#### Native Nations & FSMA: Working with Tribal Governments & Tribal Food Producers in a Culturally Appropriate Way

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SOUTHERN REGION INTEGRATED PRODUCE SAFETY MEETING; OCTOBER 29, 2019





#### Agenda

**About IFAI** 

**IFAI Food Safety Trainings** 

**Context for working in Indian** 

Country

**Best practices for working with Tribal Nations & Tribal Producers** 

**Questions and Answers** 



### Indigenous Food and Agriculture Initiative University of Arkansas Office of Economic Development



#### **Our Mission**

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



Started in the School of Law, moved with Vice-Chancellor Leeds to Office of Economic Development

**Janie Simms Hipp** 



#### We Empower Tribal governments, farmers, ranchers, and food businesses by:

Providing complex strategic planning and technical assistance; creating new academic and professional executive education programs in food systems and agriculture; developing solutions and opportunities through research in partnership with Tribes and Tribal organizations; and increasing student enrollment in land grant universities in food and agricultural related disciplines.

#### **Our Work in Indian Country**

- FSMA Food Safety Training and Outreach
  - Native American Tribal Center for Food Safety Outreach, Education, Training and Technical Assistance – <a href="www.nativefoodsafety.org">www.nativefoodsafety.org</a>
  - Alternative Curriculum Development & Culturally Appropriate Training
- Model Tribal Food and Agriculture Code <u>www.tribalfoodcode.com</u>
- Food Policy Roundtable Discussions
- Support the National Association of the Food Distribution Programs on Indian Reservations (NAFDPIR)
- Annual Native Youth in Food and Agriculture Leadership Summit in Year 7!
- Scaling-Up Project
- Native Farm Bill Coalition Research Partner



### Our Work in Indian Country: Food Safety Training

- FSMA Food Safety Training and Outreach
  - Native American Tribal Center for Food Safety Outreach, Education, Training and Technical Assistance – <a href="www.nativefoodsafety.org">www.nativefoodsafety.org</a>
  - Alternative Curriculum Development & Culturally Appropriate Training
  - In September 2016, the Indigenous Food and Agricultural Initiative (IFAI) at the University of Arkansas was named as the Native American Tribal Center for Food Safety Outreach, Education, Training and Technical Assistance.
  - IFAI is cooperating with a wide array of partners, including the Intertribal Agricultural Council, to bring a series of webinars and face-to-face certification trainings to tribal producers and food businesses to fulfill requirements of FSMA.



IFAI Hosted PSR Grower and Train-the-Trainer Trainings





## Our Work in Indian Country: Food Safety Training

#### **Needs & Challenges in Food Safety Training for Indian Country**

- IFAI has a national service area: multiple growing seasons, huge variety of ag products, variety of growers (size, annual sales)
- Jurisdictional questions and concerns
- Broadband access issues
- Need for culturally relevant training



# Context for Working in Indian Country

CONTEMPORARY & LEGAL FACTS ABOUT TRIBAL NATIONS, NATIVE PEOPLES, AND INDIAN COUNTRY AGRICULTURE

#### A FAST-GROWING POPULATION

TOTAL US POPULATION

IN 2010, **5.2 MILLION** PEOPLE (OR **1.7**% OF THE US POPULATION) IDENTIFIED AS AMERICAN INDIAN/ALASKA NATIVE (AI/AN) ALONE OR IN COMBINATION WITH OTHER RACES, WHILE **0.9**% IDENTIFIED AS AI/AN ALONE.



1.7% AI/AN ALONE/IN COMBINATION



0.9% AI/AN ALONE

2.9 MILLION

- ❖ Before we jump into best practices— which include speaking of Native peoples in the present tense and acknowledging some of the legal complications that FSMA enforcement presents for Tribal Nations— here are some contemporary and legal realities for Native peoples to provide context for those best practices.
- Native peoples today make up about 1.7% of the U.S. population, per the last population Census.
- ❖ Those 5.2 million Native peoples are citizens of 576 federally recognized Tribes. Additional Tribes may be state-recognized, but not have federal recognition.
  - ❖ Federal recognition can be an arduous process! We won't go into that in today's presentation, but if you want to know more, the resource listed below has a great one-page guide.

