

UNIVERSITY OF
ARKANSAS

Empowering Indian Country through economic development and greater food access

Model Tribal Food and Agriculture Code

National Indian Health Board
2021 National Tribal Public Health Summit
April 29, 2021

Indigenous Food and Agriculture Initiative

University of Arkansas Office of Economic Development



Our Founding

- Establish in the Univ. of Arkansas School of Law in 2013 by:
 - Vice-Chancellor Stacy Leeds; and
 - Founding Director Janie Simms Hipp
- Moved with Vice-Chancellor Leeds to Office of Economic Development in July 2018

Our Mission

Enhance health and wellness in tribal communities by advancing healthy food systems, diversified economic development, and cultural food traditions in Indian Country.



Our Work in Indian Country

Putting Tribal Sovereignty in Food Sovereignty

We provide strategic legal analysis, policy research, and educational resources to empower Indian Country through food sovereignty, agriculture, and economic development.



Model Tribal Food and Agriculture Code

- Envisioned by IFAI's founding director Janie Simms Hipp
- The ***Model Tribal Food and Agriculture Code Project*** serves as a resource for Tribal governments, providing a comprehensive set of model laws for review, adoption, and implementation.
- The model laws contained in the code were designed by IFAI and contributing attorneys to ***promote food Sovereignty*** by **facilitating agricultural production, food systems development, and health outcomes improvement** in Indian Country.



Code Project: Supporters

AGUA FUND, INC.



FARM CREDIT **MAZON** | A Jewish Response
To Hunger

NoVo Foundation
create. change.



W.K.
KELLOGG
FOUNDATION™

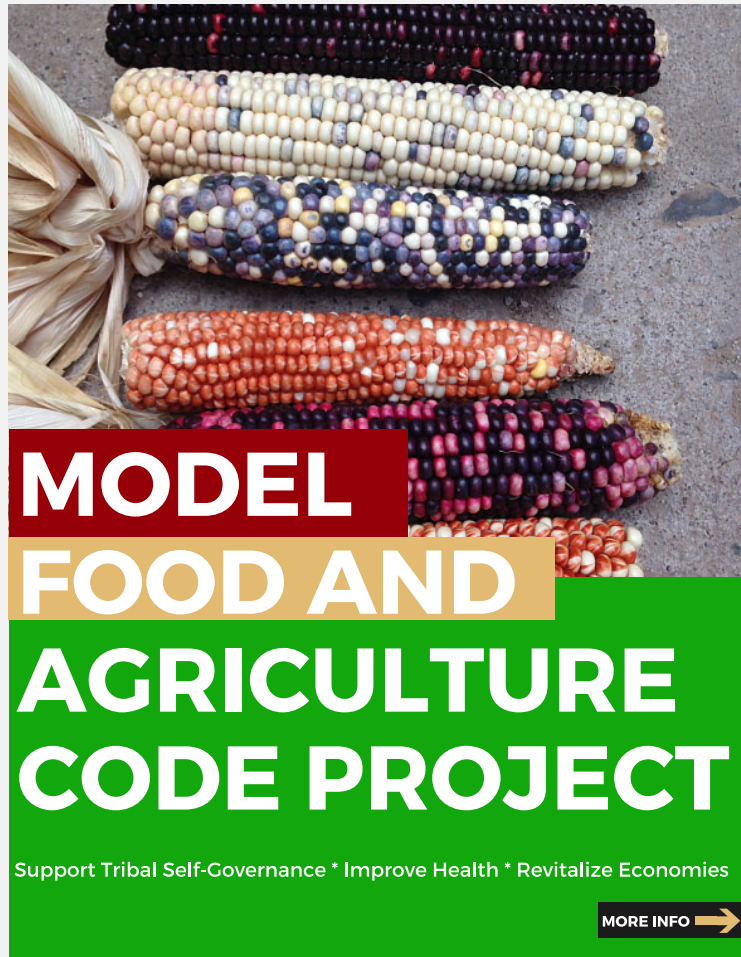


Code Project: Partners

- The Initiative gives special thanks to:
 - Columbia River Intertribal Fish Commission
 - Intertribal Agriculture Council
 - Blackfeet Tribe
 - Menominee Nation
 - Quapaw Tribe
 - Great Lakes Intertribal Fish & Wildlife Commission
 - National Congress of American Indians
 - Native American Rights Fund
 - Public Health Law Center



