to make support groups available for mothers who are having trouble breastfeeding.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
\textbf{Foods} & \textbf{I and II} & \textbf{II and III} & \textbf{I and III} & \textbf{II} \\
\hline
\textbf{Fully Formula Fed} & A: 0-3 months & 6-11 months & A: 0-1 month & 0-5 months \\
B: 4-5 months & & & B: 1-3 months & \\
& & & C: 4-5 months & \\
\hline
\textbf{Partially Breastfed} & & & & \\
A: one can powder & & & & \\
B: 364 fl oz reconstituted liquid concentration & & & & \\
C: 442 fl oz reconstituted liquid concentration & & & & \\
\hline
\textbf{Fully Breastfed} & & & & \\
1 & & & & \\
0-5 months & & & & \\
6-11 months & & & & \\
\hline
\textbf{WIC formula} & & & & \\
A: 806 fl oz reconstituted liquid concentration & & & & \\
B: 884 fl oz reconstituted liquid concentration & & & & \\
624 fl oz reconstituted liquid concentration & & & & \\
\hline
\textbf{Infant cereal} & N/A & 24 oz & N/A & 24 oz \\
\hline
\textbf{Baby food fruits and vegetables} & N/A & 128 oz & N/A & 128 oz \\
\hline
\textbf{Baby food and meat} & N/A & N/A & N/A & 77.5 oz \\
\hline
\end{tabular}
\caption{Snapshot of the WIC Food Packages\textsuperscript{541}}
\end{table}

\textsuperscript{540} Id.
\textsuperscript{541} Telephone Interview with Desta Reff, Harvard Law School/Mississippi State University Delta Fellow (Feb. 26, 2015).
<table>
<thead>
<tr>
<th>TABLE VII-3 : WIC MONTHLY MAXIMUM FOOD PACKAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOODS</strong></td>
</tr>
<tr>
<td>IV: 1 through 4 years</td>
</tr>
<tr>
<td>V: Pregnant and partially breastfeeding (up to 1 year postpartum)</td>
</tr>
<tr>
<td>VI: Postpartum (up to 6 months postpartum)</td>
</tr>
<tr>
<td>VII: Fully breastfeeding (up to 1 year postpartum)</td>
</tr>
<tr>
<td><strong>JUICE</strong></td>
</tr>
<tr>
<td>128 fl oz</td>
</tr>
<tr>
<td>144 fl oz</td>
</tr>
<tr>
<td>96 fl oz</td>
</tr>
<tr>
<td>144 fl oz</td>
</tr>
<tr>
<td><strong>MILK</strong></td>
</tr>
<tr>
<td>16 qt</td>
</tr>
<tr>
<td>22 qt</td>
</tr>
<tr>
<td>16 oz</td>
</tr>
<tr>
<td>24 qt</td>
</tr>
<tr>
<td><strong>BREAKFAST CEREAL</strong></td>
</tr>
<tr>
<td>36 oz</td>
</tr>
<tr>
<td>36 oz</td>
</tr>
<tr>
<td>36 oz</td>
</tr>
<tr>
<td>36 oz</td>
</tr>
<tr>
<td><strong>CHEESE</strong></td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>1 lb.</td>
</tr>
<tr>
<td><strong>EGGS</strong></td>
</tr>
<tr>
<td>1 dozen</td>
</tr>
<tr>
<td>1 dozen</td>
</tr>
<tr>
<td>1 dozen</td>
</tr>
<tr>
<td>2 dozen</td>
</tr>
<tr>
<td><strong>FRUITS AND VEGETABLES</strong></td>
</tr>
<tr>
<td>$6.00 in cash value vouchers</td>
</tr>
<tr>
<td>$10.00 in cash value vouchers</td>
</tr>
<tr>
<td>$10.00 in cash value vouchers</td>
</tr>
<tr>
<td>$10.00 in cash value vouchers</td>
</tr>
<tr>
<td><strong>WHOLE WHEAT BREAD</strong></td>
</tr>
<tr>
<td>2 lb.</td>
</tr>
<tr>
<td>1 lb.</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>1 lb.</td>
</tr>
<tr>
<td><strong>FISH (CANNED)</strong></td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>30 oz</td>
</tr>
<tr>
<td><strong>LEGUMES, DRY OR CANNED AND/OR PEANUT BUTTER</strong></td>
</tr>
<tr>
<td>1 lb. (64 oz canned) OR 18 oz</td>
</tr>
<tr>
<td>1 lb. (64 oz canned) AND 18 oz</td>
</tr>
<tr>
<td>1 lb. (64 oz canned) OR 18 oz</td>
</tr>
<tr>
<td>1 lb. (64 oz canned) AND 18 oz</td>
</tr>
</tbody>
</table>

544 ibid.
<table>
<thead>
<tr>
<th><strong>Table VII-4: Summary of Food Assistance Programs</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What is it?</strong></td>
</tr>
<tr>
<td>SNAP</td>
</tr>
<tr>
<td>FDPIR</td>
</tr>
<tr>
<td>WIC</td>
</tr>
<tr>
<td>Largest hunger relief program in the US offering cash-based nutrition assistance to millions of low-income individuals across the country</td>
</tr>
<tr>
<td><strong>Eligibility</strong></td>
</tr>
<tr>
<td>SNAP</td>
</tr>
<tr>
<td>FDPIR</td>
</tr>
<tr>
<td>WIC</td>
</tr>
<tr>
<td>- Gross income of less than 130% of the poverty line</td>
</tr>
<tr>
<td>- Other eligibility criteria set by state</td>
</tr>
<tr>
<td><strong>Distribution</strong></td>
</tr>
<tr>
<td>SNAP</td>
</tr>
<tr>
<td>FDPIR</td>
</tr>
<tr>
<td>WIC</td>
</tr>
<tr>
<td>Purchase food items at eligible retail locations</td>
</tr>
<tr>
<td>- Choice of distribution center or tailgate pickup</td>
</tr>
<tr>
<td><strong>Governing Law and Authority</strong></td>
</tr>
<tr>
<td>SNAP</td>
</tr>
<tr>
<td>FDPIR</td>
</tr>
<tr>
<td>WIC</td>
</tr>
<tr>
<td>Federal USDA and FNS set basic eligibility requirements, application standards, vendor qualifications, and eligible food items, but states have some leeway in administering program</td>
</tr>
<tr>
<td><strong>Administration in the Navajo Nation</strong></td>
</tr>
<tr>
<td>SNAP</td>
</tr>
<tr>
<td>FDPIR</td>
</tr>
<tr>
<td>WIC</td>
</tr>
<tr>
<td>Through the states:</td>
</tr>
<tr>
<td>- Arizona Department of Economic Security</td>
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<td>- New Mexico Human Services Department Income Support Division</td>
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<td>- Utah Department of Workforce Services</td>
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<th>PROGRAM</th>
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| SNAP    | -United States Department of Agriculture (USDA) and Food and Nutrition Service (FNS) [http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap](http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap)  
- Arizona Department of Economic Security [https://www.azdes.gov/nutrition_assistance/](https://www.azdes.gov/nutrition_assistance/)  
- New Mexico Human Services Department Income Support Division [http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program__SNAP__asp](http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program__SNAP__asp)  
- Utah Department of Workforce Services [http://www.jobs.utah.gov/customereducation/services/](http://www.jobs.utah.gov/customereducation/services/) |
- Navajo Nation Department of Health WIC Program [http://www.nndoh.org/wic.html](http://www.nndoh.org/wic.html)  
- Arizona WIC Program [http://www.azwic.gov](http://www.azwic.gov)  
- Inter Tribal Council of Arizona WIC Program [http://itcaonline.com/?page_id=53](http://itcaonline.com/?page_id=53)  
- National WIC Association Navajo Nation Profile [https://www.nwica.org/states/navajo-nation](https://www.nwica.org/states/navajo-nation) |
SECTION VIII: SCHOOL FOOD & NUTRITION EDUCATION