Graphics Source & Recommended Resource: National Congress of American Indians (NCAI), "Tribal Nations and the United States: An Introduction," available at:

http://www.ncai.org/tribalnations/introduction/Tribal Nations and the United States An Introduction-web-.pdf

#### What is Indian country?

Indian country is a Legal Term Defined by 18 U.S.C.§ 1151

- (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
- (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- Important to note: Indian country Includes land owned by non-Indians in Fee Simple if it is within the exterior boundaries of an Indian reservation.

#### What is the difference between "Indian country" and "Indian Country"?

"Indian country" is the term for the area over which the federal government and tribes exercise primary jurisdiction. It is a term with a distinct meaning in legal and policy contexts.

"Indian Country" (both words capitalized) is a broader term used to refer more generally to tribal governments, Native communities, cultures, and peoples.

National Congress of American Indians, "Tribal Nations and the United States: An Introduction," available at <a href="http://www.ncai.org/tribalnations/introduction/Tribal">http://www.ncai.org/tribalnations/introduction/Tribal</a> Nations and the United States An Introduction-web-.pdf



## Our Work in Indian Country: Food Safety Training

#### Our work at IFAI Respects that Tribal Governments are Sovereign Nations

- •Government-to-Government Relationship and Federal Trust Responsibility
  - •Agreements, Treaties, U.S. Constitution, Exec. Orders, Statutes, etc.
  - Based on Land Sessions Promises for something
  - History and development of land grant system
  - •573 Federally Recognized Tribes; dozens of State recognized Tribes Covers the Entire Country
  - •Different histories, traditions, traditional foods, cultural practices for every Tribe and in each of region
- •Tribal Consultation Requirement under Exec. Order 13175

Requires direct, in-person outreach, relationship building, listening, understanding, and willingness to work with Tribal governments and Tribal producers to support their goals and inform them of important issues and their potential impacts



# Tribal Sovereignty: Four Principle Themes of Tribal Self-Government



Tribes are independent entities with inherent powers of self-government



The independence of the Tribes is subject to plenary power of Congress to regulate and modify the status of the Tribes.



The power to deal with and regulate the Tribes is wholly federal; the states are largely excluded unless Congress delegates power to them.

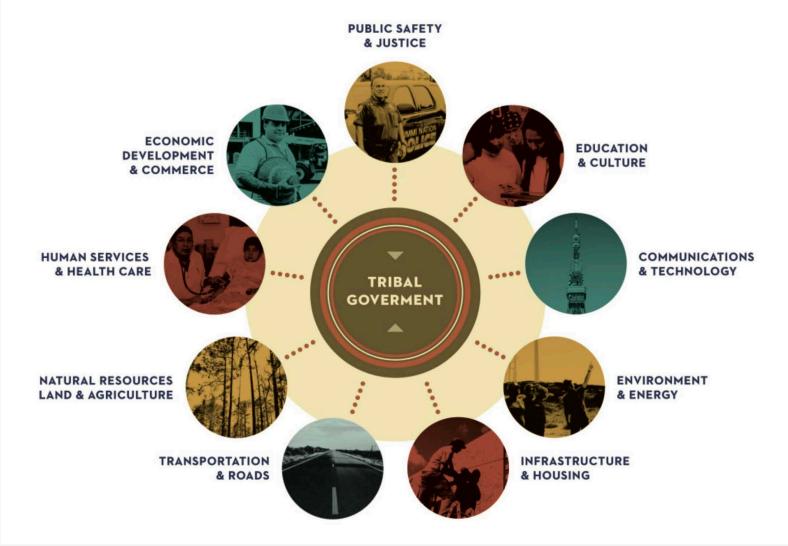


The federal government has a responsibility for the protection from encroachments by the states and their citizens.

