Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
March 18, 2020
1:30 p.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved

1. Approve the March 4, 2020 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Indian Preference in Contracting Law Amendments (pg. 4)
2. Children's Burial Fund Policy Amendments (pg. 63)
3. Tobacco Law Amendments (pg. 91)
4. Oneida Food Service Code Amendments (pg. 103)

IV. New Submissions

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Recess/Adjourn

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
March 04, 2020
9:00 a.m.

Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King
Excused: Jennifer Webster
Others Present: Brandon Wisneski, Clorissa N. Santiago, Kristen Hooker, Joanne House, Nicolas Reynolds, Terry Cornelius, Jameson Wilson, Leyne Orosco, Bonnie Pigman, Mollie Passon, Lee Cornelius.

I. Call to Order and Approval of the Agenda

David Jordan called the March 4, 2020, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to adopt the agenda: seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

1. **February 19, 2020 LOC Meeting Minutes**

Motion by Kirby Metoxen to approve the February 19, 2020, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

III. Current Business

1. **Vehicle Driver Certification and Fleet Management Amendments** *(:50-14:36)*

Motion by Daniel Guzman King to accept the updated public comment review memorandum, draft law and legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Ernest Stevens III to approve the Vehicle Driver Certification and Fleet Management law amendments fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by March 18, 2020; seconded by Kirby Metoxen. Motion carried unanimously.

2. **Children's Burial Fund Amendments** *(14:37-21:36)*

Motion by Kirby Metoxen to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously

3. **Oneida Food Service Code Amendments** *(21:37-27:03)*
Motion by Ernest Stevens III to accept the public comment and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

4. **Curfew Law Amendments** *(27:05-30:22)*
Motion by Kirby Metoxen to approve the public meeting packet and forward the Curfew law amendments to a public meeting to be held on April 2, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

5. **Domestic Animals Law Amendments** *(30:23-32:15)*
Motion by Kirby Metoxen to approve the public meeting packet and forward to the Domestic Animals law amendments to a public meeting to be held on April 2, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

6. **Boards, Committees and Commissions Law Emergency Amendments** *(32:16-36:19)*
Motion by Daniel Guzman King to approve the Boards, Committees, and Commissions law emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

7. **Wellness Court Law** *(36:20-:54)*
Motion by Daniel Guzman King to approve the article and the first community outreach notice to be published in the March 19, 2020 Kalihwisaks edition, the second community outreach notice to be published in the April 16, 2020 Kalihwisaks edition, and the third community outreach notice to be published in the May 21, 2020, Kalihwisaks edition; seconded by Kirby Metoxen. Motion carried unanimously.

IV. New Submissions

V. Additions

VI. Administrative Items

1. **Consideration of Legislative Solution to Election Issues Memo** *(39:56-50:26)*
Motion by Daniel Guzman King to approve the memorandum with the noted change and forward to the Oneida Business Committee. Motion failed due to lack of second.

Motion by Kirby Metoxen to approve the memorandum and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried.

Ayes: Ernest Stevens III, Kirby Metoxen
Abstained: Daniel Guzman King

VII. Executive Session

VIII. Adjourn
Motion by Ernest Stevens III to adjourn at 9:50 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.

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Legislative Operating Committee
March 18, 2020

Indian Preference in Contracting Law Amendments

Submission Date: 4/17/19	**Public Meeting:** 12/19/19
LOC Sponsor: Ernest Stevens III	**Emergency Enacted:** n/a

Summary: *The purpose of the amendments to this Law is to complete an overview of any amendments and updates that might be needed for this law.*

4/17/19 LOC: Motion by Jennifer Webster to add the Indian Preference in Contracting law to the active files list with a medium priority and Ernest Stevens III as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

5/20/19: *Work Meeting*. Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Stensloff, Jeff House, Cathy Bachhuber. The purpose of this work meeting was to discuss why the law was added to the AFL and what portions of the law needed to be addressed through amendments. The group identified potential areas for amendments and policy considerations for the LOC. Discussed that the notes from the meeting will be compiled and the LOC will begin making policy considerations – additional meetings to have further discussions of those considerations and the law in general will be scheduled.

6/5/19: *Work Meeting*. Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin considering potential amendments to the Law – based on the discussion and suggestions from the last work meeting. The LOC did not complete an initial review of the beginning policy considerations so an additional work meeting will be scheduled this week.

6/6/19: *Work Meeting*. Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue the discussion and consideration of potential amendments to the Law from the June 6 LOC work session – based on the discussion and suggestions for potential amendments from the May 20 LOC work meeting.

7/25/19: *Work Meeting*. Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Patricia Garvey, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the law line-by-line and discuss potential amendments, as well as to review and confirm prior issues the LOC decided to support and not support so we can move forward with amendments to this law.

9/26/19: *Work Meeting*. Present: Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff, Paul

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Witek, Jameson Wilson. The purpose of this work meeting was for Indian Preference, Purchasing, and Community Economic Development Divisions Engineering to educate and discuss with the LOC on the internal spreadsheets that are used for scoring, SOPs, and a proposed fine schedule.

10/21/19: *Work Meeting*. Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Witek. The purpose of this work meeting was to review the draft of the proposed amendments and the fine and penalty resolution with the affected entities.

10/24/19: *Work Meeting*. Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review the draft of the proposed amendments to the law.

11/6/19 LOC: Motion by Ernest Stevens III to approve the draft and the legislative analysis for the Indian Preference in Contracting Law Amendments; seconded by Kirby Metoxen. Motion carried unanimously.

11/14/19: *Work Meeting*. Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the updated draft fine and penalty resolution and discuss specific fine amounts for each violation.

11/20/19 LOC: Motion by Ernest Stevens III to approve the public meeting packet and forward the Indian Preference in Contracting law amendments to a public meeting on December 19, 2019; seconded by Kirby Metoxen. Motion carried unanimously.

12/12/19: *Work Meeting*. Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review and discuss the fine and penalty resolution. LOC directed one change be made to the resolution.

12/19/19: *Public Meeting Held*. Present: David P. Jordan, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Jameson Wilson, Rae Skenandore, Crystal Meltz, Amy Hacker, Jeffrey House. One (1) person gave oral comments during the public meeting.

12/30/19: *Public Comment Period Closed*. Two (2) submissions of written comments were received during the public comment period.

2/5/20 LOC: Motion by Jennifer Webster to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

2/5/20: *Work Meeting*. Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and consider the public comments that were received during the public meeting and subsequent public comment period. The LOC directed some revisions to be made to the draft based on the comments.

2/19/20 LOC: Motion by Ernest Stevens III to accept the updated public comment review memorandum, draft law and legislative analysis; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster to approve the Indian Preference in Contracting Law Amendments fiscal impact statement request memorandum and forward to the Finance Department directing a fiscal impact statement be prepared and submitted to the LOC by March 4, 2020; seconded by Daniel Guzman King. Motion carried unanimously.

3/3/20: *Special OBC Work Session.* Present: David P. Jordan, Patricia King, Tehassi Hill, Lisa Summers, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago. The purpose of this work meeting was to discuss the Indian Preference in Contracting law amendments and determine if and how it relates to the Oneida Business Committee's goal of utilizing the OESC Group.

Next Steps:

- Approve the Indian Preference in Contracting law adoption packet and forward to the Oneida Business Committee for consideration.
- Approve the resolution "Indian Preference in Contracting Law Fine and Penalty Schedule" and forward to the Oneida Business Committee for consideration.

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ONEIDA

TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: April 8, 2020
RE: Indian Preference in Contracting Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Indian Preference in Contracting law:

1. Resolution: Amendments to the Indian Preference in Contracting Law
2. Statement of Effect: Amendments to the Indian Preference in Contracting Law
3. Indian Preference in Contracting Law Amendments Legislative Analysis
4. Indian Preference in Contracting Law Amendments (Redline)
5. Indian Preference in Contracting Law Amendments (Clean)
6. Indian Preference in Contracting Law Amendments Fiscal Impact Statement

Overview

On April 17, 2019, the LOC added the Indian Preference in Contracting law amendments to its Active Files List. The purpose of the Indian Preference in Contracting law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. *[5 O.C. 502.1-1]*.

This resolution adopts amendments to the Indian Preference in Contracting law which will:

- Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation *[5 O.C. 502.3-1(ee)]*;
- Exempt tribal corporations from the requirement to submit a certification renewal application on an annual basis *[5 O.C. 502.5-6(c)]*;
- Permit joint ventures to qualify for Indian Preference on a project-specific basis *[5 O.C. 502.5-8]*;
- Raise the contract threshold for when Indian Preference is applied from one thousand five hundred dollars ($1,500) to three thousand dollars ($3,000) *[5 O.C. 502.6-1]*;
- Set a new timeframe for the Indian Preference Office's review of contracts prior the posting or announcement of a contract *[5 O.C. 502.6-3]*;
- Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution *[5 O.C. 502.9-5(a)(4)(A)]*;
- Make additional updates and clarify language throughout the law.

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The Legislative Operating Committee developed the proposed amendments to the Indian Preference in Contracting law through collaboration with representatives from the Nation's Indian Preference Office, Purchasing Department, Oneida Law Office, Community and Economic Development Division, and the Oneida ESC Group.

In accordance with the Legislative Procedures Act, a public meeting on the Indian Preference in Contracting law was held on December 19, 2019. One (1) person provided oral comments during the public meeting. The public comment period was then held open until December 30, 2019. The Legislative Operating Committee received two (2) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on February 5, 2020. Any changes made based on those comments have been incorporated into this draft.

Requested Action
Approve the Resolution: Amendments to the Indian Preference in Contracting Law

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Oneida Nation

Post Office Box 365

Phone: (920)869-2214 Oneida, WI 54155

BC Resolution # _____
Amendments to the Indian Preference in Contracting Law

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Indian Preference in Contracting law ('the Law") was adopted by the Oneida Business Committee through resolution BC-03-27-13-B; and

WHEREAS, the purpose of the Law is to stablish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation; and

WHEREAS, the Legislative Operating Committee worked collaboratively with representatives from the Nation's Indian Preference Office, Purchasing Department, Oneida Law Office, Community and Economic Development Division, and the Oneida ESC Group to develop the amendments to this Law; and

WHEREAS, the amendments to the Law update the definition of tribal corporation to now include any corporation wholly owned by the Nation in addition to those corporations chartered by the Nation; and

WHEREAS, the amendments to the Law provide tribal corporations an exemption from the requirement to submit a certification renewal application on an annual basis; and

WHEREAS, the amendments to the Law now permit joint ventures to qualify for Indian Preference on a project-specific basis; and

WHEREAS, the amendments to the Law raise the contract threshold for when Indian Preference is applied from one thousand five hundred dollars ($1,500) to three thousand dollars ($3,000); and

WHEREAS, the amendments to the Law set a new timeframe for the Indian Preference Office's review of contracts prior the posting or announcement of a contract; and

WHEREAS, the amendments to the Law clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution; and

WHEREAS, the amendments to the Law make other minor drafting revisions; and

WHEREAS, in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact statement were completed for the amendments to the Law; and

WHEREAS, a public meeting on the proposed amendments to this Law was held on December 19, 2019, in accordance with the Legislative Procedures Act, and the public comment period was held open until December 30, 2019; and

WHEREAS, the Legislative Operating Committee accepted, reviewed, and considered the public comments received on February 5, 2020; and

NOW THEREFORE BE IT RESOLVED, that the amendments to the Indian Preference law are hereby adopted and shall be effective on May 8, 2020.

BE IT FINALLY RESOLVED, that the Indian Preference Office and Purchasing Department shall implement the Law as adopted and develop and/or revise any internal processes and/or standard operating procedures as needed to implement this Law.

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Statement of Effect
Amendments to the Indian Preference in Contracting Law

Summary

This resolution adopts amendments to the Indian Preference in Contracting law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office
Date: March 13, 2020

Analysis by the Legislative Reference Office

The Legislative Procedures Act ("the LPA") was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. *[1 O.C. 109.1-1]*. This resolution adopts amendments to the Indian Preference in Contracting law which comply with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. *[1 O.C. 109.6, 109.7, 109.8]*.

The Indian Preference in Contracting law was adopted by the Oneida Business Committee for the purpose of establishing an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. *[5 O.C. 502.1-1]*.

The amendments to the Indian Preference in Contracting law will:

- Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation *[5 O.C. 502.3-1(ee)]*;
- Exempt tribal corporations from the requirement to submit a certification renewal application on an annual basis *[5 O.C. 502.5-6(c)]*;
- Permit joint ventures to qualify for Indian Preference on a project-specific basis *[5 O.C. 502.5-8]*;
- Raise the contract threshold for when Indian Preference is applied from one thousand five hundred dollars ($1,500) to three thousand dollars ($3,000) *[5 O.C. 502.6-1]*;
- Set a new timeframe for the Indian Preference Office's review of contracts prior the posting or announcement of a contract *[5 O.C. 502.6-3]*; and
- Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution *[5 O.C. 502.9-5(a)(4)(A)]*.

Other additional minor changes were made to the draft to update the language and ensure compliance with drafting style and formatting requirements.

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In accordance with the LPA, a public meeting on the proposed amendments to the Indian Preference in Contracting law was held on December 19, 2019. One (1) person provided oral comments during the public meeting. The public comment period was then held open until December 30, 2019. The Legislative Operating Committee received two (2) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on February 5, 2020. Any changes made based on those comments have been incorporated into this draft.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.

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AMENDMENTS TO INDIAN PREFERENCE IN CONTRACTING LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Ernie Stevens III	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	▪ To update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation; ▪ To raise the threshold to apply Indian Preference from one thousand five hundred dollars ($1,500) to three-thousand dollars ($3,000) for any contracts entered into by the Nation; ▪ To permit joint ventures to qualify for Indian Preference on a project-specific basis; ▪ To exempt tribal corporations from having to submit a certification renewal application on an annual basis; ▪ Set a new timeline for Indian Preference Office to review contracts; ▪ Clarify the Indian Preference Office's authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution.		
Purpose	To establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation *[5 O.C. 502.1-1]*.		
Affected Entities	Indian Preference Office, Purchasing Department, Oneida Judiciary, Oneida Police Department, Oneida Licensing Department, Corporations chartered and/or wholly owned by the Nation, and any department or entity of the Nation that enters into projects or contracts greater than $3,000.		
Related Legislation	Open Records and Open Meetings law, Vendor Licensing law, Personnel Policies and Procedures; Independent Contractor Policy, Travel and Expense Policy.		
Public Meeting	A public meeting was held on December 19, 2019.		
Fiscal Impact	A fiscal impact statement has been provided by the Finance Department.		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. The Nation's Indian Preference in Contracting law was adopted on July 29, 1998 and most recently amended on March 27, 2013. The purpose of this law is to increase economic benefits for the Nation and members of the Nation by providing maximum utilization of Indian workers and businesses on projects of the Nation. The Nation's Indian Preference Office is responsible for monitoring and enforcing Indian Preference in contracting.

B. This law was added to the LOC's Active file List on April 17, 2019 at the request of Councilmember Ernie Stevens III. The original intent of the amendments was to update the definition of "tribal entity." Since that time, a work group of representatives from relevant entities and departments have met to

review the law. Many of the proposed amendments reflect the feedback and suggestions of this work group.

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities of the Nation participated in the development of this law and legislative analysis: Indian Preference Office, Purchasing Department, Law Office, Community and Economic Development Division, and Oneida ESC Group.

B. The following laws of the Nation were reviewed in drafting this analysis: Open Meetings and Open Records law, Vendor Licensing law, Personnel Policies and Procedures, Independent Contractor Policy, Travel and Expense Policy, Layoff Policy, Furlough Policy, Oneida Nation Law Enforcement Ordinance.

SECTION 4. PROCESS

A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).

B. The law was added to the Active Files List on April 17, 2019.

C. A public meeting was held on December 19, 2019 with the public comment period held open until December 30, 2019.

C. At the time this legislative analysis was developed, the following work meetings had been held regarding developments of these amendments and legislative analysis:

- May 20, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Oneida ESC Group.
- June 5, 2019 Work Meeting: LOC.
- June 6, 2019 Work Meeting: LOC.
- July 25, 2019 Work Meeting: LOC, Law Office, Indian Preference, Purchasing.
- September 26, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Community Economic Development.
- October 21, 2019 Work Meeting: Indian Preference, Community Economic Development.
- October 24, 2019 Work Meeting: LOC.
- November 14, 2019 Work Meeting: Indian Preference and Purchasing.
- December 12, 2019 Work Meeting: LOC.
- February 5, 2020 Work Meeting: LOC.
- March 3, 2020 Special Oneida Business Committee Work Meeting.

SECTION 5. CONTENTS OF THE LEGISLATION

A. ***Definition of Tribal Corporation.*** The Indian Preference law applies to tribal corporations to the extent that those corporations enter into contracts with the Oneida Nation *[5 O.C. 502.6-1(b)]*. Previously, the definition of tribal corporation was "a corporation chartered by the Oneida Tribe of Indians of Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe." This definition has been updated to "a corporation chartered <u>and/or wholly owned by the Nation</u> pursuant to the Constitution and Bylaws of the Oneida Nation" *[5 O.C. 502.3-1(ee)]*.

- *Effect.* Some of the corporations owned by the Nation are chartered in other states. For example, Oneida ESC Group is incorporated in the state of Nevada, but wholly owned by the Oneida Nation. This updated definition clarifies that this law will apply to all of the Nation's corporations regardless of where they are chartered, organized or incorporated.

Chart 1. List of Oneida Nation Corporations.

Tribal Corporation	
Oneida Airport Hotel Corporation	Chartered by Oneida Nation.
Bay Bancorporation	Incorporated under WI Business Corporation law. Wholly owned by Oneida Nation.
Oneida ESC Group, LLC	Limited liability company (LLC) organized under Nevada law. Wholly owned by Oneida Nation.
Oneida Golf Course Enterprise Corporation	Chartered by Oneida Nation.
Oneida Seven Generations Corporation.	Chartered by Oneida Nation. Currently in the process of being dissolved.

B. ***Joint Ventures.*** Joint ventures will now qualify for Indian Preference on a project-specific basis.

- *What is a Joint Venture?* A "joint venture" is a one-time grouping of two (2) or more entities in a business undertaking *[5 O.C. 502.3-1(v)]*. A joint venture is a partnership where each party jointly undertakes a transaction for mutual profit. Each member of the joint venture contributes assets and shares risk *[Cornell Law Legal Information Institute (LII)]*. For example, two companies may form a joint venture to bid on a construction project that they otherwise would be unable to complete on their own.
- *Joint Ventures Now Eligible for Indian Preference.* Previously, joint ventures were not eligible to receive Indian Preference. These amendments will permit joint ventures to receive Indian Preference on a project-specific basis *[5 O.C. 502.5-8]*. In other words, the joint venture will only receive Indian Preference for the specific project they are bidding on. Because joint ventures are typically a short-term partnership, any future joint venture will need to reapply for Indian Preference each time they bid on a project.
- *Effect.* Entities that form joint ventures to bid on projects will now qualify for Indian Preference provided they meet all other requirements of this law.

C. ***Threshold to Apply Indian Preference.*** Currently, the Indian Preference law applies to all of the Nation's contracts over $1,500 except where prohibited by law or grant funding requirements. These amendments raise this threshold. Now, the Indian Preference law will only apply to the Nation's contracts over $3,000 *[5 O.C. 502.6-1]*.

- *Justification.* This change was made at the recommendation of the Purchasing Department to match the Nation's current procurement threshold. The Nation's procurement policy requires three bids for any contract or purchase over $3,000. Setting both the Indian Preference and three-bid thresholds at $3,000 will make both policies easier to implement for the Nation. Purchasing also explained that most Indian Preference vendors bid on projects above $3,000, such as construction-related projects. Therefore, Purchasing Department predicts that the higher threshold will have minimal impact on most Indian Preference vendors.
- *Effect.* Indian Preference will only apply to contracts greater than $3,000. Any vendors bidding on projects between $1,500 and $2,999 will no longer receive Indian Preference.

D. ***New Timeline for Indian Preference Office to Review Contracts.*** The current Indian Preference law already requires that projects must be submitted to the Indian Preference Office for review before being posted or announced for bids. However, the current law does not include a timeframe for the Indian Preference office to complete this review.

- *New Timeline.* These amendments add a new timeline for when the Indian Preference office must complete this review. Now, the Indian Preference Office must complete their review within five (5) business days *[5 O.C. 502.6-4]*. The intent is to ensure that projects can be posted in a timely manner.

E. ***Fine and Penalty Schedule for Indian Preference Violations.*** The current Indian Preference law already authorizes the Indian Preference Office to develop and the Business Committee to approve a fine and penalty schedule for violations of this law. However, no fine and penalty schedule has been adopted.

- *Changes.* Previously, this law stated that fine amounts must be no less than $100 and no more than $1,000. These amendments remove this limitation. In addition, the amendments also specify that the fine amounts will be adopted by the Business Committee by resolution. *[5 O.C. 502.9-5(a)(4)]*.

F. ***Certification Renewal Exemption for Tribal Corporations.*** Indian Preference certification is granted on an annual basis and expires after one (1) year. Each year, certified entities must submit a renewal application and reporting form to maintain their certification. This ensures that entities still meet the requirements for Indian preference. Tribal corporations will now be exempt from having to submit a certification renewal form on an annual basis. *[5 O.C. 502.5-6(c)]*.

- *Background:* Tribal corporations are chartered and/or wholly owned by the Oneida Nation. Compared to a private entity, tribal corporations are unlikely to experience a change in ownership or control that would impact their Indian Preference certification status without the Nation being aware of it. Therefore, the requirement to submit renewal forms each year has been deleted. Tribal corporations will still be required to notify that Indian Preference Office of any occurrence that would impact their eligibility for certification in accordance with 502.5-5.

G. ***Minor Drafting Changes.*** Minor drafting changes have been made throughout the law, such as changing "Tribe" to "Nation" or moving the order of existing sections.

SECTION 6. EFFECT ON EXISTING LEGISLATION

A. ***References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this law. These amendments do not conflict with any of the referenced laws.

- *Open Records and Open Meetings law.* In accordance with the Nation's laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. *[5 O.C. 502.5-7 and 502.9-3(c)(2)]*.
- *Personnel Policies and Procedures.* In the execution of employment duties and in accordance with the Nation's laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation *[5 O.C. 502.6-7]*.
- *Vendor Licensing.* All contracts this law applies to must include reference to the Nation's laws governing vendor licensing and provide the contracting parties with directions on how to access that document *[5 O.C. 502.6-8(c)]*.

B. ***Other Laws that Reference Indian Preference in Contracting:*** The following laws of the Nation reference Indian Preference in Contracting. These amendments do not conflict with any of the referenced laws.

- *Independent Contractor Policy.* "It is… the policy of the Tribe that the order of preference, as set out in the Tribe's Indian Preference law, be used in the selection of independent contractors" *[5 O.C. 503.1-2(b)]*.
- *Travel and Expense Policy.* In regard to business expenses, "Considerations should be given to patronizing tribally owned business and Indian Preference vendors certified by the Compliance division" *[2 O.C. 219.9-4(f)]*.
- *Judiciary Canons of Judicial Conduct.* "Nothing in these canons shall be construed as prohibiting a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations that support Native American issues, exercise tribal or Indian Preference…" *[8 O.C. 802.3.2.2]*.

C. *Other Laws that Reference Indian Preference in Hiring:* The following laws of the Nation reference Indian Preference as it relates to the Nation's hiring process. The standards set in this law do not apply to preference "as applicable to employees hired through the Nation's HRD or pursuant to an employment contract" *[5 O.C. 502.6-2(a)]*. The Nation's Indian preference in hiring process is located in Section III of the Nation's Personnel Policies and Procedures. These amendments do not conflict with any of the referenced laws.

- *Layoff Policy.* "The Oneida Tribe recognizes Indian preference in the development of layoff SOPs. Indian preference as used in this policy shall mean a preference granted to retain the Oneida member employee when all other things being equal with non-member employees. Provided that, a manager may identify critical positions within the business unit which shall not be subject to Indian Preference" *[2 O.C. 207.4-1]*.
- *Furlough Policy.* "Indian preference may not be used as a consideration in identifying employees to be furloughed" *[2 O.C. 205.5-4]*.
- *Oneida Nation Law Enforcement Ordinance.* "The following positions shall be held only by members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant, Conservation Director, Assistant Conservation Director… All other positions and appointments shall be subject to the Indian Preference rules of the Oneida Tribe" *[3 O.C. 301.5-3(d)]*.

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. *Enforcement.* The Nation's Indian Preference Office is authorized to enforce this law *[5 O.C. 502.4-1 502.9-5]*. In addition, the Oneida Police Department is authorized to enforce orders issued by the Trial Court, such as cease-and-desist orders *[5 O.C. 502.9-8]*.

SECTION 8. OTHER CONSIDERATIONS

A. *Fine and Penalty Schedule.* At the time this analysis was drafted, the Indian Preference Office is developing a fine and penalty schedule for consideration by the Oneida Business Committee. The LOC intends to bring a proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these amendments are up for adoption.

B. *Fiscal Impact*. A fiscal impact statement has been provided by the Finance Department.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation *[1 O.C. 109.6-1]*.
- A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial

information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee *[1 O.C. 109.6-1(a and b).]*.