As places where children and adolescents spend much of their days, schools are in a unique position to ensure that kids get healthy, balanced meals. The Navajo Nation can work to strengthen existing policies and champion new policies that improve nutrition, health, and education about these topics in school environments.

OVERVIEW This section of the toolkit considers strategies for improving the foods served in schools in the Navajo Nation. To improve school food environments, the Navajo Nation can design policies that encourage or remove certain foods from lunch menus and vending machines. They can also take steps to maximize participation in federal school meal programs to ensure that as many students as possible are receiving healthy meals each day. Many schools in the Navajo Nation are already deeply engaged in incorporating food and nutrition education into the curriculum and developing school gardens to provide students with opportunities for experiential learning and to instill a love and respect of the process of growing food. The Navajo Nation can improve policies and take advantage of grants to continue and expand these efforts.

1. Structure of School Systems provides a brief overview of the various school systems in the Navajo Nation.
2. School Food Environment illustrates the many ways that advocates can work to improve the nutritional quality of food served in schools, including strengthening nutrition standards, promoting healthy concession stands and fundraisers, and improving cafeteria design.
3. Farm to School Programs describes the types of policies and programs that schools can develop to increase the amount of locally grown food being purchased and served to students in school meals.
4. Food and Nutrition Education Initiatives lays out several options for incorporating food and nutrition education into the school curriculum, teaching children about the importance of eating healthy, and connecting them to how traditional, healthy foods are grown and prepared.

STRUCTURE OF SCHOOL SYSTEMS

The Navajo Nation Department of Diné Education (DODE) has a broad mandate to govern schools affiliated with the Navajo Nation. The Navajo Nation Tribal Council passed the Navajo Sovereignty in Education Act of 2005, which specifically declares the right of the Navajo Nation to oversee the education of its people.445

There are five different and independent school systems within the Navajo Nation.446 These include public schools (Arizona, New Mexico, and Utah), charter schools, schools run by the Bureau of Indian Affairs (BIA)/ Bureau of Indian Education (BIE), private schools, and schools under the direction of the Navajo Nation.447 This complexity should be taken into account when deciding on advocacy strategies to improve school food: notwithstanding its right to oversee the education of Navajo people, the Navajo Nation does not control every aspect of the management of all the schools where Navajo students are enrolled. Advocates must address the relevant authorities managing the different schools, with a particular focus on public schools (where around 90% of Navajo students are enrolled).

447 Id.
SCHOOL FOOD ENVIRONMENT

As institutions where students spend much of their days, schools should recognize that the food available to kids and the nutrition education they receive at school are significant drivers in shaping lifelong dietary habits. Schools provide a place for children to learn and grow, and can help to transmit and reinforce cultural knowledge. In school, children learn societal norms, how to interact with others, and how to lead healthy and productive lives.

The school food environment includes: formal school meals programs; other foods available for purchase during the school day (called “competitive foods”); foods served in the classroom for lessons or celebrations; and food available on school grounds at after-hour functions such as sporting events. The school food environment also includes discussions and education around food, agriculture, and nutrition, as well as food marketing in schools. Strategies for transforming the school food environment include:

- Increasing the amount of healthy food options wherever food is available on school grounds;
- Limiting access to unhealthy food, especially during and between usual meal times;
- Incorporating nutrition and food literacy education more fully into the school curriculum; and
- Limiting marketing and advertisements for unhealthy foods in schools.

School Meals Programs

The National School Lunch Program (NSLP) and National School Breakfast Programs (NSBP) are federally funded programs which provide free or reduced price meals to eligible students in schools. The current versions of these programs were established by the 2010 Healthy, Hunger-Free Kids Act (HHFKA), which is the main piece of federal legislation on school foods. HHFKA is the most recent reauthorization of the Child Nutrition and WIC Reauthorization Act, which is reauthorized every 5 years (the next reauthorization will take place in September 2015). Both the NSLP and the NSBP play critical roles in contributing to food security for children in school. This section will explore them in more detail, including the requirements with which children and schools must comply in order to participate in these programs, as well as the benefits they offer.

Reimbursable School Meals

The term “reimbursable school meals” refers to those meals provided to children at schools as part of the NSLP or NSBP. For low-income families, children can receive these meals free or at a reduced cost, and then schools receive federal reimbursement for those meals. The federal government lays out comprehensive standards with which schools must comply in order to receive these reimbursements. These standards require specific quantities of meat or meat alternatives, vegetables or fruits, grains, and

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milk. The quantity varies depending on the meal and the age of the children. There are also restrictions on the amount of sodium, sugar, and fat that can be included in these meals as well as calorie minimums and maximums that must be met. USDA provides specific recipes to help schools meet the regulations.

Participation in School Meal Programs
Children can be enrolled in the school meal program in two ways: parents can apply for the program by submitting an application documenting their total household income; or students can be automatically enrolled through a process known as “direct certification.” Students are entitled to free school meals if their families’ incomes are below 130 percent of the annual income poverty level. Students with family incomes below 185 percent of the Federal Poverty Level are eligible for a reduced price lunch. Children can be “directly certified” if they come from households receiving Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR), or Temporary Assistance for Needy Families (TANF) benefits. Foster, homeless, runaway, and migrant children, and children enrolled in Head Start also qualify for free meals. The Community Eligibility Option, discussed below, is a new option for enrolling low-income students to receive free meals at school.