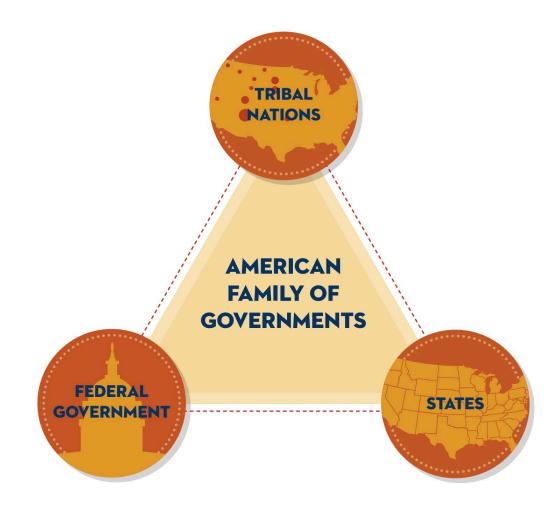


Tribal governments exercise their sovereignty over all matters affecting the health, safety, & welfare of the Tribe within the Tribe's jurisdiction. When you speak with Tribal leaders, you are speaking with the highest political authorities of a sovereign government.

Graphics Source &
Recommended Resource:
National Congress of American
Indians (NCAI), "Tribal Nations
and the United States: An
Introduction," available at:
<a href="http://www.ncai.org/tribalnations/introduction/Tribal Nations">http://www.ncai.org/tribalnations/introduction/Tribal Nations</a>
and the United States An Introduction-web-.pdf







It is the obligation of the federal government to protect tribal self-governance, tribal lands, assets, resources, and treaty rights, and to carry out the directions of federal statutes and court cases.

- Who has jurisdiction? FSMA Edition:
  - Generally speaking, states don't have civil or criminal jurisdiction within Indian country, unless:
    - Congress explicitly says so, OR
    - A federal court determines as such.
- ❖ Tribal Nations do regulate, enforce, and inspect pursuant to other federal laws, such as environmental regulation & compliance. The Environmental Protection Agency works with Tribal Nations for training programs on compliance & enforcement. Similar language is contained within the FSMA statute.
- The jurisdictional rule above applies in Indian country, but not all land is Indian country—so the type of land may matter when talking about which of these sovereigns has jurisdiction over FSMA inspection & enforcement for any particular grower's operation.
- Graphics Source & Recommended Resource: National Congress of American Indians (NCAI), "Tribal Nations and the United States: An Introduction," available at: <a href="http://www.ncai.org/tribalnations/introduction/Tribal">http://www.ncai.org/tribalnations/introduction/Tribal</a> <a href="Nations">Nations</a> and the United States An Introduction-web-</a>.pdf



#### **Types of Indian Land**



"Indian Land" is any restricted or trust land, even if such land stands outside of the reservation boundaries. "Trust Land" means land the title to which is held in trust by the United State for an individual or a tribe.

Land in <u>Trust or Federal Trust Land</u> is protected by the federal government, thus the ultimate control of the land remains with the federal government. Tribal Trust land, may not be mortgaged.

Off Reservation Trust Land, Is outside the boundaries of the reservations and protected by the federal government for Indian use. For example they could be religious sites, or pieces of allotted land.

<u>Restricted Fee lands</u>, ownership is similar to Fee Simple land except that there are specific government imposed restriction on use and or/disposition. The title of the land is held by individual Indians' or a tribe but may only be alienated or encumbered by the owner with approval of the Secretary of the Interior.

Individual (Allotted) Trust Land, Individual tribal trust land can be vested in the individual Indian but in restricted status in favor of the United States or title is held by the United States in trust for the named individual tribal member. A tribal member has the right to mortgage the land with the approval of the Secretary of the Interior

#### **Individually Owned Lands Two Kinds:**

- ➤ Trust Land The federal government holds legal title but the beneficial interest remains with the Individual Indian.
- ➤ Restricted Fee Land An individual holds legal title but with legal restrictions against alienation or encumbrance.

#### **Tribally Owned Lands Three Kinds:**

- **1. Trust Land** same as above however beneficial interest remains with tribe.
- 2. Restricted Fee Land The tribe holds legal title but with legal restrictions against alienation or encumbrance.
- **3. Fee Land Purchased by Tribes** The Tribe acquires legal title under specific statutory authority. Fee land owned by a tribe outside the boundaries of a reservation is not subject to legal restrictions against alienation or encumbrance, absent any special circumstances.

#### **Dependent Indian Communities:**

Land that is owned by an Indian tribe and was conveyed by the United States to a Native Corporation pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) or that was conveyed by the United States to a Native Corporation in exchange for such land.



