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Farm Bill Primer: Support for Native Agricultural Producers

The 2018 farm bill (Agriculture Improvement Act of 2018; P.L. 115-334) expanded federal farm program support for Native agricultural producers and tribal communities. Congress further enhanced community and economic development for tribes in the Indian Community Economic Enhancement Act of 2020 (P.L. 116-261) and provided additional support for historically underserved agricultural producers, including Native producers, in the American Rescue Plan Act of 2021 (P.L. 117-2). As Congress debates the next farm bill, groups supporting Native agriculture are calling for additional support related to production services and credit, nutrition and food sovereignty, and economic development for tribal producers and communities.

Native Farmers and Ranchers

More than 79,000 farmers and ranchers identify as American Indian or Alaska Native, including producers identifying in combination with another race, according to the U.S. Department of Agriculture (USDA). In 2017, Native agricultural producers accounted for 2% of all U.S. producers. Native agricultural sales were \$3.5 billion in 2017, or about 1% of all U.S. farm-level sales. Most Native producers (46%) are located in Arizona and Oklahoma (**Figure 1**). Other leading states were New Mexico, Texas, California, Montana, Missouri, Utah, Arkansas, Alabama, Oregon, and South Dakota. These operations cover 59 million acres of farm and grazing land. Native producers, however, may lack legal title to land often held in trust by the federal government. (For more background, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*.)

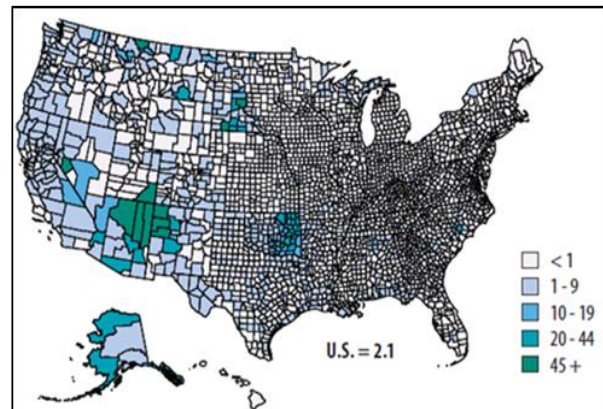
In statute, support for Native producers references the definition of *Indian tribe* in the Indian Self-Determination and Education Assistance Act (ISDEAA; P.L. 93-638, 25 U.S.C. §5304(e)). The Bureau of Indian Affairs (BIA) of the Department of the Interior (DOI) reports 574 federally recognized Indian tribes are eligible to receive services, including farm program support. Alternatively, some statutes specifically reference Native Americans, American Indians, Alaska Natives, or Native Hawaiians. Some statutes use terms such as *tribal groups* or *Indian tribal organizations* that are defined in statute or regulation.

Federal Role in Native Agriculture

As the agency delegated to implement many federal statutes addressing Indian tribes, BIA has been the lead agency for providing agricultural programs and services to Indian tribes, often contracting with and transferring funds to USDA for farm programs (e.g., the Cooperative Extension System). In 1993, Congress enacted the American Indian Agricultural Resource Management Act (AIRMA; P.L. 103-177, 25 U.S.C. Ch. 39) intended to “improve the management, productivity, and use of Indian agricultural

lands and resources,” citing also the need to fulfill federal trust responsibility and promotion of tribal self-determination and emphasizing agriculture’s significance to tribal economic development. Since AIRMA’s enactment, BIA’s Branch of Agriculture and Rangeland Development has been managing “tribal agricultural programs.” In addition to BIA program funding, Congress has continued to address Native agriculture by amending USDA programs to expand access to farm credit and research/extension services (e.g., P.L. 100-233, Title VI; P.L. 101-624, Titles XVI and XVIII). Congress also added Tribal Colleges and Universities (TCUs), or *1994 Institutions*, to the land-grant university system (P.L. 103-382, Title V).

Figure 1. Native Farms, Percent of U.S. Farms, 2017



Source: USDA, 2017 Census of Agriculture, “American Indian/Alaska Native Producers,” October 2019. Native farms as a share of all farms. Based on 42,705 American Indian or Alaska Native farms.

Following enactment of the 2018 farm bill, USDA now has limited authority for contracting under ISDEAA, allowing an Indian tribe or group of tribes to negotiate contracts to administer programs, functions, services, or activities that a federal agency performs for an Indian tribe and its members. These are known as *638 contracts* or *compacts* or *self-determination contracts* and must conform to statutory and regulatory standards, including specific performance and recordkeeping requirements. Previously, these contracts were limited to DOI or Department of Health and Human Services programs. The 2018 farm bill authorized USDA to enter into demonstration project contracts under ISDEAA to empower a tribe or tribal organization to negotiate a 638 contract to perform certain program functions on Indian forestlands. The 2018 farm bill also authorized USDA to contract with a tribe or tribal organizations to perform purchasing functions under its Food Distribution Program on Indian Reservations (FDPIR). Unlike DOI, which is authorized to enter into a *self-governance compact* or single annual funding agreement for the tribe to administer all the Indian programs that the agency administers for that tribe

(25 U.S.C. §§5381-5389), USDA is not authorized to enter into self-governance compacts.