Use direct certification to increase the number of children participating in NSLP and NSBP. As mentioned above, children from households that receive certain income-tested federal assistance benefits, and children in other difficult situations, can be directly certified for free meals in NSLP and NSBP, which means the school does not have to collect individual applications from their families as long as they can be verified as part of one of the eligible groups. Direct certification systems are different in each state, and some individual schools lack the resources to directly certify eligible students. For example, some schools only directly certify students with families that receive SNAP benefits and not those receiving TANF. The Healthy, Hunger-Free Kids Act of 2010 requires states to improve their direct certification process in order to increase enrollment of these categorically eligible children in school meal programs.

By maximizing direct certification in its schools and working with state education agencies to improve their procedures (in particular by improving the flow of data sharing between the state and tribal governments), the Navajo Nation can ensure that all students that are in need are receiving free school meals. Advocates can raise awareness with schools about the benefits of increased school meal participation and the need to expand it to all students, as well as by providing them with assistance on applying for direct certification. Advocates can also push for the Navajo Nation and state governments to develop better coordination procedures and provide support for local schools.

RESOURCES

559 7 C.F.R. § 245.6 (2014).
560 7 C.F.R. § 245.6 (2014).
**USDA Direct Certification Grants:** The USDA has offered **Direct Certification Grants** to states (though not tribes) to help them streamline their direct certification systems. **Utah**, which received this grant in 2013, directly certified 94% of SNAP participants for free school meals in the 2012-2013 school year. The Navajo Nation could encourage the New Mexico Public Education Department and the Arizona Department of Education to apply for USDA funding. In 2013, New Mexico directly certified only 78% of SNAP participants for free school meals and Arizona had one of the lowest rates of direct certification for SNAP participants nationwide, at 73%.

**Direct Certification Guides:** The States of Arizona and Utah have published documents aimed at providing schools with guidance on direct certification. Navajo Nation advocates could work on ensuring that these documents are available and accessible to schools (for instance by providing them with executive summaries of the documents or even with training on best direct certification practices on the basis of the states’ guidance).

**Use the Community Eligibility Option to increase participation in NSLP and NSBP.**

A provision included in the 2010 Healthy, Hunger-Free Kids Act permits a route to universal (meaning school-wide) participation in school meal programs: Community Eligibility. Under Community Eligibility, students no longer have to apply or be directly certified for free and reduced-price lunch. Eligible schools (those where more than 40% of students are enrolled in Head Start, homeless or in foster care, or from families enrolled in government aid programs such as welfare benefits) are given federal reimbursement based on a formula that takes into account the total number of children in the school, regardless of individual income-level. All children in the school then receive free breakfast and lunch. As of 2014, all eligible schools may enroll. In **West Virginia**, where the state government worked with eligible schools to enroll in the Community Eligibility Option, the state Child Nutrition Director reported that “challenges were minor compared to the significant benefits of community eligibility — higher school meal participation, reduced paperwork, improved administration, and elimination of identification of low-income students that can lead to stigma.”

Many of the schools within the Navajo Nation likely qualify for Community Eligibility, as the majority of households in the Navajo Nation fall below the national poverty line. Advocates can encourage DODE to ensure that all eligible schools take advantage of Community Eligibility to provide free school meals to all students. Advocacy can also be undertaken at the local level, since school districts and even individual schools have authority to exercise Community Eligibility.

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565 Id. at Fig. 4 (12).
572 Diné Food Sovereignty report, supra note 8, at 12.
RESOURCES

- **USDA Community Eligibility Provision Guidance and Q&As**: The USDA offers guidance documents that break down the process of applying to exercise the Community Eligibility Option and describe how the funds are disbursed to the school. 574

- **The No Kid Hungry School Calculator** can help schools to figure out if they are eligible for Community Eligibility and will provide a better understanding of the financial implications of the switch to universal free meals. 575

Increase participation in school breakfast by changing the way breakfast is served.
Many low-income children do not receive breakfast at home, and without a healthy meal to start the day it is difficult for children to concentrate and learn. In addition to benefiting kids, improving participation in the NSBP can help schools increase their federal reimbursements. Yet even when schools offer free breakfast, it can be difficult for students to get to school early, and there is stigma associated with being the only children at school early to receive breakfast. Because of these barriers and other challenges, for every 100 students who receive free or reduced-price lunch nationwide, only 53.2 receive free or reduced-price breakfast. 576 Notably, New Mexico is one of the strongest states for school breakfast: for every 100 students receiving school lunch, over 71.5 are also eating school breakfast. 577 While schools have made progress in offering school breakfast, there is still significant work to be done in making sure this healthy food is getting to all children that need it. 578 In Washington, D.C., the City Council voted in 2005 to create universal free breakfast for all schools and “breakfast in the classroom” programs for schools where 40% of the students were eligible for free/reduced meals. 579 School breakfast participation increased 34% in the first year among low income children and now 70% of children who eat school lunch also eat school breakfast (the third highest rate in the country). 580

DODE can provide guidance and technical assistance on methods of serving breakfast in schools that are known to increase student participation in the breakfast program, such as serving breakfast in the classroom or providing a bagged meal immediately upon the students’ arrival to school (known as a Grab’n’Go program). Communities can work with their local school districts to implement these changes as well.

RESOURCES

- **USDA’s Food and Nutrition Service** provides a web portal with fact sheets and strategies for increase school breakfast participation, including guidance on the nutrition guidelines that reimbursable meals under NSBP must meet. 582

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577 Id. at 6.

578 Id. at 2.


581 School Breakfast Program, supra note 576, at 6.

❖ **Share Our Strength Center for Best Practices** provides a web portal that includes information about best practices for increasing participation in the National School Breakfast Program. This resource also includes policy recommendations for increasing school breakfast participation.\(^{583}\)

**Maximize the use of the USDA Foods Programs.**

Besides using reimbursement funds from the NSLP and the NSBP to purchase foods through distributors, schools can order food through the USDA Foods Program. The USDA Foods Program offers hundreds of raw food products – including cheese, beef, turkey, chicken, legumes, fruits and vegetables – to schools.\(^{584}\)

During the 2013-2014 school year, schools were eligible to receive 23.25 cents worth of USDA Food for each lunch served in the previous year;\(^{585}\) this is known as a school’s USDA Foods entitlement. Schools can choose whether to use their entitlement dollars on unprocessed foods, known as Brown Box foods (such as raw chicken, fruits and vegetables, and dairy), or on processed foods, known as Diverted foods. Though the Brown Box ingredients from this program are free, schools must pay for the storage and delivery of foods; schools must also pay processing costs for those that are diverted.\(^{586}\) Many schools pay to divert their USDA Foods to companies that process the food into ready-to-eat items (like turning raw chicken into chicken nuggets). Navajo Nation advocates can encourage schools to order as many Brown Box foods as possible and to minimize the amount of processing to which these foods are subject (e.g. by serving them as roast chicken, salads, etc.) or to purchase less-highly processed diverted foods (e.g., grilled chicken strips instead of chicken nuggets). This would benefit not only the schools’ finances, but also the students’ health.