# FARM-TO-TABLE

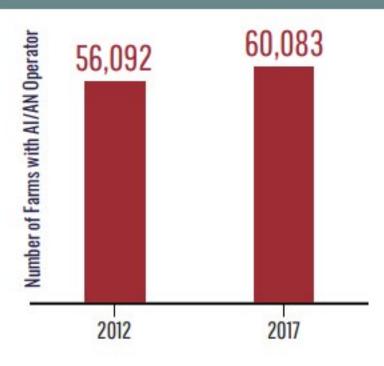
2017 Census of Agriculture Update

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



70/o increase



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

**1**24%



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

**1** 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.

**120%** 



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 Al/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

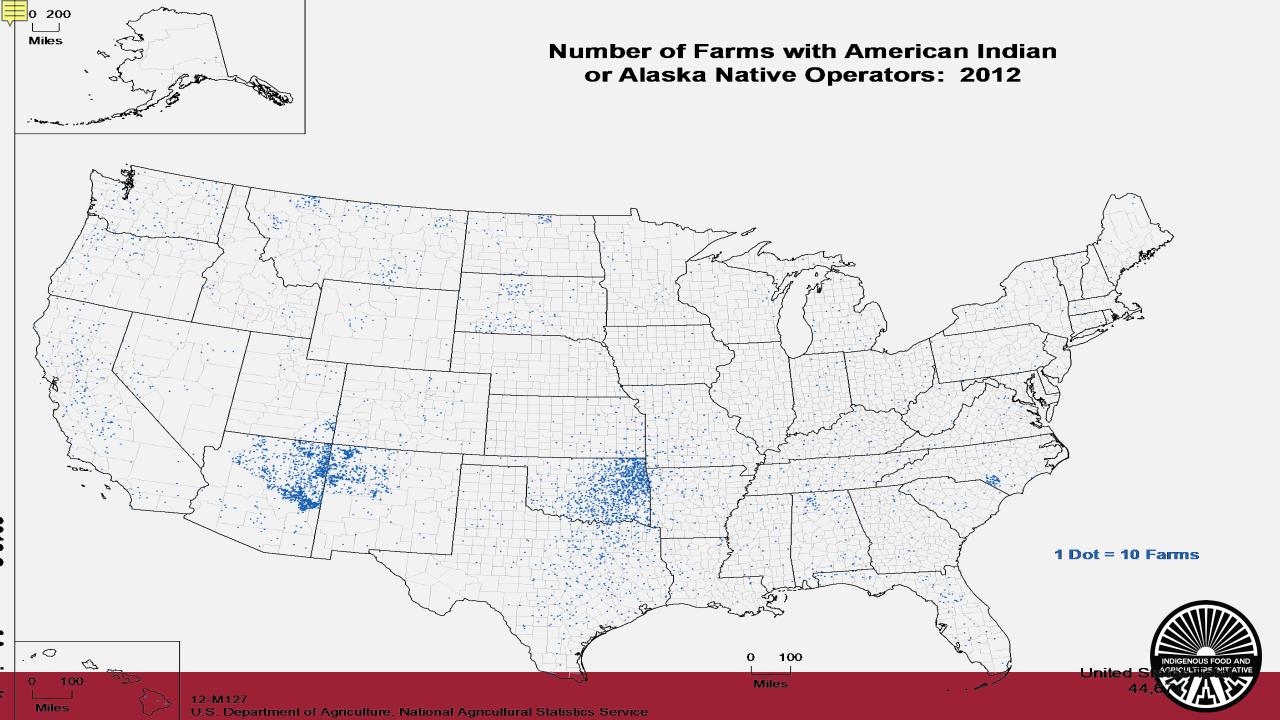


Market value of livestock, poultry, and related products increased 15% from 2012 to 2017.



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





### Best Practices

GENERAL GUIDANCE FOR DOING GOOD WORK IN INDIAN COUNTRY & WORKING WITH NATIVE GROWERS

#### A Note About Language

Knowing what words to use and not use can make all the difference in comfortably initiating and joining conversations and advancing an accurate, positive narrative.

For reference, we recommend the following:

- Native American Journalists Association, Reporter's Indigenous Terminology Guide (naja.com/reporter-s-indigenous-terminology-guide/)
- Native American Rights Fund, FAQs (narf.org/frequently-asked-questions/)

Terminology varies in different places across the country and can be a matter of personal preference.