Title 5. Business - Chapter 502

~~INDIAN PREFERENCE IN CONTRACTING~~

Yukwat^nhas Ukwehu=w# Kayanl^hsla

Laws concerning the hiring of the Oneida People

~~502.1. Purpose and Policy~~
~~502.2. Adoption, Amendment, Conflicts~~
~~502.3. Definitions~~
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INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
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502.7. Compliance Agreements
502.8. Skills Bank and Qualified Trades Workers
502.9. Investigations and Enforcement

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the ~~Tribe~~Nation and ~~Tribal~~ members of the Nation by providing for the maximum utilization of Indian workers and businesses on ~~Tribal~~ projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the ~~Tribe:~~

~~(a) To~~Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and

~~(b) To~~ to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the ~~Tribe~~Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and ~~shall be effective immediately.~~amended by resolution BC-__-__-__.

502.2-2. This law may be amended ~~pursuant to the procedures set out in Tribal law~~or repealed by the Oneida Business Committee and/or ~~the Oneida~~ General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. However, this law specifically supersedes the following:

(a) BC-04-03-96-A - Indian Preference Policy Rider I;
(b) BC-05-22-96-A - Technical Amendments to Rider I Policy;
(c) BC-06-10-98-D - Amendment to Resolution 5-22-96-A;
(d) BC-07-29-98-B - Indian Preference Law;

(e) BC-03-27-02-A - Sections 9-14 of the Indian Preference Law; and
(f) BC-03-26-03-A - Amendment to Indian Preference Law Addendum.

502.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin.~~

~~502.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the Oneida Tribe of Indians of Wisconsin~~Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a)~~ (a) "Agent" means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

~~(b)~~ (b) "Bid" means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

~~(c)~~ (c) "Bid shopping" means the practice of divulging a contractor's or subcontractor's bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

~~(d)~~ (d) "Broker" means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

(e) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

~~(e)~~ (f) "Certification" means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.

~~(f) Certified entity. See Entity, Certified entity~~

~~(g) "Compliance agreement" means a binding agreement, negotiated between the Indian Preference Office and a contractor, identifying specific Indian preference-related requirements for a Tribal project.~~

~~(h) "Construction contract" means any contract issued to build, repair or remodel structures, and includes subcontracts and other construction agreements.~~

~~(i) "Contractor" means one who enters into a contract.~~

~~(j) "Core work crew" means the minimum amount of the contractor's key employees that are essential to start up and continue work on a Tribal project.~~

~~(k) "Days" means calendar days, except as otherwise provided.~~

~~(l) "Employee" means any person that performs services and/or labor for an employer in exchange for compensation.~~

~~(m) "Employer" means any entity, except the Oneida Tribe of Indians of Wisconsin, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.~~

~~(n) "Entity" means any person, sole proprietor, partnership, corporation, franchise, governmental enterprise, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Tribe.~~

~~(1)~~ (g) "Certified entity" means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

~~"Tribal~~ (h) "Compliance agreement" means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.

(i) "Construction contract" means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.

(j) "Contractor" means one who enters into a contract.

(k) "Core work crew" means the minimum amount of the contractor's key employees, who perform a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer's procedures and routines, that are essential to start up and continue work on a project.

(l) "Employee" means any person that performs services and/or labor for an employer in exchange for compensation.

(m) "Employer" means any entity~~" means~~, except the Nation, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

(n) "Enterprise" means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.

(o) "Entity" means any person, sole proprietor, partnership, corporation, franchise, governmental body, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all ~~Tribal~~employment and contract activities within the jurisdiction of the Nation.

~~(2)~~ (p) "Entities of the Nation" means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations~~, such as Oneida Seven Generations Corporation or Oneida Tribal Integrated Enterprises~~.

~~(o)~~ (q) "Front" means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.

~~(p)~~ (r) "Indian" means an enrolled member of any federally-recognized Indian tribe.

~~(q)~~ (s) "Indian-owned business" means an entity which is majority owned and managed by an Indian.

~~(r)~~ (t) "Indian preference" means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.

~~(s)~~ (u) "Internal service" means any service provided for free or at cost for the ~~Tribe~~Nation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.

~~(t)~~ (v) "Joint venture" means ~~an entity that is fifty percent (50%) owned and managed by an Indian.~~

~~(u) "Key employee" means~~ a one ~~who performs a critical function such that an employer would risk likely financial damage~~-time grouping of two (2) or ~~loss if that task were assigned to a person unfamiliar with and/or untrained~~more entities in ~~the employer's procedures and routines~~a business undertaking.

~~(v)~~ (w) "Lowest responsible bidder" means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.

~~(w) "Office~~(x) "Nation" means the ~~Indian Preference Office or its designee.~~

~~(x)~~ ~~"~~Oneida~~" means the Oneida Tribe of Indians of Wisconsin~~ Nation.

~~"Outsource~~(y) "Non-construction contract" means ~~to obtain goods or~~ any contract other than a ~~service from a third party, instead of having~~construction contract, and includes subcontracts and other agreements.

~~(y)~~ (z) "Project" means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services ~~be provided from within the Tribe by a Tribal entity or Tribal enterprise~~that will support or benefit any aspect of the Nation's government, holdings, infrastructure, workplace, economy or community.

~~(z)~~ (aa) "Qualified trades worker" means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.

~~(aa)~~ (bb) "Reservation" means all the lands within the exterior boundaries of the Reservation of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(bb) "Skills Bank" means the services provided by the Office, whereby listings of qualified trades workers are maintained and made available for those required to comply with this law.~~

~~(cc)~~ (cc) "Subcontractor" means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor's contractual obligations.

~~(dd) "Trade contractor" means an entity that is awarded a contract for the supply of services pursuant to a construction agreement, including all entities that enter into any subcontracts.~~

~~(ee) "Tribal" or "Tribe" means the Oneida Tribe of Indians of Wisconsin.~~

(dd) "Trial Court" means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

~~(ff)~~ (ee) "Tribal corporation" means a corporation chartered and/or wholly owned by the ~~Oneida Tribe of Indians of Wisconsin~~Nation pursuant to the Constitution and Bylaws of the Oneida ~~Tribe.~~Nation.

~~(gg) "Tribal enterprise" means any internal operation owned and operated by the Tribe that generates revenues through its core business functions, including but not limited to: Oneida Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.~~

~~(hh) Tribal entity. *See Entity, Tribal entity.*~~

~~(ii) "Tribal project" means any effort whereby the Tribe or a Tribal entity contracts for labor and/or goods or services that will support or benefit any aspect of the Tribal government, holdings, infrastructure, workplace, economy or community.~~

502.4. Jurisdiction

502.4-1. The Indian Preference Office shall ~~have authority over matters relating to the interpretation~~implement, monitor, and ~~enforcement of~~enforce this law ~~as set out within this law.~~and other applicable laws and policies relating to Indian preference.

502.4-2. The ~~Tribe's judicial system~~Trial Court shall have ~~exclusive~~ jurisdiction over all ~~other~~ matters ~~relating~~related to the interpretation and enforcement of this law.

502.4-~~2~~3. The Indian Preference Office and ~~the Tribe's judicial system~~Trial Court shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working

with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance agreement.

502.5. Certification of Entities~~Indian Preference Office~~

502.5-1. ~~An Indian Preference Office is hereby created~~*Criteria for* ~~the purpose of implementing, monitoring and enforcing this law and other applicable laws and policies relating to Indian preference.~~

~~502.5-2. The Office shall have the following duties, along with other responsibilities as may be listed throughout this law.~~

~~(a)~~ *Certification* ~~*of Entities.*~~

~~(1) Verify information provided by entities seeking~~*as an Indian-Owned Business.* In order to seek certification ~~and make determination of eligibility.~~

~~(2) Issue certification.~~

~~(b) *Skills Bank.* Establish and maintain a Skills Bank and actively recruit qualified trades workers for listing in the Skills Bank.~~

~~(1) Identify, initiate, and sponsor training, internship and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.~~

~~(2) Cooperate with other Tribal programs to provide counseling and support to assist Indians in retaining employment.~~

~~(c) *Negotiations.* Negotiate compliance agreements that include, but are not limited to the following:~~

~~(1) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per Tribal contract dollar.~~

~~(2) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing federal, state and/or Tribal wage scales.~~

~~(d) *Monitoring.*~~

~~(1) Perform on-site inspections to verify compliance with this law.~~

~~(2) Require and review weekly workforce reports.~~

~~(3) Establish a mandatory training process for Tribal entities that do contracting or bidding~~ as ~~a regular function of their duties.~~

~~(4) Provide training to assist certified entities with understanding their rights and abilities under this law.~~

~~(5) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.~~

~~(e) *Investigations.* Investigate written complaints and respond to inquiries.~~

~~(f) *Enforcement.*~~

~~(1) Enforce compliance agreements and the provisions of this law.~~

~~(2) Create internal procedures to implement and carry out the provisions of this law.~~

~~(3) Suspend or revoke certification of entities or remove trades workers from the Skills Bank.~~

~~(4) Issue Notices of Noncompliance.~~

~~(5) Represent the interests of the Tribe in bringing or defending Indian preference-related actions before the Tribe's judicial system relating to noncompliance with~~

~~this law, a compliance agreement, or regulations or policies issued pursuant to this law.~~

~~(6) Establish a schedule of fines in accordance with 502.10-3, and impose such fines in accordance with 502.10-4.~~

~~502.5-3. *Records*. Any records created and maintained by the Office shall be made available in accordance with applicable Tribal and federal law.~~

~~502.5-4. Within the scope of authority defined in this law, the Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.~~

~~502.5-5. Prior to the posting or announcement of a contract for any Tribal project, the specifications for such project shall be submitted to the Office.~~

~~(a) The Office shall, with experts identified from other Tribal entities, review the specifications, including bidding requirements, to ensure that there are no unnecessary and unjustifiable restrictions that may:~~

~~(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;~~

~~(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; or~~

~~(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.~~

~~(b) *Unbundling a Contract*. The Office may require that specific portions of a contract be outsourced to internal services, Tribal enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the Tribal project.~~

~~502.6. Certification of Entities~~

~~502.6-1. Applicants seeking certification of~~ an Indian-owned business ~~shall submit a completed and signed application to the Office, along with any documentation required under 502.6-4.~~

~~502.6-2. The Office may interview~~ the following criteria shall be met by the applicant~~(s) and/or request additional information as may be necessary to make a determination regarding certification.~~ entity:

~~502.6-3. Within thirty (30) days of receiving the application and any additional requested information, the Office shall inform the applicant of a determination to:~~

~~(a) grant the certification; or~~

~~(b) deny the certification, including a full written explanation of the reason for the denial; or~~

~~(c) grant probationary certification for a period of up to one (1) year, if so determined by the Office for reasonable and just cause as identified and set out in regulations. During the probationary period, the applicant shall satisfy any conditions imposed by the Office, and the Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law. The Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.~~

~~502.6-4. Certification may be granted to entities that qualify in accordance with the criteria listed in this law. In order to receive certification, an applicant entity shall provide proof of:~~

~~(a)~~ (a) There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity. Evidence of both financial ownership and control shall be embodied in the entity's organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) *Indian Financial Ownership.* Indian financial ownership is established where the ~~Tribe, Tribal~~Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity's assets upon dissolution.

(2) *Indian Control.* Indian control is established where the ~~Tribe, Tribal~~Nation, member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.

(3) *Indian Management.* Indian Management is established where an Indian owner(s) is directly involved in the entity's management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or

(B) at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.

~~(b) Financial~~(b) The entity can demonstrate financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable required bonding and insurance, materials and/or equipment necessary to perform applicable work.

(c) ~~All~~The entity can provide past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

502.~~6~~ 5-2. *Application.* The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. *Certification Determination.* Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(b) deny the certification, including a full written explanation of the reason for the denial; or

(c) grant probationary certification for a period of up to one (1) year, if so determined by the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall mail a certificate to the entity.~~-~~ Granting an entity certification does not convey any comment regarding the ability of the entity to perform any work nor does it guarantee that an entity has met all the qualifications to obtain work under any particular contract where Indian preference may be applied.

502.~~6-6.~~5-5. *Notification Requirements.* A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

(a) changes in the ownership or control status of the entity; ~~and/or~~

(b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or

(c) any other changes that could:

(1) affect an entity's eligibility for certification~~,~~;

(2) affect the financial liability of any entity, contracting party or the ~~Tribe,~~ Nation; and/or

(3) alter the status of the qualifications of the entity.

502.5-6~~-7~~. *Certification Renewal*. Certification is granted on an annual basis~~,~~ and shall lapse after one (1) year unless renewed.

(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.

(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.

~~502.6-8. *Open Records.* In accordance with the Open Records and Open Meetings law~~(c) *Exemption for Tribal Corporations*. Tribal corporations shall be exempt from the requirement to renew certification on an annual basis. Certification for a Tribal corporation is granted until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a Tribal corporation in accordance with the notification requirements of section 502.5-5.

(1) When a Tribal corporation complies with the notification requirements of section 502.5-5 the Tribal corporation shall also apply for renewal of its certification.~~,~~

(A) The Indian Preference Office shall provide the Tribal corporation with a renewal application and annual reporting form.

(B) The Tribal corporation shall return the renewal application and annual reporting form to the Indian Preference Office ten (10) days.

502.5-7. *Open Records.* In accordance with the Nation's laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided ~~further,~~ that, all information given for purposes of receiving certification, including financial information, is subject to internal audit of the ~~Tribe~~Nation.

502.~~6-9~~5-8. *Joint Ventures.* ~~Joint~~All joint ventures ~~shall not be certified~~seeking certification as ~~eligible for Indian preference even though one equal fifty percent (50%) partner is~~ an Indian~~ that shares in equal financial ownership, control and direct involvement with~~-owned business shall

submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

502.~~6-10~~5-9. *Brokers, Agents and Franchises.*

(a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.

(1) To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.

(2) The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself or herself out for employment to the public generally and that the employment is not that of being a special agent for a single client.

(b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.

(c) *Franchises.* A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.

502.~~6-11~~5-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian ~~preference eligibility~~-owned business in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Indian Preference Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

(1) Entities that represent that they are exercising management control of a ~~Tribal~~ project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity~~.~~;

(2) Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role~~.~~;

(3) Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity's source without paying a marked-up cost~~.~~; and/or

(4) Any other situation where the Indian Preference Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

502.~~7~~6. Application of Indian Preference to Contracts

502.~~7~~6-1. *Application of the Law.* Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over ~~one~~three thousand ~~five hundred~~ dollars ($~~1,500.00~~3,000) that meet the requirements of (a) and/or (b) below~~.~~:

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the ~~Tribe~~Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the ~~Tribe~~Nation, whereby goods and services are provided on or near the Reservation~~.~~; and

(2) all subcontractors, employees, or other entities working with, for, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement.

(b) *Tribal Corporations*. This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the ~~Tribe~~Nation.

502.~~7~~6-2. *Non-Applicability of the Law.*

(a) *~~Tribal~~Indian Preference in Hiring of Employees~~.~~ of the Nation.* The standards set out in this law shall not apply to preference as applicable to ~~Tribal~~ employees hired through the ~~Oneida~~Nation's Human Resources ~~department~~Department or pursuant to an employment contract.

(b) *Internal Services and ~~Tribal~~ Enterprises*. The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The ~~Tribe~~Nation shall exclusively utilize internal services and ~~Tribal~~ enterprises whenever an internal service of the ~~Tribe~~Nation or ~~Tribal~~ enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or ~~Tribal~~ enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or ~~Tribal~~ enterprise.

502.6-3. *Contract Specifications Review.* Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

~~502.7-3.~~(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; and/or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) *Unbundling a Contract.* The Indian Preference Office may require that specific portions of a contract be outsourced to internal services, enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall

not cause undue hardship, unnecessary delay or additional expenses in completing the project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

502.~~7-4.~~6-5. *Cooperative Agreements*. Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. *Cultural Setting of Contracts.* All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the ~~community of the Tribe.~~ Nation. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

502.6-7~~-5. *Tribal*~~. *Employees~~.~~ of the Nation.* In the execution of employment duties and in accordance with the ~~Tribe's Personnel Policies~~Nation's laws and ~~Procedures, Tribal~~policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the ~~Tribe~~Nation or ~~Tribal~~ entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

502.~~7~~-6-8. *Contracts and Attachments.* All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of this law or applicable compliance agreement may be deemed a material and substantial breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and

(2) In accordance with the provisions of this law.

(b) Reference this law, and shall contain an ~~Acknowledgment Clause~~acknowledgment clause, whereby the contractor shall agree to the following:

(1) The contractor has read and understands the provisions of this law~~.~~;

(2) The contractor understands how this law affects the contractor's rights and responsibilities~~.~~; and

(3) The contractor agrees that the provisions of this law shall govern the performance of the parties.

(c) Reference ~~Chapter 56 of~~ the ~~Oneida Code of Laws, Oneida Vendor Licensing~~Nation's laws governing vendor licensing, and provide the contracting parties with directions on how to access that document.

502.6-9. *Applying Indian Preference to Non-Construction Contracts*. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.6-10. *Applying Indian Preference to Construction Contracts*. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

~~502.7-7. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Office toward a mutually satisfactory resolution.~~

(a) ten percent (10%) of the first fifty thousand dollar ($50,000) segment of a bid;

(b) plus nine percent (9%) of the next fifty thousand dollar ($50,000) segment of a bid;

(c) plus eight percent (8%) of the next one hundred thousand dollar ($100,000) segment of a bid;

(d) plus seven percent (7%) of the next one hundred thousand dollar ($100,000) segment of a bid;

(e) plus six percent (6%) of the next one hundred thousand dollar ($100,000) segment of a bid;

(f) plus five percent (5%) of the next one hundred thousand dollar ($100,000) segment of a bid;

(g) plus four percent (4%) of the next five hundred thousand dollar ($500,000) segment of a bid;

(h) plus two percent (2%) of the next one million dollar ($1,000,000) segment of a bid; and

(i) plus one percent (1%) of any amount over two million dollars ($2,000,000).

502.~~7-8~~6-11. *Awarding the Contract*. After the appropriate discount has been subtracted from preferred bids, the following shall be used to determine which bidder is awarded the contract:

(a) If a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity.

(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.

~~502.7-9. *Applying Indian Preference to Non-Construction Contracts*. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.~~

~~502.7-10. *Applying Indian Preference to Construction Contracts*. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:~~

~~(a) ten percent (10%) of the first $50,000 segment of a bid.~~

~~(b) plus nine percent (9%) of the next $50,000 segment of a bid.~~

(c) ~~plus eight percent (8%) of the next $100,000 segment of a bid.~~

~~(d) plus seven percent (7%) of the next $100,000 segment of a bid.~~

~~(e) plus six percent (6%) of the next $100,000 segment of a bid.~~

~~(f) plus five percent (5%) of the next $100,000 segment of a bid.~~

~~(g) plus four percent (4%) of the next $500,000 segment of a bid.~~

~~(h) plus two percent (2%) of the next $1,000,000 segment of a bid.~~

~~(i) plus one percent (1%) of any amount over $2,000,000.~~

~~502.7-11.~~ Bid shopping is prohibited.

~~**502.8. Skills Bank and Qualified Trades Workers**~~

502.~~8-1. The~~6-12. *Monitoring the Contract*. Once a contract is awarded to an entity, the Indian Preference Office shall ~~establish~~perform the following monitoring duties:

(a) Perform on-site inspections to verify compliance with this law;

(b) Require and ~~administer a Skills Bank~~review weekly workforce reports;

(c) Provide training to assist ~~with providing Indians and first generation descendants~~certified entities with ~~employment opportunities. The goal~~understanding their rights and abilities under this law; and

(d) Receive feedback from contractors regarding the performance of ~~the Tribe is to achieve one hundred percent (100%) participation of~~any certified entity or qualified trades ~~workers on Tribal projects~~worker.

~~502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.~~

~~502.8-3. The Office shall regularly update the Skills Bank listings.~~

~~502.8-4. Entities required to fill positions in accordance with~~502.6-13. In the event that a dispute may arise regarding this law ~~and/~~or a compliance agreement ~~under 502.9,~~, all affected parties shall ~~contact~~cooperate in good faith with the Indian Preference Office ~~prior to the commencement of any work~~toward a mutually satisfactory resolution.

~~(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:~~

~~(1) Members of the Oneida Tribe.~~

~~(2) First generation descendants of Oneida Tribal members.~~

~~(3) Members of other federally-recognized Indian tribes.~~

~~(b) If a law or grant funding requirements prohibit the hiring of qualified trades workers in accordance with 502.8-4(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.~~

~~(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted in accordance with 502.8-4.~~

~~502.8-5. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:~~

~~(a) proof of enrollment or proof that the individual is a first generation descendant of the Oneida Tribe.~~

~~(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field.~~

~~(c) if applicable, proof of a driver license, including any endorsements.~~

~~(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:~~

~~(1) past and current licensing, credentials and certifications, including information related to penalties or punitive actions taken by any licensing body within the past ten (10) years; and~~

~~(2) any required or possessed insurance and/or bonding.~~

~~502.8-6. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.~~

~~502.8-7. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.*~~

~~(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in~~

~~order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.~~

~~(b) In making any layoffs or terminations, all contractors shall notify the Office prior to laying off or terminating a qualified trades worker.~~

~~(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.~~

~~(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.~~

~~(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Office and shall call back qualified trades workers before bringing back other employees.~~

~~(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.~~

~~502.8. 8. *Construction Contracts: Core Work Crew.* As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Office, they may be employed on the Tribal project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.~~

~~(a) For the purposes of employment on a Tribal project, the Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.~~

~~(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Office that such actions were not intended to circumvent the provisions of this law.~~

~~(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.~~

~~**502.9.**~~

502.7. Compliance Agreements

502.~~9~~7-1. *Compliance Agreements.* ~~All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.~~ Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. *Contents of a Compliance Agreement*. A compliance agreement shall include, but is not limited to, the following information:

(a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and

(b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

502.7-3.~~502.9-2.~~ *Term of a Compliance Agreement*. Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

502.~~9-3~~7-4. Unless prior written consent of the Indian Preference Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

502.~~9-4~~7-5. *Limited Waivers.* The Indian Preference Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

(a) The Indian Preference Office shall identify, initiate, and sponsor training, internship, and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.

~~502.10.~~ The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference Office prior to the commencement of any work.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Nation;

(2) First generation descendants of the Nation; and then

(3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted by the Indian Preference Office.

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;

(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;

(c) proof of a driver's license, including any endorsements, if applicable;

(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:

(1) past and current licensing;

(2) credentials and certifications; and

(3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

502.8-6. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.*

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Indian Preference Office prior to laying off or terminating a qualified trades worker.

(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Indian Preference Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-7. *Construction Contracts: Core Work Crew.* As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees

utilized by known subcontractors. If such employees are approved by the Indian Preference Office, they may be employed on the project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a project, the Indian Preference Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Indian Preference Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Investigations and Enforcement

502.~~10~~9-1. ~~*Office Investigations*~~ ~~Any~~*Complaints*. An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by ~~a perceived~~an act of ~~noncompliance~~ non-compliance with:

(a) this law~~,~~;

(b) a compliance agreement~~,~~; and/or

(c) any standard operating procedure issued pursuant to this law~~, who wishes to complain shall file a written complaint with the Office.~~.

502.9-2. *Contents of the Complaint*. A complaint shall ~~provide such~~include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint and carry out an investigation~~. Wherever possible, the complainant shall provide the Office with~~, such as evidence of any discriminatory practices, alleged misconduct, or other ~~noncompliance~~non-compliance.

~~(a)~~502.9-3. *Complaint Investigation*. Upon receipt of a complaint or after witnessing ~~noncompliance~~non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

~~(1) If the Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Tribe or community, the Office shall immediately refer the complaint or information to the appropriate Tribal department or authority for investigation. The Office may also independently investigate such complaint or information for purposes of ensuring compliance with this law, and shall have the authority to review the results of any other investigation conducted by another Tribal department or authority in accordance with the Open Records and Open Meetings Law.~~

~~(2~~(a) In conducting an investigation~~, the~~ to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and ~~shall have the right to~~ speak to workers; and ~~to~~

(3) conduct inspections of the job site~~(s).~~.

(~~3~~b) Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or

administrative proceeding or in accordance with ~~Tribal law. Provided that, any report or recommendation prepared by the Office for use at a hearing shall be promptly released to the complainant and alleged violator.~~a law of the Nation.

(~~b~~1) Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

(c) If~~, after conducting~~ the Indian Preference Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation ~~under~~.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this ~~section, the~~law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation's laws and policies governing open records.

502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the ~~issue will~~complaint shall be closed. ~~A~~

(a) The complainant may ~~appeal~~file a complaint to contest this decision ~~to~~with the ~~Tribe's judicial system~~Nation's Trial Court within ten (10) business days after issuance of such notice.

~~(1) The complainant's appeal may only request the Tribe's judicial system~~(b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office.~~-~~ During an in-camera inspection~~,~~ only a judge~~(s)~~ may review the information obtained by the Indian Preference Office during the investigation~~,~~ as this information is confidential and disclosure is not necessary.