Schools can also choose to use some of their entitlement dollars to purchase fresh fruits and vegetables through the Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh). Through this program, the USDA works with the DoD to use their infrastructure to deliver fresh produce to schools.\(^{587}\)

**RESOURCES**

❖ **USDA DoD Fresh How-To Webinar:** The USDA offers a webinar, available for viewing at any time, that “reviews the nuts and bolts” of the DoD Fresh Fruit and Vegetable Program and points users to the list of vendors in different states and the online ordering system.\(^{588}\)

❖ **Menu planning tools:** The USDA’s Healthy Meals Resource System offers a series of resources to help schools offer healthier, minimally processed meals, including recipes and menu planning tools, worksheets and webinars.\(^{589}\)

❖ **University of California Davis Center for Nutrition in Schools** offers free online webinars about how to improve school foods, including how to introduce a salad bar, and ways to promote breakfast and lunch consumption of healthy foods.\(^{590}\)

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\(^{583}\) School Breakfast, SHARE OUR STRENGTH CTR. FOR BEST PRACTICES, http://bestpractices.nokidshungry.org/school-breakfast (last visited April 9, 2015).


\(^{586}\) Id.


\(^{588}\) Id.

Let’s Move Salad Bars to Schools\(^{591}\) donated 2,800 salad bars to schools in 49 states between 2010-2014. 57% of schools “saw an increase in student participation in the school lunch program” after they received salad bars.\(^{592}\) The Let’s Move Salad Bars to Schools website has extensive information about the benefits of salad bars and the application process. It also includes an advocacy toolkit for parents to ask schools to apply for a salad bar.

**Increase funding opportunities to support schools’ investments in cooking equipment, training and supplies to do from-scratch cooking.**

One of the main hurdles that schools may encounter when trying to purchase and serve more unprocessed foods is the lack of equipment and resources they have to devote to food preparation. Schools may not have fully stocked kitchens, or may be underutilizing their kitchens due to labor costs.

Advocates could help schools study the long-term budgetary benefits of working with raw and unprocessed food products obtained through the abovementioned programs. For example, advocates could help schools decide whether investing in equipment to process raw foods (e.g. blenders to make soup out of fresh vegetables or produce washers to quickly prep vegetables for salads) would be profitable in the long term despite the cost of the initial investment.

**Other School Food**

Competitive foods include any foods sold at school that are not part of NSLP or NSBP, such as those foods sold via vending machines, a la carte (sold during mealtimes but not part of the school lunch or breakfast), or in school stores. The Healthy Hunger-Free Kids Act of 2010 required the USDA to create nutrition guidelines for all food sold on school campuses, including competitive foods.\(^{593}\) These standards set limits on calories, salt, sugar, and fat in foods and beverages and promotes snack foods that have whole grains, low fat dairy, fruits, vegetables or protein as their main ingredients.\(^{594}\) However, USDA standards do not by themselves guarantee the nutritional quality of all foods served in schools: their scope does not extend to after-school or fundraising events, and some competitive foods can still have a very low nutritional profile despite complying with federal standards (e.g. low-fat tortilla chips or diet sodas).

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### Healthy Kids McKinley County Initiative

The Healthy Kids McKinley County Initiative, supported by Healthy Kids New Mexico, is making changes in school cafeterias, such as offering pre-made salads as reimbursable lunches to make it easier for children to choose healthy foods. To expand nutritious options at schools, it offers fruit smoothies as alternatives to pickles, popcorn and nachos that are sold at fundraisers. In high school, smoothies are another option to supplement the grab-n-go breakfast of plastic-wrapped sausage. Healthy Kids trained students and staff to make smoothies and applied for a national grant so four elementary classrooms could have free smoothies for breakfast every day for a month.

Create stricter nutrition guidelines for all foods served in schools.

Tribes, states and school districts can enact policies for school food that are more rigorous than federal requirements. For example, in Arkansas, elementary school cafeterias participating in the federal school meal programs are not permitted to serve desserts, fries, or ice cream. In junior high and high schools in Arkansas, schools are permitted to sell only snack items that could be part of the reimbursable meal, such as fresh fruits and vegetables, milk and other beverages that meet the federal school nutrition standards.

Tribal policies and school policies can also be more restrictive than federal law when it comes to fundraisers in schools. Traditional fundraisers often sell unhealthy foods and beverages such as chocolate bars and flavored popcorn. One study found that completely eliminating unhealthy fundraisers is associated with a 10% drop in students’ body mass indexes (BMI). Unhealthy fundraisers can negate the benefits of healthy school meals, and pressure parents and community members to purchase unhealthy foods to support their local schools. It also reinforces the message to children that unhealthy foods are desirable rewards. In contrast, healthy food or non-food fundraisers allow schools to send consistent, positive health messages and reinforce messages about healthy eating within the community. For example, the wellness council at Long Mill Elementary School in North Carolina hosted a talent show called “An Evening F.I.T.T. for the Stars” to raise funds to build a community walking trail. Students and staff participated by singing, playing instruments, dancing, and stepping. The school was able to raise over $800 through the event. Advocates can assist schools in piloting a healthy or non-food fundraiser, or improving the food options at concession stands. They can inform students and faculty about the viability of healthier alternatives to traditional fundraisers.

While many communities have been able to successfully ban the sale of specific foods in schools, there may be cases where this policy can prove difficult to implement in practice. As a complementary or transitional measure, a tax or price increase on unhealthy foods served at schools can be considered. This measure might encounter fewer difficulties than a complete ban, since the unhealthy food would still be available, just at a higher cost. As another alternative, moving vending machines further away from the cafeteria and the classrooms, or turning the vending machines off during the school day, can help reduce the consumption of unhealthy snacks at virtually no cost.