Code Development



- ❖ Project supported by the Shakopee Mdewakanton Sioux Community, the W.K. Kellogg Foundation, MAZON: A Jewish Response to Hunger, AguaFund, Inc., Farm Credit, and NoVo Foundation
- ❖ Developed by IFAI attorneys along with key external partners
 - Intertribal Agriculture Council, Columbia River Intertribal Fish Commission, Public Health Law Center, Tribal governments
- ❖ Process:
 - ❖ Year One– groundtruthing & community discussion via roundtable sessions around Indian Country
 - ❖ Years Two & Three-- research, drafting, revision
 - ❖ December 2018: code released, available at www.tribalfoodcode.com



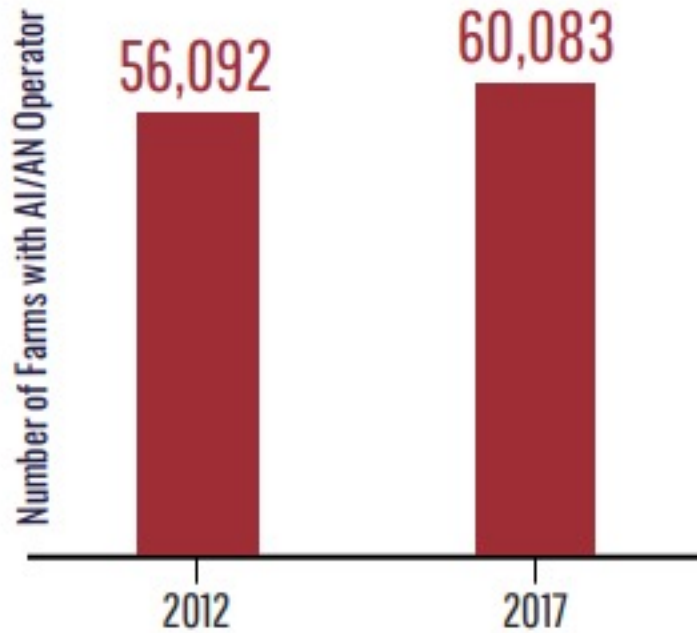
INDIAN COUNTRY DATA FARM-TO-TABLE

2017 Census of Agriculture Update

American Indian/Alaska Native (AI/AN) farms make up 3% of all farms in the United States.



Number of Farms Counted with an AI/AN Producer



7%
increase

in number of farms counted with an AI/AN producer from 2012 to 2017



↑ 24%



Fruit and tree nut farming increased 24% from 1853 farms counted in 2012 to 2302 farms counted in 2017.

↑ 20.2%



Beef cattle ranching and farming increased by 20.02% from 20617 ranches counted in 2012 to 24744 ranches counted in 2017.

↑ 34.03%



Sheep and goat farming increased by 34.03% from 6817 operations counted in 2012 to 9137 counted in 2017.

↑ 20%



Greenhouse, nursery, and floriculture farming increased by 20% from 650 counted in 2012 to 779 counted in 2017.





Market value of agricultural products sold by AI/AN producers increased 9.12% from \$3.24 billion in 2012 to \$3.5 billion in 2017.

Market Value of Agricultural Products Sold by AI/AN Producers



Market value of livestock, poultry, and related products increased 15% from 2012 to 2017.



Market value of crops, including greenhouses and nurseries, increased 1.8% from 2012 to 2017.

Model Code Project Chapters

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- I. Jurisdiction and Developing a Tribal Department of Agriculture
 - II. Traditional Foods and Seeds
 - III. Health and Nutrition
 - IV. Animals and Livestock
 - V. Slaughter of Animals and Sale of Meat
 - VI. Horses
 - VII. Land Use
 - VIII. Agriculture and Food Safety
 - IX. Plant Production, Health, and Sale of Produce
 - X. Aquaculture
 - XI. Bees and Honey Production
 - XII. Agroforestry and Silviculture
 - XIII. Trade and Marketing of Agriculture Products
 - XIV. Liability for Agriculture Production and Enterprises 
 - XV. Water
 - XVI. Conservation
 - XVII. Alternative Agriculture Production
 - XVIII. Agriculture Labor
 - XIX. Agriculture Business Entities



Why Have a Food & Agricultural Code?



