

Chapter 17
Administrative Rulemaking
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they are the leaders, they are making the laws, policies and rules

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17.1. Purpose and Policy

17.1-1. *Purpose.* The purpose of this Law is to provide a process for the adoption and amendment of administrative Rules.

17.1-2. *Policy.* It is the policy of the Tribe to ensure:

- (a) There is an efficient, effective and democratic process for enacting and revising administrative Rules.
- (b) That Authorized Agencies act in a responsible and consistent manner when enacting and revising the administrative Rules.

17.2. Adoption, Amendment, Repeal

17.2-1. This Law was adopted by the Oneida Business Committee by resolution 02-24-16-C.

17.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

17.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

17.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law control.

17.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

17.3. Definitions

17.3-1. This Section governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday use.

(a) “Authorized Agency” means any board, committee, commission, department, or officer of the Tribe that has been granted Rulemaking Authority.

(b) “Business Day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Tribe.

(c) “Financial Analysis” means an estimate of the total fiscal year financial effects associated with a proposed Rule prepared by the Authorized Agency proposing the Rule. It includes startup costs, personnel, office, documentation costs, an estimate of the amount of time necessary for an individual or agency to comply with the Rule after implementation.

(d) “Entity” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the majority of the Tribe’s eligible voters and also any department of the Tribe.

(e) “Oneida Register” means the free legal periodical published on the Tribe’s website by the Legislative Operating Committee which contains, at a minimum, agency Rules, proposed legislation and notices, and either the Oneida Code of Laws or directions to obtain free access to the Oneida Code of Laws.

(f) “Rule” means a set of requirements enacted by an Authorized Agency in order to implement, interpret and/or enforce a law of the Tribe, which includes citation fee and penalty schedules.

(g) “Rulemaking Authority” means the delegation of authority to Authorized Agencies found in the Tribe’s laws other than this Law which allows Authorized Agencies to implement, interpret and/or enforce a law of the Tribe.

(h) “Statement of Effect” means a legislative and legal analysis which explains the effects that adopting a Rule would have on the Tribe.

(i) “Tribe” means the Oneida Tribe of Indians of Wisconsin.

17.4. General

17.4-1. *Administrative Rulemaking.* Only Authorized Agencies may promulgate Rules; this Law does not confer Rulemaking Authority. Authorized Agencies shall adhere to the Rulemaking procedures as provided in this Law. Authorized Agencies may promulgate Rules interpreting the provisions of any law enforced or administered by it; provided that, a Rule may not exceed the Rulemaking Authority granted under the law for which the Rule is being promulgated.

(a) This Law does not apply to standard operating procedures, which for the purposes of this section are statements, interpretations, decisions, internal rules, regulations, internal policies, procedures or other matters concerning internal management of an agency, which do not affect the private rights or interests of individuals outside of the agency.

(b) Rules developed pursuant to this Law have the same force and effect as the law which delegated the Authorized Agency Rulemaking Authority and must be followed by both the general public and the Authorized Agency promulgating the Rule.

17.4-2. *Authorized Agency Solicitation of Comment on General Subject Matter.* For the purpose of soliciting public comment, an Authorized Agency may hold a public meeting on the general subject matter of a possible or anticipated Rule before preparing a proposed Rule. However, a public meeting under this subsection does not satisfy the requirements of Section 17.6 hereof with respect to promulgation of a specific proposed Rule.

17.4-3. *Substantial Compliance.* Any Rule hereafter adopted is valid only if adopted in substantial compliance with this Law, however Rules already in effect at the time of this Law’s adoption remain in effect unless directed to be updated based on this Law’s requirements by the Oneida Business Committee. Any amendments made to Rules already in effect must follow the requirements of this Law.

17.5. Preparation of Proposed Rules

17.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for Rules with which Authorized Agencies shall comply; the said template is not subject to the procedural requirements of this Law.