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597 M. Kubik, et al., Schoolwide Food Practices Are Associated with Body Mass Index in Middle School Students, 159 Archives of Pediatric and Adolescent Medicine, 1111-14 (2005).
599 Id.
600 Id.
Use school wellness policies as a tool to improve the school food environment.

According to the HHFKA, each school receiving funds through a federal school meals program must develop a school wellness policy that includes opportunities for public input, transparency, and an implementation plan. The DODE and Navajo Department of Health can work with schools to strengthen their wellness policies, specifically with respect to the school food environment. For example, these agencies could jointly issue a Model Wellness Policy. A Model Wellness Policy can: define what types of food may be served during classroom celebrations or at after-school events; take steps to increase the nutritional quality of the foods served in school; call for an increase in the use of local foods in school meals; and set goals for nutrition education, physical activity, and other school-based activities that promote student wellness. The Model Wellness Policy could draw from the Bureau of Indian Education’s (BIE) Health and Wellness Policy, which encourages BIE schools to buy fresh produce directly from independent produce vendors in an effort to increase student health.

Many states have laws that go beyond the federal legislation and require schools to create school wellness councils that meet regularly and are comprised of school staff, students, parents, and community members. These councils are tasked with creating, reviewing, implementing, and updating the school’s wellness policy. The organizational work of these councils is often essential for the adequate implementation of the mandated wellness policies. The Navajo Department of Health can require schools to establish school wellness or health advisory councils that meet regularly to address school health and nutrition within Navajo Nation schools. Advocates can push for the Navajo Department of Health to promote or require the creation of these councils.

RESOURCES

- **Model Wellness Policies**: The National Alliance for Nutrition and Activity (NANA) has published a Model Wellness Policy that can serve as a guide in developing a model policy that is more tailored to Navajo culture.

- The **Model Beverage and Food Vending Machine Standards** created by NANA can be used to improve the nutritional quality of the snacks and drinks offered in school vending machines. Advocates should remind schools that the switch to healthier alternatives in this context does not necessarily entail financial losses for schools.

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Children make food choices at cafeterias. For example:

- **Sweet Deals: School Fundraisers can be Healthy and Profitable** created by NANA has suggestions on how to make school fundraisers both healthy and profitable. 612
- **Helping students to develop a preference for healthy foods:** Many children tend to avoid healthy foods when they are used to the taste of processed products. NANA provides advice on how to encourage children to choose healthier foods. 613 The USDA’s Food and Nutrition Service also offers information on how to increase children’s enthusiasm for healthy and local foods. 614
- **The Chefs Move to Schools** program helps bring chefs into schools to get kids excited about eating healthy foods and cooking recipes from scratch. 615

**Work with schools and DODE to design smarter cafeterias.**

There has been a recent increase in research on how to restructure cafeterias to encourage students to make healthier choices. These simple and virtually cost-free changes can have a tremendous impact in the way children make food choices at cafeterias. For example:

- **Placing fruit at the end of the line** (by the cash register, where bottlenecks tend to be formed) helped increase the consumption of fruit by 70%, while offering it in colorful bowls, in a well-lit and convenient place has raised the consumption of fruit by 105%. 616
- **Placing the salad bar on the way to the cash registers** (so that students cannot avoid seeing it or walking around it) has been proven to dramatically increase the sales of salad in school cafeterias, since the visibility of food increases desire for the food. 617
- **Giving students a choice** between two vegetables (instead of requiring them to take one kind of vegetable) drastically reduces the amount of vegetables wasted. 618
- Along the same lines, creatively naming vegetables (“broccoli bites” instead of “broccoli” or “tender steamed carrots” instead of “carrots”), mirroring the practices of restaurants, was shown to increase sales of vegetables by more than 20% in two months. 619
- **Introducing a “healthy choices only” convenience line** has been proven to increase the consumption of healthy foods by 35%. 620
- **Requiring that students to pay in cash** for desserts or unhealthy snacks can also help decrease demand for these foods and increase sales of nutritious foods. 621

Advocates can work with their schools to incorporate these low cost changes into their cafeterias and school wellness policies. They can also encourage DODE to provide resources and funding to schools for designing smarter school lunchrooms.

618 See Smarter Lunchrooms, supra note 616.
619 Id.
622 See Smarter Lunchrooms, supra note 616.
RESOURCES

- The Smarter Lunchrooms Movement led by the Cornell Center for Behavioral Economics in Child Nutrition Program provides resources (such as webinars and workshops), research findings, and case studies on the ways that school cafeterias can be designed to help students eat healthier.

FARM TO SCHOOL PROGRAMS

Part of an effort to increase the nutrition of food served in schools can be to increase the purchase of healthy food from local sources. “Farm to school” programs connect schools to local farms with the purpose of supporting local farmers while providing students with healthy food and educational opportunities. Farm to school programs may also allow for students to visit the farm in order to learn about agriculture and food production. In the Navajo Nation, this connection is an important opportunity for students to learn about traditional foods and the connection between their lunch plate and Mother Earth.

The nutritional benefits of farm to school programs can be significant. Farm to school programs have been shown to increase students’ fruit and vegetable consumption, and introduce students to new fruits and vegetables as they form eating habits they will have for the rest of their lives. Serving more fresh fruits and vegetables can also help schools decrease added sugars and salt in school meals, as food service employees have control over the food preparation instead of using canned or processed produce, which can contain large amounts of added sugars and salt.

Adding locally grown produce to school meals can be done with little to no additional costs. Purchasing locally grown food can actually benefit schools financially by decreasing transportation costs, increasing student participation in the school meal program, and decreasing food waste as freshly picked produce will last longer than produce that has been picked early and shipped from far away.

The federal government strongly supports farm to school programs. In 2010, Congress approved a resolution to officially designate October as National Farm to School Month, to highlight the value of farm-to-school programs. Congress has also established the Farm to School

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STAR School Navajo Farm to School Program

The STAR School’s Navajo Farm-to-School project was launched to link Navajo farms with the STAR Navajo community-based elementary school. The project’s success gave rise to the creation of a manual containing valuable insights on the practical aspects of running a farm to school program, providing a culturally-specific farm to school model for other schools and farms to build upon. In particular, the report touches upon the food safety rules that apply to the development of farm to school programs, discusses procurement issues affecting participating schools, and offers solutions for them to work with the fresh foods provided by farms, notably dealing with menu adaptation, processing and storage of foods, and equipping the school kitchen. Resources for partner farms are also provided, with a particular focus on certification and production planning. This project was initially funded by the First Nations Development Institute subsequently receiving a grant from the USDA Farm to School Grant Program.


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Help schools apply for existing federal, state, and private resources for farm to school programs.

