



UNIVERSITY OF
ARKANSAS®

Empowering Indian Country through economic development and greater food access

Cultivating Tribal Food Sovereignty:

Overview of Model Tribal Hemp Code

July 2, 2020

Agenda

About IFAI

Framing Discussion on Code

Context on Federal Hemp Law

Overview of Tribal Hemp Code

Drafting Team Commentary



Indigenous Food and Agriculture Initiative



Our Founding

- Established in the Univ. of Arkansas School of Law in 2013 by:
 - Professor and Dean Emeritus Stacy Leeds; and
 - Founding Director Janie Simms Hipp

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 Food and Agriculture Code



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

Model Food and Agriculture Code

Overview of Contents

- 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



A Bit of Context: 2018 Farm Bill Hemp Authorities

Prior Law

Hemp was outlawed as a Schedule I Substance under the Controlled Substances Act of 1970 (CSA) by being included within the statutory definition of “marijuana.”

The 2014 Farm Bill partially lifted this CSA ban by authorizing state departments of agriculture and higher educational institutions to grow and cultivate hemp under pilot research programs authorized by state law.

Did not explicitly allow Tribal Colleges and Universities nor Tribal departments of agriculture to participate.

Current Law

The 2018 Farm Bill legalizes industrial hemp production that has a 0.3 percent, or less, concentration of tetrahydrocannabinol (THC).

- Authorizes new Tribal and State plans to self-regulate, develop, and expand hemp production with federal approval;
- Provides technical assistance to tribes;
- Requires that States/Tribes permit the transportation of hemp through its jurisdiction if the hemp that is lawfully produced under an approved Tribal and State plan.
- Includes hemp as a commodity eligible for federal crop insurance



A Bit of Context: 2018 Farm Bill Hemp Authorities

Tribes seeking to regulate hemp within their jurisdiction must submit a proposed plan to USDA meeting certain requirements under federal law:

1. Procedures for tracking the land where hemp is grown;
2. Procedure for testing delta-9 tetrahydrocannabinol levels of hemp plants, using post-decarboxylation or other similarly reliable methods;
3. Process for disposing of non-compliant plants (greater than 0.3% THC);
4. Policy for Tribal regulatory enforcement and compliance with the statute;
5. Procedure for conducting annual inspections and random sampling of producers;
6. Policy for submitting statutorily required producer information maintained by the Tribe to USDA within 30 days of receipt; and
7. An attestation by the Tribe that sufficient resources and personnel are available to ensure compliance with the submitted plan.

The USDA must respond with a decision of approval or denial within 60 days. If no Tribal plan is submitted, the USDA will assume regulatory authority over Tribe's jurisdiction.

In other words, if you do not assert your Tribal sovereignty to occupy this regulatory space – the federal government will do it!