- Promote food sovereignty through Tribal sovereignty:
- Provide resources to protect traditional plants, medicines and foods
- Provide clarity and protection for Tribal food producers and food businesses
- Develop economic opportunity
- Facilitate intertribal trade
- Access emerging agricultural opportunities (2018 Farm Bill)
- Signal to other governments—federal, state, and local—what Tribal policy is for Tribal food systems.

Creating Pathways for Tribal Trade



- The Model Tribal Food and Agriculture Code can provide a starting point to set the framework for a Tribal government wishing to increase its presence in conducting international or intertribal trade:
 - **Ch. XIII - Trade and Marketing of Agricultural Products**
 - Contains language to establish a Tribal Economic Development Authority (TEDA) to serve as the formal home within the Tribal government for all external trade efforts.
 - Can be granted special authority enter into agreements with other Tribal Nations to facilitate pathways to establish and Inter-Tribal trade network.
 - **Ch. XIX – Agricultural Business Entities**
 - Contains language to form Tribal Limited Liability Companies and Tribal Cooperatives and protect the individual Tribal member assets when engaging in trade. Also contains a discussion of relevant Uniform Commercial Code provisions.



Importance of Value-Added

2016 Food dollar: Industry Group (nominal)



Value-added means
more jobs, lower costs

3 steps would more
than TRIPLE
Reservation Economies



Accessing International Markets



- **USDA Market Access Program**

- Encourages the development, maintenance, and expansion of commercial export markets for agricultural commodities.
- USDA Foreign Agriculture Service may enter into agreements with eligible participants to share the costs of promoting and marketing eligible domestic commodities overseas
- The Intertribal Agriculture Council is a participant in MAP and administers the program through the American Indian Foods Program
 - Provides export readiness training and assistance for the export presence of American Indian food products and incorporation of those products into international food trade shows.
 - 2014-2016, IAC's MAP support \$62 million sold – including Wild Rice, Bison Jerky, Teas, breads, and chocolates, among others
- The 2018 Farm Bill provides \$200 million in direct appropriations to MAP per year through



Food Security & Economic Development Opportunities



- **"638" food procurement for FDPIR**

- The 2018 Farm Bill for the first time extends "638" Tribal self-governance authority to USDA.
- One of those provisions opens up a demonstration project for Tribal Nations to enter into self-determination contracts to procure food for the Food Distribution Program on Indian Reservations (FDPIR) food package.
- Congress has appropriated \$6 million for this project to date.
- Tribal food procurement standards for this will be important in the success of this project, because Tribal procurement standards, not federal standards, will be used here, promoting Tribal sovereignty in this food sourcing for the first time.