The Navajo Nation has had several successful farm to school partnerships. With a grant from the First Nations Development Institute, students in the STAR Charter School in Flagstaff, AZ in southwest Navajo Nation received educational presentations from local farmers and developed on-campus greenhouses where they participate in growing, harvesting, and tasting food. Funding is currently available at the state and federal level to support farm to school programs, and Navajo advocates can also call on the Navajo government to create a farm to school grant program.

New Mexico Grown Fresh Fruits and Vegetables for School Meals legislation was passed by the New Mexico State Legislature in 2012 and creates a recurring fund of $240,000 to support schools purchasing fresh fruits and vegetables locally grown in New Mexico. The state (1) connects school food service staff with local farmers; (2) helps school food service directors develop requirements for local products; (3) connects schools with local farmers; and (4) works with schools to create local preference policies.

Navajo advocates could work with New Mexico public schools in the Navajo Nation to seek out this funding and support. They can also advocate for an increase in the program’s funding. In 2015, a bill was introduced that would have increased the budget to $1.4 million, but the bill died in Committee.

Lastly, advocates could help schools apply for USDA Farm to School Grants. Congress established the USDA Farm to School Grant program to assist school districts or schools to plan, design, implement, or expand farm to school programs. These grants range from $20,000 to $100,000 depending on the type of project and anticipated project costs. In 2014, the STAR School in Flagstaff, AZ received $44,338 for the “Food for Navajo Schools Project,” which aimed to create a comprehensive plan to integrate local foods into school meals. In 2015, the Inter-tribal Agriculture Council in Billings, Montana received a $50,000 USDA Farm to School grant to include a more robust farm to school component in their annual membership meeting. This meeting brings in “hundreds of tribal food producers, agricultural professionals, and Native youth from across the nation.” The event will include a multimedia youth project where high school students will share their perspectives on food and agriculture.

630 Id.
631 Id.
632 N.M. HB § 96 (52d N.M. Leg. Sess. 2015).
634 Id.
637 Id.
638 Id.
Connect schools with local farms.
Navajo advocates can also work to make the crucial connections between schools and local farmers, who often do not know how to connect with each other. As one example, the tribal government could set up a web portal where schools and farmers could post what types and amounts of produce they are willing to purchase/sell, and be able to connect to potential partners. In Mississippi, the state department of agriculture created Mississippi MarketMaker (https://foodmarketmaker.com), an online database where schools and farms can connect. Schools can specify what types of products they are interested in purchasing, and narrow their farmer search to those growers in their region that are selling these products.

RESOURCES

❖ The First Nations Development Institute (FDNI) provided funding for the STAR Charter School farm to school pilot program, and is a funding resource for similar initiatives. 638

❖ National Farm to School Network offers information on how to establish farm to school programs in schools through webinars, educational resources (including instructions on how to establish a school garden), and sample activities that can be part of a farm to school program. 639

❖ On an annual basis, the USDA Farm to School Grant Program awards up to $5 million in competitive grants for training, supporting operations, planning, purchasing equipment, developing school gardens, developing partnerships, and implementing farm to school programs. 640 Funding through these grants also can be used to provide training and technical assistance for child nutrition foodservice professionals and support stronger school nutrition education programs. Additionally, it can help schools purchase needed kitchen equipment to serve meals cooked from scratch. 641

❖ The USDA Food and Nutrition Service has published a series of free webinars on Finding, Buying and Serving Local Foods 642 that cover many procurement-related topics, such as how to conduct a local procurement baseline assessment, how to find local producers, how to work with different procurement methods to purchase local foods, or how schools can use USDA Foods and DoD Fresh as resources to purchase locally.

Develop Navajo Nation food safety certification for farms selling to schools and other institutions.
As mentioned in Section V: Food Processing, Distribution and Waste, the Navajo Nation government should develop a food safety certification that is reasonable and responsive to the specific conditions of Navajo farms. The current voluntary USDA Good Agricultural Practices (GAP) certification and Good Handling Practices (GHP) for farms can be overly burdensome and costly for small farmers, and can be a barrier to market entry for those farms. While GAP/GHP certification is not required for farms to sell to schools, some schools will rely on it for assurance that the food was grown and processed safely. If the Navajo Nation developed its own food safety certification, schools could choose to rely on this certification instead, and would be able to purchase food from those farms with confidence.

Geographic Preference

641 Id.
One extremely effective way to increase farm to school purchasing is through geographic preference policies that give preference to foods that are produced locally. The Navajo Nation already allows programs funded by the tribe to grant preference to certified Navajo-owned businesses. The Navajo Nation Business Opportunity Act grants “first opportunity and contracting preference to qualified Navajo businesses for contracts, subcontracts, grants and subgrants sponsored by the Navajo Nation and all public and private entities.” Under the Act, for contracts over $50,000, public institutions must set a maximum feasible price for the contract. Then they must first consider the bids of 100% Navajo-owned and controlled businesses (“Priority #1”), awarding the contract to the qualified bidder offering the lowest bid in this category. If no such business has submitted a valid bid, then the procuring party will examine the bids submitted by businesses 51-99% Navajo-owned and controlled or 51-100% owned and controlled by other Indian tribes (“Priority #2”), awarding the contract to the business offering the lowest bid in this category. Only if no Indian-owned and controlled businesses have submitted valid bids can the procuring party consider offers from other bidders.

These types of policies make it easier for local farmers to compete with larger distributors in the school bidding process. Locally sourced foods, particularly from smaller farms, might cost more because large food distributors benefit from economies of scale that small farms cannot offer. In order to encourage schools and institutions to create geographic preference policies, the USDA issued a rule in 2011 that makes it clear that schools using federal money as part of the NSLP or NSBP can preference local foods, so long as they specify on their bid forms that they will be utilizing such a preference.

**Implement a geographic preference policy for schools in the Navajo Nation, in certain states, or in a specific school or district.**

According to the USDA geographic preference rule mentioned above, schools using federal dollars to purchase food can provide a price preference to local farmers or producers by equating geographic proximity to a decrease in price on the bid, thus making local foods appear less expensive comparatively. For example, imagine a school offers a 10 percent price preference to bidders within a certain geographic proximity and receives three bids. As seen in the chart below, the 10 percent preference could make a difference in the way the price appears such that the local producer (Bidder 2) would be able to win the bid.