(a) At a minimum, all Rules must be numbered in the following consistent manner “1-1(a)(1)(A)(i)” where:

- (1) "1-1" means the first section.
- (2) "(a)" means the first subsection.
- (3) "(1)" means the second subsection.
- (4) "(A)" means the third subsection.
- (5) "(i)" means the fourth subsection.
- (6) All other numbering after the fourth subsection must be in a logical manner.

17.5-2. *Summary Report.* The Authorized Agency shall prepare a summary report regarding each proposed Rule, which must be attached to the proposed Rule when presented for public comment and for approval through the Oneida Legislative Operating Committee and ultimately the Oneida Business Committee. The summary report must include:

- (a) the name of the proposed Rule;
- (b) a reference to the law that the proposed Rule interprets, along with a list of any other related laws or rules that may be affected by the proposed Rule;
- (c) a brief summary of the proposed Rule and any changes made to the proposed Rule based on the public comment period required by Section 17.6 hereof, if applicable;
- (d) a Statement of Effect for the Rule which the Legislative Reference Office shall prepare upon request by the Authorized Agency; and
- (e) the Financial Analysis, for which the Authorized Agency shall send a written request to each Entity that may be affected by the proposed Rule soliciting information on how the proposed Rule would financially affect the Entity; each Entity's response indicating its financial affects must be included in the Financial Analysis.

- (1) If an Authorized Agency does not receive a response from one (1) or more Entities regarding its request for the Entities' financial effects of the Rule within ten (10) business days of the date of the request, it may submit a Financial Analysis noting which Entities were non-responsive to its request.

17.6. Public Comment Period on Proposed Rules

17.6-1. A proposed Rule, except a Rule promulgated under the emergency Rules exemptions under Section 17.9, must be preceded by a public comment period, which must include a public meeting. Nothing in this Section prohibits or restricts the holding of any other type of community meeting which may be used to gather input on Rules.

17.6-2. *Public Meetings.* When a public meeting on a proposed Rule is scheduled by an Authorized Agency, it must be held in accordance with the following requirements.

- (a) The Authorized Agency shall set a date for the public meeting and have the notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting.
- (b) The notice must include:
 - (1) information for electronically accessing the summary report required under Section 17.5-2 and a statement that hard copies will be available with the Entity;
 - (2) the date, time, and place of the scheduled public meeting; and
 - (3) the name, address, phone number, and other appropriate information to submit written comments on the Rule and the time period during which the Authorized Agency shall accept comments.
- (c) The Authorized Agency shall hold a public meeting at the date, time and place designated in the meeting notice.

(d) The Authorized Agency holding the public meeting shall have a representative to preside at the meeting who shall briefly describe the Rule which is the subject of the public meeting and the nature of the Rule's requirements, and then open the meeting for comments. The Authorized Agency's presiding representative is not required to comment or respond to comments at the meeting, but may, at his/her discretion, offer clarity.

(e) *Registration.* The Authorized Agency shall create and bring to the public meeting a sign-in sheet; persons attending the public meeting shall register at the meeting by signing the sign-in sheet.

(f) The Authorized Agency shall audio record the public meeting and persons who provide oral comments shall state their name for the record.

(g) The Authorized Agency shall hold the record open for the submission of written comments for a minimum of five (5) business days following the public meeting, provided that, the Authorized Agency may extend the comment period as it deems appropriate by posting an amended Notice of Public Meeting based on the notice requirements found in Section 17.6-2(b) at any time prior to the close of the original public comment period which identifies the extended comment period ending date.

17.6-3. *Public Comments.* The Authorized Agency shall fully consider all comments received during the public comment period and during any public meeting held regarding a proposed Rule.

17.7. Oneida Legislative Operating Committee Certification of Procedural Compliance and Business Committee Review

17.7-1. After a public meeting is held and the public comment period has expired, the Authorized Agency shall submit the proposed Rule and the items it must contribute for the administrative record pursuant to Section 17.10 to the Legislative Operating Committee, which is responsible for certifying that promulgation of the Rule complies with the procedural requirements contained in this Law.