(~~2~~c) If~~,~~ after reviewing the ~~Office's investigation, the Tribe's judicial system determines that there is sufficient evidence of a genuine and material issue of noncompliance, the Tribe's judicial system shall order the Office to take action in accordance with 502.10-4 and/or 502.10-5, as if the Office's original investigation had determined that sufficient evidence of a genuine and material issue of noncompliance existed.~~

~~(3) If, after reviewing the~~ Indian Preference Office's investigation, the ~~Tribe's judicial system~~Trial Court determines the alleged violation has no merit, the ~~Tribe's judicial system~~Trial Court shall notify all parties in writing that the ~~issue~~matter will be ~~closed~~dismissed and no further appeals of the matter will be accepted.

~~502.10-2. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.~~

~~502.10-3. *Fines and Fees.*~~

~~(a) The Office shall establish, and the Oneida Business Committee shall approve:~~

~~(1) a schedule of fines that may be imposed upon any person or entity violating provisions of this law. Each offense shall result in a fine of no less than one hundred dollars ($100) nor more than one thousand dollars ($1,000); and a separate offense~~

~~shall be deemed committed on each day during which a violation occurs or continues.~~

~~(2) a schedule of penalty fees that may be imposed upon any person or entity on all amounts due on monetary judgments not paid within at least thirty (30) days of the initial judgment.~~

~~(b) No fines or penalty fees may be assessed against the Tribe, the Office or other Tribal departments, or employees engaged in their official duties under this law.~~

~~502.10-4.~~(d) If~~,~~ after ~~an~~reviewing the Indian Preference Office's investigation ~~under 502.10-1,~~ the ~~Office reasonably believes~~Trial Court determines that there is sufficient evidence of a genuine and material issue of ~~noncompliance~~non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.

502.9-5. *Alleged Violation Has Merit*. If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(~~a~~1) Attempt to reach an informal or formal resolution of the alleged ~~noncompliance.~~non-compliance;

(A) If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. ~~-~~Breach of the terms of the written agreement may be a cause of action for litigation before the ~~Tribe's judicial system~~Trial Court.

(~~b~~2) Issue a ~~Notice~~notice of ~~Noncompliance~~non-compliance to the entity by certified mail~~.~~;

(A) The ~~Notice~~notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(~~c~~3) Place the entity's certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity's certification~~.~~;

(A) Once certification is revoked, an entity shall not be eligible to ~~re-~~apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference. ~~Where a certified entity loses certification:~~

~~(1~~(C) Where a certified entity loses certification:

(i) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or

(~~2~~ii) the Indian Preference Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if

work has already begun or performance under a contract has commenced.

(~~d~~4) Issue a fine;

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines ~~as established~~or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under ~~502.10-3~~this law.

(~~e~~5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities~~.~~; and/or

(~~f~~6) Request the appropriate entity withdraw any licensing issued by the ~~Tribe~~Nation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office's decision.

502.~~10-5.~~9-6. *Additional Enforcement Measures.* If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a ~~Notice~~notice of ~~Noncompliance~~non-compliance or action against a certified entity's certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the ~~Tribe's judicial system~~Trial Court, seeking appropriate relief, including but not limited to:

(a) An injunction~~.~~;

(b) Specific performance, including but not limited to:

(1) reinstatement of a qualified trades worker at the previous wage~~.~~;

(2) immediate removal of employees hired in violation of this law~~.~~; and/or

(3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation~~.~~;

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the ~~Tribe's judicial system~~Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an action. Provided that, no money damages may be claimed in any suit against the ~~Tribe~~Nation, the Indian Preference Office or other ~~Tribal~~ departments of the Nation, or ~~Tribal~~ officials of the Nation or employees engaged in their official duties under this law~~.~~; and/or

(d) ~~Other~~Any other action the ~~Tribe's judicial system~~Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by ~~noncompliance~~non-compliance.

502.~~10-6~~9-7. Although relief granted by the ~~Tribe's judicial system under 502.10-5~~Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian Preference Office nor the ~~Tribe~~Nation represents those individuals and/or entities in any action for non-compliance with this law.

502.~~10-7~~9-8. *Cease-and-Desist Orders.* The Oneida ~~Tribal~~ Police ~~are~~Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the ~~Tribe's judicial system.~~Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida ~~Tribal~~ Police Department shall not be civilly liable for enforcing such orders so long as the ~~Commission~~Trial Court signs the order.

~~502.10-8. *Appeals.*~~

~~(a) Any appeal from an action taken by the Office shall be filed with the Tribe's judicial system within ten (10) business days after the date of issuance of the Office's decision. Any decision not appealed within the required time frame shall become final.~~

~~(b) Except as otherwise stated in this law, a party may appeal orders, rulings and judgments of the Tribe's judicial system in accordance with the applicable rules of appellate procedure.~~

502.9-9. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

End.

Adopted BC-03-27-13-B
Amended BC-__-__-__

Title 5. Business - Chapter 502
Yukwat^nhas Ukwehu=w# Kayanl^hsla
Laws concerning the hiring of the Oneida People
INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
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502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and amended by resolution BC-__-__-__-__.

502.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. However, this law specifically supersedes the following:

(a) BC-04-03-96-A - Indian Preference Policy Rider I;
(b) BC-05-22-96-A - Technical Amendments to Rider I Policy;
(c) BC-06-10-98-D - Amendment to Resolution 5-22-96-A;
(d) BC-07-29-98-B - Indian Preference Law;
(e) BC-03-27-02-A - Sections 9-14 of the Indian Preference Law; and
(f) BC-03-26-03-A - Amendment to Indian Preference Law Addendum.

502.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Agent" means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

(b) "Bid" means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

(c) "Bid shopping" means the practice of divulging a contractor's or subcontractor's bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

(d) "Broker" means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

(e) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(f) "Certification" means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.

(g) "Certified entity" means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

(h) "Compliance agreement" means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.

(i) "Construction contract" means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.

(j) "Contractor" means one who enters into a contract.

(k) "Core work crew" means the minimum amount of the contractor's key employees, who perform a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer's procedures and routines, that are essential to start up and continue work on a project.

(l) "Employee" means any person that performs services and/or labor for an employer in exchange for compensation.

(m) "Employer" means any entity, except the Nation, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

(n) "Enterprise" means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.

(o) "Entity" means any person, sole proprietor, partnership, corporation, franchise, governmental body, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Nation.

(p) "Entities of the Nation" means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations.

(q) "Front" means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.

(r) "Indian" means an enrolled member of any federally-recognized Indian tribe.

(s) "Indian-owned business" means an entity which is majority owned and managed by an Indian.

(t) "Indian preference" means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.

(u) "Internal service" means any service provided for free or at cost for the Nation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.

(v) "Joint venture" means a one-time grouping of two (2) or more entities in a business undertaking.

(w) "Lowest responsible bidder" means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.

(x) "Nation" means the Oneida Nation.

(y) "Non-construction contract" means any contract other than a construction contract, and includes subcontracts and other agreements.

(z) "Project" means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services that will support or benefit any aspect of the Nation's government, holdings, infrastructure, workplace, economy or community.

(aa) "Qualified trades worker" means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.

(bb) "Reservation" means all the lands within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(cc) "Subcontractor" means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor's contractual obligations.

(dd) "Trial Court" means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(ee) "Tribal corporation" means a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

502.4. Jurisdiction

502.4-1. The Indian Preference Office shall implement, monitor, and enforce this law and other applicable laws and policies relating to Indian preference.

502.4-2. The Trial Court shall have jurisdiction over all matters related to the interpretation and enforcement of this law.

502.4-3. The Indian Preference Office and Trial Court shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance agreement.

502.5. Certification of Entities

502.5-1. *Criteria for Certification as an Indian-Owned Business.* In order to seek certification as an Indian-owned business the following criteria shall be met by the applicant entity:

(a) There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity. Evidence of both financial ownership and control shall be

embodied in the entity's organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) *Indian Financial Ownership.* Indian financial ownership is established where the Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity's assets upon dissolution.

(2) *Indian Control.* Indian control is established where the Nation, member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.

(3) *Indian Management.* Indian Management is established where an Indian owner(s) is directly involved in the entity's management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or

(B) at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.

(b) The entity can demonstrate financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable required bonding and insurance, materials and/or equipment necessary to perform applicable work.

(c) The entity can provide past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

502.5-2. *Application.* The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. *Certification Determination*. Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(b) deny the certification, including a full written explanation of the reason for the denial; or

(c) grant probationary certification for a period of up to one (1) year, if so determined by the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall mail a certificate to the entity. Granting an entity certification does not convey any comment regarding the ability of the entity to perform any work nor does it guarantee that an entity has met all the qualifications to obtain work under any particular contract where Indian preference may be applied.

502.5-5. *Notification Requirements*. A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

(a) changes in the ownership or control status of the entity;

(b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or

(c) any other changes that could:

(1) affect an entity's eligibility for certification;

(2) affect the financial liability of any entity, contracting party or the Nation; and/or

(3) alter the status of the qualifications of the entity.

502.5-6. *Certification Renewal*. Certification is granted on an annual basis and shall lapse after one (1) year unless renewed.

(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.

(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity's certification; however, the responsibility for renewal is upon the entity.

(c) *Exemption for Tribal Corporations*. Tribal corporations shall be exempt from the requirement to renew certification on an annual basis. Certification for a Tribal corporation is granted until such a time that the Indian Preference Office is made aware that there have been changes that may affect the certification status of a Tribal corporation in accordance with the notification requirements of section 502.5-5.

(1) When a Tribal corporation complies with the notification requirements of section 502.5-5 the Tribal corporation shall also apply for renewal of its certification.~~,~~

(A) The Indian Preference Office shall provide the Tribal corporation with a renewal application and annual reporting form.

(B) The Tribal corporation shall return the renewal application and annual reporting form to the Indian Preference Office ten (10) days.

502.5-7. *Open Records*. In accordance with the Nation's laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided that, all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Nation.

502.5-8. *Joint Ventures*. All joint ventures seeking certification as an Indian-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

502.5-9. *Brokers, Agents and Franchises.*

(a) *Brokers.* Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.

(1) To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.

(2) The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself or herself out for employment to the public generally and that the employment is not that of being a special agent for a single client.

(b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.

(c) *Franchises.* A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.

502.5-10. *Fronts are Prohibited*. Entities shall be disqualified from certification as an Indian-owned business in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Indian Preference Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

(1) Entities that represent that they are exercising management control of a project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity;

(2) Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role;

(3) Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity's source without paying a marked-up cost; and/or

(4) Any other situation where the Indian Preference Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

502.6. Application of Indian Preference to Contracts

502.6-1. *Application of the Law.* Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over three thousand dollars ($3,000) that meet the requirements of (a) and/or (b) below:

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation; and

(2) all subcontractors, employees, or other entities working with, for, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement.

(b) *Tribal Corporations*. This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the Nation.

502.6-2. *Non-Applicability of the Law.*

(a) *Indian Preference in Hiring of Employees of the Nation*. The standards set out in this law shall not apply to preference as applicable to employees hired through the Nation's Human Resources Department or pursuant to an employment contract.

(b) *Internal Services and Enterprises*. The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The Nation shall exclusively utilize internal services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or enterprise.

502.6-3. *Contract Specifications Review.* Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; and/or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) *Unbundling a Contract*. The Indian Preference Office may require that specific portions of a contract be outsourced to internal services, enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

502.6-5. *Cooperative Agreements.* Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. *Cultural Setting of Contracts.* All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the Nation. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

502.6-7. *Employees of the Nation.* In the execution of employment duties and in accordance with the Nation's laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

502.6-8. *Contracts and Attachments.* All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of this law or applicable compliance agreement may be deemed a material and substantial breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and

(2) In accordance with the provisions of this law.

(b) Reference this law, and shall contain an acknowledgment clause, whereby the contractor shall agree to the following:

(1) The contractor has read and understands the provisions of this law;

(2) The contractor understands how this law affects the contractor's rights and responsibilities; and

(3) The contractor agrees that the provisions of this law shall govern the performance of the parties.

(c) Reference the Nation's laws governing vendor licensing, and provide the contracting parties with directions on how to access that document.

502.6-9. *Applying Indian Preference to Non-Construction Contracts*. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.6-10. *Applying Indian Preference to Construction Contracts*. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

(a) ten percent (10%) of the first fifty thousand dollar ($50,000) segment of a bid;

(b) plus nine percent (9%) of the next fifty thousand dollar ($50,000) segment of a bid;

(c) plus eight percent (8%) of the next one hundred thousand dollar ($100,000) segment of a bid;

(d) plus seven percent (7%) of the next one hundred thousand dollar ($100,000) segment of a bid;

(e) plus six percent (6%) of the next one hundred thousand dollar ($100,000) segment of a bid;
(f) plus five percent (5%) of the next one hundred thousand dollar ($100,000) segment of a bid;
(g) plus four percent (4%) of the next five hundred thousand dollar ($500,000) segment of a bid;
(h) plus two percent (2%) of the next one million dollar ($1,000,000) segment of a bid; and
(i) plus one percent (1%) of any amount over two million dollars ($2,000,000).

502.6-11. *Awarding the Contract.* After the appropriate discount has been subtracted from preferred bids, the following shall be used to determine which bidder is awarded the contract:
(a) If a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity.
(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.
(c) Bid shopping is prohibited.

502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian Preference Office shall perform the following monitoring duties:
(a) Perform on-site inspections to verify compliance with this law;
(b) Require and review weekly workforce reports;
(c) Provide training to assist certified entities with understanding their rights and abilities under this law; and
(d) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.

502.6-13. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Indian Preference Office toward a mutually satisfactory resolution.

502.7. Compliance Agreements

502.7-1. *Compliance Agreements.* Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. *Contents of a Compliance Agreement.* A compliance agreement shall include, but is not limited to, the following information:
(a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and
(b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

502.7-3. *Term of a Compliance Agreement.* Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

502.7-4. Unless prior written consent of the Indian Preference Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any

subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

502.7-5. *Limited Waivers.* The Indian Preference Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

(a) The Indian Preference Office shall identify, initiate, and sponsor training, internship, and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers. The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference Office prior to the commencement of any work.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Nation;

(2) First generation descendants of the Nation; and then

(3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted by the Indian Preference Office.

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;

(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;

(c) proof of a driver's license, including any endorsements, if applicable;

(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:

(1) past and current licensing;

(2) credentials and certifications; and

(3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

502.8-6. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.*

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Indian Preference Office prior to laying off or terminating a qualified trades worker.

(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Indian Preference Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-7. *Construction Contracts: Core Work Crew.* As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Indian Preference Office, they may be employed on the project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a project, the Indian Preference Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor's core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Indian Preference Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Investigations and Enforcement

502.9-1. *Complaints*. An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by an act of non-compliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law.

502.9-2. *Contents of the Complaint*. A complaint shall include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint and carry out an investigation, such as evidence of any discriminatory practices, alleged misconduct, or other non-compliance.

502.9-3. *Complaint Investigation*. Upon receipt of a complaint or after witnessing non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

(a) In conducting an investigation to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and speak to workers; and

(3) conduct inspections of the job site.

(b) Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with a law of the Nation.

(1) Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

(c) If the Indian Preference Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation's laws and policies governing open records.

502.9-4. *Alleged Violation Has No Merit*. If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the complaint shall be closed.

(a) The complainant may file a complaint to contest this decision with the Nation's Trial Court within ten (10) business days after issuance of such notice.

(b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office. During an in-camera inspection only a judge

may review the information obtained by the Indian Preference Office during the investigation as this information is confidential and disclosure is not necessary.

(c) If after reviewing the Indian Preference Office's investigation, the Trial Court determines the alleged violation has no merit, the Trial Court shall notify all parties in writing that the matter will be dismissed and no further appeals of the matter will be accepted.

(d) If after reviewing the Indian Preference Office's investigation the Trial Court determines that there is sufficient evidence of a genuine and material issue of non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.

502.9-5. *Alleged Violation Has Merit.* If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(1) Attempt to reach an informal or formal resolution of the alleged non-compliance;

(A) If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. Breach of the terms of the written agreement may be a cause of action for litigation before the Trial Court.

(2) Issue a notice of non-compliance to the entity by certified mail;

(A) The notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(3) Place the entity's certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity's certification;

(A) Once certification is revoked, an entity shall not be eligible to apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference.

(C) Where a certified entity loses certification:

(i) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or

(ii) the Indian Preference Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if work has already begun or performance under a contract has commenced.

(4) Issue a fine;

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under this law.

(5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(6) Request the appropriate entity withdraw any licensing issued by the Nation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office's decision.

502.9-6. *Additional Enforcement Measures*. If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a notice of non-compliance or action against a certified entity's certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the Trial Court, seeking appropriate relief, including but not limited to:

(a) An injunction;

(b) Specific performance, including but not limited to:

(1) reinstatement of a qualified trades worker at the previous wage;

(2) immediate removal of employees hired in violation of this law; and/or

(3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation;

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an action. Provided that, no money damages may be claimed in any suit against the Nation, the Indian Preference Office or other departments of the Nation, or officials of the Nation or employees engaged in their official duties under this law; and/or

(d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by non-compliance.

502.9-7. Although relief granted by the Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian Preference Office nor the Nation represents those individuals and/or entities in any action for non-compliance with this law.

502.9-8. *Cease-and-Desist Orders*. The Oneida Police Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida Police Department shall not be civilly liable for enforcing such orders so long as the Trial Court signs the order.

502.9-9. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

End.

Adopted BC-03-27-13-B
Amended BC-__-__-__-__

FINANCE ADMINISTRATION
Fiscal Impact Statement

ONEIDA

MEMORANDUM

TO: Larry Barton, Chief Financial Officer
RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Terry Cornelius, Chief Financial Analyst

DATE: March 4, 2020

RE: **Fiscal Impact of the Amendments to the Indian Preference in Contracting Law**

I. Estimated Fiscal Impact Summary

Law: Amendments to the Indian Preference in Contracting Law		Draft 2
Implementing Agency	Legislative Operating Committee	
Estimated time to comply	30 days, for Indian Preference to develop reporting format	
Estimated Impact	**Current Fiscal Year**	**10 Year Estimate**
Total Estimated Fiscal Impact	**Indeterminate**	**Indeterminate**

II. Background

This Law was adopted by the Oneida Business Committee by resolution BC-07-29-98-B as the Indian Preference Law, which was amended by resolutions BC-03-27-02-A and BC-03-26-03-A, before being adopted in its present form of the Indian Preference in Contracting Law by Oneida Business Committee Resolution BC-03-27-13-B. A public meeting was held on December 19, 2019. The amendments to the legislation are the following:

- The definition of a tribal corporation is updated.
  - Now includes any corporation chartered and/or wholly owned by the Nation.
- The threshold to invoke Indian Preference is raised from $1,500.00 to $3,000.00.
  - This is in keeping with Accounting Department Policies.
- Joint Ventures are now permitted to qualify for Indian Preference.
- Tribal corporations no longer have to submit certification renewal application every year.
- A new timeline is set for Indian Preference Office to review contracts.
- The Indian Preference Office will be granted authority to develop a fine and penalty schedule for violations of this law.

- This is to be approved later by the Oneida Business Committee via a BC Resolution.

III. Methodology and Assumptions

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

According to Patrick Stensloff, the Director of Purchasing, the portions of the Amendments to the Law which pertain to monetizing Indian Preference do not have a material direct fiscal impact. The document maintains a five percent (5%) discount to be provided for certified Indian owned businesses for non-construction contracts. For construction contracts, the Amendment maintains that same laddered approach to Indian Preference discounts as the version which was approved with Business Committee Resolution BC-03-27-13-B.

There is a small change in that the threshold before Indian Preference rules kick in is raised from a floor of $1,500.00 to a new floor of $3,000.00. This level is in keeping with other Central Accounting practices and will have a positive impact for the Nation by lowering our expenses for small contracts. We asked both the Purchasing Department and the Engineering Department regarding the quantification of this benefit. Both indicated there are no reports tracked which would be able to demonstrate the number of construction contracts between $1,500.00 and $3,000.00 nor the extra amounts paid by the Nation to certified Indian owned businesses in such an instance. The Engineering Department indicated there was not enough staff time available to build such a report.

Another change in the Amendment is establishing that the Indian Preference Office may develop a fine and penalty schedule, to be approved by the Oneida Business Committee. This could serve to lessen non-compliance with contracts on behalf of chosen vendors. It is, however, difficult to predict a dollar amount of impact of a fine and penalty schedule.

Indian Preference Office has requested 30 days after approval to be in compliance. The Office must draft a Renewal Appplication and an Annual Reporting format.

III. Financial Impact

The Fiscal Impact of implementing this legislation is indeterminate due to the inability to obtain reporting of small dollar contracts under $3,000.00 wherein Indian Preference was applied.

Of concern is that this proposed Amendment, and the existing Law, seems to hinge awarding contracts on price, alone. Accepting the lowest bid in contracting does not always render a level of acceptable quality in the work performed. Much can be gained by measuring the experience of the vendors in the type of work requested. Deciding to award soley based upon lowest bidders could lead to failures and rework, thereby resulting in an increase of overall project costs.

IV. Recommendation

Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214 Oneida, WI 54155

BC Resolution # _____
Indian Preference in Contracting Law Fine and Penalty Schedule

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Indian Preference in Contracting law ('the Law") was adopted by the Oneida Business Committee through resolution BC-03-27-13-B; and then amended by resolutions BC-__-__-__-__; and

WHEREAS, the purpose of the Law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation; and

WHEREAS, the Law allows the Indian Preference Office to take action to resolve a complaint if the Indian Preference Office determines that an alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance; and

WHEREAS, the actions the Indian Preference Office is delegated the authority to take include an informal or formal resolution of the alleged noncompliance, a notice of noncompliance by certified mail, placing the entity's Indian preference certification in probationary status, suspension, denial, or revocation, of the entity's Indian preference certification, issuance of fines, renegotiation of compliance agreement, and a request for withdrawal of licensing issued by the Nation; and

WHEREAS, the Law delegates authority to the Indian Preference Office to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of the Law; and

WHEREAS, the fine and penalty schedule is required to be adopted by the Oneida Business Committee through resolution; and

NOW THEREFORE BE IT RESOLVED, that by a finding by the Indian Preference Office that an alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance section 502.9-5(a) of the Law allows the Indian Preference Office to take any of the following action against an entity:

- Attempt to reach an informal or formal resolution of the alleged non-compliance;
- Issue a notice of non-compliance to the entity by certified mail;

- Place the entity's certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity's certification;
- Issue a fine;
- Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or
- Request the appropriate entity withdraw any licensing issued by the Nation.

BE IT FURTHER RESOLVED, the Indian Preference Office hereby sets forth the following fine schedule to be used if it is determined that a fine is the appropriate action to take against an entity to resolve a complaint:

FINE SCHEDULE				
Violation	**Reference**	**1st Offense**	**2nd Offense**	**3rd Offense and Up**
Beginning work prior to completing negotiations of the required compliance agreement	502.7-1	$100	$200	$400
Failure to comply with the terms of any compliance agreement executed in accordance to this law	502.7-1 502.7-4	$100	$200	$400
Failure to submit the qualified trades worker employee's work evaluation as required in the compliance agreement	502.7-1	$100	$200	$400
Failure to submit certified weekly payroll and manpower report as required in the compliance agreement	502.7-1	$100	$200	$400
Failure to hire qualified trades workers from the Skills Bank in accordance with the order of priority	502.8-3(a)	$100	$200	$400
Failure to provide equal compensation and/or maintain equal work standards for qualified trades workers	502.8-6(a)	$100	$200	$400
Failure to notify the Indian Preference Office of any layoffs or terminations of a qualified trades worker	502.8-6(b)	$100	$200	$400
Termination of a qualified trades worker	502.8-6(b)(2)	$100	$200	$400

without documented good cause				
Failure to notify Indian Preference Office of intent to call back laid off employees, and/or failure to call back qualified trades workers before other employees	502.8-6(b)(3)	$100	$200	$400
Use of extraneous qualification criteria or other personnel requirements to prevent qualified trades workers from being employed	502.8-7(c)	$100	$200	$400
Breach of contract due to violation of this law or compliance agreement	502.6-8	$250	$500	$1,000
Non-compliance with contract or compliance agreement resulting in harm to the health, safety or welfare of the Nation and/or the community	502.6-8 and 502.7-1	$1,500	$3,000	$6,000

BE IT FURTHER RESOLVED, that a separate offense shall be deemed committed on each day during which a violation occurs or continues.

BE IT FURTHER RESOLVED, that all fines are required to be paid to the Indian Preference Office within thirty (30) days from the date of issuance.

BE IT FURTHER RESOLVED, failure to pay any fines issued within thirty (30) days from the date of issuance shall result in a late penalty of ten dollars ($10) per day and may result in the Indian Preference Office suspending the violating contractor from the project with reinstatement available upon payment in full of all fines currently due.

BE IT FURTHER RESOLVED, any money received from fines collected for violations of this Law shall be contributed to the General Fund.

BE IT FINALLY RESOLVED, the Oneida Business Committee hereby adopts this resolution which shall become effective on May 8, 2020.