Model Code Example: Tribal Hemp Regulation under the 2018 Farm Bill

Tribe wants to regulate hemp production on Tribal lands

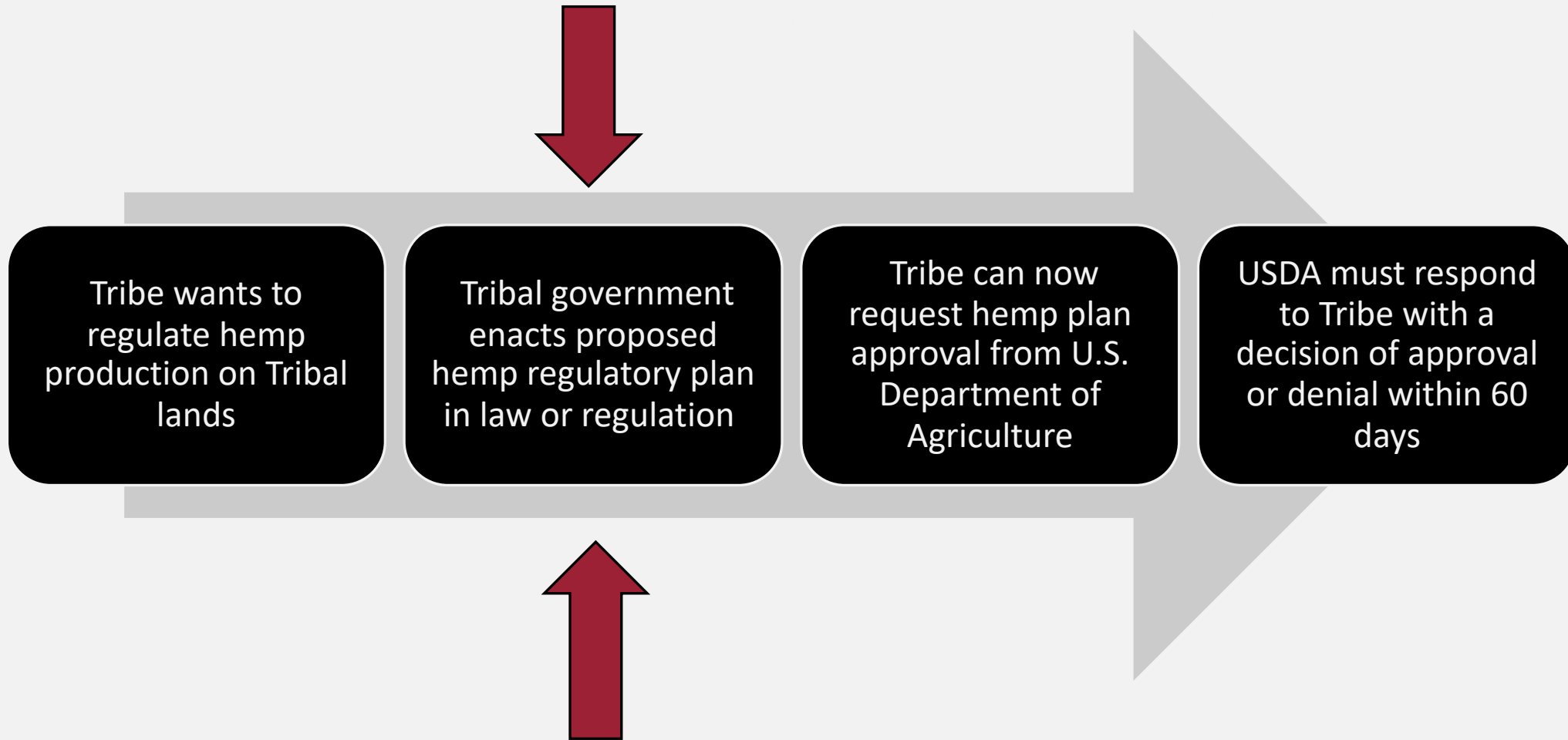
Tribal government enacts proposed hemp regulatory plan in law or regulation

Tribe can now request hemp plan approval from U.S. Department of Agriculture

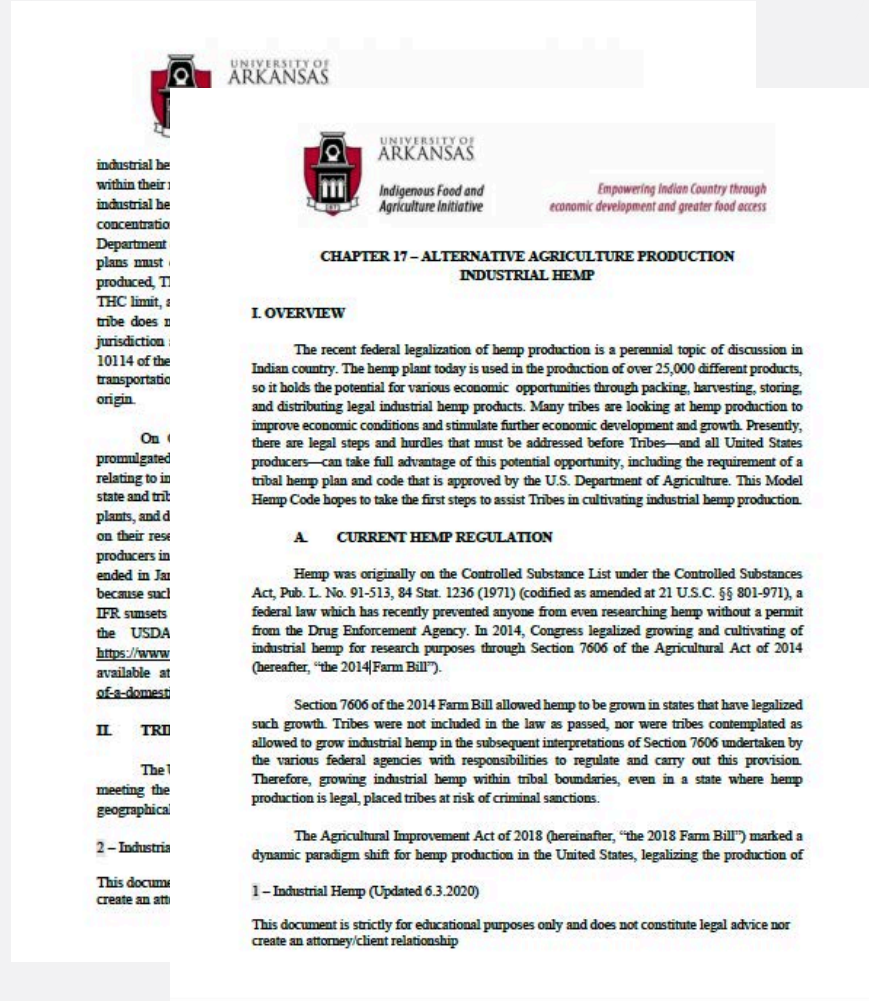
USDA must respond to Tribe with a decision of approval or denial within 60 days