17.7-2. Upon receipt of a complete submission, as required by this Section, the Legislative Operating Committee shall take one (1) of the following actions:

(a) If the Legislative Operating Committee is able to certify that the Authorized Agency has complied herewith, it shall forward items (b) and (c) of the Administrative Record under Section 17.10 received by the Legislative Operating Committee to the Oneida Business Committee with a written certification that the requirements of this Law have been fulfilled, and shall publish the Rule on the Oneida Register; or

(b) If the Legislative Operating Committee is not able to certify that the Authorized Agency has complied herewith, it shall return the proposed Rule to the Authorized Agency with specific feedback as to which procedural requirements were not fulfilled by the Authorized Agency.

17.7-3. The Oneida Business Committee shall review the proposed Rule, the summary report, the memorandum containing the public comments that were received, both orally and written, and the Authorized Agency's response to each comment, and the Legislative Operating Committee's certification of compliance. If upon review the Oneida Business Committee has any concerns and/or requested revisions to the Rule, the Authorized Agency shall work with the Oneida Business Committee to address any concerns.

(a) Unless the Oneida Business Committee repeals the Rule, the Rule will remain in effect while the Authorized Agency and the Oneida Business Committee jointly work to amend the existing Rule.

(1) Should the Oneida Business Committee repeal the Rule adopted by the Authorized Agency, the Rule that was in effect immediately previous to those repealed, if any, will be automatically reinstated and effective immediately upon the repeal of the Rule adopted by the Authorized Agency.

(b) If the Authorized Agency does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rule within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rule, the Rule will remain in effect as submitted and certified by the Legislative Operating Committee.

(c) Should the Oneida Business Committee pursue amendments to the Rule, the amendments must be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:

(1) if the Authorized Agency and the Oneida Business Committee reach an agreement as to the content of the amendments, the Authorized Agency shall adopt the revised Rule that has been discussed with and agreed upon by the Oneida Business Committee. Provided that, if substantial revisions are requested by the Oneida Business Committee, where the consideration of a substantial revision is in the Authorized Agency's best informed discretion, the Authorized Agency shall hold an additional public comment period, which would restart the process beginning in Section 17.6 hereof ; or

(2) if the Authorized Agency and the Oneida Business Committee do not reach an agreement as to the content of the amendments, the Oneida Business Committee may defer the Rule to the Legislative Operating Committee for revisions as directed by the Oneida Business Committee. If substantial revisions are requested by the Oneida Business Committee, where the consideration of a substantial revision is in the Legislative Operating Committee's best informed discretion, the Legislative Operating Committee shall hold an additional public comment period according to the requirements contained in Section 17.6 with the Legislative Operating Committee taking the place of the Authorized Agency. When the Rule is ready for adoption, the Legislative Operating Committee shall forward it to the Oneida Business Committee for consideration.

(d) If a revised Rule is not adopted by either the Authorized Agency or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rule originally adopted by the Authorized Agency will remain in effect.

(e) If revisions are made to the Rule by either the Authorized Agency or the Oneida Business Committee, such party making the revisions shall provide a final version of the Rule to the Legislative Operating Committee. Upon receipt, the Legislative Operating Committee shall update the Oneida Register with the final version of the Rule.

17.8. Effective Date of Rules

17.8-1. The Authorized Agency shall determine a Rule's effective date, provided that a Rule may not become effective until the Legislative Operating Committee has provided the

Authorized Agency with the written certification required by Section 17.7-2(a). A failure to publish an approved Rule by its effective date does not change the effective date of the Rule.

17.9. Emergency Rules

17.9-1. An Authorized Agency may present the Oneida Legislative Operating Committee with a proposed emergency Rule without a public comment period being held if it finds there is an emergency situation that requires the enactment or amendment of a Rule for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment is required sooner than would be possible under the normal Rulemaking process. The Authorized Agency shall submit to the Legislative Operating Committee the proposed emergency Rule with reasoning to justify the emergency and a summary report, provided that the deadline for Entities' submission of financial impacts pursuant to Section 17.5-2(e)(1) may be reduced to a minimum of two (2) business days. Upon receipt, the Legislative Operating Committee shall review the submission and take one (1) of the following actions:

- (a) reject the proposed emergency Rule on the basis that there is not a valid emergency; or
- (b) accept that there is a valid basis for an emergency and forward the emergency Rule to the Oneida Business Committee.