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
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Statement of Effect
Indian Preference in Contracting Law Fine and Penalty Schedule

Summary

Through this resolution the Oneida Business Committee adopts a fine schedule for violations of the Indian Preference in Contracting law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office
Date: March 13, 2020

Analysis by the Legislative Reference Office

The Indian Preference in Contracting law ("the Law") was adopted by the Oneida Business Committee for the purpose of establishing an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation. *[5 O.C. 502.1-1]*.

The Law allows the Indian Preference Office to take action to resolve a complaint if the Indian Preference Office determines that an alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance. *[5 O.C. 502.9-5]*. The Indian Preference Office is delegated the authority to take any of the following actions to resolve the complaint:

- informal or formal resolution of the alleged noncompliance;
- a notice of noncompliance by certified mail;
- placing the entity's Indian preference certification in probationary status;
- suspension, denial, or revocation, of the entity's Indian preference certification;
- issuance of fines;
- renegotiation of compliance agreement; and
- requests for withdrawal of licensing issued by the Nation.
  [5 O.C. 502.9-5(a)(1)-(6)].

The Law then delegates authority to the Indian Preference Office to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this Law. *[5 O.C. 502.9-5(a)(4)(A)]*. The fine and penalty schedule is required to be adopted through resolution by the Oneida Business Committee. *[5 O.C. 502.9-5(a)(4)(A)]*.

This resolution was developed by the Indian Preference Office and sets forth the fine and penalty schedule which includes the specific fine amounts for various violations of this Law. The resolution also clarifies the other actions the Indian Preference Office may utilize when it is determined that an alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance.

The resolution further provides that:

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- a separate offense shall be deemed committed on each day during which a violation occurs or continues;
- all fines are required to be paid to the Indian Preference Office within thirty (30) days from the date of issuance;
- failure to pay any fines issued within thirty (30) days from the date of issuance shall result in a late penalty of ten dollars ($10) per day and may result in the Indian Preference Office suspending the violating contractor from the project with reinstatement available upon payment in full of all fines currently due; and
- any money received from fines collected for violations of this Law shall be contributed to the General Fund.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.

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Legislative Operating Committee
March 18, 2020

Children's Burial Fund Policy Amendments

Submission Date: 8/7/19	**Public Meeting:** 2/13/20
LOC Sponsor: Kirby Metoxen	**Emergency Enacted:** n/a

Summary: *This item was submitted on behalf of the Oneida Trust Enrollment Committee for the purpose of making general updates to the Law which would remove outdated restrictions for membership using benefit.*

8/7/19 LOC: Motion by Kirby Metoxen to add the Children's Burial Fund Policy Amendments to the Active Files List with Kirby Metoxen as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

11/14/19: *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was the development of a legislative plan. LRO will schedule work meeting with representatives of OTEC and Trust Enrollment Department to discuss first draft of proposed amendments.

12/2/19: *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Falck, Maureen Perkins, Bonnie Pigman. The purpose of this work meeting was to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC.

12/4/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa N. Santiago, Jennifer Falck, Maureen Perkins. The purpose of this work meeting was for the LOC to review the proposed amendments and discuss if there are any other revisions needed before the draft is presented to the LOC. The LOC discussed a couple minor revisions. The LRO will update the draft and develop a legislative analysis and bring those items to an upcoming LOC meeting.

12/18/19 LOC: Motion by Jennifer Webster to accept the draft of the Children's Burial Fund amendments and direct that a legislative analysis be completed and brought back to the January 15, 2020, Legislative Operating Committee meeting; seconded by Kirby Metoxen. Motion carried unanimously.

1/6/20: *Work Meeting.* Present: Jennifer Falck, Clorissa N. Santiago, Maureen Perkins. The purpose of this work meeting was to review and discuss the legislative analysis.

1/15/20 LOC: Motion by Kirby Metoxen to accept legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

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Motion by Kirby Metoxen to approve the public meeting packet and forward the Children's Burial Fund Policy Amendments to a public meeting to be held on February 13, 2020; seconded by Ernest Stevens III. Motion carried unanimously.

2/13/20: *Public Meeting Held*. Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa N. Santiago, Maureen Perkins, Lee Cornelius, Brooke Doxtator, Keith Doxtator, Julie Denny, Ralinda Ninham-Lamberies. Three (3) individuals provided oral comments during this public meeting.

2/20/20: *Public Comment Period Closed*. Two (2) people submitted written comments during the public comment period.

3/4/20 LOC: Motion by Kirby Metoxen to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Daniel Guzman King. Motion carried unanimously.

3/4/20: *Work Meeting*. Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago. The purpose of this work meeting was to review and consider the public comments that were received. The Legislative Operating Committee directed that the draft be updated based on their decisions.

Next Steps:

- Accept the updated public comment review memorandum, draft law and legislative analysis.
- Approve the Children's Burial Fund amendments fiscal impact statement request memorandum and forward to the Finance Department directing a fiscal impact statement be prepared and submitted to the LOC by April 1, 2020.

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
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ONEIDA

TO:	Legislative Operating Committee (LOC)
FROM:	Clorissa N. Santiago, Legislative Reference Office, Staff Attorney CNS
DATE:	March 18, 2020
RE:	Children's Burial Fund Amendments: Public Meeting Comment Review

On February 13, 2020, a public meeting was held regarding the proposed amendments to the Children's Burial Fund Policy ("the Law"). The public comment period was then held open until February 20, 2020. On March 4, 2020, the Legislative Operating Committee reviewed and considered all public comments that were received. This memorandum is submitted as the Legislative Operating Committee's review of the oral and written comments received during the public meeting and public comment period.

Comment 1 – Qualifications for Financial Assistance from the Fund:

129.4. Qualifications for Financial Assistance
129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:
(a) six (6) years of age or younger;
(b) not enrolled with the Nation; and
(c) eligible for enrollment with the Nation.

Ralinda Ninham-Lamberies (oral): Also, I didn't notice anything in the law that would prohibit an individual from collecting funds from multiple tribes if they're eligible to be enrolled in more than one tribe. And I am not sure that would be something that would be intended in the law. Thank you.

Response

The commenter provides that she did not see anything in the Law that would prevent an individual from collecting burial funds from more than one tribe if the deceased child is eligible to be enrolled in more than one tribe and questioned whether the Law should address this issue.

The Law determines qualification for financial assistance from the Children's Burial Fund based on the deceased child meeting the following criteria:

- The deceased child is six (6) years of age or younger;
- The deceased child is not enrolled with the Nation; and
- The deceased child is eligible for enrollment with the Nation.
  [1 O.C. 129.4-1].

The Law does not base qualifying for assistance from the Children's Burial Fund on whether the deceased child is eligible to receive, or has received, burial assistance from another tribe. This Law aims to assure a dignified approach to the final needs of members of the Nation and their families

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by providing financial assistance towards the funeral costs of children of a certain age who are not enrolled but are eligible for enrollment in the Nation. *[1 O.C. 129.1-1, 129.1-2]*. This is accomplished through the qualification measures of section 129.4-1.

Additionally, if the Law required that the family of a deceased child not receive financial assistance from the Nation's Children's Burial Fund if the deceased child was eligible for enrollment in a tribe which offered financial assistance for the burial of a child, and the family then accepted financial assistance from the other tribe, then this would increase the administrative efforts of the Oneida Trust Enrollment Department. The Oneida Trust Enrollment Department would then have to verify if the deceased child is eligible for enrollment in a different tribe and if that tribe provided the family financial assistance for the burial of the child before determining the eligibility of the child to receive financial assistance from the Nation's Children's Burial Fund. Many of the amendments that were sought to the Law were an effort to make the administration of the Children's Burial Fund efficient for all those involved.

Since the Law does not intend to qualify assistance from the Children's Burial Fund on whether the deceased child is eligible to receive, or has received, burial assistance from another tribe, there is no revision recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to clarify that even if a deceased child meets the qualifications in section 129.4-1, the child shall not be eligible for assistance from the Nation's Children's Burial Fund if the child is enrolled in another tribe.

The Legislative Operating Committee understands handling the death of a child is a sensitive matter, and that the overall goal of this Law is to assure a dignified approach to the final needs of members of the Nation and their families by providing financial assistance towards the funeral costs of children of a certain age who are not enrolled but are eligible for enrollment in the Nation. *[1 O.C. 129.1-1, 129.1-2]*. Although the Legislative Operating Committee wants the Children's Burial Fund to be available to the most Oneida families, the Legislative Operating Committee believes that the Fund should only be available to the families of those deceased children who have not been enrolled in another tribe. The Legislative Operating Committee believes that if the deceased child was enrolled in another tribe then the family of that child should be ineligible from receiving assistance from the Children's Burial Fund. The Legislative Operating Committee determined that the purpose of this Law is really to provide financial assistance to those families of deceased children who would have likely been enrolled with the Nation at some point, but it had just not occurred before the child passed away.

The Legislative Operating Committee determined the following revision should be made to the Law based on this comment:

129.4. Qualifications for Financial Assistance

129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:

(a) six (6) years of age or younger;

(b) not enrolled with the Nation; ~~and~~
(c) eligible for enrollment with the Nation~~.~~; and
(d) not enrolled with any other tribe.

Comments 2 through 3 – Required Documentation:

129.5. Requesting Financial Assistance
129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:
(a) all original invoices;
(b) birth certificate, death certificate, or fetal death report; and
(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

Keith Doxtator (written): The Oneida Trust Enrollment Committee (OTEC) motioned at their January 28, 2020 Regular meeting to have the following amendments submitted for the Children's Burial Fund amendments public meeting February 13, 2020.

Section 129.5-3 : Add sub-section (d) Other relevant documentation to support eligibility of enrollment. (For example: the Trust Enrollment Department generally requests for a parent Birth Certificate in order to establish the link of Oneida descent, when the parent(s) are not enrolled with the Nation).

Keith Doxtator (oral): Good morning. The Trust Enrollment Committee discussed this at the last monthly meeting. I have a memo here summarizing the four amendments they would like to propose. May I simply hand this over?

***[Jennifer Webster:** Do you want to read it into the record?]*

Their four proposed amendments would be Section 129.5-3, to add a subsection (d) Other relevant documentation to support eligibility of enrollment. For example: if a parent is not enrolled for them to also provide their birth certificate to help establish that link in the enrollment record.

Response

The commenter requests that another subsection be added to section 129.5-3 of the Law that addresses other documentation that may be needed by the Oneida Trust Enrollment Department to make a determination as to if the deceased child is eligible for the Children's Burial Fund.

The Law provides that upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

- All original invoices;
- Birth certificate, death certificate, or fetal death report; and
- voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined. *[1 O.C. 129.5-3(a)-(c)]*.

There may be situations that arise where the Oneida Trust Enrollment Department needs to request more documentation to support the eligibility of enrollment of the deceased child. In an effort to provide the greatest flexibility, the following recommendation is made based on this comment:

129.5. Requesting Financial Assistance
129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:
(a) all original invoices;
(b) birth certificate, death certificate, or fetal death report; ~~and~~
(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined~~.~~; and
(d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to allow the greatest flexibility in requesting documentation to support the eligibility of enrollment of the deceased child. The Legislative Operating Committee directed the following revision be made to the Law based on these comments:

129.5. Requesting Financial Assistance
129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:
(a) all original invoices;
(b) birth certificate, death certificate, or fetal death report; ~~and~~
(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined~~.~~; and
(d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

Comment 4 – Clarification on Fetal Death Reports and Stillborn Information:

129.3. Definitions
129.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
(a) "Fetal death report" means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.
(c) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

129.5. Requesting Financial Assistance
129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

(a) all original invoices;
(b) birth certificate, death certificate, or fetal death report; and
(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

Lori Elm (written): Clarification on Fetal death report and stillbirths information. I found this in Wisconsin State Legislature Chapter 69 Collection of statistic, Subchapter 1, Vital Statistics. I work with the Cemetery for Oneida and we request a Final Disposition for burials. We have run into a few that do not have them because they are stillbirths. According to the wording below it gives more specific information as a guideline.

(e)
a death is a miscarriage and 20 weeks or more have elapsed between the mother's last normal menstrual period and delivery or the stillbirth weighs 350 grams or more, one of the following shall submit, within 5 days after delivery, a fetal death report to the state registrar:
the miscarriage occurs at or on route to a hospital, the individual who manages the hospital or the hospital's medical records.
the miscarriage does not occur at or on route to a hospital, the funeral director or other person authorized by at least one parent of the stillbirth.
18(1)(e)2.2. Except as provided under subd. 1., no fetal death report is required.

Response

The commenter provides an excerpt of Wisconsin law, and states that she is providing this information as clarification on fetal death reports and stillbirth information. Additionally, the commenter states that while working for the cemetery for the Nation there have been issues with individuals not having a Final Disposition due to stillbirths.

The Law provides that when making a request for financial assistance from the Children's Burial Fund an individual shall provide the following documentation to the Oneida Trust Enrollment Department:

- all original invoices;
- birth certificate, death certificate, or fetal death report; and
- voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.
  [1 O.C. 129.5-3(a)-(c)].

The Law defines a "fetal death report" as the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths. *[1 O.C. 1 29.3-1(a)]*. The Law further defines a "stillbirth" as a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles. *[1 O.C. 129.3-1(c)]*.

The excerpt from Wisconsin law provides who is responsible for registering the death of the stillbirth, and states that in some circumstances no fetal death report is required. *[Wis. Stat.*

§69.18(1)(e)]. The Wisconsin requirements for registering a death do not necessarily have to be the same as the Nation's requirements for requesting financial assistance from the Children's Burial Fund. An individual will have to provide a birth certificate, death certificate, or fetal death report in order to request financial assistance from the Children's Burial Fund. *[1 O.C. 129.5-3(b)]*.

There is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment.

Comments 5 through 7 – Funeral Related Expenses:

129.6. Use of Funds
129.6-2. The following funeral related expenses are payable if identified on an invoice:
- **(a) monument and/or headstone costs;**
- **(b) casket or coffin costs;**
- **(c) cemetery costs;**
- **(d) church costs; and/or**
- **(e) food costs.**

Keith Doxtator (written): Section 129.6-2: This section lists specific "funeral related expenses". Not listed is funeral home costs. Funeral home costs should be added as subsection (f) or the first in the list. Maybe it's being assumed, but since expenses are being listed, funeral homes should be included with all the others.

Keith Doxtator (oral): Number two is Section 129.6-2 and this would be to add funeral related expenses, I'm sorry. Under the funeral related expenses to add the funeral home costs itself. You did a good job detailing out some other sub-costs, I thought that was the one, big one, that should get noticed.

Julie Denny (oral): I kind of concur with what Keith said in reviewing his memo. Okay, I recommend leaving 129-6-1, leaving it for the use of funds after thirty-five thousand ($35,000) but I would like to see 129-6-2 just totally eliminated and that might cover what Keith just said as leaving it as funeral expenses, because in reviewing a bill from a two (2) year old that was enrolled, which obviously was covered by the OLIPP, that billing of a two (2) year old and if we have somebody that falls under the Children's Burial Fund that's not enrolled or not covered by the OLIPP now has to go with the thirty-five hundred ($3,500). We're limiting what we can, they can do for funeral expenses with a lot of the incidentals such as people want to pay out clergy, they want to give something, honorariums to a drum group, the Oneida Singers, you know that doesn't, we're limiting what we could, so if we could just leave it at whatever is on that funeral bill and funeral related, so we can include those incidentals that normally would come with, like I said, with a two (2) year old here that was enrolled and all her expenses were covered and we should do

the same for those that fall under the thirty-five hundred ($3,500) Children's Burial Fund. So right now we're limiting what families can get. So, if you just open it up to funeral regulated expenses.

Response

The first commenter provides that although section 129.6-2 lists the specific funeral home related expenses that are eligible to be paid for by the Fund if identified on the invoice, it does not include general funeral home costs.

The second commenter provides we should not identify specific related expenses that the Fund can be used for, and instead just generally state that the Fund should be used for funeral related expenses in an effort to allow for more flexibility in how the families use the Fund.

The Law provides that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice. *[1 O.C. 129.6-2(a)-(e)]*.

What funeral related expenses to allow to be paid by the Fund if identified on an invoice is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee will have to balance the need to provide families necessary flexibility in the utilization of the Fund with the need to provide specific direction as to what expenditures the Fund is authorized to be used on. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and identify that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice.
2. The Law should be amended so that general costs associated with a funeral home are payable if identified on an invoice in addition to the other costs identified in section 129.6-2. If the Legislative Operating Committee makes this determination then the following revision is recommended:

   129.6. Use of Funds

   129.6-2. The following funeral related expenses are payable if identified on an invoice:

   (a) monument and/or headstone costs;
   (b) casket or coffin costs;
   (c) cemetery costs;
   (d) church costs; ~~and/or~~
   (e) food costs~~.~~; and/or
   (f) funeral home costs.
3. The Law should be amended so that it just provides that funeral related costs shall be payable if identified on an invoice, and not provide specific costs that are allowed in an effort to provide the most flexibility to the families in how they use the fund. If the Legislative Operating Committee makes this determination then the following revision is recommended:

   129.6. Use of Funds

   129.6-2. ~~The following f~~Funeral related expenses are payable if identified on an invoice~~:~~. Funeral related expenses may include, but are not limited to:

   (a) monument and/or headstone costs;
   (b) casket or coffin costs;

(c) cemetery costs;
(d) church costs; and/or
(e) food costs.

LOC Consideration

The Legislative Operating Committee determined that the Law should be amended so that it just provides that funeral related costs shall be payable if identified on an invoice, and not provide specific costs that are allowed. The Legislative Operating Committee wants to ensure that the most flexibility is provided to the families in how they use the fund for funeral costs. The Legislative Operating Committee directed the following revision be made to the Law based on this comment:

129.6. Use of Funds
129.6-2. ~~The following~~ f~~F~~uneral related expenses are payable if identified on an invoice~~:~~. Funeral related expenses may include, but are not limited to:
(a) monument and/or headstone costs;
(b) casket or coffin costs;
(c) cemetery costs;
(d) church costs; and/or
(e) food costs.

Comment 8 – Funeral Related Expenses:

129.6. Use of Funds
129.6-2. The following funeral related expenses are payable if identified on an invoice:
(a) monument and/or headstone costs;
(b) casket or coffin costs;
(c) cemetery costs;
(d) church costs; and/or
(e) food costs.

Lori Elm (written): Also, the section about food and vendors, majority of the time, I helped with funerals, the funeral home does all of this, and it is locked into their pricing.

Response

The commenter provides that she is familiar with funerals and often times the funeral home includes the costs of other aspects of a funeral like food costs into their pricing.

The Law provides that costs for monuments and/or headstones, caskets or coffins, the cemetery or church, and food are payable if identified on an invoice. *[1 O.C. 129.6-2(a)-(e)]*. Although some of the costs identified in section 129.6-2(a)-(e) may be included on the invoice for the general cost of utilizing a funeral home, the Law provides a family with the flexibility of utilizing a vendor for those goods and/or services outside of a funeral home if desired.

There is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment as the Law provides that funeral related costs are payable if identified on an invoice.

Comments 9 through 10 – Drafting of Section 129.6-4:

129.6. Use of Funds
129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund for other burials.

Keith Doxtator (written): Section 129.6-4: The line reads "Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials. It's recommended the sentence should end after the word "Fund".

Keith Doxtator (oral): Number three, Section 129.6-4, the line reads "Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund for other burials." The Committee wants to recommend the sentence should end after the word "Fund."

Response

The commenter requests that section 129.6-4 be revised to remove "for other burials" from the end of the sentence.

The Legislative Operating Committee may determine whether section 129.6-4 should be revised to eliminate "for other burials" from the end of the sentence. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted and provide that "*Any unexpended monies after payments(s) have been made shall remain in the Children's Burial Fund for other burials*."
2. The Law should be revised to remove "for other burials" from the end of the sentence in section 129.6-4. If the Legislative Operating Committee makes this determination then the following revision is recommended:
   129.6. Use of Funds
   129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund ~~for other burials~~.

LOC Consideration

The Legislative Operating Committee determined the Law should be revised to remove "for other burials" from the end of the sentence in section 129.6-4. The Legislative Operating Committee directed the following revision be made to the Law based on this comment:

129.6. Use of Funds
129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund ~~for other burials~~.

Comment 11 – Unexpended Monies from the Fund:

129.6. Use of Funds
129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund for other burials.

Ralinda Ninham-Lamberies (oral): Good afternoon, Ralinda Ninham-Lamberies. I am not sure that 129 point, I'm sorry, wait, 129.6-4 is necessary in the law. I believe it maybe was necessary prior to OLIPP, but there isn't a budget allocation for these types of funeral costs, so there, because there is no allocation, there would be nothing to remain, so I am not, I'm not sure that that is necessary.

Response

The commenter provides that section 129.6-4 of the Law may not be necessary since there isn't a budget allocation for these types of funeral costs so nothing would remain.

The Law provides that any unexpended monies after payments have been made shall remain in the Children's Burial Fund for the use of other burials. *[1 O.C. 129.6-4]*. Without more information provided by the commenter on how the Children's Burial Fund is budgeted and maintained, a response as to whether this section is necessary based on budget allocation is unavailable. This section is still useful for the reader of the Law because it provides that if the full three thousand five hundred dollars ($3,500) is not utilized by a family for the funeral costs, then the unexpended monies are placed back into the Children's Burial Fund to be used for the burials of other children, meaning that the unexpended monies are not refunded to the families who sought financial assistance for the burial. This provides notice to the families that request financial assistance from the Children's Burial Fund so they have a better understanding of how its used.

There is no revision to the Law recommended based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there was no revision to the Law needed based on this comment.

Comments 12 through 13 – Appeals to the Oneida Trust Enrollment Committee:

Keith Doxtator (written): Add an Appeal Section (129.6-6) : It should identify the OTEC as the body which appeals shall be submitted to. The OTEC is the final hearing body which hears all appeals relating to enrollment matters (including denials). The OTEC already has an approved Appeals Standard Operating Procedure

Keith Doxtator (oral): And finally, number four, to add a sixth dash to that 129.6 section which identifies the Trust Enrollment Committee as the body which appeals shall be submitted to.

Response

The commenter requests that an additional section be added to the Law that identifies that appeals under this Law shall be submitted to the Oneida Trust Enrollment Committee. The commenter provides that the Oneida Trust Enrollment Committee is the final hearing body for all matters related to enrollment.

Currently, the Law does not address whether appeals are allowed, and whom the appeals would be made to. The Legislative Operating Committee will have to determine if the Law should allow for appeals of decisions of the Oneida Trust Enrollment Department to be made to the Oneida Trust Enrollment Committee. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as drafted and not address appeals of the Oneida Trust Enrollment Department's decision.
2. The Law should be revised to provide that appeals of the Oneida Trust Enrollment Department's decision should be made to the Oneida Trust Enrollment Committee. If the Legislative Operating Committee makes this determination then the following revision is recommended:

   129.7. Appeals

   129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department's decision as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) calendar days of receipt of the decision.

LOC Consideration

The Legislative Operating Committee determined that the Law should be revised to provide that appeals of the Oneida Trust Enrollment Department's decision should be made to the Oneida Trust Enrollment Committee. The Legislative Operating Committee directed that the following revision be made to the Law based on this comment:

129.7. Appeals

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department's decision as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

Title 1. Government and Finances – Chapter 129
Kaya>takenh@sla ashakotiya>t@tane> latiksa>sh&ha
It is helpful for them to bury them the children
CHILDREN'S BURIAL FUND

~~129.1. Purpose and Policy~~
~~129.2. Adoption, Amendment, Repeal~~
~~129.3. Definitions~~
~~129.4. Qualifications for Financial Assistance~~
~~129.5. Requesting Financial Assistance~~
~~129.6. Use of Funds~~
129.1. Purpose and Policy
129.2. Adoption, Amendment, Repeal
129.3. Definitions
129.4. Qualifications for Financial Assistance
129.5. Requesting Financial Assistance
129.6. Use of Funds
129.7. Appeals

129.1. Purpose and Policy

129.1-1. *Purpose.* It is the purpose of this law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation.
129.1-2. *Policy.* It is the policy of the Nation to provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our members and their families.

129.2. Adoption, Amendment, Repeal

129.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B and amended by BC-__-__-__-__.
129.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislatives Procedures Act.
129.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
129.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.
129.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

129.3. Definitions

129.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Fetal death report" means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.
(b) "Nation" means the Oneida Nation.
(c) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.
(d) "Voluntary paternity and/or maternity statement" means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

129.4. Qualifications for Financial Assistance

129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:

(a) six (6) years of age or younger;
(b) not enrolled with the Nation; ~~and~~
(c) eligible for enrollment with the Nation; and
(d) not enrolled with any other tribe.

129.5. Requesting Financial Assistance

129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial assistance from the Children's Burial Fund.

129.5-2. Requests for financial assistance from the Children's Burial Fund shall be made to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the date of death.

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

(a) all original invoices;
(b) birth certificate, death certificate, or fetal death report; ~~and~~
(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined~~.~~; and
(d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering or food vendors.

129.6. Use of Funds

129.6-1. Financial assistance from the Children's Burial Fund for funeral costs of a deceased child shall not exceed three thousand five hundred dollars ($3,500).