<table>
<thead>
<tr>
<th>Table VIII-1: Geographic Preference in Sample Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bidder 1</strong></td>
</tr>
<tr>
<td><strong>Price</strong></td>
</tr>
<tr>
<td><strong>Meets Geographic Preference</strong></td>
</tr>
<tr>
<td><strong>Price with Preference Points</strong></td>
</tr>
</tbody>
</table>

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643 Navajo Nation Code, tit. 5 § 201.E.
644 Navajo Nation Code, tit. 5 § 203.B; § 205.A.
645 Navajo Nation Code, tit. 5 § 205.E.1.
647 Navajo Nation Code, tit. 5 § 205.C.5.
650 Adapted from chart in Procurement Geographic Preference Q&As, supra note 648.
Advocates can approach the superintendents of their school districts to ask them to use a geographic price preference. They can also push for the Bureau of Indian Education to enact a price preference in its schools or for public schools in Utah, Arizona or New Mexico to establish a price preference.

It is important to note that the school or district will stay pay the original bid price for the product, meaning that although local foods can win the contract, they may still cost more. Some schools may not be able to pay these increased costs. In order to help with this financial burden, the Navajo government could offer financial incentives to schools that award percent price preferences to local producers, such as reimbursements of the excess cost incurred when awarding a percent price preference, or infrastructure improvements to facilitate the preparation of fresh foods in schools (such as produce washers, ovens, refrigerators, etc.) For example, in 2013 the Oregon State Legislature committed $1.2 million to Farm to School costs, including reimbursing schools for purchasing locally-grown food and supporting food and nutrition education.651 Navajo advocates could encourage the Navajo Nation government’s investment in a Farm to School fund.

Purchase school food from local farmers outside the formal bid process.
Aside from geographic preference policies, another way for public schools to increase their purchases of local foods is to purchase foods from local farmers outside of the formal bid process. If a school decides to conduct a commercial transaction with a local farmer that is considered a “small purchase,” the school does not have to go through a formal bid process.652 This enables small farms to sell produce without going through the formal process, thus lowering administrative costs for both the farmers and the schools. Currently, the federal small purchase threshold is $150,000 per purchase, but states have set their own small purchase thresholds anywhere from $5,000 to the full $150,000 federal maximum.653 Currently, Arizona, New Mexico, and Utah use the following thresholds: Arizona: $50,000654; New Mexico: $20,000655; Utah: $5,000.656

Advocate for states to raise their small purchase threshold.
The low small purchase thresholds in New Mexico and especially in Utah can make it difficult for schools and farmers to avoid the formal bid process when entering into contracts.657 Advocates can push for raising the state small purchase thresholds to the federal standard.

Depending on the amount of the contract, schools will either be working under the small purchase threshold, or (if the amount is over the threshold), using one of two methods: Invitation for a Bid and Request for Proposals. All of these purchasing options are used throughout the Navajo Nation. Table VIII-2 lays out

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654 Id.
657 Memorandum CN# 17-13, supra note 653.
approaches for helping local schools districts using any of these bid methods procure more locally-produced food products.  

<table>
<thead>
<tr>
<th>PROCUREMENT METHOD</th>
<th>SELECTION PROCESS</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
</table>
| **Simplified Acquisition** | **[Small purchase procedures or informal procurement]** | - To give schools more flexibility in making small purchases from local farms, advocate for the state to increase the small purchase threshold to the federal maximum.  
- Advocate for schools to utilize the simplified acquisition process when they purchase foods that can be grown locally, as it makes it easier for local farmers to sell to schools. |
| **INVITATION FOR BID (IFB)** | **[Sealed bids or formal advertising]** | - Encourage schools to include specifications in the IFB that prefer local foods, such as “picked within one day of delivery,” “harvested within a certain time period,” or “traveled less than XX miles or hours” and then choose the lowest price option from bidders that meet this requirement.  
- Advocate for a percent price benefit to local farms by making geographic proximity count as a discount, thereby decreasing the bid total for local products. This would lower the bids from local farms in comparison to non-local farms, enabling local farms to win more contracts. |
| **REQUESTS FOR PROPOSALS (RFPs)** | **[Competitive proposals]** | - Help the school amend its RFP to include questions about the geographic origin of food products and make geographic proximity count as a positive factor in choosing the most beneficial bid. |

Assist schools in changing their contracts with food distributors.  
Schools generally sign one year or multi-year contracts with their food distributors. If the termination date of the existing contracts is near, advocates can help schools develop a new RFP that includes a preference for locally-grown foods. If schools are locked into contracts for more time, they can consider the possibility of negotiating an early termination date or contractual modification. The Navajo Nation government could

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659 7 C.F.R. § 3016.36.  
660 Procurement Geographic Preference Q&As (2012), supra note 648.  
661 Id. at 4–5.  
662 Id.  
663 Presentation: School Lunch Procurement and Using Geographic Preference, supra note 658.
offer legal assistance or economic support to the schools wishing to modify these contractual terms if the reason for the desired modifications is to include a geographic preference.

**FOOD AND NUTRITION EDUCATION INITIATIVES**

In addition to eating healthy foods, schools can be places where students gain an appreciation for proper nutrition and healthy eating, while developing a spiritual relationship with their food. Many schools in the Navajo Nation are already incorporating nutrition and food literacy into the school curriculum and using school gardens as a powerful educational tool.

**Incorporate education about food into the school curriculum.**

Education on traditional Navajo foods and their nutritional properties could be incorporated into the curriculum, providing children with sound knowledge on human nutrition while fostering learning of Navajo culture. A culturally specific addition to the curriculum would be the teaching of traditional Navajo ways of hunting and fishing, as well as the ability to identify wild edibles available on Navajo land. These topics could be taught alone or incorporated into other subjects, such as science, geography or history. Navajo advocates could encourage the incorporation of food education into the school curriculum with school boards or parents’ associations, and school districts. The Navajo Special Diabetes Project also gives lessons about healthy food in schools, and could be a great resource for advocates.664

Advocates could also propose special events in schools that could serve to foster students’ knowledge of and interest in traditional Navajo food and healthy eating habits, such as the celebration of a “Navajo Foods Week” focused on educating students on knowing and preparing healthy Navajo foods. Vice President Rex Lee Jim developed a program called the Navajo Kentuckians, a group of Food Literature students and teachers from Fern Creek High School in Louisville, Kentucky and Window Rock High School in the Navajo Nation. Through this collaboration, students have been able to learn about the concept of food literacy and how food interacts with “culture, memory, place, health, and equity.”665 This collaboration is supported by the Bread Loaf Teacher Network (BLTN)666, which can be a valuable resource in developing future collaborations and programming.