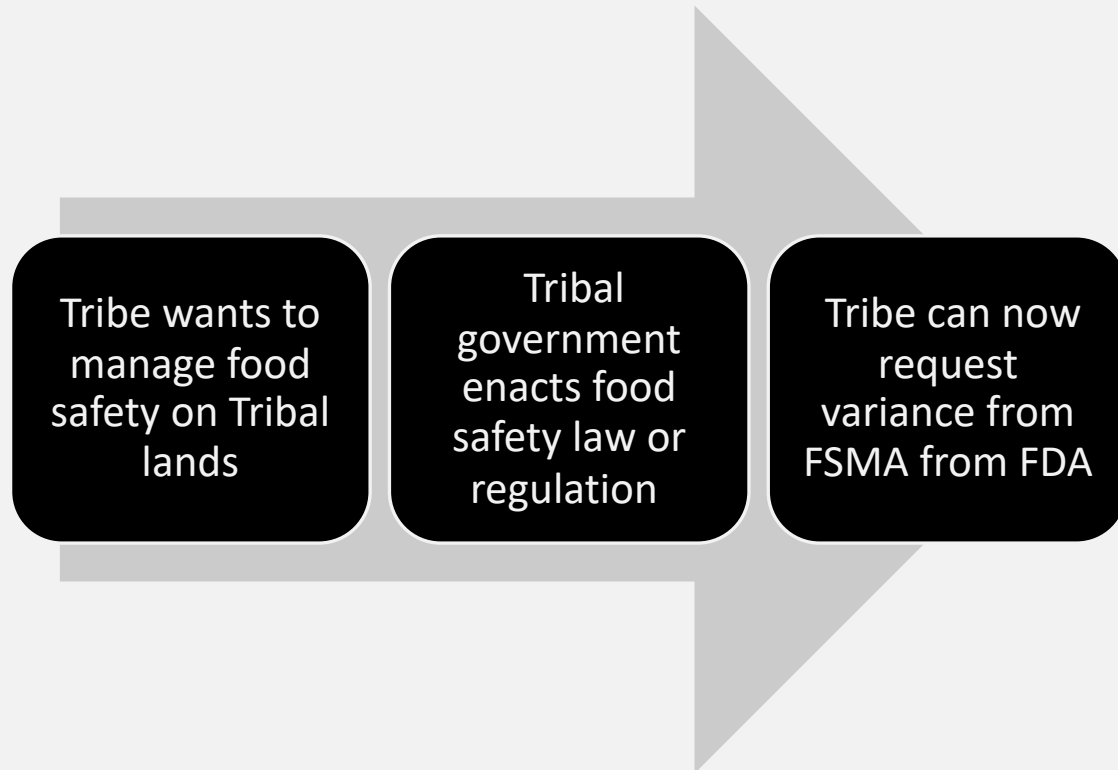


Food Safety



- All of these examples involve a need for food safety regulation and guidelines
- Tribal Nations have been involved in food safety from time immemorial, and the Model Tribal Food & Agriculture Code positions Tribal Nations as the most appropriate government to shape food systems on Tribal lands—that includes food safety.
- Recognizing that Tribal Nations and AI/AN producers are already engaged in international food trade, the Code offers a harmonized FSMA approach so that producers have clarity and can easily access all available markets.

Example: Food Safety regulation under FSMA



- Food safety is an important consideration for any food producer no matter where they are.
- The FSMA has changed our regulatory landscape for food safety onto the farm.
- Tribal governments are uniquely situated to use Tribal law and policy in a way that:
 - Protects Tribal producers and food businesses; and
 - Provides clarity to everyone—including state/federal regulators—that the Tribal Nation is the appropriate regulator on Tribal lands
 - Provides clarity to producers on Tribal lands, they know what rules to follow and who to reach out to about them



TRIBAL DEPARTMENT OF AGRICULTURE – CREATION

I. OVERVIEW

This section establishes a Department of Agriculture, an important feature to consider adopting in today’s regulatory environment. Many tribes regulate agricultural and food production functions through other cabinet-level departments within the tribal government structure, perhaps most commonly through a Department of Natural Resources or Department of Health & Human Services. While food and agriculture certainly touch on these two highly relevant areas, it may be worthwhile for adopting tribes to entertain the creation of an entirely separate regulatory entity at the tribal government level that has within its purview all aspects of food production and policy encompassed by this Model Tribal Food and Agriculture Code. This is potentially crucial for a number of reasons. First, consider that state departments of agriculture interface directly with one another and with the United States Department of Agriculture (“USDA”) in a meaningful government-to-government way. Information about grant opportunities, loan programs serving American Indian producers or agribusinesses, and more flows directly from USDA to designated points of contact at the state departments of agriculture. State departments of agriculture have even created their own national organization through which they can comment on pending legislation, such as farm bills, that affect agricultural production and economic development through food and agriculture.

Further, for tribes interested in developing an Agricultural Resources Management Plan (“ARMP”) pursuant to the American Indian Agricultural Resources Management Act, Pub. L. 103-177, 107 Stat. 2011 (codified as amended at 25 U.S.C. §§ 3701-3746) establishing such a department may prove a critical first step in designating the particular entity within the tribe that will be responsible for developing the ARMP and ultimately ensuring that the goals of the tribe as indicated in that document are carried out.