129.6-2. ~~The following funeral~~Funeral related expenses are payable if identified on an invoice. Funeral related expenses may include, but are not limited to:

(a) monument and/or headstone costs;
(b) casket or coffin costs;
(c) cemetery costs;
(d) church costs; and/or
(e) food costs.

129.6-3. Under no circumstances shall there be any payments from the Children's Burial Fund for reimbursements of:

(a) funeral costs to individuals; and/or
(b) travel and/or lodging for attending a funeral.

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund ~~for other burials~~.

129.6-5. Any expenses over three thousand five hundred dollars ($3,500) shall be the responsibility of the family or responsible party.

129.7. Appeals

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

End.

Emergency Adopted – BC-09-23-09-F
Permanently Adopted – BC-02-10-10-B
Amended – BC-__-__-__-__

Title 1. Government and Finances – Chapter 129
~~CHILDREN'S BURIAL FUND~~ ~~POLICY~~
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It is helpful for them to bury them the children
CHILDREN'S BURIAL FUND

129.1. Purpose and Policy
129.2. Adoption, Amendment, ~~Conflicts~~Repeal
129.3. Definitions
129.4. Qualifications for Financial Assistance
129.5. ~~Procedures~~ Requesting Financial Assistance
129.6. Use of Funds
129.7. Appeals

129.1. Purpose and Policy
129.1-1. *Purpose.* It is the purpose of this ~~policy~~law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the ~~Oneida Tribe of Indians of Wisconsin~~Nation.
129.1-2. *Policy.* ~~The Oneida Tribe~~It is ~~committed~~the policy of the Nation to ~~providing~~provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our ~~Tribal~~ members and their families.
~~129.1-3. This fund is established to provide an individual allotment, not to exceed $3,500 per qualified individual, to defray the cost of funeral expenses.~~

129.2. Adoption, Amendment, ~~Conflicts~~Repeal
129.2-1. This ~~policy~~law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B~~.~~ and amended by BC- - - - .
129.2-2. This ~~policy~~law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in ~~Tribal law~~the Legislatives Procedures Act.
129.2-3. Should a provision of this ~~policy~~law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this ~~policy~~law which are considered to have legal force without the invalid portions.
129.2-4. In the event of a conflict between a provision of this ~~policy~~law and a provision of another law, ~~ordinance, policy, regulation, rule, resolution, or motion,~~ the provisions of this ~~policy~~law shall control. ~~Provided that, nothing in this policy is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.~~
129.2-5. This ~~policy~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

129.3. Definitions
129.3-1. This section shall govern the definitions of words and phrases used within this ~~policy~~law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Fetal death report" means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

~~(b~~(b) "Nation" means the Oneida Nation.

(c) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(~~c~~d) "Voluntary paternity~~/~~ and/or maternity statement" means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

129.4. Qualifications for Financial Assistance

129.4-1. ~~Except as provided in 129.4-2,~~ In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be ~~five (5~~:

(a) six (6) years of age or younger~~,~~;

(b) not enrolled~~, but~~ with the Nation;

(c) eligible for enrollment~~.~~ with the Nation; and

~~129.4-2. In the event the deceased is six (6) years of age, not enrolled, but eligible for enrollment, the deceased shall be eligible for assistance if the Oneida Trust/Enrollment Committee had approved the enrollment of the deceased prior to his or her death.~~

(d) not enrolled with any other tribe.

129.5. ~~Procedures~~ Requesting Financial Assistance

129.5-1. The Oneida Trust Enrollment Department ~~is designated to~~ shall process all requests for financial assistance from the Children's Burial Fund.

129.5-2. Requests for ~~payment~~financial assistance from the Children's Burial Fund shall be made to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the date of death.

129.5-3. ~~Original invoices~~Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department ~~for payment.~~ :

(a) all original invoices;

(b) birth certificate, death certificate, or fetal death report;

(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined; and

(d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

129.5-4. Upon receipt and verification of invoices and ~~the~~other relevant ~~document(s) as required under 129.5-5, the~~documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering~~/~~ or food vendors.

~~129.5-5. A birth certificate, death certificate, or fetal death report shall be submitted to the Enrollment Department prior to payment. A voluntary paternity/maternity statement shall also be submitted to the Enrollment Department prior to payment where paternity and/or maternity needs to be determined.~~

~~129.5-6. Food expenses are payable through a food voucher, added to the funeral home invoice, or paid directly to the caterer/food vendor/restaurant, amount not to exceed $200.00, which is included under the $3,500.00.~~

~~129.5-7. Monument/headstone costs are payable directly to the vendor or may be added to the funeral home invoice, amount not to exceed $1,000.00, which is included under the $3,500.00.~~

129.6. Use of Funds

129.6-1. Financial assistance from the Children's Burial Fund for funeral costs of a deceased child shall not exceed three thousand five hundred dollars ($3,500).

129.6-2. Funeral related expenses are payable if identified on an invoice. Funeral related expenses may include, but are not limited to:

(a) monument and/or headstone costs;
(b) casket or coffin costs;
(c) cemetery costs;
(d) church costs; and/or
(e) food costs.

129.6-3

~~**129.**5-8. Cemetery costs are payable directly to the vendor or may be added to the funeral home invoice, amount to be included under the $3,500.00.~~

~~129.5-9. Church costs are payable directly to the vendor or may be added to the funeral home invoice, amount to be included under the $3,500.00.~~

~~129.5-10~~. Under no circumstances ~~will~~shall there be any payments from the Children's Burial Fund for reimbursements ~~for~~of:

(a) funeral costs to individuals~~.~~; and/or
(b) travel and/or lodging for attending a funeral.

129.~~5-11~~6-4. Any unexpended monies after payment(s) have been made ~~will~~shall remain in the ~~fund for other burials~~Children's Burial Fund.

~~129.5-12. Under no circumstances will funding exceed $3,500.00.~~

~~129.5-13. Total~~129.6-5. Any expenses over ~~$3,500.00 or expenses over the designated amounts payable are~~three thousand five hundred dollars ($3,500) shall be the responsibility of the family or responsible party.

129.7. Appeals

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

End.

Emergency Adopted~~-~~ – BC-09-23-09-F
Permanently Adopted – BC-02-10-10-B
Amended – BC-__-__-__-__

Title 1. Government and Finances – Chapter 129
Kaya>takenh@sla ashakotiya>t@tane> latiksa>sh&ha
It is helpful for them to bury them the children
CHILDREN'S BURIAL FUND

129.1. Purpose and Policy
129.2. Adoption, Amendment, Repeal
129.3. Definitions
129.4. Qualifications for Financial Assistance
129.5. Requesting Financial Assistance
129.6. Use of Funds
129.7. Appeals

129.1. Purpose and Policy

129.1-1. *Purpose.* It is the purpose of this law to provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation.

129.1-2. *Policy.* It is the policy of the Nation to provide services to the membership from birth to death. As a part of this commitment, we wish to assure a dignified approach to the final needs of our members and their families.

129.2. Adoption, Amendment, Repeal

129.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-10-10-B and amended by BC-__-__-__-__.

129.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislatives Procedures Act.

129.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

129.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

129.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

129.3. Definitions

129.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Fetal death report" means the form prescribed and supplied by a State used to report non-abortion related fetal deaths, which may also be referred to as stillbirths.

(b) "Nation" means the Oneida Nation.

(c) "Stillbirth" means a fetus born dead, irrespective of the duration of pregnancy, with death indicated by the fact that after expulsion or extraction from the woman, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(d) "Voluntary paternity and/or maternity statement" means the document created by the Oneida Trust Enrollment Department which requires the notarized signature(s) of Oneida parent(s) acknowledging paternity and/or maternity of a fetus, which is used to determine eligibility for enrollment.

129.4. Qualifications for Financial Assistance

129.4-1. In order to be eligible for financial assistance from the Children's Burial Fund the deceased child shall be:

(a) six (6) years of age or younger;
(b) not enrolled with the Nation;
(c) eligible for enrollment with the Nation; and
(d) not enrolled with any other tribe.

129.5. Requesting Financial Assistance

129.5-1. The Oneida Trust Enrollment Department shall process all requests for financial assistance from the Children's Burial Fund.

129.5-2. Requests for financial assistance from the Children's Burial Fund shall be made to the Oneida Trust Enrollment Department within three hundred and sixty-five (365) days from the date of death.

129.5-3. Upon making a request for financial assistance from the Children's Burial Fund the following documentation shall be provided to the Oneida Trust Enrollment Department:

(a) all original invoices;
(b) birth certificate, death certificate, or fetal death report;
(c) voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined; and
(d) any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child.

129.5-4. Upon receipt and verification of invoices and other relevant documentation, the Oneida Trust Enrollment Department shall be responsible for processing the appropriate paper work for the payment to be made to the funeral home, monument company, casket or coffin company, cemetery, crematorium, churches, and/or catering or food vendors.

129.6. Use of Funds

129.6-1. Financial assistance from the Children's Burial Fund for funeral costs of a deceased child shall not exceed three thousand five hundred dollars ($3,500).

129.6-2. Funeral related expenses are payable if identified on an invoice. Funeral related expenses may include, but are not limited to:

(a) monument and/or headstone costs;
(b) casket or coffin costs;
(c) cemetery costs;
(d) church costs; and/or
(e) food costs.

129.6-3. Under no circumstances shall there be any payments from the Children's Burial Fund for reimbursements of:

(a) funeral costs to individuals; and/or
(b) travel and/or lodging for attending a funeral.

129.6-4. Any unexpended monies after payment(s) have been made shall remain in the Children's Burial Fund.

129.6-5. Any expenses over three thousand five hundred dollars ($3,500) shall be the responsibility of the family or responsible party.

129.7. Appeals

129.7-1. An appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Children's Burial Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

End.

Emergency Adopted – BC-09-23-09-F
Permanently Adopted – BC-02-10-10-B
Amended – BC-__-__-__-__

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It is helpful for them to bury them the children

CHILDREN'S BURIAL FUND POLICY AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

Analysis by the Legislative Reference Office	
Intent of the Amendments	▪ Revise the eligibility qualifications for assistance from the Fund; ▪ Add the requirement that a person provide the Oneida Trust Enrollment Department with any other relevant documentation as requested by the Department to support the eligibility of enrollment of the deceased child; ▪ Allow the Fund to be used for any funeral related expenses as identified as an invoice, thus eliminating any specific requirements as to what types of expenses the Fund could be used for or caps on the use of the Fund for certain types of expenses; ▪ Prohibit the use of the Funds for travel and/or lodging to attend a funeral; ▪ Allow appeals of the Oneida Trust Enrollment Department's decision as to the eligibility of a deceased child for financial assistance from the Fund to be made to the Oneida Trust Enrollment Committee.
Purpose	To provide financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation *[1 O.C. 129.1-1]*.
Affected Entities	Oneida Trust Enrollment Committee, Oneida Trust Enrollment Department
Related Legislation	Oneida Nation Constitution, Membership Ordinance
Public Meeting	A public meeting was held on February 13, 2020.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. ***Background.*** The Children's Burial Fund Policy ("the Law") provides three thousand and five hundred dollars ($3,500) of financial assistance towards the funeral costs of children of a certain age who are not enrolled, but are eligible for enrollment, in the Nation. *[1 O.C. 129.1-1]*. The Oneida Business Committee originally adopted this Law on September 23, 2009.

B. ***History.*** The following is a history of the development of this Law:

- *Resolution BC-01-04-95-A.* The Burial Endowment Fund Policy was established by this resolution to provide a burial benefit for enrolled members of the Nation and their children aged zero to five (0-5) if the child would have been eligible for enrollment in the Nation at the time of death *[Burial Endowment Fund Policy 2-2]*.
- *Resolution BC-10-01-08-A.* The Oneida Business Committee and Oneida Trust Enrollment Committee jointly adopted this resolution approving the concept of the Oneida Life Insurance Plan Plus (OLIPP) to present to the General Tribal Council for approval. OLIPP is life insurance that provides a benefit to the designated beneficiary of the enrolled member of the Nation upon death. OLIPP does not help with burial and other funeral expenses for children that are eligible for enrollment in the Nation but not enrolled.
- *Resolution GTC-01-17-09-B.* The General Tribal Council approved OLIPP for implementation in fiscal year 2010 and directed that the Nation's Burial Endowment Fund Policy be repealed.
- *Resolution BC-09-23-09-E.* This Burial Endowment Fund Policy was repealed by this resolution.
- *Resolution BC-09-23-09-F.* The Law was adopted on an emergency basis by this resolution to be effective on the date of implementation of the OLIPP. This included provisions

recommended by the Oneida Trust Enrollment Committee to maintain a burial benefit for children ages three (3) and under who are not enrolled but eligible for enrollment in the Nation at the time of death.

- *Resolution BC-02-10-10-B.* The Law was permanently adopted by this resolution to provide financial assistance towards funeral related expenses for children ages five (5) or younger that were eligible for enrollment in the Nation but not enrolled at the time of death. Additionally; children who were six (6) years of age at the time of death and approved for enrollment by the Oneida Trust Enrollment Committee, but not approved for enrollment by the Oneida Business Committee, were also eligible for financial assistance.

C. On August 7, 2019, the Oneida Trust Enrollment Committee submitted a request to the Legislative Operating Committee to consider amending the Law.

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments of the Nation participated in the development of this Law and legislative analysis:
   - Oneida Trust Enrollment Department; and
   - Oneida Trust Enrollment Committee.

B. The following laws of the Nation were reviewed in drafting this analysis:
   - Membership Ordinance; and
   - Oneida Nation Constitution.

C. The following tribal laws were reviewed in the development of this analysis:
   - Wichita and Affiliated Tribes Burial Assistance Guidelines;
   - Leech Lake Band of Ojibwe Funeral Assistance Program;
   - Absentee Shawnee Tribe Burial Assistance Program; and
   - Pawnee Nation of Oklahoma Burial Assistance Policy.

SECTION 4. PROCESS

A. Thus far, this Law has followed the process set forth by the Legislative Procedures Act.
   - The Law was added to the Legislative Operating Committee's Active Files List on August 7, 2019.
   - A public meeting on the proposed amendments to the Law was held on February 13, 2020.
   - The public comment period closed on February 20, 2020.
   - The Legislative Operating Committee reviewed and considered all public comments received on March 4, 2020.

B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
   - December 2, 2019: Work meeting was held with Oneida Trust Enrollment Department Staff.
   - December 4, 2019: Work meeting was held with the Legislative Operating Committee.
   - March 4, 2020: Work meeting was held with the Legislative Operating Committee.

SECTION 5. CONTENTS OF THE LEGISLATION

A. ***Qualifications for Financial Assistance.*** The proposed amendments revise the qualifications for financial assistance from the Children's Burial Fund ("the Fund"). In order to be eligible for financial assistance from the Fund the deceased child shall be six (6) years of age or younger; not enrolled with the Nation; eligible for enrollment with the Nation; and not enrolled with any other tribe. *[1 O.C. 129.4-1]*. Previously, the Law provided that in order to be eligible for assistance from the Fund the deceased child must be five (5) years old or younger, not enrolled with the Nation, but eligible for enrollment. The current Law also allowed for a six (6) year old to be eligible for the Fund if the Oneida Trust Enrollment Committee had approved the enrollment of that deceased child prior to his or her death.
   - *Effect.* The proposed amendments simplify the qualifications by removing the additional step of having an enrollment approved by the Oneida Trust Enrollment Committee for those deceased children who were six (6) years old. Having an enrollment approved by the Oneida

Trust Enrollment Committee did not ultimately affect whether a deceased child met the qualifications of enrollment with the Nation. The inclusion of the additional eligibility qualification of not being enrolled with a different tribe provides clarification as to how enrollment with another tribe affects a deceased child's eligibility for assistance from the Fund.

B. ***Required Documentation to Prove Eligibility of Enrollment.*** The proposed amendments provide that upon making a financial assistance from the Fund a person shall provide the Oneida Trust Enrollment Department any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child. *[1 O.C. 129.5-3(d)]*. Previously, the only required that a person provide the Oneida Trust Enrollment Department all original invoices; birth certificate, death certificate, or fetal death report; and a voluntary paternity and/or maternity statement in situations where paternity and/or maternity needs to be determined.

- *Effect*. The addition of the requirement to any other relevant documentation as requested by the Oneida Trust Enrollment Department to support the eligibility of enrollment of the deceased child, in addition to the documents that were already required by the Law recognizes that there may be situations that arise where the Oneida Trust Enrollment Department needs to request more documentation to support the eligibility of enrollment of the child, and provides the greatest flexibility in requesting documentation to support the eligibility of enrollment of the deceased child.

C. ***Use of the Funds.*** The proposed amendments provide that funeral related expenses are payable if identified on an invoice. *[1 O.C. 129.6-2]*. The Law provides that funeral related expenses may include, but are not limited to monument and/or headstone costs, casket or coffin costs, cemetery costs, church costs, and/or food costs. *[1 O.C. 129.6-2(a)-(e)]*. Previously, the Law provided specific types of uses for the Fund which included food costs, monument and/or headstone costs, cemetery costs, and church costs. The Law then further added restrictions as to how much of the Fund could be used for certain types of expenses. Two hundred dollars ($200) of the three thousand and five hundred dollars ($3,500) that was available as assistance was allowed to be used for food, and only one thousand dollars ($1,000) was allowed to be used for monument or headstone costs. Cemetery or church costs did not have further restrictions.

- *Effect*. Removing the restrictions as to the types of costs that are able to be paid for by the Fund as well as any specific limitations on the cost of specific aspects of a funeral opens up the use of the Fund and provides the most flexibility to families to determine how to best use their assistance from the Fund for the funeral costs of a deceased child.

D. ***Prohibition to Use Funds for Travel and/or Lodging.*** The proposed amendments add a provision which prohibits payments from the Fund to be used for travel and/or lodging for attending a funeral. *[1 O.C. 129.6-3(b)]*. Previously, the Law only provided that payments from the Fund could not be used to reimburse funeral costs to individuals. *[1 O.C. 129.6-3(a)]*.

- *Effect*. This amendment clarifies that in addition to the Fund not being able to be used to reimburse costs to individuals, it cannot be used for travel and/or lodging for attending a funeral. This provides further clarification as to how the Fund may be used by a family.

E. ***Appeals.*** The amendments add a new appeal section. *[1 O.C. 129.7]*. This section provides that an appeal of a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Fund may be made to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision. Previously, the Law was silent as to if appeals were allowed, or where those appeals would be made to.

- *Effect*. This amendment provides clarification that appeals of the Oneida Trust Enrollment Department's decisions are permitted, and should be made to the Oneida Trust Enrollment Committee. Allowing for appeals provides due process to those individuals who may have been denied assistance from the Fund due to not meeting the enrollment eligibility requirements. The Oneida Trust Enrollment Committee is given the authority to hear the appeals due to the fact that the Oneida Trust Enrollment Committee is the final hearing body for all matters related to enrollment.

F. ***Minor Drafting Changes.*** Additional minor drafting changes have been made throughout the law for clarification purposes and to update the drafting style of this Law.

SECTION 6. EFFECT ON EXISTING LEGISLATION

A. ***Related Legislation.*** The following laws of the Nation are related to this Law:

- *Constitution and Bylaws of the Oneida Nation.* T The Law provides that in order to be eligible for assistance from the Fund the child must be eligible for enrollment with the Nation. *[1 O.C. 129.4-1]*.
  - The Constitution and Bylaws of the Oneida Nation provides the qualifications for membership in the Nation. *[Article II, Section 1(a)-(c)]*.
  - The Oneida Trust Enrollment Department shall be required to use the Constitution and Bylaws of the Oneida Nation to determine if a deceased child is eligible for enrollment in the Nation.
- *Membership Ordinance*. The Law provides that in order to be eligible for assistance from the Fund the child must be eligible for enrollment with the Nation. *[1 O.C. 129.4-1]*.
  - The Membership Ordinance was drafted in accordance with Article II, Section 2 of the Constitution and Bylaws of the Oneida Nation and provides further details as to membership qualifications. *[1 O.C. 124.4]*.
  - The Oneida Trust Enrollment Department shall be required to use the Membership Ordinance to determine if a deceased child is eligible for enrollment in the Nation.

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. The Oneida Trust Enrollment Department is responsible for the implementation and operation of this Law. The Oneida Trust Enrollment Department is delegated the authority to process all requests for financial assistance from the Fund. *[1 O.C. 129.5-1]*.

B. If an individual does not agree with a decision of the Oneida Trust Enrollment Department as to the eligibility of a deceased child for financial assistance from the Fund, that individual may appeal the decision to the Oneida Trust Enrollment Committee within fourteen (14) days of receipt of the decision.

- This provides additional rights to an individual who may disagree with the decision of the Oneida Trust Enrollment Department, and allows the Oneida Trust Enrollment Committee to hold the Oneida Trust Enrollment Department accountable by reviewing the decisions made as to the eligibility of a deceased child to receive assistance from the Fund.

SECTION 8. OTHER CONSIDERATIONS

A. ***Current Use of the Fund***. The Oneida Trust Enrollment Department indicated that the Fund has been used to assist with the expenses of a funeral for five (5) deceased children since 2015.

- If the full amount of the Fund was utilized by each family since 2015, then the total expense to the Nation for assisting with these funerals would be seventeen thousand and five hundred dollars ($17,500).

B. ***Fiscal Impact***. A fiscal impact statement of the proposed amendments to the Law has not yet been developed.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation. *[1 O.C. 109.6-1]*.
- Oneida Business Committee resolution BC-09-25-19-A requires that when developing a fiscal impact statement for the adoption of proposed legislation by the Oneida Business Committee the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative Operating Committee.

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

ONEIDA

TO:	Lawrence E. Barton, Chief Financial Officer Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
FROM:	David P. Jordan, Legislative Operating Committee Chairman
DATE:	March 18, 2020
RE:	Children's Burial Fund Policy Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Children's Burial Fund Policy. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. *[1 O.C. 109.6-1]*. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. *[1 O.C. 109.3-1(c)]*.

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. *[1 O.C. 109.6-2]*. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. *[1 O.C. 109.6-1]*.

Oneida Business Committee resolution BC-09-25-19-A titled, "*Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act*" provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On March 18, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Children's Burial Fund Policy. Therefore, the LOC is directing the Finance

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Department to provide a fiscal impact statement on the proposed amendments to the Children's Burial Fund Policy by April 1, 2020.

A copy of the proposed amendments to the Children's Burial Fund Policy, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action
Provide the LOC a fiscal impact statement of the proposed amendments to the Children's Burial Fund Policy by April 1, 2020.

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

Legislative Operating Committee
March 18, 2020

Tobacco Law Amendments

Submission Date: 1/15/20	**Public Meeting:** n/a
LOC Sponsor: Kirby Metoxen	**Emergency Enacted:** 2/26/20

Summary: *This item was added to the AFL to pursue emergency amendments to comply with an amendment to the Federal Food, Drug, and Cosmetic Act. On December 20, 2019, President Trump signed into law an amendment to increase the minimum age of sale of tobacco products from eighteen (18) to twenty-one (21). The amendment was effective immediately. The Oneida Retail operations have been compliant with the minimum age change since January 1, 2020. This emergency amendment to the Law would change the minimum age provision from eighteen (18) to twenty-one (21) years of age. Emergency amendments were adopted by the Oneida Business Committee through resolution BC-02-26-20-A. The emergency amendments will expire on August 26, 2020.*

1/15/20 LOC: Motion by Daniel Guzman King to add the Tobacco Law Emergency Amendments to the active files list with Kirby Metoxen as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

For the record: Ernest Stevens III, "I support that motion, because we can't have a conversation if we don't bring it there. That's the only reason I'm supporting it."

1/30/20: *Work Meeting*. Present: Daniel Guzman King, Ernest Stevens III, Jennifer Webster, David P. Jordan, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Carl Artman, Maureen Perkins. The purpose of this work meeting was for Attorney Carl Artman to provide the LOC with more information on why the Nation is complying with the recent amendment to the Federal Food, Drug, and Cosmetic Act.

2/19/20 LOC: Motion by Jennifer Webster to approve the Tobacco Law Emergency Amendments adoption packet and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried.

2/26/20 OBC: Motion by Brandon Stevens to adopt resolution 02-26-20-A Tobacco Law Emergency Amendments, seconded by Jennifer Webster. Motion carried. (Daniel Guzman King and Ernest Stevens III abstained).

3/2/20: *Work Meeting*. Present: Clorissa N. Santiago, Michelle Doxtator, Mollie Passon. The purpose of this work meeting was to go through the Law and discuss any additional amendments that should be sought when the emergency amendment is made permanent. The drafting attorney will update the Law and send it out for review by the work group before a legislative analysis is sought.

3/4/20: *Work Meeting*. Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago. The purpose of this work meeting was to review the beginnings of a draft of

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permanent amendments based on the work meeting with Retail and Community Health and decide if there were any other amendments the LOC wanted to pursue.

Next Steps:

- Accept the draft and legislative analysis and defer to a work meeting for further consideration.

