The Model Tribal Food and Agriculture Code Project: Executive Summary
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About the Code

Envisioned by the Indigenous Food and Agriculture Initiative’s 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 facilitate agricultural production, food systems development, and health outcomes improvement in Indian Country.

The Model Tribal Food and Agriculture Code Project would not have been possible without the generous support of the Shakopee Mdewakanton Sioux Community through their Seeds of Native Health campaign, MAZON: A Jewish Response to Hunger, Aqua Fund, Inc., the W.K. Kellogg Foundation, the NoVo Foundation and the Farm Credit Council. IFAI would like to extend its deepest gratitude to these generous and thoughtful donors for making the Model Tribal Food and Agriculture Code a reality.

Though coordinated by Janie Simms Hipp and the IFAI team of staff attorneys, specialized attorneys and professionals in the fields of public health law, agricultural law, environmental law, and more also contributed to this project. IFAI thanks Tim McLaughlin of Rey-Bear McLaughlin, LLP, Julie Ralston-Aoki of the Public Health Law Center, Paul Goeringer, Kelly Nuckolls, Jamie Dickinson, Livia Marques, Corey Malone-Smolla, Rachael Dettman-Speigel, and Jeni Lamb for their contributions to the project. Additionally, IFAI would like to thank Stacy Leeds, University of Arkansas Vice-Chancellor for Economic Development, for her guidance and support through the entire process; and especially thank Sandy Martini, IFAI Administration and Programs Director/Staff Economist & Food Safety Coordinator, for her important guidance, support and contributions.

Finally, IFAI extends special gratitude to the Intertribal Agriculture Council, Columbia River Inter-Tribal Fish Commission, University of Kansas Professor Sarah Deer, the Quapaw Nation, the Menominee Tribe, and the Blackfeet Nation and the many Tribal governments and organizations who provided invaluable encouragement and insights during the development of the code.

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The Need for a Model Tribal Food and Agriculture Code

With American Indian and Alaska Native people producing an estimated $3.3 billion in actual market value of agricultural products annually on 57 million acres of land and new Native food businesses, community gardens, greenhouses, farmers markets, value-added enterprises and Tribal farms and ranches growing in number, there is a clear groundswell of food systems work going on in Indian Country currently. This exciting work brings economic development and opportunities to improve health and wellness for people across Indian Country, while taking many thousands of steps to ensure our traditional foods are protected and revitalized but it also raises complicated legal questions that often call for answers from Tribal and federal law. Without the strong legal backing of sovereign Tribal governments, the individual Native food producers, food businesses, and food system creators working in food and agriculture on Tribal lands often operate in a legal grey area at a time when state and even local regulators in many places are already pushing into tribal jurisdictions, despite their lack of legal authority to regulate on Tribal lands. In the absence of a clear voice from Tribal governments, as expressed through Tribal law, this jurisdictional confusion and overreach will only escalate over time. Further, as Tribes engage in the business of agriculture in domestic commercial markets and for intertribal and international trade, they frequently run headlong into state and local jurisdictions and a dizzying array of state, local, and federal laws governing food and food production which have been in place for decades. Without Tribal governments exercising their inherent authority to develop their own Tribal laws and policies, specifically tailored to the needs and traditions of Tribal food systems that have in many cases sustained their peoples since time immemorial, these Native players in the food system remain legally exposed and unprotected.

The Model Tribal Food and Agriculture Code Project offers Tribal governments a starting point to begin the conversations necessary to enact legal protections for their people in the space of food and agriculture. The idea of a model code is not new—although there is no other Model Code designed for Tribal governments around food and agricultural law—as state actors regularly come together to develop “model codes” on a variety of subject matters, from business and commercial regulations to criminal law. These model codes give states a place to begin the important work of legislating on a particular subject matter. They offer uniformity to a degree, but are also highly modifiable by each individual state government, so that the law best reflects the goals of that particular state’s government. Similarly, there are also model laws in existence that support Tribal governments in developing law and policy, such as the Model Tribal Secured Transactions Act, the Model Tribal Probate Code, and the Tribal Housing Code.

At both the Tribal and state level, model codes such as these facilitate efficient governance by offering governments a foundation upon which to build their own regulations rather than
beginning with a blank slate. Further, where model code language is passed largely unchanged into law by multiple Tribal or state governments, a fairly uniform system of regulation or policy emerges. In the space of agriculture, where foods and food products frequently cross multiple jurisdictional lines as producers seek the best markets and consumers seek out foods, a more uniform system can be good for business, since producers have fewer legal complexities to analyze and comply with in order to sell or transport their products. Additionally, adoption of model codes often allows Tribal governments a more effective way to interface with the federal government on a government-to-government level and, at least in an area such as food and agriculture which is among the most heavily regulated and complex areas, a platform for recognition of Tribal sovereignty.