Refer to your local tribal government's website for specifics. As you get to know Native organizations and leaders, listen for what terminology they use and prefer. When in doubt, ask.

Following are a few specifics you'll see in this guide:

- There are many diverse Native American peoples, cultures and histories. We use the plural of each term intentionally.
- Different organizations use different terms to refer to the Indigenous peoples of the Americas. Common terms are Native American, American Indian and Alaska Native (AI/AN), Native peoples, and Indigenous peoples.
- People are citizens, not members, of tribes. Preferred terms are tribal citizen, tribal nation and Native nation. If you are talking about a specific Native nation and its citizens, use the tribe's name rather than the general Native American. For example, say, "According to the tribal chairman of the Standing Rock Sioux Tribe," or "We spoke with Mary Smith, a citizen of the Navajo Nation." If you are unsure of how to refer to a tribal nation, check the tribe's website for the preferred terminology and full legal name.

- Start off right by using appropriate language.
- This information is from the "Changing the **Narrative About Native** Americans" guidebook published by IllumiNative as part of their Reclaiming Native Truth initiative. The full guidebook is downloadable here: https://illuminatives.org/ wpcontent/uploads/2018/04 /MessageGuide-Alliesscreen-spreads.pdf.

**Changing the Narrative About Native Americans** 

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# Acknowledge Unique Tribal or Regional Customs and Traditions

- Every Tribal Nation is different, but there may be some shared knowledge and practices: there are regional similarities based on adaptation to ecology, climate, and geography (including traditional foods); linguistic and cultural affiliations; and sharing of information for long periods of time.
- Differences in cultural groups are closely related to regional differences and may be distinguished by their language or spiritual belief systems.
- ➤ They are also a result of the diversity of historic homelands across the Nation and migration patterns of Tribal groups.
- On reservations where different AI/AN groups were forced to coexist, repercussions occurred that still can be experienced today in those communities. Historic rivalries, family or clan conflicts, and Tribal politics may present challenges for an outsider unaware of local dynamics who is trying to interact with different groups in the community.
- Establishing community partnerships prior to training is key to success.

# Best Practices for Working with Tribal Nations

- Come to the work with respect for the food safety knowledge that is already present within the Tribal community.
  - ➤ Tribes have been engaged in food systems work for thousands of years. Longstanding principles of indigenous science promoted food safety and kept Native people safe and healthy for thousands of years before FSMA.
    - Example: "Navajo Food Taboos & Food Safety," by Dave Nezzie (Diné), J.D.; Food Safety News. <a href="https://www.foodsafetynews.com/2016/05/navajo-food-taboos-and-food-safety/">https://www.foodsafetynews.com/2016/05/navajo-food-taboos-and-food-safety/</a>.
  - ➤ The food safety training we're doing on FSMA isn't necessary because Tribal Nations have no knowledge of food safety—it's necessary because colonization has disrupted food systems, introducing new risks into the production environment.
  - > These new risks can still be addressed through an indigenous framework!
  - Additionally, many Tribal producers sell in large markets that already have strict food safety standards. Like many other similarly situated growers, they may already be competitive.