USDA has a formal tribal consultation policy and an Office of Tribal Relations to conduct formal, government-to-government meetings between USDA officials and tribal nations. USDA has launched its Indigenous Food Sovereignty Initiative, where *indigenous food sovereignty* broadly refers to developing and strengthening tribal nations' efforts to build and protect tribal traditional food systems and allowing tribes to respond to their own dietary needs. USDA's Equity Action Plan includes policies promoting tribal self-determination to enable greater self-governance and decisionmaking by tribes. USDA's Equity Commission also includes tribal representation. These efforts, in part, address concerns related to equity and access to USDA services highlighted in the class action lawsuit, *Keepseagle v. Vilsack*. In that case, Native farmers and ranchers sued USDA under the Equal Credit Opportunity Act (15 U.S.C. §1691), claiming the department discriminated against them when they tried to participate in USDA farm loan programs between 1981 and 1999. The 2010 settlement in that case provided \$760 million, including a \$680 million compensation fund and \$80 million in debt relief.

Tribal Views on the 2018 Farm Bill

The Native Farm Bill Coalition (Coalition), representing 208 tribes and 62 related organizations, claims Native farmers and ranchers have “been largely relegated to the margins of Farm Bill discussions for decades,” thus “missing out on major opportunities to protect and advance their interests.” The Coalition's concerns, along with those of other groups (such as the First Nations Development Institute, the Indigenous Food and Agriculture Initiative, the Intertribal Agriculture Council, and the Intertribal Timber Council) are highlighted in *Regaining Our Future*, a 2017 study by the University of Arkansas's Indigenous Food and Agriculture Initiative. These groups assert the 2018 farm bill contained more than 60 provisions relating to Native agricultural producer and communities, resulting in “unprecedented” farm policy gains for tribes. Provisions supporting Native agriculture and communities span many USDA programs related to production, rural infrastructure, economic development, conservation, forestry, and nutrition assistance. See CRS In Focus IF11287, *2018 Farm Bill Primer: Support for Indian Tribes*.

Considerations for the Next Farm Bill

Tribal groups continue to call for expanding tribal self-governance authority and for reducing barriers to implementing USDA's food and nutrition programs and certain land policies. For example, in advance of the next farm bill, the Coalition's priorities include proposed changes across each of the farm bill titles (see **text box**). Priorities include expanding 638 authority for tribes in USDA programming, providing for indigenous food sovereignty and greater autonomy for TCUs and tribal extension services, and prioritizing tribes in USDA grants, among other priorities. The Coalition also has facilitated a Tribal Caucus for Hunger, Nutrition, and Health. Priorities cover expanding Native food systems, programs, and policies, emphasizing “the important role that food

sovereignty plays in improving the future for Native Americans” (see <https://www.nativefarmbill.com/>; and <https://indigenousfoodandag.com/>).

The 118th Congress has introduced legislation seeking to address the needs of Indian tribes and their producers. Some bills would give tribes more control over Supplemental Nutrition Assistance Program (SNAP) administration (H.R. 5970, S. 2912); others would expand self-governance authority for other types of community services (e.g., H.R. 1450/S. 697; H.R. 3307; H.R. 3964). Some proposals would establish additional services for Native communities (e.g., S. 1156), while other proposals would more broadly expand support for historically underserved producers, including Native producers. These efforts generally seek to address perceived discrimination and inequities in accessing USDA services and assistance—such as through loan forgiveness, targeted assistance, and instituting reforms at USDA. Congress may consider these and other Native agriculture and community priorities as it debates the farm bill.

The Coalition's Proposed Farm Bill Priorities

Title I, Commodities: Establish tribal representatives on local county committees. Amend livestock disaster assistance.

Title II, Conservation: Provide flexible conservation program delivery and alternative funding arrangements. Recognize alternative conservation practices and tribal priorities.

Title III, Trade: Promote parity in USDA trade programs. Support trade and address fraud in tribally produced foods.

Title IV, Nutrition: Amend FDPIR, making permanent/expand self-governance (638 authority). Expand parity/sovereignty under SNAP and the Emergency Food Assistance Program (TEFAP). Expand purchases of tribally procured/produced foods.

Title V, Credit: Expand access to credit and authorize a pilot program relaxing certain requirements and providing flexibility.

Title VI, Rural Development: Expand tribal set-asides and the Substantially Underserved Trust Area designation for all USDA Rural Development programs.

Title VII, Research: Expand youth grants, set-asides, and TCU eligibility in USDA research, extension, and education funding. Fully fund the Federally Recognized Tribes Extension Program.

Title VIII, Forestry: Transfer lands back to Tribal Nations. Extend/expand 638 authority in USDA forestry programs. Give full authority for tribes to retain/utilize revenue from Good Neighbor Agreement projects. Protection for Sacred Sites.

Title IX, Energy: Ensure tribal eligibility and set-asides in USDA energy programs. Develop tribal solar/bio-based grants.

Title X, Horticulture: Protect Native seeds and traditional foods. Expand support for tribes under USDA horticulture programs. Acknowledge tribal sovereignty in pesticide regulation.

Title XI, Crop Insurance: Allow tribal insurance companies to insure tribal producers, and appoint tribal producers to oversight board. Expand training and technical assistance. Develop crop insurance for traditional foods/livestock.

Title XII, Miscellaneous: Apply 638 authority to all USDA programming, and create a 638 Office at USDA. Recognize tribal departments of agriculture. Allow tribes to buy certain available USDA lands. Expand assistance, hiring preferences, procurement, and collaboration/cooperation within USDA and other federal agencies. Increase food assistance programs for urban Indian communities. Study fraud/cultural appropriation of Native foods.

Source: CRS from Native Farm Bill Coalition, “Resources and Updates,” at <https://www.nativefarmbill.com/resources-updates>.

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