IV. TRIBAL CODE COMMENTARY

The Model Code is modifiable depending on the particular needs of the adopting tribe. This is especially true for the terminology used: “Commissioner” is easily traded for “Secretary” or other language that comports with the framework that the tribe currently uses for other departments. However, the name of the head of this department is not a small consideration, and the drafters encourage balancing different terminology with the need to ensure that this newly created position is instantly recognizable to external regulators as having parity with a state Secretary or Commissioner of Agriculture. At the state level, most states call the head of their agricultural department a Commissioner or Secretary, and the drafters follow this model for the sake of uniformity. An adopting tribe might also choose another term, such a “Director” or “Administrator,” but alternate naming conventions may create confusion with external regulators. While this is entirely a perception problem of the external regulator and has no actual reflection on the knowledge and expertise of the tribal government, it is nevertheless an important consideration to make when creating this kind of new department.

The Model Code further adopts a departmental model that very much duplicates the USDA at the federal level. This is done for similar reasons to the above. It offers external regulators a familiar framework to navigate and therefore facilitates easier communication, which may be an important consideration if the tribe has interest in seeking cooperative agreements, memorandums of understanding, or the like, with federal entities within USDA.

Naming conventions are also a consideration for the actual name of the department. The Model Code uses “Department of Agriculture,” but a longer title may be more relevant. Depending on the wishes of the Chairman and Tribal Council, the actual name of this department could include not only agriculture, but food, nutrition, sustainability, and related terms. For instance, the “Department of Agriculture, Food, Forestry and Nutrition” might be more in line with the tribe’s vision for the work of this entity. However, taking away the word “Agriculture” may create confusion.



b. Subject matter areas

i. The [Tribal Department of Agriculture] shall have responsibility, as funds allow and as directed by the Chairman of the [Adopting Tribe] and the [Adopting Tribe's Legislature] over the following subject matters, and as funds allow, to develop a strategic plan and implementation recommendations for the [Adopting Tribe] in the following subject matter areas:

1. Horticulture (produce, fruits and vegetables)
2. Poultry
3. Eggs
4. Animal Feed
5. Food Safety (for both Human and Animal Consumption)
6. Fertilizer use, regulation, and oversight
7. Weights and Measures; Other Agricultural and Food Standards
8. Seed preservation, protection, and propagation
9. Pesticide use; pesticide applicator licensing
10. Grain warehouse inspection
11. Field inspection
12. Apiary inspection, honey production, and bees
13. Meat and poultry inspection
14. Dairy
15. Organic Program Development and Certification
16. Forestry and silviculture, rural fire, forest tree improvement, and forest regeneration
17. Laboratory services supporting agriculture production
18. Meteorology and Weather Stations
19. Animal health and welfare



8. Inspection of Farm

There is hereby created in the Tribal [Department of Agriculture] an On Farm Food Safety Inspection Authority. This office shall have the authority to develop policies and procedures that carry out the provisions of this chapter.

The [Tribal inspection authority) must be allowed to enter and inspect the premises to ensure compliance with these rules. If the [Tribal inspection authority] determines that the farmer is not is compliance with these rules, the [Tribal inspection authority] will provide the farmer notice of the requirements that have not been met.

If a farmer fails an inspection, the farmer will have 30 days from the date the notice was sent to submit a written response that demonstrates how the deficiencies have been corrected. A farmer is also required to inspect and assess adjacent lands for possible sources that might contaminate the production field, and take corrective actions if needed.

IFAI Technical Resources

- IFAI attorneys can be a resource for your Tribal attorneys, in house or contract, during implementation of any or all of the Model Tribal Food and Agriculture Code.
- In general, IFAI can provide:
 - Strategic planning on Tribal law & policy in food and agriculture
 - Analysis of federal or state law where those are considerations for Tribes in food and agriculture regulation
 - Information on emerging issues in federal agricultural policy (like industrial hemp) and impact on Indian Country
- Interested Tribal leaders, Tribal attorneys, Tribal food systems advocates, and other stakeholders can reach out to our team members anytime about the Code



Accessing the Code

- The Code is available for free viewing and download on our website, www.tribalfoodcode.com
- To view and download the Code, visitors will need to create a free account by clicking the button next to "Sign Up For Access Here" on the homepage.
- After your account is approved, you'll receive an email with instructions to help you log in. Once logged in, you can click on "The Code" in the top righthand corner of the site to view the model laws.
- The Code can be viewed or downloaded by section, or if you would like the entire document, you can download it in full by clicking the link at the top of the Index page.
- You can also search the code for keywords by typing them into the search bar at the top of the index page.





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