# Best Practices for Working with Tribal Nations

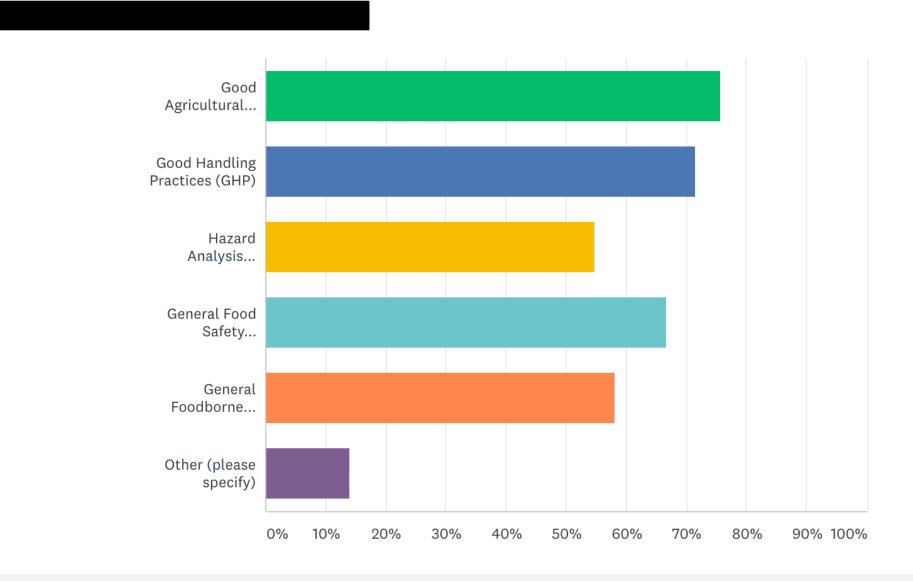
- Each Tribal Nation is different, so there's no one rule that works in every circumstance. Nevertheless, generally speaking:
  - Use the language that the Native peoples in the room use when referring to themselves, not what you think they should be called. (Native American, Indigenous, etc.)
  - > Don't take photographs or record audio/video without permission.
  - Don't touch sacred items, artifacts, display objects, or people (especially hair) without permission.
  - Avoid pointing with your finger, which may be seen as disrespectful.
  - ➤ Be flexible with time—trainings will probably not start at 9am on the dot. Build in a little time for people to arrive, mingle, and settle in.
  - Limit your personal digital use—don't constantly check your phone, email, Apple Watch, etc.
  - Be yourself! Don't "Go Native."
  - When talking about your work afterwards, remember that language matters there, too, and is key to maintaining good relationships longterm with Native stakeholders.

## Our Work in Indian Country: Food Safety Training

#### **Needs & Challenges in Food Safety Training for Indian Country**

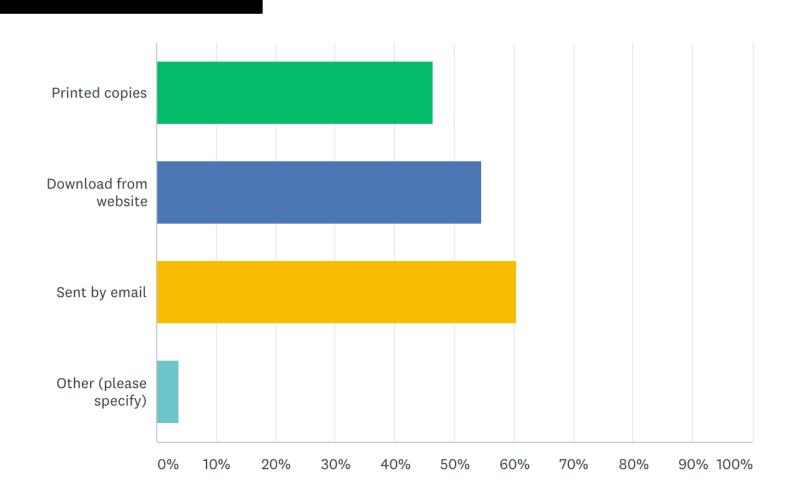
- Need for culturally relevant training that:
  - Respects indigenous science and food traditions
  - Acknowledges cultural practices that may necessitate extra steps in addressing issues around fresh produce, such as wildlife
  - Understands the jurisdictional concerns with enforcement and inspection of FSMA
- Additional Native grower preferences for trainings, as reported from our Needs Assessment survey process, are in the slides that follow.