17.9-2. If the proposed emergency Rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed emergency Rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

- (a) reject the proposed emergency Rule on the basis that there is not a valid emergency; or
- (b) accept that there is a valid basis for an emergency and adopt, by motion, the emergency Rule, provided that, if the Oneida Business Committee deems it necessary, it may make revisions to the emergency Rule.

- (1) If the Oneida Business Committee makes revisions to the emergency Rule that the Authorized Agency does not support, such concerns may be addressed when the Authorized Agency begins the process for enactment of the permanent Rule.

17.9-3. An emergency Rule becomes effective immediately upon its adoption by the Oneida Business Committee and remains in effect for a period of up to six (6) months, with an opportunity for a one-time emergency extension of up to six (6) months. Requests for the one-time emergency extension may be brought by the Authorized Agency directly to the Oneida Business Committee for consideration and shall become effective upon the Oneida Business Committee's approval and adoption by motion. An emergency Rule will:

- (a) expire when six (6) months have passed since the emergency Rule went into effect and an emergency Rule extension has not been approved; or
- (b) expire when six (6) months have passed since the emergency Rule extension went into effect; or
- (c) no longer be in effect when a Rule is permanently adopted in the emergency Rule's place before the emergency Rule expires under (a) or (b).

17.9-4. As soon as possible after emergency adoption, and if permanent adoption is desired, the Authorized Agency shall follow the regular procedures as provided under this Law to adopt the permanent Rule.

17.9-5. The Legislative Operating Committee shall publish the emergency Rule on the Oneida Register.

17.10. Creating and Maintaining an Administrative Record of Rules

17.10-1. The Legislative Reference Office, with information the Authorized Agencies shall provide, shall create and maintain a complete record of all proposed and adopted Rules, which must include the following:

(a) A memorandum provided by the Authorized Agency containing the Rule's procedural timeline including the dates the requirements of this Law were fulfilled by the Authorized Agency and any supporting documentation, which includes, but is not limited to:

- (1) Drafts of the Rule considered for the required Public Meeting;
- (2) The Public Meeting notice;
- (3) If the Rule is being amended, redline drafts from the currently effective Rule;
- (4) Minutes from the agency's meeting during which the proposed Rule was considered as an agenda item, or, if the Authorized Agency is not a board, committee or commission, a memo from the Entity's highest level of management approving the proposed Rules; and
- (5) Any other supporting information that may be requested by the Legislative Reference Office;

(b) The summary report required under Section 17.5-2 provided by the Authorized Agency;

(c) A memorandum provided by the Authorized Agency containing the public comments that were received, both orally and written, and the Authorized Agency's response to each comment; and

(d) The effective dates of the original Rules and any Rule amendments subsequently made as established by the Authorized Agency.

17.10-2. Prior to publishing approved Rules on the Oneida Register under either Section 17.7-3(f) or 17.9-5, the Legislative Operating Committee shall create and/or update the administrative history on each Rule which must include the original effective date of the Rule and the effective date of any amendments made to the Rule.

17.11. Judicial Review of a Rule

17.11-1. The Judiciary may render a declaratory judgment to determine the validity of a Rule in the same manner that the Judiciary may do so for a Law; as identified in section 150.5-2(e) of the Judiciary Law. Provided that, no Rule may be contested based on non-compliance with the procedural requirements of this Law after one (1) year has elapsed from the effective date of the Rule.

17.11-2. Upon the Authorized Agency's receipt of notice that an appeal has been filed regarding a Rule of the said agency, the Authorized Agency that promulgated the Rule shall request the Administrative Record of the Rule created under Section 17.10 and shall submit the said record to the Oneida Judiciary.