**RESOURCES**

- **Let’s Move! In Indian Country (LMIC)** seeks to improve the health of American Indian and Alaska Native children, who are affected by childhood obesity at some of the highest rates in the

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664 Navajo Nation Special Diabetes Project, supra note 41.
Navajo Technical University received a $75,000 grant from Walmart to give cooking lessons to schools within Navajo Nation. The University students will travel by food truck to schools across Navajo Nation, teaching how to prepare and present Native foods using healthy cooking techniques.


Develop school gardens.

School gardens can be a powerful component of a nutrition education program or education in general. Students active in school gardens eat a greater variety of vegetables, are more willing to try new vegetables, and consume more vegetables at school. Furthermore, school nutrition classes that incorporate garden education are more successful in altering eating habits than nutrition classes alone. In many cases, these hands-on school programs tie in with classroom lessons in science, math, reading, and other subjects.

There are several common hurdles to starting a school garden program. In a 2005 survey of California teachers, the greatest challenges were lack of time (88%) and a lack of sufficient curricular materials linked to educational standards (74%). For those without gardens, the greatest barrier was a lack of funding (60%). It is important that schools be connected with resources for funding and curricular materials.

FoodCorps is an organization of young volunteers that are dedicated to helping schools start and maintain school gardens as an educational resource. Hosted by community organizations, FoodCorps members work to teach and connect children with healthy and fresh food, focusing on creating school gardens to be used as teaching platforms.

School districts interested in bringing on a FoodCorps member for a Farm-to-School or school garden project should visit the FoodCorps website and submit a request during the application cycle. FoodCorps works in Arizona (with the Johns Hopkins Center for American Indian Health) and New Mexico (with the University of New Mexico Community Engagement Center and Farm to Table NM).

Furthermore, in order to avoid placing too great a burden on teachers, community members could help teachers maintain school gardens. Alternatively, community centers or spiritual centers near schools could

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669 Navajo Nation Special Diabetes Project, supra note 41.
670 Michelle M. Ratcliffe et al., The Effects of School Garden Experiences on Middle School-Aged Students’ Knowledge, Attitudes, and Behaviors Associated with Vegetable Consumption, 12 HEALTH PROMOT. PRACTICE 36, 36–43 (2011).
673 Heather Graham et al., Use of School Gardens in Academic Instruction, 37 J. NUTR. EDUC. BEHAV. 147, 147–51 (2005).
674 Id.
676 Id.
build a garden that the students and teachers can access.

RESOURCES

- **Navajo Native Plant Garden**: The Navajo Forestry Department runs the Native Plant Garden in Fort Defiance, which cultivates plants that are traditionally useful to the Navajo, either for medicinal use, culinary purposes, basketry, cultural, or ceremonial use. Students travel to this garden on field trips, and information about the plants is available to individual and community gardeners.

- **Arizona 4-H**: Operated out of Arizona State University Cooperative Extension, the 4-H program has offices Shiprock, Tuba City, and Window Rock, and provides enrichment and education on a variety of topics, including farming and raising livestock and other small animals.

- **Alliance for a Healthier Generation’s Healthy Schools Program**: The Bureau of Indian Education (BIE) introduced the Alliance’s Healthy Schools Program in Navajo schools, such as Chee Dodge Elementary School in Yatahey. The school teaches health education, schedules time for physical activity throughout the day, and cultivates a large school garden that focuses on traditional Navajo food-growing practices. The curriculum around food “encourages students to think about what their grandparents ate, the balance of food and physical activity, and to see the connection between healthy behaviors and diabetes.”

- **Food Distribution Program on Indian Reservations Grants for Food Education**: Navajo schools may be able to obtain financial assistance for nutrition education from FDPIR, which issues competitive grants for food education programs.

- **Cooking with Kids**: This independent program in New Mexico aims to improve children’s nutrition by offering classes and lessons plans for grades K-6. Some sessions teach students how to prepare healthy, affordable recipes, and others offer “fruit and vegetable tastings” to introduce students to healthy and tasty produce.

The Navajo Nation and its schools are using multiple tools to transform the school food environment. From increasing the amount of healthy local produce that appears in school meals and snacks to integrating food more completely into every aspect of the academic curriculum, advocates across the Navajo Nation have taken strong strides toward changing the way that students eat and think about food. The information in this chapter can be used to support ongoing improvements in the school food environment and culture.

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678 Id.


CONCLUSION: PLANNING A MORE ROBUST NAVAJO FOOD SYSTEM

The 2014 Diné Food Sovereignty report from the Diné Policy Institute (DPI) made a strong case for community-based food system planning, with the ultimate goal of strengthening local food production and increasing food sovereignty in the Navajo Nation. This toolkit strives to support the Navajo Nation in driving its own policy reform efforts by offering a tailored survey of knowledge and information about food laws and policies relevant to the Navajo Nation.

Achieving a more robust, independent and self-sustaining food system is a complex goal that communities all across the globe are working towards. DPI’s Diné Food Sovereignty report underscored the entwinement of all aspects of the food environment in the Navajo Nation; the report recommended changes in multiple areas with ample opportunity for input from tribal members.

One way to achieve the overarching goal of increasing food sovereignty is to undertake formal development of a Navajo Nation-wide “Food System Plan.” Food System Plans bring together key community members and community experts to investigate the food system and explore a coordinated set of solutions to identified problems and issues. Such Plans, developed with full participation and partnership of the community, reflect the unique perspectives and address the specific needs of the wide variety of stakeholders involved in their drafting. The Navajo Nation can design a Plan development process that respects cultural values and traditions. To ensure that discussion remains community-based, regional Food Policy Councils can be formed (similar to the Western Navajo Food Policy Council already in existence) that examine food security, food accessibility, and farm policy on a local level.

The process of developing a Food System Plan is an opportunity to look at the food system as a whole and address its implications for other substantive areas, from political sovereignty to cultural preservation to health and economics. Plans can help keep food issues at the forefront of government discussions on topics

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681 See Diné Food Sovereignty report, supra note 8.
682 Id.
such as land use and education. They signal that food sovereignty is a central government concern, and provide a living document that can guide policymaking and provide guidelines to state budgeting and investing in long-term food system improvements.

Food systems planning can be complex and time-intensive, and should be conducted in tandem with other policy reform efforts. By outlining the current food system structures and identifying opportunities for change, this toolkit aims to support the tribal government, local Chapter governments, and Navajo food advocates in improving food policies that affect the Navajo Nation. It provides many strategies and options, including both short-term policy changes and longer-term goals. Moving forward, the Navajo people have the opportunity to decide what policy and programmatic solutions should be prioritized and have the most potential to improve the health and economic prosperity for their people.