Title 1. Government and Finances - Chapter 115
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matters concerning tobacco
TOBACCO

115.1. Purpose and Policy
115.2. Adoption, Amendment, Repeal
115.3. Definitions
115.4. Oneida Retail Locations
115.5. Purchase of, Title to And Possession of Tobacco Products
115.6. Restrictions on Sales
115.7. Liability
115.8. Violations

115.1. Purpose and Policy

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

115.2. Adoption, Amendment, Repeal

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, BC-01-25-17-B, ~~and~~ BC-02-26-20-A~~.~~, and BC- - - - .

115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

115.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

115.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

115.3. Definitions

115.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) "Electronic cigarette" means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. "Electronic cigarette" shall not include any device that is prescribed by a healthcare professional.

(c) "Employee" means a person employed by the Oneida Nation working in an Oneida retail location.

(d) "Nation" means the Oneida Nation.

(e) "Oneida Retail Location" means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) "Reservation" means all land within the exterior boundaries of the Reservation of the

Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.

(g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.

(h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

115.4. Oneida Retail Locations

115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation~~ (the~~. The title shall be subject to any purchase money security interest~~)~~. Possession of the stamped cigarettes~~ (~~, but not title~~)~~, shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

115.6. Restrictions on Sales

115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.

115.6-3. Cigarettes~~ and~~, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21~~) .~~). Cigarettes~~ and~~, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes~~ and~~, electronic cigarettes, and/or other tobacco products at an Oneida retail location.

115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

115.8 Violations

115.8-1. *Issuance of a Citation.* An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.

(a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court.

(b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(c) The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this law.

115.8-2. *Additional Penalties.* In addition to the issuance of a citation and the resulting fine and/or penalty, an individual who violates a provision of this law may be subject to the following:

(a) *Seizure.* All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by ~~any~~the Oneida ~~law enforcement officer~~Police Department.

~~(a) Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars ($10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation.~~

(b) ~~Employees~~*Disciplinary Action.* An employee who ~~violate~~violates this law shall be subject to disciplinary action in accordance with the Nation's laws~~, rules,~~ and policies governing employment.

~~115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person contests the citation with the Nation's judicial system before the fine is to be paid.~~

End.

Adopted - BC-~~3~~03-15-76-A
Adopted - BC-09-07-77-B
Adopted - BC-09-04-79-C
Adopted - BC-11-18-81-A
Amended - BC-10-10-07-A
Amended - BC-04-09-14-F
Amended - BC-01-25-17-B
~~Adopted - BC-9-7-77-B~~ ~~Amended - BC-10-10-07-A~~ Emergency Amended – BC-02-26-20-A
~~Adopted - BC-9-4-79-C~~ Amended – BC-~~04-09-14-F~~

Title 1. Government and Finances - Chapter 115
Oyú·kwaʔ Olihwá·ke
matters concerning tobacco
TOBACCO

115.1. Purpose and Policy
115.2. Adoption, Amendment, Repeal
115.3. Definitions
115.4. Oneida Retail Locations
115.5. Purchase of, Title to And Possession of Tobacco Products
115.6. Restrictions on Sales
115.7. Liability
115.8. Violations

115.1. Purpose and Policy

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

115.2. Adoption, Amendment, Repeal

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, BC-01-25-17-B, BC-02-26-20-A, and BC-__-__-__-__.

115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

115.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

115.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

115.3. Definitions

115.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) "Electronic cigarette" means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. "Electronic cigarette" shall not include any device that is prescribed by a healthcare professional.

(c) "Employee" means a person employed by the Oneida Nation working in an Oneida retail location.

(d) "Nation" means the Oneida Nation.

(e) "Oneida Retail Location" means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) "Reservation" means all land within the exterior boundaries of the Reservation of the

Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.

(g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.

(h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

115.4. Oneida Retail Locations

115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation. The title shall be subject to any purchase money security interest. Possession of the stamped cigarettes, but not title, shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

115.6. Restrictions on Sales

115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.

115.6-3. Cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). Cigarettes, electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an Oneida retail location.

115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

115.8 Violations

115.8-1. *Issuance of a Citation*. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.

(a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court.

(b) A citation for a violation of this law shall be processed in accordance with the

procedure contained in the Nation's laws and policies governing citations.

(c) The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this law.

115.8-2. *Additional Penalties*. In addition to the issuance of a citation and the resulting fine and/or penalty, an individual who violates a provision of this law may be subject to the following:

(a) *Seizure*. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by the Oneida Police Department.

(b) *Disciplinary Action*. An employee who violates this law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment.

End.

Adopted - BC-03-15-76-A
Adopted - BC-09-07-77-B
Adopted - BC-09-04-79-C
Adopted - BC-11-18-81-A
Amended - BC-10-10-07-A
Amended - BC-04-09-14-F
Amended - BC-01-25-17-B
Emergency Amended – BC-02-26-20-A
Amended – BC-__-__-__-__

oyú·kwaʔ olihwá·ke
Oh yoon gwa oh lee waa gay
matters concerning tobacco

AMENDMENTS TO THE TOBACCO LAW
LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

Analysis by the Legislative Reference Office	
Intent of the Amendments	▪ Provide a definition for "tobacco products;" ▪ Clarify that all tobacco products, and not just cigarettes and electronic cigarettes, shall not be sold to any person under the age of twenty-one (21) years; ▪ Clarify that no person other than an authorized employee shall sell tobacco products, and not just cigarettes and electronic cigarettes, at an Oneida retail location; ▪ Clarify that process and procedure contained in the Nation's Citations law will govern citations issued under this Law; and ▪ Provide authority to the Oneida Business Committee to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this Law.
Purpose	The purpose of this Law is to regulate the sale, possession and distribution of cigarettes within the Reservation *[1 O.C. 115.1-1]*.
Affected Entities	Oneida Retail Enterprise, Oneida Judiciary, Oneida Police Department
Related Legislation	Oneida Personal Policies and Procedures, Citations law
Public Meeting	A public meeting has not yet been held.
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. ***Background.*** The Tobacco law ("the Law") regulates the sale, possession, and distribution of cigarettes within the Reservation. *[1 O.C. 115.1-1]*. The Oneida Business Committee originally adopted this Law on March 15, 1976. The Law was most recently amended on an emergency basis on February 26, 2020.

B. ***Emergency Amendments.*** On February 26, 2020, the Oneida Business Committee adopted emergency amendments to the Law through resolution BC-02-26-20-A. The emergency amendment raised the minimum age for the sale of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21).

- The Oneida Business Committee is allowed to temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible by utilizing the standard legislative process *[1 O.C. 109.9-5]*.
- An emergency amendment to the Law was pursued based on President Trump's December 20, 2019, action to sign into law an amendment to the Federal Food, Drug, and Cosmetic Act which raised the legal age to purchase tobacco products to at least twenty-one (21) years old, effective immediately. The Oneida Retail Enterprise began implementing this change on January 1, 2020.
- The Oneida Business Committee determined emergency adoption of the amendment to the Law was necessary for the preservation of the public health and general welfare of the Reservation population because it ensures the Nation is in compliance with federal law. Additionally, the Oneida Business Committee found that observance of the requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

- The emergency amendment to the Law will expire on August 26, 2020. The Legislative Procedures Act allows a one-time emergency law extension of up to six (6) months. *[1 O.C. 109.9-5(b)]*.

SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments of the Nation participated in the development of this Law and legislative analysis:
   - Oneida Retail Enterprise;
   - Community Health Services Department; and
   - Oneida Law Office.

B. The following laws of the Nation were reviewed in drafting this analysis:
   - Oneida Personnel Policies and Procedures; and
   - Citations law.

SECTION 4. PROCESS

A. Thus far, this Law has followed the process set forth in the Legislative Procedures Act.
   - The Tobacco law emergency amendments was added to the Legislative Operating Committee's Active Files List on February 5, 2020.
   - The Oneida Business Committee adopted the emergency amendments on February 26, 2020, through the adoption of resolution BC-02-26-20-A.
   - The emergency amendments will expire on August 26, 2020.

B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of these amendments:
   - January 30, 2020: Work meeting with LOC and Oneida Law Office.
   - March 2, 2020: Work meeting with Oneida Retail Enterprise and Community Health Services Department.
   - March 4, 2020: Work meeting with LOC.

SECTION 5. CONTENTS OF THE AMENDMENTS

A. ***Definition of Tobacco Products***. The proposed amendments add a definition for "tobacco products" to the Law. *[1 O.C. 115.3-1(h)]*. Previously, the Law only defined and referenced "cigarettes" and "electronic cigarettes" and was silent as to other tobacco products. The Oneida Retail Enterprise uses the same minimum age for the sale of tobacco products as cigarettes and electronic cigarettes, the Law just did not reflect this practice.
   - *Effect*. The addition of the definition and reference to tobacco products better reflects the Oneida Retail Enterprise's current practices, and informs the reader that tobacco products are treated in the same manner as cigarettes and electronic cigarettes.

B. ***Minimum Age of Sale***. The proposed amendments provide that cigarettes, electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21). *[1 O.C. 115.6-3]*. Prior to the adoption of the emergency amendments, the Law only stated that cigarettes and electronic cigarettes shall not be sold to any person under the age of eighteen (18).
   - *Effect*. This proposed amendment permanently adopts the emergency amendment which raised the minimum age of sales of cigarettes and electronic cigarettes from eighteen (18) to twenty-one (21). This amendment also clarifies that the minimum age for the sale of tobacco products is twenty-one (21). Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.

C. ***Sale by Authorized Employees Only***. The proposed amendments provide that no person other than an authorized employee shall sell cigarettes, electronic cigarettes, and/or other tobacco products at an

Oneida retail location. *[1 O.C. 115.6-3]*. Previously, the Law only referenced cigarettes and electronic cigarettes in this section.

- *Effect.* This amendment clarifies that the restriction of sales to authorized employees applies to the sale of tobacco products at Oneida retail locations. Although the current version of the Law does not reference tobacco products other than cigarettes and electronic cigarettes, this amendment reflects the Oneida Retail Enterprise's current practice.

D. ***Citations Issued for Violations of this Law.*** The proposed amendments provide that an individual who violates a provision of this Law may be issued a citation by the Oneida Police Department. *[1 O.C. 115.8-1]*. The Law goes on to provide that citations, which may include fines and other penalties, shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations. *[1 O.C. 115.8-1(a)-(b)]*. The proposed amendments also delegate authority to the Oneida Business Committee to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this Law. *[1 O.C. 115.8-1(c)]*. Previously, the Law provided that violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars ($10) per pack of unstamped cigarettes to be issued by the Oneida Police Department and paid to the Nation. The Law also previously provided that all fines assessed shall be paid within sixty (60) days of issuance of the citation, unless the person contests the citation with the Nation's judicial system before the fine is to be paid.

- *Adoption of a Citations Law*. In February 2020 the Oneida Business Committee adopted a Citations law for the purpose of providing a consistent process that governs all citations that fall under the jurisdiction of the Oneida Nation. *[8 O.C. 807.1-1]*.
- *Effect*. The proposed amendments better clarify that the process and procedure contained in the Nation's Citations law will govern citations issued under this Law. The proposed amendment's removal of language specific to fines and penalties from the Law to instead be placed into a resolution containing a fine and penalty schedule is also consistent with the Nation's recent legislative drafting practices.

SECTION 6. EFFECT ON EXISTING LEGISLATION

A. ***Reference to other Laws of the Nation***. The following laws of the Nation are referenced in this Law:

- *Oneida Personnel Policies and Procedures.* This Law provides that an employee who violates this Law shall be subject to disciplinary action in accordance with the Nation's laws and policies governing employment. *[1 O.C. 115.8-2(b)]*.
  - The Oneida Personnel Policies and Procedures is the Nation's law which governs employment. The Oneida Personnel Policies and Procedures provides the process for handling complaints, disciplinary actions, and grievances. *[Section V.D.]*.
  - A supervisor would have to follow the disciplinary action procedure contained in the Oneida Personnel Policies and Procedures if holding an employee accountable for a violation of this Law.
- *Citations law*. This Law provides that a citation for a violation of this Law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.
  - The Citations law is the Nation's law governing citations. The Citations law provides how a citation action is started – such as who has the authority to issue a citation, the requirements of the form of the citation, and how a citation is served and filed; stipulations for the settlement of a citation; and the citation hearing procedures. *[8 O.C. 807]*.
  - Any citations issued by the Oneida Police Department for a violation of this Law must comply with the requirements and procedures of the Citations law.

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. ***Enforcement.*** This Law is enforced in the following ways:

- *Procedures and Policies.* The Oneida Retail enterprise is the entity responsible for carrying out the process, procedures, and responsibilities of this Law.
- *Issuance of a Citation*. The Oneida Police Department is authorized to issue a citation for a violation of this Law. *[1 O.C. 115.8-1]*.
- *Seizure of Unstamped Cigarettes*. The Oneida Police Department is authorized to seize any cigarettes acquired, owned, possessed, sold, or distributed in violation of this Law. *[1 O.C. 115.8-2(a)]*.
- *Disciplinary Action*. A supervisor may utilize disciplinary action in accordance with the Oneida Personnel Policies and Procedures for any employee who violates this Law. *[1 O.C. 115.8-2(b)]*.

SECTION 8. OTHER CONSIDERATIONS

A. ***Timeframe for Permanent Adoption of Amendments.*** The emergency amendment to this Law, as adopted by the Oneida Business Committee through resolution BC-02-26-20-A, will expire on August 26, 2020. The Legislative Procedures Act allows a one-time extension of up to an additional six (6) months. *[1 O.C. 109.9-5(b)]*. This means that the Legislative Operating Committee has until February 21, 2021, at the latest to adopt the permanent amendments to this Law before the emergency amendments expire.

B. ***Fine and Penalty Schedule.*** This Law provides that the Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this Law. *[1 O.C. 115.8-1(c)]*. The fine and penalty schedule resolution for the Tobacco law is currently under development. The Legislative Operating Committee intends to bring this proposed fine and penalty schedule resolution to the Oneida Business Committee at the time these amendments are up for adoption.

C. ***Fiscal Impact***. A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation *[1 O.C. 109.6-1]*.
- A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee *[1 O.C. 109.6-1(a and b).]*.

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

Legislative Operating Committee
March 18, 2020

Oneida Food Service Code

Submission Date: 9/19/18	**Public Meeting:** February 6, 2020
LOC Sponsor: Ernest Stevens III	**Emergency Enacted:** n/a **Expires:** n/a

Summary: *This request comes from the Environmental, Health, Safety & Land Division and Licensing Department for amendments and updates to the Oneida Food Service Code that include fee schedule updates, an exemption for cottage food sales, and requirements for a credentialed Food Safety Manager.*

9/19/18 LOC: Motion by Jennifer Webster to add the Oneida Food Service Code to the active files list and assign Ernest Stevens III as the sponsor; Seconded by Daniel Guzman King. Motion carried unanimously.

10/4/18: *Work Group Meeting.* Present: Kristen M. Hooker, Maureen Perkins, Michelle Myers, Vanessa Miller, Jeff Mears, Jamie Betters. The purpose of this work group meeting was to discuss potential amendments to the Oneida Food Service Code ("Law") with representatives from the following departments and divisions: Environmental, Health, Safety & Land Division; Community Health Nursing; and Internal Services. The next steps are: (1) for the legislative analyst to conduct additional research to be presented back to the work group for consideration and further discussion; (2) for the drafting attorney to provide general updates to the Law based on the LPA and the Federal Food Code; and (3) for the work group to provide any follow up recommendations and/or suggestions to the LRO for amendments to the Law.

11/29/18: *Work Group Meeting.* Present: Vanessa Miller, Tonya Webster, Jennifer Falck, Maureen Perkins, Kristen M. Hooker. The purpose of this work group meeting was to go through the revisions and proposed amendments to the Oneida Food Service Code. The next steps are: (1) for EHSLD and/or Licensing Department to contact Risk Management regarding the current insurance requirements for independent food vendors; (2) for EHSLD to share and get input on the proposed cottage food exemption with representatives of the Nation that may be interested in its development/ application; and (3) to reconvene at another work group meeting to finish going through the amendments and discuss the input received from the above groups.

1/25/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was: (1) to discuss Risk Management's stance on the Law's current insurance provisions and consider possible amendments relating

thereto; and (2) to continue reviewing the Law to gather suggestions from the work group for amendments that include, but are not limited to, updating the fee schedule and adding an exemption for cottage food sales.

2/28/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller, Jennifer Falck. The purpose of this meeting was to discuss the addition of a cottage food sales exemption to the Law. The next step is for the drafting attorney to update the Law to include all amendments proposed during the last two meetings and to bring a draft back to a work group meeting for a final review and comment.

6/6/19: *Work Group Meeting.* Present: Jeff Mears, Kristen Hooker, Maureen Perkins, Vanessa Miller. The purpose of this meeting was to go through the rough draft of the proposed amendments to the Law with the work group for final comments before bringing the draft to a LOC work meeting for review and policy consideration.

11/6/19: *LOC Work Meeting.* Present: David P. Jordan, Daniel Guzman-King, Kirby Metoxen, Kristen M. Hooker, Maureen Perkins, Ernest Stevens III, Jennifer Webster (left early), Jameson Wilson. The purpose of this meeting was to review the current draft of the Oneida Food Service Code, go through the proposed amendments suggested by the work group and discuss any further amendments by the LOC. The LOC reviewed the first half of the draft. The next step is for: (1) the LRO to follow up on the questions/ concerns raised by the LOC during its review; (2) the LRO to bring responses back to a LOC work meeting; and (3) for LRO to go through the second half of the draft with the LOC during that meeting.

11/15/19: *LOC Work Meeting.* Present: Kristen Hooker, Maureen Perkins, David Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Daniel Guzman King. The purpose of this meeting was to provide the LOC with responses to the questions/issues it raised during the previous LOC work meeting and to finish going through the draft of the amendments to the Oneida Food Service Code.

12/4/19 LOC: Motion by Jennifer Webster to approve the draft of the amendments to the Oneida Food Service Code with one change and direct a legislative analysis to be completed; Seconded by Kirby Metoxen. Motion carried.

12/18/19 LOC: Motion by Kirby Metoxen to approve the draft amendments to the Oneida Food Service Code and the legislative analysis and to defer to a work meeting; Seconded by Ernest Stevens III. Motion carried.

12/18/19: *LOC Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to discuss the considerations raised in the Food Service Code Amendments Legislative Analysis. The next step is for the LRO to update the draft, as well as the legislative analysis, based on the discussions and to prepare a public meeting packet for approval at the next LOC meeting.

1/15/20 LOC: Motion by Kirby Metoxen to approve the public meeting packet and forward the Food Service Code Amendments to a public meeting to be held on February 6, 2020; Seconded by Daniel Guzman King. Motion carried unanimously.

2/6/2020: *Public Meeting Held.* Present: Daniel Guzman King, Jennifer Falck, Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Rae Skenadore, Jaime Betters, Jamison Wilson, other community members who did not sign-in. No comments were received. The meeting closed at 12:30 p.m.

2/13/2020: *LOC Work Meeting.* Present: David Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Laura Laitinen-Warren, Maureen Perkins, Kristen M. Hooker. The purpose of this meeting was to review written comments sent from a member of the work group prior to the public comment period regarding certain amendments to the Oneida Food Service Code.

2/13/2020: *Public Comment Period Closed at 4:30 p.m.* One (1) written comment was submitted during the public comment period.

3/4/2020: *LOC Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Clorissa Santiago, Kristen M. Hooker. The purpose of this meeting was for the LOC to review and consider the public comment that was received, and to determine whether revisions to the Law are necessary. Next step is for the drafting attorney to follow up with intergovernmental affairs regarding a question raised during the meeting and to update the draft for the next LOC packet so a fiscal analysis can be requested.

Next Steps:

- Accept the updated public comment review memorandum, draft law and legislative analysis.
- Approve the Oneida Food Service Code amendments fiscal impact statement request memorandum and forward to the Finance Department directing a fiscal impact statement be prepared and submitted to the LOC by April 1, 2020.

A good mind. A good heart. A strong fire.

ONEIDA

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54115-0365
Oneida-nsn.gov

TO:	Legislative Operating Committee (LOC)
FROM:	Kristen M. Hooker, Legislative Reference Office, Staff Attorney
DATE:	March 18, 2020
RE:	Oneida Food Service Code Amendments: Public Meeting Comment Review

On February 6, 2020, a public meeting was held regarding proposed amendments to the Oneida Food Service Code ("Law"). The public comment period was then held open until February 13, 2020. On March 4, 2020, the Legislative Operating Committee reviewed and considered the public comment that was received. This memorandum is submitted as the Legislative Operating Committee's review of the written comment received within the public comment period.

Comment 1 – Licensing Fee Waiver:

305.7. Licensing

305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to operate a food service business:

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

Vanessa Miller (written): Shekoli, Regarding section (3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

While I do understand that this fee exemption does not take away any regulatory authority of the Nation and still requires compliance with any and all license requirements, acknowledging of other governmental license payment, asking for proof of said payment, and then exempting a

A good mind. A good heart. A strong fire.

requirement of the Nation's law (which does include fee payment) based on that acknowledgement, diminishes primacy of our own law. Yaw^ko

Response

The commenter expresses a concern over the licensing fee exemption set forth in section 305.7-1(c)(3)(B) of the Law, which provides:

> The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

The commenter believes that requiring the Department to exempt an applicant from the Nation's own licensing fee provision based upon proof that the applicant paid another governmental unit for a similar license diminishes the Law's primacy.

The waiver of licensing fees for those food service businesses and prepackaged restaurants that are located within overlapping jurisdictions and would otherwise be subject to duplicative billing for similar licenses was a policy decision made by the Legislative Operating Committee. The Legislative Operating Committee weighed numerous factors in reaching its decision, including that the waiver could be considered a form of diminishment as described by the commenter. It weighed this against the burden duplicative billing could place on a business, particularly a smaller one, factoring in that the waiver does not take away the Nation's regulatory authority or release the applicant from any of the other compliancy provisions set forth in the Law.

Additionally, the Legislative Operating Committee considered that duplicative licensing fees could deter business development on the Reservation, and thus, undermine the Nation's goal of promoting enterprise within its borders.

The waiver of licensing fees for the food service businesses and prepackaged restaurants described in section 305.7-1(c)(3)(B) of the Law is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may determine that:

1. The Law should remain as drafted to require a licensing fee waiver upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.
2. The Law should be amended to limit licensing fee waivers to only those food service businesses and prepackaged restaurants described in section 305.7-1(c)(3)(B) that meet certain qualifications, such as business size.
    a. If the Legislative Operating Committee makes this determination, it will then have to decide what limiting qualifications to include within section 305.7-1(c)(3)(B) of the Law.
3. The Law should be amended to remove the requirement that the Department waive the licensing fee for food service businesses and prepackaged restaurants that present proof of payment to another governmental unit located within the boundaries of the Reservation for

a similar license or permit to operate that covers the same term. If the Legislative Operating Committee makes this determination, the following revision is recommended:

305.7. Licensing

305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to operate a food service business:

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

~~(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.~~

LOC Consideration

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment as the issue of diminishment was considered by the Legislative Operating Committee when it was considering whether to include a waiver provision within the Law. And, based on the reasons set forth above, the Legislative Operating Committee decided that the benefits outweighed the risk that a waiver of licensing fees could be viewed as a partial diminishment of the Law's primacy.

Prior to the public meeting, however, the Legislative Operating Committee did receive a similar comment regarding diminishment. In response, the Legislative Operating Committee decided to amend the Law to make clear that a waiver of the licensing fee to operate a food service business or prepacked restaurant did not constitute a waiver of the Nation's regulatory authority or a release of an applicant from any other compliancy provision set forth within the Law. Based on this decision, the Legislative Operating Committee directed the following revision be made to section 305.7 of the Law.

305.7. Licensing

305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to operate a food service business:

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to

another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

(C) Exemption from a licensing fee under (A) or (B) of this section shall not be considered a waiver of any other compliancy requirement within this Law that is applicable to food service businesses and/or prepackaged restaurants, nor shall it be considered a waiver of the Nation's authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

Title 3. Health and Public Safety – Chapter 305
Kahkwaʔó·ku
about the food
ONEIDA FOOD SERVICE

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305.1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation's self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation's resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. Adoption, Amendment, Repeal

305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-__-__-__-__.

305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

305.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

305.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. Definitions

305.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Citation" means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against a person of a violation of law.

(b) "Close-down" means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

(c) "Consumer" means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.

(d) "Cottage food operator" means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.

(e) "Cottage food products" mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.

(f) "Department" means the Environmental, Health and Safety Department within the Nation's Environmental, Health, Safety and Land Division.

(g) "Direct sale" means a consumer's face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.

(h) "Domestic residence" means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.

(i) "Emergency" means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.

(j) "Federal Food Code" means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.

(k) "Fine" means a monetary punishment issued to a person for violation of this law.

(l) "Food" means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(m) "Food service business" means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:

(1) Private rummage sales;
(2) Community sponsored non-profit fundraising and/or charity events;
(3) Cottage food operators who satisfy the requirements of this law; and/or
(4) Prepackaged restaurants that satisfy the requirements of this law.

(n) "Home-canned foods" means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.

(o) "Independent food service operator" means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.

(p) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(q) "License" means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.

(r) "Nation" means the Oneida Nation.

(s) "Penalty" means a punishment, other than a fine, imposed on a person for violation of this law.

