

# **“LET’S EAT GOOD FOOD”: THE STORY OF THE BAY MILLS INDIAN COMMUNITY’S INNOVATIVE COTTAGE FOODS LAW**

# BRIEF HISTORY OF COTTAGE FOOD LAWS

- Local food producers have an economic interest to provide their products to consumers through their local and regional food markets.
- Cottage food laws can exempt food makers from licensing laws to make it easier for them to do business.



# WHAT DOES A COTTAGE FOODS LAW ADDRESS?

- Definitions
- Sale of Homemade Food
- Registration/licensing of sellers
- Labeling
- Packaging
- Storage
- Violations and Penalties
- Exemptions from other laws



# **INDIGENOUS FOOD & AGRICULTURE INITIATIVE**

## **MODEL TRIBAL CODE: SALE OF HOMEMADE FOOD**

- Allows for the authorized sale of homemade food within Tribal jurisdiction boundaries provided that the product:
  - Is a non-potentially hazardous food.
  - Is appropriately labeled based on requirements written in Tribal Code.
  - Has not been prepared by a person or persons who has a communicable disease.
  - Has been prepared with water that meets potable water drinking standards.
  - Must be sold directly to a consumer.



# IFAI MODEL TRIBAL FOOD CODE DEFINITIONS

- Consumer
- Culturally Significant Food\*
- Home kitchen
- Home food production operation
- Homemade food
- Potentially hazardous food\*
- Non-potentially hazardous food\*
- Sale



# IFAI MODEL TRIBAL FOOD CODE DEFINITIONS, CONT.

## “Potentially hazardous food”

*“...f. Potentially hazardous food shall mean a food item intended for human consumption that has been generally shown to support the growth of pathogenic bacteria or other foodborne pathogens without a time and temperature control.”*

# IFAI MODEL TRIBAL FOOD CODE DEFINITIONS, CONT.

*“...g. **Non-potentially hazardous food** shall mean a food item intended for human consumption that does not require a time and temperature control, refrigeration, and has not been generally shown to support the growth of pathogenic bacteria or other foodborne pathogens. Non-potentially hazardous foods acceptable for sale out of home kitchens under this section are:*

- i. Baked goods such as breads, biscuits, cookies, pastries, and tortillas that do not contain cream, custard, or meat fillings.*
- ii. Confectionary items such as candies.*
- iii. Chocolate covered nonperishable foods such as pretzels, nuts, and uncut fruits (exempting melons).*
- iv. Dried items such as dried fruit (exempting melons), dried teas and dried tea blends*
- v. Granola, cereal, and trail mixes.*
- vi. Fruit butters and fruit pies.*
- vii. Honey.*
- viii. Jams, jellies, and preserves*
- ix. Nuts, nut butters, and nut mixes.*
- x. Maple syrup.*
- xi. Mustard.*
- xii. Popcorn and popcorn balls.*
- xiii. Pickled fruit or vegetables.*
- xiv. Vinegar and flavored vinegar.*
- xv. Other products as permitted by the [appropriate regulatory entity within the Tribe].”*

# NON-POTENTIALLY HAZARDOUS FOODS

- Generally the types of foods that are exempt under cottage food laws “*are considered lower risk for the growth of pathogenic bacteria or other contaminants that can injure, sicken, or even result in the death of consumers.*”
  - Wyoming and North Dakota have included meat-based foods in their exempted foods.
- Culturally significant foods may expand upon exempted foods depending on a Tribe’s history with hunting, food production, harvesting, and cultivation.



# IFAI MODEL TRIBAL FOOD CODE DEFINITIONS, CONT.

“Culturally significant food”

*“...b. Culturally significant food shall mean a food prepared in a manner that has cultural and/or spiritual significance to the Tribe.”*



# THE USE OF “CULTURALLY SIGNIFICANT FOOD” VS. “TRADITIONAL FOOD”

- Foods may have become significant to certain Tribes over the course of time that may not have played a role in creation stories or may not have sustained the Tribe since time immemorial.
- To reflect the culture, history and needs of the community, a Tribal Nation should choose the appropriate terminology for them.

# IFAI MODEL TRIBAL CODE: SALE OF HOMEMADE FOOD

- Provides that only non-potentially hazardous foods produced in a home kitchen may be sold, except:

*“1. Culturally significant food items produced or prepared in a home kitchen may be legally sold under this section, even if they contain potentially hazardous food, so long as:*

*a. The food item is produced and/or prepared in a traditionally safe manner using cultural practices broadly recognized by community members.”*

# IFAI MODEL TRIBAL CODE: SALE OF HOMEMADE FOOD

- An exemption from regulations is also made for homemade food that is served but not sold.



- The model code also includes language prohibiting sale of food over the phone or online.
  - This is a liability protection measure for individual Tribal small business owners.

# IFAI MODEL TRIBAL CODE: REGISTRATION REQUIREMENTS

- Does not include language addressing registration of cottage food producers.
- Some state laws require cottage food producers to register with the state.



# IFAI MODEL TRIBAL CODE: LABELING REQUIREMENTS

- *“Produced in a home kitchen” must appear in “at least 10-point font on a label affixed to the food packaging.”*
- *If there is no packaging on individual food item, then “Produced in a home kitchen” “must appear on a sign or tag that is within one foot (twelve feet) of the food and is visible to the consumer.”*
- *The individual packaging label or sign “must also include some form of identifying information and contact information for the home food production operation.”*

# IFAI MODEL TRIBAL CODE: VIOLATIONS AND PENALTIES

- Fine for violation is up to \$500 per offense.



# IFAI MODEL TRIBAL FOOD CODE: RIGHTS RESERVED

- Tribal food safety inspector reserves right to request an onsite inspection of any home kitchen under the existing authority of their position.
- This law does not protect sellers from liability for damages or harm that may come from eating their products.
- Similarly, the law doesn't create a new right to sue for consumers who may have been harmed by eating cottage food products covered by this law.

# CONTACT US



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