Model codes therefore serve as an important starting point as a government considers regulating in any policy area, and may be especially useful in an area where a government has regulated very little, or not at all. Code development can be time-consuming, and for Tribal governments, special considerations for complicated jurisdictional issues add not only time, but also financial expense to an already lengthy and costly legislative process. In an effort to assist Tribal governments and defray the cost of code development as Tribes seek to exercise their sovereignty in the space of food and agriculture, the IFAI offers this Model Tribal Food and Agriculture Code at no expense to Tribal governments.

**Code Format**

The entire Code is structured as an Agricultural Title, with specific chapters devoted to key subject matter areas related to foods and food production. The topics discussed in the Model Code are either common components of existing Tribal and/or local, state, or federal food and agriculture codes, or are specialized components which should be considered in order to protect and promote unique aspects of Tribal food systems, such as traditional foods.

The Code is available in two formats at our Code website, [www.tribalfoodcode.com](http://www.tribalfoodcode.com). At the start of the Model Code project, our Advisory Body suggested we adopt a workbook-style format, similar to that used by the Tribal Law and Policy Institute to craft the *Guide for Drafting or Revising Victim-Centered Tribal Laws Against Domestic Violence*. The Advisory Body felt that this format should contain an overview of a code section, relevant examples from existing Tribal, state, and/or federal law, any explanatory language necessary to clarify terms of art utilized in the model language, and the model language itself. This is ultimately the primary format that we used to draft the Model Code. The workbook format of the Model Code provides a section-by-section walkthrough of the entire Model Code, with explanatory notes from the drafters and concludes with the model language itself.

The draft legal language of the full Model Code, with no explanatory text or notes from the drafting team, may also be downloaded in its entirety as a .pdf from our website, [www.tribalfoodcode.com](http://www.tribalfoodcode.com).

**Code Contents**
The Model Tribal Food and Agriculture Code is meant to be a foundational document. In food, as in everything, Tribes are incredibly diverse, and there is no one-size-fits-all solution to Tribal governance in food and agriculture. As individual Tribes consider adopting food and agriculture-related laws, we hope that the sections contained within the Code are a useful starting point for Tribal governments and Tribal attorneys as they craft individualized legislation in food and agriculture. The Model Code is not intended to be a substitute for the critical discussions Tribes must have as they seek to create laws that promote Tribal governance and sovereignty; we offer it as the start of a conversation, not the entire dialogue. The IFAI legal team stands ready to work alongside Tribal governments and their advisors to explain, describe, support and assist in further adoption of the code, in whole or in part.

The Model Code provides an overall Title structure for food and agricultural regulation. The entire Title spans a multitude of subject matter areas in food and agricultural production, with individual chapters focusing on a different topic. These chapters are as follows.

I. General Provisions, jurisdiction, and findings
II. Traditional Foods and Seeds
III. Health and Nutrition
IV. Regulation and Control of Animals and Livestock
V. Slaughter of Animals and Sale of Meat
VI. Horses
VII. Land Use
VIII. Agricultural 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 Agricultural Products
XIV. Liability for Agricultural Production and Related Enterprises
XV. Water
XVI. Conservation
XVII. Alternative Agricultural Production
XVIII. Agricultural Labor
XIX. Agricultural Business Entities

Each of these chapters has different sections within it addressing particular aspects of these general areas. To protect the privacy of Tribes who do not wish to have their laws made publicly available, however, we are not publishing the entire table of contents for the Model code here. The titles listed above are obviously not every single aspect of food and agriculture that may be important to Tribal governments, their communities and their people; they are a starting point.

Conclusion
The pressures on traditional foods are mounting, as are the pressures on liability of farmers, ranchers, tribal food systems, and food businesses. The need to take immediate action to establish basic parameters for food sovereignty and seed protection in the law is clear. The newly emerging food safety federal laws will only continue to create uncertainty—and potentially, legal liability—for tribal food producers and businesses. Despite these challenges, the promise of Indian Country food and agriculture is exciting. The need for Tribal governments to express their sovereignty through food and agricultural law may be great, but we hope that the culmination of our work on this Model Tribal Food and Agriculture Code Project offers Tribes a resource as they undertake the important work of protecting their food systems.