(t) "Permanent food service establishment" means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:

(1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;

(2) A market or grocery store;

(3) A catering business;

(4) A bakery or confectionary;

(5) A convenience store or gas station store;

(6) An Oneida Nation Food Service Program; and/or

(7) A mobile food truck that requires a Department approved service base to operate.

(u) "Person" means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.

(v) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.

(w) "Prepackaged restaurant" means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.

(x) "Reservation" means all ~~the property~~land within the exterior boundaries of the Reservation —of the _Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, ——and any _____lands added thereto pursuant to federal law.

(y) "Temporary food service establishment" means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

305.4. Application

305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.

305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

305.5. Compliance

305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.

(a) Licenses to operate a food service business are non-transferable.

(b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.

(a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.

(1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.

(2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.

(b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

305.6. Authority

305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:

(a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;

(b) Establish licensing fee, fine and penalty schedules;

(c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;

(d) Perform all requisite inspections and conduct investigations when necessary; and/or

(e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.

305.7. Licensing

305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to operate a food service business:

(a) *License Application.* Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and

(2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.

(A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

(B) If the Department denies an application for licensure or license renewal, it shall provide the applicant, in writing, with its reason or reasons for the denial and information on how to appeal its decision.

(b) *License Period.*

(1) Licenses for permanent food service establishments and independent food service operators shall be issued and renewed by the Department for terms of one (1) year, commencing October 1st and ending September 30th of every year.

(2) Licenses for temporary food service establishments shall be issued by the Department to cover one (1) single event for a period of not more than fourteen (14) consecutive days.

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(1) The fee amount shall cover the initial license term for permanent food service establishments and independent food service operators and shall cover a single event of not more than fourteen (14) consecutive days for temporary food service establishments.

(A) A separate licensing fee shall be required when applying to renew a license for a permanent food service establishment or independent food service operator.

(B) The licensing fee for a permanent food service establishment license or independent food service operator license that was issued after October 1st shall be prorated for that term pursuant to a standard operating procedure established by the Department.

(C) Unless otherwise provided herein, if an application for licensure or license renewal is denied by the Department, the licensing fee submitted with the application shall be returned to the applicant in full.

(2) The Department shall post the licensing fee schedule in a prominent area within its offices and elsewhere as it deems appropriate.

(A) The licensing fee schedule shall include the fee established by the Department to operate a prepackaged restaurant pursuant to section 305.8 of this law.

(B) The Department may amend the licensing fee schedule as it deems necessary, subject to approval by the Oneida Business Committee through adoption of a resolution.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

(C) Exemption from a licensing fee under (A) or (B) of this section shall not be considered a waiver of any other compliancy requirement within this law that is applicable to food service businesses and/or prepackaged

restaurants, nor shall it be considered a waiver of the Nation's authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

305.7-2. *License Eligibility.*

(a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate a permanent food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Pass an inspection by the Department of the proposed premises for the permanent food service establishment; and

(3) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a permanent food service establishment.

(b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate a temporary food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

(A) Certification under the applicable food safety training offered through the Department; or

(B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.

(3) Pass an inspection by the Department of the proposed premises for the temporary food service establishment; and

(4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a temporary food service establishment.

(c) *Independent Food Service Operators.* To be eligible to receive a license to function as an independent food service operator, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

(A) Certification under the applicable food safety training offered through the Department; or

(B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.

(3) Pass an inspection by the Department of the proposed premises designated in writing by the applicant as the food preparation site; and

(4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to function as an independent food service operator.

(d) *Training.* The Department shall provide reasonable opportunities for persons to undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A) of this law.

305.7-3. *License Placement.*

(a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all times, be posted in a conspicuous area within the premises of every permanent food service establishment and every temporary food service establishment.

(b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

305.8. Exemptions

305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this law, except as follows:

(a) *Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:

(1) Full name;

(2) Address of domestic residence; and

(3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.

(A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.

(b) *Labeling.* Cottage food products must be labeled with the following information:

(1) The name and address of the cottage food operator;

(2) The name of the cottage food product and the date on which it was prepared, processed or canned; and

(3) A clearly legible sign or placard that states: "this product is homemade and not subject to inspection by the Nation."

(c) *Home-canned Foods.* Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training relating to canning that is approved by the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

(a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;

(2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and

(3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.

(A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.

(b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.

(1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

(c) The Department may reinspect the prepackaged restaurant premises during reasonable hours as often as it deems necessary so long as it does not exceed more than one (1) time per year, absent cause.

305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of this law.

(a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.

(b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.

(c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

305.9. Inspections

305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.

305.9-2. The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:

(a) Receipt of a complaint;

(b) Outbreak of a food borne illness; and/or

(c) Reasonable suspicion of a violation of this law or an emergency.

305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

305.10. Violations, Enforcement

305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:

(a) The suspension or revocation of a license or license exemption status;

(b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or

(c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.

(1) Failure to pass an inspection conducted pursuant to this law may be cause for the issuance of one or more of the enforcement mechanisms set forth herein.

(2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.

305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this law must further pass a reinspection by the Department before being eligible for operation.

(a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

(1) After six (6) months of satisfactory compliance with this law, as determined by the Department upon a follow-up inspection, the license holder may apply for an annual license.

(b) A food service business or prepackaged restaurant that has had its license or license exemption status suspended or has become subject to a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance with the licensing fee schedule.

305.10-3. *Emergency.* The Department may order a close-down of a food service business, cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence of a serious heath and/or safety threat to the community.

(a) Persons issued a close-down order by the Department as an emergency measure hereunder must provide evidence of compliance to the Department and pass an inspection by the Department prior to being allowed to re-open and/or continue operations.

305.11. Appeal Rights

305.11-1. *Decisions Not Issued Pursuant to a Citation.* Decisions of the Department that are not issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

(a) The written appeal shall be submitted to the Area Manager within ten (10) business days of receiving the decision upon which the appeal is based.

(b) The Area Manager shall render a decision within five (5) business days of receiving the appeal. The decision shall be sent by registered mail (return receipt requested) or delivered in person to the appellant.

(1) The Area Manager may suspend the time limits for rendering a decision if he or she determines that more investigation on the matter is necessary.

(c) The Area Manager's decision shall be final unless a good faith argument exists to appeal to the Trial Court of the Judiciary on one or more of the following grounds:

(1) That, the decision is contrary to law;

(2) That, the decision is without any reasonable factual basis; and/or

(3) That, the decision constitutes an abuse of power.

(A) Appeals initiated hereunder shall be conducted in accordance with the Judiciary law and any applicable rules of procedure.

305.11-2. *Decisions Issued Pursuant to a Citation.* Decisions of the Department that are issued pursuant to a citation may be contested in accordance with the procedures contained in the Nation's laws and policies governing citations.

(a) A mandatory appearance at the citation pre-hearing is required of all persons wishing to contest a citation issued by the Department hereunder.

End.

Adopted – BC-06-13-01-B
Amended – BC-02-25-15-C
Amended – BC-__-__-__-__

Title 3. Health and Public Safety – Chapter 305

ONEIDA FOOD SERVICE CODE

Kahkwaʔó·ku

about the food

ONEIDA FOOD SERVICE

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305.1. Amendment, Repeal

305.1-1. The Oneida Nation is a federally recognized Indian tribe with the sovereign authority to enact laws as authorized in Article IV, section 1 (f) of the Oneida Constitution.

305.1-2. The policy of this Code is to ensure the safe food handling and sales by food vendors who sell their products for profit on tribal property within the exterior boundaries of the Oneida Nation in Wisconsin through licensing, regulation, control and supervision of those vendors.

305.1-3. The purpose of this Code is to protect and preserve the safety of Oneida Nation citizens and others within it's jurisdiction in conjunction with the most current United States Public Health Service Food Code, hereinafter, the Federal Food Code.

305.1-4. The Federal Food Code is adopted along with this Code to provide guidelines regulating the retail sale, commercial and institutional service and vending of food; defining permit holder, person in charge, employee, food, potentially hazardous food, food establishment, safe material, sanitation, and other terms; and providing standards for employee food safety knowledge, health and practices, food sources, preparation, holding temperatures, and protection; equipment design, construction, installation, cleaning and sanitation, water and liquid and solid wastes, facilities construction and maintenance, and storage and use of poisonous and toxic materials; requiring a license to operate a food establishment; providing for the restriction or exclusion of employees, the examination and condemnation of food, and the enforcement of this code including the setting of penalties. (*Chapter 8 and the Chapter 8 annex, annex 1 of the Federal Food Code.*)

1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy*. It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation's self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation's resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. Adoption, Amendment, Repeal

305.2-1. This Code islaw was adopted by the Oneida Business Committee by Resolution# 6resolution BC-06-13-01-B and amended by resolutionresolutions BC-02-25-15-C and is effective ten (10) business days after adoption.BC- - - - .

305.2-2. This Codelaw may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Oneida AdministrativeLegislative Procedures Act by the Oneida Business Committee or by the Oneida General Tribal Council. .

305.2-3. Should a provision of this Codelaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which will continueare considered to have legal force without the invalid portions.

305.2-4. All previously enacted or adopted Oneida laws, ordinances, policies or other regulations that are inconsistent or conflict with this Code are hereby repealed unless re-enacted after adoption of this Code.

305.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. Definitions

305.3-1. This section shall govern the definitions of words and phrases used within thethis law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Oneida Nation" means the Oneida Tribe of Indians of Wisconsin.

(b) "Tribal Property" means property that is owned by (a) "Citation" means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against a person of a violation of law.

(b) "Close-down" means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

(c) "Consumer" means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.

(d) "Cottage food operator" means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.

(e) "Cottage food products" mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.

(f) "Department" means the Environmental, Health and Safety Department within the Nation's Environmental, Health, Safety and Land Division.

(g) "Direct sale" means a consumer's face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.

(h) "Domestic residence" means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.

(i) "Emergency" means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.

(j) "Federal Food Code" means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.

(k) "Fine" means a monetary punishment issued to a person for violation of this law.

(l) "Food" means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(m) "Food service business" means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:

(1) Private rummage sales;

(2) Community sponsored non-profit fundraising and/or charity events;

(3) Cottage food operators who satisfy the requirements of this law; and/or

(4) Prepackaged restaurants that satisfy the requirements of this law.

(n) "Home-canned foods" means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.

(o) "Independent food service operator" means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.

(p) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(q) "License" means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.

(r) "Nation" means the Oneida Nation ~~in fee or held in trust for the~~.

(s) "Penalty" means a punishment, other than a fine, imposed on a person for violation of this law.

(t) "Permanent food service establishment" means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:

(1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;

(2) A market or grocery store;

(3) A catering business;

(4) A bakery or confectionary;
(5) A convenience store or gas station store;
(6) An Oneida Nation ~~by the United States of America.~~Food Service Program; and/or
~~(c)~~ " (7) A mobile food truck that requires a Department approved service base to operate.
(u) "Person" means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.
(v) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.
(w) "Prepackaged restaurant" means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.
(x) "Reservation~~"~~" means ~~that area in Wisconsin~~all land within the exterior boundaries ~~as set out in the~~ of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the ~~United States of America.~~ Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
~~(d) "Federal Food Code" means the most current United States Public Health Service Model Food Code.~~
~~(e) "Food Service Establishment" means a permanent unit or location on tribal property which food is processed on site and intended for individual consumption usually for retail sale. The term includes any such place whether consumption is on or off premises, including, but not limited to the following:~~
~~(1) A restaurant or eating/drinking establishment~~
~~(2) A market or grocery~~
~~(3) A catering business~~
~~(4) A bakery or confectionary~~
~~(5) A convenience store or gas station store~~
~~(f) "Independent Food Service Vendors" are those individuals who sell food on tribal property for profit that prepare food off site independent of a permanent establishment such as a restaurant, at a source that has been approved by the Environment Health and Safety Department.~~
~~(g)~~ (y) "Temporary ~~Food Service" means a~~ food service establishment" means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

305.4. Application

305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.

305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

305.5. Compliance

305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.

(a) Licenses to operate a food service business are non-transferable.

(b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

305.5-2. *Federal Food Code*. The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.

(a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.

(1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.

(2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.

(b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

305.6. Authority

305.6-1. *Authority of the Department*. Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:

(a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;

(b) Establish licensing fee, fine and penalty schedules;

(c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;

(d) Perform all requisite inspections and conduct investigations when necessary; and/or

(e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.

305.7. Licensing~~on tribal property~~

305.7-1. *Licenses*. The following shall govern the process for obtaining and renewing a license to operate a food service business:

(a) *License Application*. Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and

(2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.

(A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

(B) If the Department denies an application for licensure or license renewal, it shall provide the applicant, in writing, with its reason or reasons for the denial and information on how to appeal its decision.

(b) *License Period.*

(1) Licenses for permanent food service establishments and independent food service operators shall be issued and renewed by the Department for terms of one (1) year, commencing October 1st and ending September 30th of every year.

(2) Licenses for temporary food service establishments shall be issued by the Department to cover one (1) single event for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(h) "Environmental Department" means the Oneida Environment Health and Safety Department, hereinafter, EHS.

(i) " (c) *License Fee.* The **Compliance**" means to operate a food service business, i.e. a food service establishment, an independent food service or a temporary food service in conformity with the requirements of this Code, the Federal Food Code and the EHS standard operating procedures.

(j) The "Licensing Department" means that department within the organizational structure of the Compliance Division of the Oneida Nation responsible for administering and issuing licenses within the tribal jurisdiction in accordance with Oneida Laws, Ordinances and Codes.

(k) "The Business Committee" means the Oneida Business Committee

(l) "Risk Management" means the Oneida Risk Management Department.

(m)"Emergency" means that situation an unforseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others due to the imminent nature of the circumstance.

(n) "Close down" means that the food service vendor, by order of the Compliance Division in conjunction with the Business Committee and the Oneida Police Department, based upon the recommendation of the EHS, will be prohibited to be open for business to the public for the protection of the health, safety or welfare of the community.

(o) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

(p) Adopt all other definitions as written in the Federal Food Code.

305.4. Responsibilities and Duties

305.4 1. The EHS Department shall administer and regulate the requirements of this Code and the Federal Food Code pursuant to their updated Standard Operating Procedures, hereinafter, "SOP's", for Food Service Vendors.be

305.4 2. The EHS Department shall conduct food handling classes that are required forto set a licensing of independent and temporary food vendors. Food service establishment vendors are exempt from this requirement but are to uphold other requirements per the Federal Food Code.

305.4-3. The EHS Department shall have a copy of the most current Federal Food Code available for inspection at the EHS offices by any and all food service vendors during regular business hours.

305.4-4. The EHS Department shall have a copy of their SOP's for Food Service Vendors available for inspection at the EHS offices by any and all food service vendors during regular business hours.

305.4-5. Risk Management shall make the determination to ensure that the vendor has adequate insurance coverage.

305.4-6. The fee schedule, subject to **Licensing** Department shall issue a Food Service License, Temporary Food Service License, and a badge for Independent Food Vendors upon successful compliance of the requirements of this Code and the Federal Food Code.

305.4-7. The Licensing Department, in conjunction with the EHS Department, shall determine the fees for the Food Service Licenses annually and post these prominently in the EHS a Licensing Department.

305.4-8. The Licensing Department shall determine the monetary fines for noncompliance with this Code as approved by the Business Committee.

305.5. Compliance

305.5-1. Strict compliance with the specific laws found in this Code and the Federal Food Code are required.

305.5-2. Additions or modifications to the Federal Food Code found in this Code are designed to be Oneida specific.

305.5-3. Non-compliance with this Code or the Federal Food Code will be addressed by the License Department of the Compliance Division upon written complaint and or recommendation from the EHS or Risk Management Departments.

305.6. Requirements for Licensing

305.6-1. No person or person, corporation or firm shall operate a food service establishment either permanent or temporary, or sell food as an independent food service vendor on tribal property, who does not have a valid, unsuspended, unrevoked Oneida Food Vendors License issued by the License Department.

305.6-2. Only a person or persons, corporation or firm that complies with the requirements of this Code and the Federal Food Code shall be entitled to receive and retain an Oneida Food Vendors License.

305.6-3. A valid license shall be posted in every food service establishment or temporary food service premises; and every independent food vendor shall prominently display the valid badge issued by the EHS Department.

305.6-4. A Food Service License will be issued as follows:

(a) All Food Service Establishments, Independent Food Service vendors and Temporary Food Service vendors must meet the general requirements of the Federal Food Code.

(b) Independent Food Vendors and Temporary Food Vendors are required to satisfy the requirements of the EHS safe food handling instruction and certificate of completion of training must be presented to the Licensing Department prior to the issuance of a Food Service License.

Food Service Establishments must satisfy the requirements of the EHS's pre-inspection report which will be provided to the Licensing Department prior to the issuance of a Food Service License.

(c) The Licensing Department shall issue a Food Service License pursuant to the recommendations by EHS regarding assurances that the applicant has met the conditions that are required for a satisfactory score pursuant to this Code, the EHS SOP's and the Federal Food Code guidelines with the Hazard Analysis and Critical Control Point, Techniques of Quality Control.

(d) Food Service Licenses for permanent Food Service Establishments and Independent Food Service vendors shall be issued by the License Department for a 12 month period beginning at the fiscal year, October1 and ending September 30 of the following fiscal year.

(e) Those food vendors that initiate their business at a time other than October 1 of any given year shall have their fees prorated for that year.

(f) Renewal of a license will be for an additional 12 months per fiscal year by the License Department upon approval ofby the EHS Department.

(g) Temporary Food Service Licenses shall be issued for no more than 14 days at a time.

(h) Temporary Food Service Vendors must have at least one food handler that has successfully completed the EHS food handling instruction and have their certificate of completion displayed at all times during hours of operation.

(i) Food Service Licenses for Food Service Establishments and Temporary Food Service vendors shall be displayed in a conspicuous location within the permanent or temporary food service establishments.

(j) Independent Food Service Vendors must display their badges. (See 305.10, below.)

(k) No food prepared by a Food Service Vendor shall be prepared in any room used as, or adjacent to, living or sleeping quarters.

305.6-5. Oneida Tribal Enterprise Units and Oneida Tribal Business Units shall be required to adhere to the requirements of this code when selling food for profit on tribal property.

305.6-6. Food Service Licenses are non-transferable.

305.7. Insurance

305.7-1. Food Service Establishments and Independent Vendors are required to have adequate insurance as determined by the Risk Management Department's Standard Operating Procedures.

305.7-2. Upon satisfying the requirements of the EHS Department, Food Service Establishments and Independent Food Service Vendors must provide the necessary documents of insurance to Risk Management Department.

305.7-3. At any time during the term of the food service license, if the vendor loses his or her insurance coverage, this must be reported immediately by the vendor to Risk Management and/or the License Department.

305.7-4. Temporary Food Service vendors are exempt from the requirement for additional insurance under this section.

305.8. Inspections

~~305.8-1. Food Establishment Vendors and Temporary Food Service Vendors who apply for a license must undergo a pre-inspection of the permanent or temporary establishment by the EHS Department inspector that results in a satisfactory score under the Federal Food Guidelines.~~

~~305.8-2. Independent Food Service Vendors who apply for a license must undergo a pre-inspection of the kitchen or original food preparation premises by the EHS Department inspector that results in a satisfactory score under the Federal Guidelines.~~

~~305.8-3. Inspections of the food service premises by the EHS Department will be scheduled twice a year.~~

~~305.8-4. At any time during the term of the license, either upon receipt of a complaint or upon their own volition, the EHS Department may conduct an unscheduled inspection of a vendors food preparation site.~~

~~305.8-5. A reinspection conducted as a result of a prior violation of this code or the Federal Food Code, will be an additional fee to the vendor and must achieve a satisfactory score under the Federal guidelines to cure the violation.~~

~~**305.9. Fees**~~

~~305.9-1. The Food Service license fees shall cover a twelve (12) month period and shall be paid in advance with the application for licensure.~~

~~305.9-2. The fee shall be paid annually at the beginning of each fiscal year which is October 1~~Committee through ~~September 30 of the following year~~adoption of a resolution, that is applicable to all food service businesses.

~~305.9-3. The license fees will be prorated for those applicants who start up their business prior to the beginning of the fiscal year.~~

~~305.9-4. The fee shall be returned in full if the application is denied.~~

~~305.9-5. The licensing agent shall keep fee records.~~

~~305.9-6. Food Service vendors that have had their license suspended or their businesses closed will not be entitled to a refund of their fees.~~

~~305.9-7. The fee for a food service license shall be pursuant to an equitable fee schedule as established by the EHS and License Department as reviewed and approved by the Business Committee and shall be available in the Licensing and EHS Departments for review.~~

~~305.9-8. The fee schedules may be adjusted annually.~~

~~305.9-9. Food Service vendor fees shall be used for the operational budget of the EHS (80%) and administrative budget of the License Department (20%).~~

~~305.9-10. Oneida Tribal Enterprise Units are required to pay the license fees under this code.~~

~~305.9-11. Oneida Tribal Business Units are exempt from the fee requirements.~~

~~**305.10. Independent Food Service Vendors Badge**~~

~~305.10-1. Upon compliance with the requirements of this Code and the Federal Food Code, the Independent Food Service Vendors and their employees, if any, will be issued a badge by EHS with the vendors/employee's photograph and license number clearly visible.~~

~~305.10-2. The badge must be worn by the licensed Independent Food Service Vendor and employees in a manner that is clearly visible to the public at all times while engaging in the sale of their food product.~~

(1) The fee amount shall cover the initial license term for permanent food service establishments and independent food service operators and shall cover a single

event of not more than fourteen (14) consecutive days for temporary food service establishments.

(A) A separate licensing fee shall be required when applying to renew a license for a permanent food service establishment or independent food service operator.

(B) The licensing fee for a permanent food service establishment license or independent food service operator license that was issued after October 1st shall be prorated for that term pursuant to a standard operating procedure established by the Department.

(C) Unless otherwise provided herein, if an application for licensure or license renewal is denied by the Department, the licensing fee submitted with the application shall be returned to the applicant in full.

(2) The Department shall post the licensing fee schedule in a prominent area within its offices and elsewhere as it deems appropriate.

(A) The licensing fee schedule shall include the fee established by the Department to operate a prepackaged restaurant pursuant to section 305.8 of this law.

(B) The Department may amend the licensing fee schedule as it deems necessary, subject to approval by the Oneida Business Committee through adoption of a resolution.

(3) ~~305.10-3. Independent Food Service vendor badges are non-transferable and must be worn only by the individual to whom it was issued.~~

~~**305.11. Exceptions and**~~ *Exemptions.*

~~305.11-1.~~ (A) The ~~following~~ Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service ~~vendors will be~~business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

(C) Exemption from a licensing fee under (A) or (B) of this section shall not be considered a waiver of any other compliancy requirement within this law that is applicable to food service businesses and/or prepackaged restaurants, nor shall it be considered a waiver of the Nation's authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

305.7-2. *License Eligibility.*

(a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate a permanent food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Pass an inspection by the Department of the proposed premises for the permanent food service establishment; and

(3) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a permanent food service establishment.

(b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate a temporary food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

(A) Certification under the applicable food safety training offered through the Department; or

(B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.

(3) Pass an inspection by the Department of the proposed premises for the temporary food service establishment; and

(4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a temporary food service establishment.

(c) *Independent Food Service Operators.* To be eligible to receive a license to function as an independent food service operator, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

(A) Certification under the applicable food safety training offered through the Department; or

(B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.

(3) Pass an inspection by the Department of the proposed premises designated in writing by the applicant as the food preparation site; and

(4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to function as an independent food service operator.

(d) *Training.* The Department shall provide reasonable opportunities for persons to undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A) of this law.

305.7-3. *License Placement.*

(a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all times, be posted in a conspicuous area within the premises of every permanent food service establishment and every temporary food service establishment.

(b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

305.8. Exemptions

305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this ~~Code:~~law, except as follows:

(a) *Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:

(1) Full name;

(2) Address of domestic residence; and

(3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.

(A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.

(b) *Labeling.* Cottage food products must be labeled with the following information:

(1) The name and address of the cottage food operator;

(2) The name of the cottage food product and the date on which it was prepared, processed or canned; and

(3) A clearly legible sign or placard that states: "this product is homemade and not subject to inspection by the Nation."

(c) *Home-canned Foods.* Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training relating to canning that is approved by the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

(a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;

(2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and

(3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.

(A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.

(b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.

(1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

(c) The Department may reinspect the prepackaged restaurant premises during reasonable hours as often as it deems necessary so long as it does not exceed more than one (1) time per year, absent cause.

305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of this law.

(a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.

(b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.

(c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

305.9. Inspections

305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.

305.9-2.~~(a) Private rummage sales.~~

The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:

(a) Receipt of a complaint;

(b) ~~Community sponsored non-profit fund raising~~Outbreak of a food borne illness; and/or ~~charity events.~~

(c) Reasonable suspicion of a violation of this law or an emergency.