Model Code Example: Tribal Hemp Regulation under the 2018 Farm Bill



Model Tribal Hemp Code: Overview and Drafting Approach



Overview

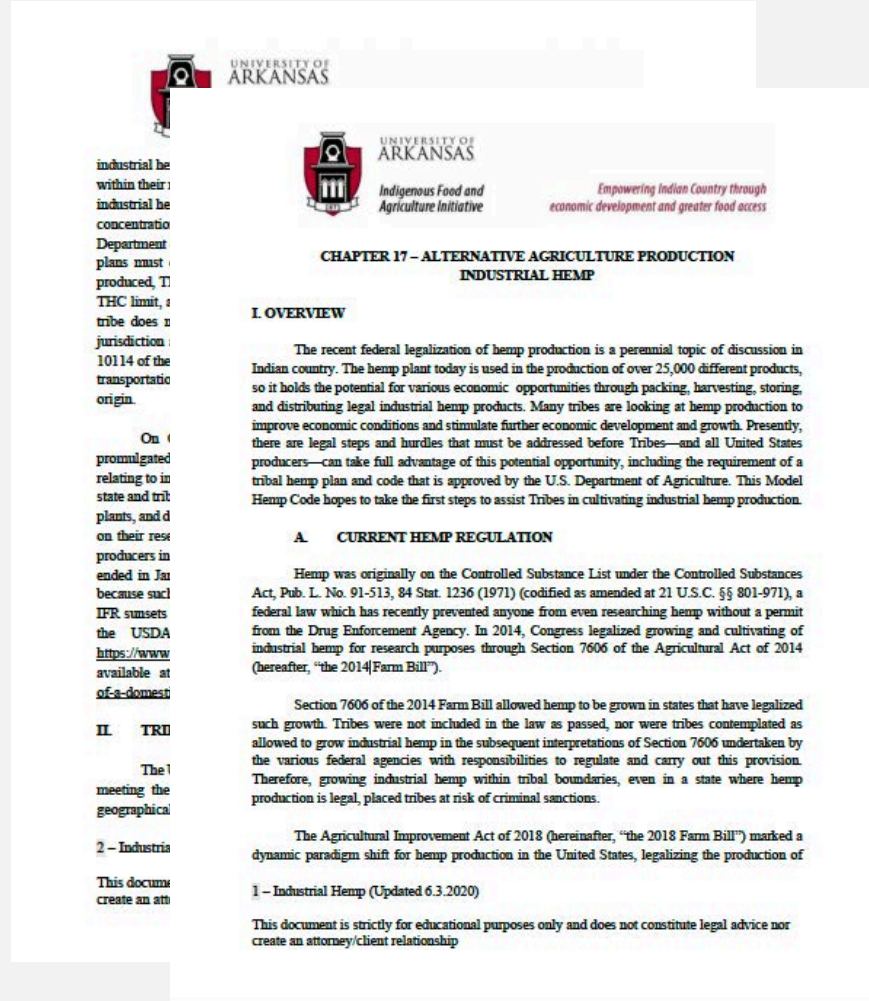
The Model Code is designed to be a malleable document for Tribal governments to use as a starting point in drafting their proposed hemp plans. The document contains the following provisions:

1. Overview of Current Hemp Regulation under Federal Law
2. Excerpts of Current Federal Hemp Statutory Requirements
3. Examples of Select Approved Tribal Hemp Plans
4. Commentary on Tribal Regulatory Considerations
5. Model Language for Tribes to Adapt in Drafting Their Own Plans
6. Link to approved State Plans

Designed to be a resource for Tribes looking to occupy this regulatory space – not intended to be a substitute for conferring with legal counsel and/or Tribal leaders!