17.12. Standard of Review for Actions Taken by Authorized Agencies

17.12-1. Any Tribal body hearing an appeal or contest of an action taken pursuant to Rules created under Authorized Agencies delegated authority and the requirements of this Law, upon consideration of the Rule and the circumstances regarding the action taken may take any one (1) of the following actions:

- (a) Uphold the action taken;
- (b) Reverse or modify the action taken;
- (c) If at the second level of appeal, remand the matter for further consideration.

17.12-2. When hearing an appeal or contest of an action as described in this Section, the Tribal hearing body shall recognize that the Authorized Agency is accepted by the Tribe as the subject matter expert in the given field and shall provide the Authorized Agency with deference by upholding the action unless it finds that the action:

- (a) Amounts to a violation of the Tribe's Constitution;
- (b) Was in excess of the Authorized Agency's Rulemaking Authority or is otherwise unlawful;
- (c) Was clearly erroneous in view of the entire administrative and factual records; or
- (d) Was arbitrary or capricious; or
- (e) Exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision and if said irregularity were not present, the decision would have been different.

End.

Adopted – BC-02-24-16-C

ADMINISTRATIVE RULEMAKING PROCESS

Authorized agencies may develop rules. Tribal entities become authorized agencies when a law other than the Administrative Rulemaking Law delegates them rulemaking authority.

Public Meeting and Comment Required

The Authorized Agency must provide a public comment meeting and accept comments for 5 business days following the meeting. The public meeting must be noticed a minimum of 10 business days prior to the meeting. Among other things, the notice must include information on how to obtain the proposed rule's summary report, which must include (1) the rule's name; (2) the law the rule interprets; (3) rule summary; (4) statement of effect from the Legislative Reference Office (LRO); and (5) a financial analysis.

LOC Certificate of Procedural Compliance

After the authorized agency considers the public meeting comments and makes any necessary revisions, it shall forward the rule and summary report to the Legislative Operating Committee (LOC) to request a certificate of procedural compliance with this Law's requirements. Is the LOC able to issue the certificate?

NO

The LOC shall return the rule to the authorized agency with an explanation of which procedural requirements were not fulfilled. The rule may be resubmitted to the LOC once procedural defects are corrected.

YES

The rule immediately becomes effective and the LOC shall forward the rule and summary report to the Oneida Business Committee (OBC). Does the OBC have any concerns with the rule?

OBC Notice and Consideration

NO

If the OBC does not present any concerns and/or requested revisions to the authorized agency within 30 days, the rules remain in effect as approved and must be sent to the LOC to be published on the Oneida Register.

YES

If the OBC has any concerns and/or requested revisions, it must present them to the authorized agency within 30 business days of its notice of the rule. (All amendments must be made within 6 months of when the OBC initiated amendments. If not complete, the rule remains in effect.) Does the OBC repeal the rule?

If the OBC has Concerns related to the Rule

NO

The authorized agency's rule remains in effect while it works with the OBC to resolve any issues with the rule and amend the rule. Do the authorized agency and the OBC agree on the amendments?

YES

If the proposed rule is an amendment, the rules in place immediately prior go back into effect while the authorized agency works with the OBC to amend the rule. Do the authorized agency and the OBC agree on the amendments?

NO

The OBC shall defer the rule to the LOC for the directed amendments. In the LOC's opinion, were substantial revisions made to the rule?

YES

In the authorized agency's opinion, were substantial revisions made to the rule?

NO

Once the rule is ready, the LOC shall forward the rule to the OBC for consideration. If approved, the OBC shall adopt the rule and the LOC shall update the Oneida Register.

YES

The LOC must provide another public comment period. Once the comments are considered and the rule is ready, the LOC shall forward the rule to the OBC for consideration. If approved, the OBC shall adopt the rule and the LOC shall update the Oneida Register.

NO

The authorized agency must approve the revised rule and provide a copy to the LOC to be posted on the Oneida Register. The rule becomes effective immediately upon the authorized agencies approval.

YES

The authorized agency must provide another public comment period, which restarts the process at LOC certificate of procedural compliance.