#### On which of the following do you need information?

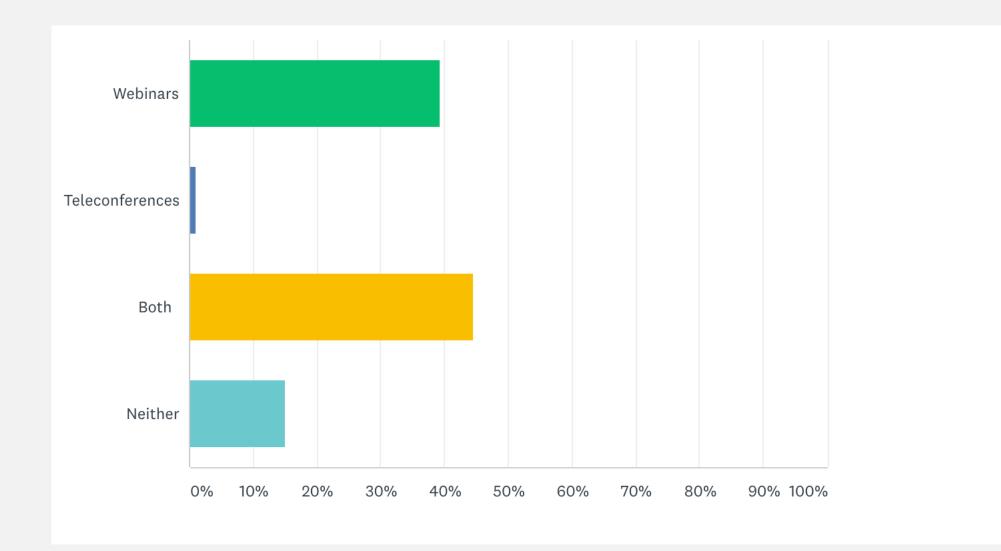




#### How would you prefer to receive educational materials and information?

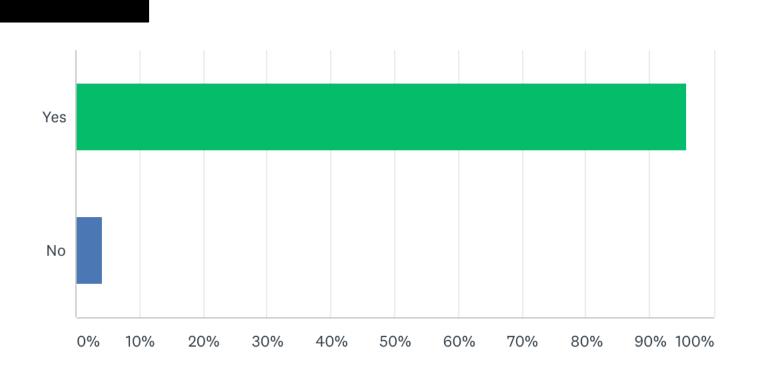






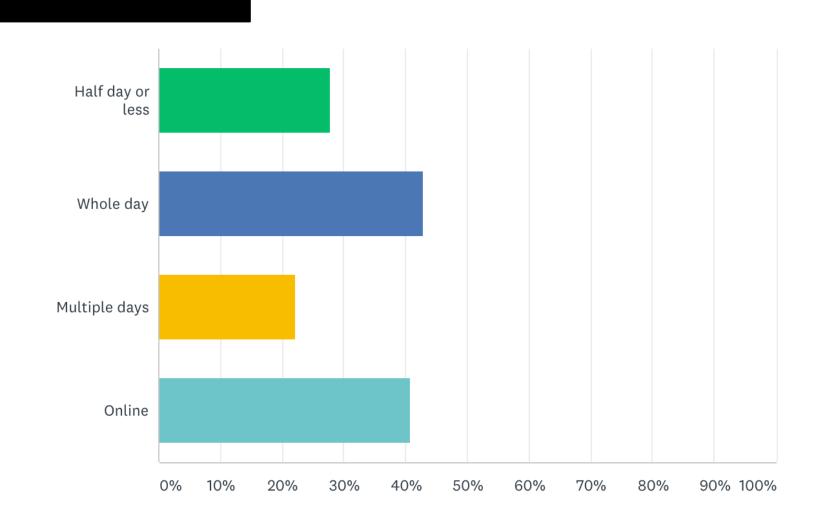


Would you attend a class on food safety that is located within your region?





#### How long do you prefer food safety training to be held?





#### **Resources & Contacts**

#### Organizations with Educational Resources about Working in Indian Country

- National Congress of American Indians (NCAI)
- Native American Journalists Association (NAJA)
  - Reporting & Indigenous Terminology Guide
  - 100 Questions, 500 Nations: A Guide to Native America
- Native American Rights Fund (NARF) (see: FAQ)
- IllumiNative-- Reclaiming Native Truth & Native Now! initiatives
- Indian Country Media Network
- National Museum of the American Indian (NMAI)
- Indigenous Food and Agriculture Initiative ← Please reach out!







Empowering Indian Country through economic development and greater food access

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