Model Tribal Hemp Code: Federal Baselines in Drafting Model Language



Model Language Contents

The model language for Tribal adaptation is intended to meet current federal requirements for the following:

1. Method for maintaining land records of where hemp is produced for at least 3 years;
2. Procedure for testing THC levels of hemp plants;
3. Process for disposing of plants not fitting the definition of "hemp;"
4. Policy for Tribal regulatory enforcement and compliance with the statute;
5. Procedure for conducting annual inspections and random sampling of producers;
6. Policy for submitting statutorily required producer information maintained by the Tribe to USDA within 30 days of receipt; and
7. An attestation by the Tribe that sufficient resources and personnel are available to ensure compliance with the submitted plan.



Model Tribal Hemp Code: Federal Baselines in Drafting Model Language



- **Sampling for THC Content**
 - Ensure that a representative sample of the crop is physically collected and delivered to a laboratory registered with the Drug Enforcement Agency (DEA).
 - Sample must be collected from flower portion of hemp plant within 15 days of anticipated harvest.
 - Administered by a USDA-approved sampling agent.
 - Federal or Tribal
- **Testing for THC Content**
 - Testing must be completed by a DEA-registered laboratory as a crop testing over 0.3% THC on a dry weight basis is still “marijuana” under the law and must be handled under DEA regulations.
 - Test results must include “Measurement of Uncertainty”



Model Tribal Hemp Code: Federal Baselines in Drafting Model Language



- **Disposal of Non-Compliant Plants**
 - Cannabis exceeding the permitted THC level of 0.3% on a dry weight basis must be disposed of in accordance with the Controlled Substances Act and DEA regulations as it then falls within the definition of “marijuana” and is a schedule I substance. Essentially operates as a confidence interval or margin of error
 - Must be collected for destruction by a person authorized under the CSA to handle marijuana
 - DEA-Registered Reverse Distributor
 - Duly authorized Federal or Tribal law enforcement
- **Annual Inspection Procedures**
 - Authority to conduct annual inspections of, at a minimum, a random sample of hemp producers.



Model Tribal Hemp Code: Federal Baselines in Drafting Model Language



- **Compliance and Enforcement Procedures**

- Procedures to identify and correct negligent acts
 - Failing to provide a legal description of the land where hemp is produced
 - Not obtaining license or other applicable Tribal authorization
 - Crop testing over the acceptable THC level
- Act is not viewed as “negligent” so long as the producer took reasonable steps to grow hemp in compliance with the Tribal plan and the plant does not have a THC concentration of more than 0.5% on a dry weight basis.
 - No more than 3 negligent violations allowed in a 5-year period
- “Felony exclusion” prohibiting any person convicted of a Federal or State controlled substance felony within the last ten years from participating in hemp production under Tribal plan.
 - Enforced by obtaining FBI criminal history reports for individual license applicants under State and Tribal plans.
 - If the applicant for a hemp license under a Tribal plan is a business entity, the felony provision applies to those who are “key participants” in the entity such as executives, managers, and owners with a direct or indirect financial interest in the business.



Model Tribal Hemp Code: Federal Baselines in Drafting Model Language



- **Information Sharing Procedures**
 - Tribal plan must contain procedures for reporting the following information to USDA within 30 days of receipt
 - Producer name, address, telephone number, and email (if available)
 - If business entity, then include the full name of the business, address of the principal business location, full name and title of “key participants,” email address (if available), and EIN number of the business.
- **Parity in Transportation**
 - Provides reciprocity to other State and Tribal licensees and testing certifications for hemp and hemp products being transported through Tribe’s jurisdiction.



Model Tribal Hemp Code: Commentary on Model Language



- **Federal Baselines are Only Minimums**
 - These baselines used in drafting the model code only represent the minimum federal requirements necessary for Tribal hemp plan approval.
 - While Tribal law cannot override these federal minimums, it can impose more stringent requirements and/or regulate areas unaddressed by federal law.
 - Seed Sourcing and Certification
 - Tribal Entity or Commission Charged with Plan Enforcement
 - Processing Facilities
- **Model Language Only**
 - Does not address specific needs for any individual Tribe.
 - Carves out common code provisions
 - Altering definition of “marijuana” to exclude hemp
 - Tribal Business Code and Agricultural Leasing Code compliance
 - Acts only as a resource and is not a substitute for conferring with your own attorneys and/or Tribal leadership when drafting law.

OUR TEAM AT IFAI IS READY TO HELP YOU!

Accessing the Code



- The Code is available for free viewing and download on our website, <http://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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