305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

305.10.~~(c) Official Tribal meetings such as GTC Meetings.~~

~~(d) Food sold on land other than tribally owned land.~~

~~**305.12.**~~ **Violations, Enforcement**

305.10-1.~~305.12-1. Selling food or food products on tribal property without a license is strictly prohibited and will result in a fine and/or the suspension of the vendor's right to continue to sell food, i.e., the business will be closed down.~~

~~305.12-2. A food service vendor's license will be suspended and the food service closed down if the licensed vendor is in non-compliance with the requirements of this Code, the Federal Food Code or for any other reasons related to the protection of the Oneida Nation's community public health, safety or welfare.~~

~~305.12-3. A food service vendor's loss of insurance coverage or inadequate coverage for their entity will be cause for a suspension of license and the business will be closed down until the vendor procures adequate coverage and provides the documents thereof to the Risk Management Department.~~

~~305.12-4.~~ *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:

(a) The suspension or revocation of a license or license exemption status;

(b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or

(c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.

(1) Failure to pass an inspection conducted ~~by the EHS will~~pursuant to this law may be cause for ~~a penalty, revocation or suspension of the license pursuant to EHS and Federal Code guidelines.~~ the issuance of one or more of the enforcement mechanisms set forth herein.

(2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.

305.10-2. ~~305.12-5. The vendor's food service business may be closed down by the License~~ In addition to satisfying any other mandate issued by the Department ~~in conjunction with the Oneida Police Department for an uncorrected, critical~~hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this ~~Code or the Federal Food Code~~law must further pass a reinspection by the Department before being eligible for operation.

(a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

(1) After six (6) months of satisfactory compliance with this law, as determined by ~~EHS and as approved by the Business Committee~~ the Department upon a follow-up inspection, the license holder may apply for an annual license.

~~305.12-6. The EHS may close down a business~~ (b) A food service business or prepackaged restaurant that has had its license or license exemption status suspended or has become subject to a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance with the licensing fee schedule.

305.10-3. *Emergency.* The Department may order a close-down of a food service business, cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence of a serious heath and/or safety threat to the community ~~due to the imminent nature of the food service violation~~.

~~305.12-7. Any food service vendor that has been closed~~ (a) Persons issued a close-down order by ~~EHS~~the Department as an emergency measure ~~due to the evidence of a serious health or safety threat~~ hereunder must provide evidence of ~~satisfactorily corrected~~ compliance to the ~~EHS~~Department and pass an inspection by the Department prior to being allowed to ~~reopen the business.~~

~~(a) Any food vendor that has been closed due to a violation of the Food Code must be reinspected by EHS at the vendors cost with a resulting satisfactory score pursuant to this Code and the Federal Food Code guidelines.~~

~~(b) Any food service vendor that has been closed down may only receive a probationary license for six months upon evidence of satisfactory compliance with this Code~~re-open and ~~the Federal Food Code,~~/or continue operations.

~~(c) After six months of satisfactory compliance with this Code and the Federal Food Code, as determined by EHS pursuant to follow-up inspections, the vendor may apply for an annual license as before.~~

~~(d) Any food service vendor who violates any provision of this Code, upon conviction, shall forfeit not less than $5.00 nor more than $500.00, together with the costs of prosecution. In default of payment of such forfeitures and costs, the Food Service business shall be closed down or remain closed down until such forfeitures and costs are paid and all other areas of non-compliance with this Code or the Federal Food Code have been cured.~~

305.~~13.~~ 11. Appeal Rights

305.~~13~~11-1. ~~Parties who disagree with the decisions~~ *Decisions Not Issued Pursuant to a Citation.* Decisions of the ~~EHS, Licensing or Risk Management Departments, regarding issues of~~

~~licensing, inspections, or insurance~~Department that are not issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

(a) The written appeal shall be submitted to the Area Manager within ten (10) business days of receiving the decision upon which the appeal is based.

(b) The Area Manager shall render a decision within five (5) business days of receiving the appeal. The decision shall be sent by registered mail (return receipt requested) or delivered in person to the appellant.

(1) The Area Manager may suspend the time limits for rendering a decision if he or she determines that more investigation on the matter is necessary.

(c) The Area Manager's decision shall be final unless a good faith argument exists to appeal to the Trial Court of the Judiciary~~.~~ on one or more of the following grounds:

~~305.13-~~ (1) That, the decision is contrary to law;

(2~~. Hearings by the~~) That, the decision is without any reasonable factual basis; and/or

(3) That, the decision constitutes an abuse of power.

(A) Appeals initiated hereunder shall be conducted in accordance with the Judiciary ~~will be pursuant to the~~ law and any applicable rules ~~established for the Judiciary.~~of procedure.

305.11-2. *Decisions Issued Pursuant to a Citation*. Decisions of the Department that are issued pursuant to a citation may be contested in accordance with the procedures contained in the Nation's laws and policies governing citations.

(a) A mandatory appearance at the citation pre-hearing is required of all persons wishing to contest a citation issued by the Department hereunder.

End.

Adopted – BC-~~10-03~~06-13-01-~~D~~B
Amended – BC-02-25-15-C

~~Attachment A.~~

~~Food Service License Fees for 2001-2002~~
~~(To be adjusted annually)~~

~~1. Food Service Establishment License~~
~~a. Restaurants and Eating/Drinking Establishments~~

~~1. With 0-49 seats $100.00~~
~~2. With 50-100 seats $150.00~~
~~3. With 101 + seats $350.00~~

~~b. Retail Food Market, Grocery Store $175.00~~

~~c. Retail Food Market, Grocery Store~~
~~With restaurant $225.00~~

~~d. Bakery/Confectionary $100.00~~

~~e. Convenience Store/Gas Station $100.00~~

~~f. Catering Business $100.00~~

~~2. Independent Food Service License~~
~~a. $75.00 annually~~

~~3. Temporary Food Service License~~
~~a. $25.00 for each event, not to exceed fourteen consecutive days~~

~~4. Tribal Schools No Fee~~

~~THIS LICENSE IS NOT TRANSFERABLE~~
~~All licenses expire on September 30th annually. A penalty of $50.00 will be applied to renewal applications postmarked after October 15th. Operation in any fiscal year requires a licence.~~

~~Schedule of Fines~~
~~For Non-Compliance with this code or the Federal Food Code~~

~~Any food service vendor who violates any provision of this chapter, upon conviction, shall forfeit not less than $5.00 nor more than $500.00, together with costs of prosecution. In default of payment of such forfeiture and costs, the Food Service business will be closed and/or remain closed until such forfeitures and costs are paid and all areas of non-compliance with this Code or the Federal Food Code have been cured. *Oneida Food Code 305.12-7(d).*~~

~~1st Offense, non-critical: $25.00~~

~~2nd Offense in Five Years, non-critical: $100.00~~

~~3rd Offense in Five Years, non-critical: $200.00~~

~~All Subsequent Non-Critical Offenses in Five Years: $250.00~~

~~1st Offense, Critical: $100.00~~

~~2nd Offense in Five Years, Critical: $300.00~~

~~3rd Offense in Five Years: Critical: $500.00~~

~~All Subsequent Critical Offenses in Five Year: $750.00~~

~~***Note:** Five or more critical offenses in five years will result in the suspension of the license for one year, the business will be closed down and a fine will be imposed to be paid prior to reinstatement.~~

~~Fees for reinspection as a result of an original finding of non-compliance by EHS is $100.00.~~

ONEIDA NATION IN WISCONSIN

APPLICATION
FOR LICENSE FOR THE SALE OF FOOD ON TRIBAL PROPERTY

ENVIRONMENTAL HEALTH AND SAFETY DEPARTMENT
COMPLIANCE DIVISION LICENSE DEPARTMENT

In accordance with the Oneida Food Code. I the undersigned, do hereby respectfully make application to the Environmental Health and Safety Department of the Oneida Nation in Wisconsin. for a license to sell food on tribal property for the year ending September 30, 2002.

I hereby certify that I am familiar with the Federal laws and Oneida Food Code pertaining to the conditions of said establishment on Oneida Nation tribal property, and I hereby agree, if granted said license, to obey all provisions of said Federal laws and Oneida Food Code.

ESTABLISHMENT NAME _____

ESTABLISHMENT ADDRESS _____

ESTABLISHMENT TELEPHONE _____

AGENT/MANAGER HOME PHONE _____
LEGAL LICENSE _____
(List the name of the Individual, Partnership or Corporation)

LICENSEE ADDRESS _____
PROPERTY OWNER _____

DATE WHEN ONEIDA FOOD HANDLING COURSE COMPLETED_____

NAME OF INSURER _____
(Attach copy of Insurance deck sheet)

SIGNATURE OF APPLICANT_____

*** MUST BE SIGNED TO OBTAIN A CURRENT LICENSE.**
****

APPROVED: _____TOTAL FEE PAID: _____
Environment Health and Safety Dept.
_____

~~**ONEIDA NATION**~~

~~**ONEIDA FOOD VENDOR'S LICENSE**~~

~~October 1, 2002 through September 30, 2003~~

~~**Business:**~~ ~~**Licensee:**~~

~~(Name and address of business)~~ ~~(Name of Person, partnership or corporation)~~

~~The person, firm or corporation whose name appears on this license has complied with the provisions of the Oneida Food Code and, as adopted, the Federal Food Code and is hereby authorized to engage in the activity as indicated below at the location named from October 1, 2001 to September 31, 2001. This license is non-transferrable.~~

~~(Name of type(s) of food service; restaurant, independent, temporary, market, bakery. caterer, etc.)~~ ~~(License fee)~~

~~Dated at the office of the Oneida License Department, this (Date issued) .~~

~~Oneida License Department Officer~~ ~~Oneida Health and Safety Department Officer~~

~~POST IN A CONSPICUOUS PLACE~~ Amended – BC-__-__-__-__

Title 3. Health and Public Safety – Chapter 305
Kahkwaʔó·ku
about the food
ONEIDA FOOD SERVICE

305.1. Purpose and Policy
305.2. Adoption, Amendment, Repeal
305.3. Definitions
305.4. Jurisdiction
305.5. Compliance
305.6. Authority
305.7. Licensing
305.8. Exemptions
305.9. Inspections
305.10. Violations, Enforcement
305.11. Appeal Rights

305.1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation's self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation's resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. Adoption, Amendment, Repeal

305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-__-__-__-__.

305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

305.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

305.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. Definitions

305.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Citation" means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against a person of a violation of law.

(b) "Close-down" means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

(c) "Consumer" means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.

(d) "Cottage food operator" means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.

(e) "Cottage food products" mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.

(f) "Department" means the Environmental, Health and Safety Department within the Nation's Environmental, Health, Safety and Land Division.

(g) "Direct sale" means a consumer's face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.

(h) "Domestic residence" means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.

(i) "Emergency" means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.

(j) "Federal Food Code" means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.

(k) "Fine" means a monetary punishment issued to a person for violation of this law.

(l) "Food" means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(m) "Food service business" means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:

(1) Private rummage sales;
(2) Community sponsored non-profit fundraising and/or charity events;
(3) Cottage food operators who satisfy the requirements of this law; and/or
(4) Prepackaged restaurants that satisfy the requirements of this law.

(n) "Home-canned foods" means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.

(o) "Independent food service operator" means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.

(p) "Judiciary" means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(q) "License" means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.

(r) "Nation" means the Oneida Nation.

(s) "Penalty" means a punishment, other than a fine, imposed on a person for violation of this law.

(t) "Permanent food service establishment" means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:

(1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;

(2) A market or grocery store;

(3) A catering business;

(4) A bakery or confectionary;

(5) A convenience store or gas station store;

(6) An Oneida Nation Food Service Program; and/or

(7) A mobile food truck that requires a Department approved service base to operate.

(u) "Person" means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.

(v) "Potentially hazardous food" means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.

(w) "Prepackaged restaurant" means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.

(x) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(y) "Temporary food service establishment" means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

305.4. Application

305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.

305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

305.5. Compliance

305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.

(a) Licenses to operate a food service business are non-transferable.

(b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.

(a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.

(1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.

(2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.

(b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

305.6. Authority

305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:

(a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;

(b) Establish licensing fee, fine and penalty schedules;

(c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;

(d) Perform all requisite inspections and conduct investigations when necessary; and/or

(e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.

305.7. Licensing

305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to operate a food service business:

(a) *License Application.* Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and

(2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.

(A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

(B) If the Department denies an application for licensure or license renewal, it shall provide the applicant, in writing, with its reason or reasons for the denial and information on how to appeal its decision.

(b) *License Period.*

(1) Licenses for permanent food service establishments and independent food service operators shall be issued and renewed by the Department for terms of one (1) year, commencing October 1st and ending September 30th of every year.

(2) Licenses for temporary food service establishments shall be issued by the Department to cover one (1) single event for a period of not more than fourteen (14) consecutive days.

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(1) The fee amount shall cover the initial license term for permanent food service establishments and independent food service operators and shall cover a single event of not more than fourteen (14) consecutive days for temporary food service establishments.

(A) A separate licensing fee shall be required when applying to renew a license for a permanent food service establishment or independent food service operator.

(B) The licensing fee for a permanent food service establishment license or independent food service operator license that was issued after October 1st shall be prorated for that term pursuant to a standard operating procedure established by the Department.

(C) Unless otherwise provided herein, if an application for licensure or license renewal is denied by the Department, the licensing fee submitted with the application shall be returned to the applicant in full.

(2) The Department shall post the licensing fee schedule in a prominent area within its offices and elsewhere as it deems appropriate.

(A) The licensing fee schedule shall include the fee established by the Department to operate a prepackaged restaurant pursuant to section 305.8 of this law.

(B) The Department may amend the licensing fee schedule as it deems necessary, subject to approval by the Oneida Business Committee through adoption of a resolution.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

(C) Exemption from a licensing fee under (A) or (B) of this section shall not be considered a waiver of any other compliancy requirement within this law that is applicable to food service businesses and/or prepackaged

restaurants, nor shall it be considered a waiver of the Nation's authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

305.7-2. *License Eligibility.*

(a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate a permanent food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Pass an inspection by the Department of the proposed premises for the permanent food service establishment; and

(3) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a permanent food service establishment.

(b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate a temporary food service establishment, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

(A) Certification under the applicable food safety training offered through the Department; or

(B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.

(3) Pass an inspection by the Department of the proposed premises for the temporary food service establishment; and

(4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a temporary food service establishment.

(c) *Independent Food Service Operators.* To be eligible to receive a license to function as an independent food service operator, applicants must:

(1) Submit the appropriate licensing fee with their application;

(2) Submit proof of having undergone either:

(A) Certification under the applicable food safety training offered through the Department; or

(B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.

(3) Pass an inspection by the Department of the proposed premises designated in writing by the applicant as the food preparation site; and

(4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to function as an independent food service operator.

(d) *Training.* The Department shall provide reasonable opportunities for persons to undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A) of this law.

305.7-3. *License Placement.*

(a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all times, be posted in a conspicuous area within the premises of every permanent food service establishment and every temporary food service establishment.

(b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

305.8. Exemptions

305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this law, except as follows:

(a) *Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:

(1) Full name;

(2) Address of domestic residence; and

(3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.

(A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.

(b) *Labeling.* Cottage food products must be labeled with the following information:

(1) The name and address of the cottage food operator;

(2) The name of the cottage food product and the date on which it was prepared, processed or canned; and

(3) A clearly legible sign or placard that states: "this product is homemade and not subject to inspection by the Nation."

(c) *Home-canned Foods.* Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training relating to canning that is approved by the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

(a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;

(2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and

(3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.

(A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.

(b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.

(1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

(c) The Department may reinspect the prepackaged restaurant premises during reasonable hours as often as it deems necessary so long as it does not exceed more than one (1) time per year, absent cause.

305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of this law.

(a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.

(b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.

(c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

305.9. Inspections

305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.

305.9-2. The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:

(a) Receipt of a complaint;

(b) Outbreak of a food borne illness; and/or

(c) Reasonable suspicion of a violation of this law or an emergency.

305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

305.10. Violations, Enforcement

305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:

(a) The suspension or revocation of a license or license exemption status;

(b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or

(c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.

(1) Failure to pass an inspection conducted pursuant to this law may be cause for the issuance of one or more of the enforcement mechanisms set forth herein.

(2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.

305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this law must further pass a reinspection by the Department before being eligible for operation.

(a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

(1) After six (6) months of satisfactory compliance with this law, as determined by the Department upon a follow-up inspection, the license holder may apply for an annual license.

(b) A food service business or prepackaged restaurant that has had its license or license exemption status suspended or has become subject to a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance with the licensing fee schedule.

305.10-3. *Emergency.* The Department may order a close-down of a food service business, cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence of a serious heath and/or safety threat to the community.

(a) Persons issued a close-down order by the Department as an emergency measure hereunder must provide evidence of compliance to the Department and pass an inspection by the Department prior to being allowed to re-open and/or continue operations.

305.11. Appeal Rights

305.11-1. *Decisions Not Issued Pursuant to a Citation.* Decisions of the Department that are not issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

(a) The written appeal shall be submitted to the Area Manager within ten (10) business days of receiving the decision upon which the appeal is based.

(b) The Area Manager shall render a decision within five (5) business days of receiving the appeal. The decision shall be sent by registered mail (return receipt requested) or delivered in person to the appellant.

(1) The Area Manager may suspend the time limits for rendering a decision if he or she determines that more investigation on the matter is necessary.

(c) The Area Manager's decision shall be final unless a good faith argument exists to appeal to the Trial Court of the Judiciary on one or more of the following grounds:

(1) That, the decision is contrary to law;

(2) That, the decision is without any reasonable factual basis; and/or

(3) That, the decision constitutes an abuse of power.

(A) Appeals initiated hereunder shall be conducted in accordance with the Judiciary law and any applicable rules of procedure.

305.11-2. *Decisions Issued Pursuant to a Citation.* Decisions of the Department that are issued pursuant to a citation may be contested in accordance with the procedures contained in the Nation's laws and policies governing citations.

(a) A mandatory appearance at the citation pre-hearing is required of all persons wishing to contest a citation issued by the Department hereunder.

End.

Adopted – BC-06-13-01-B
Amended – BC-02-25-15-C
Amended – BC-__-__-__-__

kahkwaʔó·ku
(gah kwa oh goo)
about the food

ONEIDA FOOD SERVICE CODE AMENDMENTS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Environmental, Health and Safety and Licensing Departments	SPONSOR: Ernest Stevens III	DRAFTER: Kristen M. Hooker	ANALYST: Maureen Perkins
Intent of the Amendments	The proposed amendments to the Oneida Food Service Code (Law) intend to: ▪ update the outdated Oneida Food Service Code including formatting required by the Legislative Procedures Act; ▪ update the exclusive authority of the Environmental, Health and Safety (EHS) Department to develop license fee and penalty schedules; both adopted by OBC resolution. The EHS Department is within the Environmental, Health, Safety and Land Division (EHSLD); ▪ include exemptions for cottage food sales and prepackaged restaurants; ▪ include mobile food trucks in the definition of permanent food service operators; ▪ include a waiver of license fees by the EHS Department when an applicant provides proof of payment to a governmental unit within the Reservation boundaries for the same term; ▪ include a thirty (30) day response time for EHS to make determinations regarding eligibility; ▪ require the EHS Department to provide applicants who have been denied licensure or license renewal a written explanation of the denial and an explanation of the appeals process; ▪ allow the EHS Department the discretion to accept alternate training options; ▪ include an internal appeal process at the division level (EHSLD) for certain decisions of the EHS Department; and ▪ update the title to Oneida Food Service.		
Purpose	To ensure the safety of food that is provided at retail or through Oneida Nation Food Service Programs to members of the community by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with consumers through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation *[1 O.C. 305.1-1]*.		
Affected Entities and Individuals	Environmental, Health and Safety Department, Environmental, Health, Safety and Land Division, Oneida Nation Judiciary, Oneida Business Committee (OBC), Oneida Nation Members, Oneida Nation Food Service Programs, Cottage Food Operators, Independent Food Service Operators, Permanent Food Service Establishments, Prepackaged Restaurants, Licensing Department, Oneida Police Department, Risk Management Department		
Related Legislation	Judiciary law, Oneida Judiciary Rules of Civil Procedure, Rules of Appellate Procedure, Legislative Procedures Act		
Public Meeting	A public meeting was held on February 6, 2020.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. ***Background.*** The Oneida Food Dispensary and Vendor's Licensing Regulations and Procedures law was adopted by the Oneida Business Committee on January 18, 1985 to regulate food preparation and sales by departments, enterprises and programs of the Nation and Oneida Tribal members. The Oneida Food Service Code was adopted on October 3, 2001 by resolution BC-10-03-01-D and replaced the Oneida Food Dispensary and Vendor's Licensing Regulations and Procedures law. The Oneida Food Service Code was amended on February 25, 2015, by resolution BC-02-25-15-C to remove reference to the Oneida Appeals Commission and add reference to the Oneida Judiciary as the hearing body authorized to hear appeals to decisions of the EHS, Risk Management and Licensing departments.

B. ***Expected Benefits.*** The amendments comprehensively update the Oneida Food Service law with current food service standards and provides members of the Nation the opportunity to register for an exemption to sell cottage food products from their residence. The Oneida Nation is one of the first tribes in the country to offer cottage food exemptions *[3 O.C. 305.8-1]*. The cottage food amendments can be viewed as an act of food sovereignty exercised by the Nation because the amendments deviate from the model Federal Food Code intended to be used as guidance to develop state or tribal food codes *[3 O.C. 305.5-2(a)(2)]*.

Additionally; the amendments add mobile food trucks to the definition of permanent food service establishment *[3 O.C. 305.3-1(t)]* which insures mobile food trucks operating within the Nation's jurisdiction are regulated by the EHS Department.

SECTION 3. CONSULTATION AND OUTREACH

A. **Departments**. Representatives from the following departments participated in the development of this Law:

- Environmental, Health and Safety Department
- Licensing Department
- Risk Management Department
- Community Health Nursing
- Oneida Cannery Department

B. **Laws of the Nation**. The drafting of this legislative analysis included a review of the following laws of the Nation: Judiciary *[8 O.C. 801]*, Oneida Judiciary Rules of Civil Procedure *[8 O.C. 803]*, Rules of Appellate Procedure *[8 O.C. 805]* and Legislative Procedures Act *[1 O.C. 109]*.

C. **Area and Tribal Laws**. The following state and tribal laws were reviewed in the development of this legislative analysis:

- 2009 Wisconsin Act 101
- University of Arkansas Model Tribal Cottage Food Law
- Minnesota Cottage Foods Law
- Stockbridge-Munsee Food Service Code
- Jamestown S'Klallam Tribe Tribal Food Code
- Montana Code 50-50-101-403

D. **Current Licenses Issued by the Nation**

- The Nation currently provides food service business licenses and inspections for thirty-four (34) food service businesses. Fifteen (15) of these food services are Oneida Nation Food Service Programs. The Nation has authority to license all entities within the jurisdiction of the Nation.

SECTION 4. PROCESS

A. The Oneida Food Service Code amendments have thus far followed the required process contained in the Legislative Procedures Act.

B. On September 19, 2018, the LOC added the Oneida Food Service Code Amendments to the active files list and assigned Ernest Stevens III as the sponsor.
C. A public meeting on the proposed amendments to the Law was held on February 6, 2020.
   - The public comment period closed on February 13, 2020.
   - The Legislative Operating Committee reviewed and considered the public comment received on March 4, 2020.
D. The following work meetings were held by Legislative Reference Office staff in the development of the amendments to the Law:
   - October 4, 2018, a work meeting was held with EHS Department staff, Cannery Department staff and Community Health Nursing Program staff.
   - November 29, 2018, a work meeting was held with EHS Department staff and Licensing Department staff.
   - January 25, 2019, a work meeting was held with EHS Department staff.
   - February 28, 2019, a work meeting was held with EHS Department staff and Licensing Department staff.
   - June 6, 2019, a work meeting was held with EHS Department staff.
   - November 6, 2019, a work meeting was held with the LOC.
   - November 15, 2019, a work meeting was held with the LOC.
   - December 18, 2019, a work meeting was held with the LOC.
   - February 13, 2020, a work meeting was held with the LOC.
   - March 4, 2020, a work meeting was held with the LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

A. ***Purpose and Policy*** *[3 O.C. 305.1]*

- The Law was amended to meet the requirements in the Legislative Procedures Act related to consistency in format and required sections *[1 O.C. 109.11-1]*.
- The purpose and policy sections were updated to include Oneida Nation Food Service Programs and to clearly state that the policy of the Law is to exercise the Nation's inherent sovereignty over the Nation's resources and membership, as well as to strengthen self-governance.
- The term vendor was removed from the purpose and policy section, as well as throughout the Law *[3 O.C. 305.1-2 of Current Law]*. By removing the term vendor and the Licensing Department from the Law; the application process is streamlined with the EHS Department *[Work Meeting 01/25/19]*.

B. ***Definitions*** *[3 O.C. 305.3]*. Distinction was made between the various types of licenses issued by the EHS Department to indicate whether the business is permanent or temporary, as well as removing the term vendor from the definitions. The definitions for licenses in the Law now include permanent food service establishments, temporary food service establishments and independent food service operators. Food service businesses include, both individually and collectively, permanent food service establishments, temporary food service establishments and independent food service operators. Permanent food service establishments now include Oneida Nation Food Service Programs and mobile food trucks. The term food service business excludes private rummage sales and community sponsored non-profit fundraising and/or charity events which are not governed by the Law, as well as cottage food operators and prepackaged restaurants that satisfy the requirements in this Law and obtain an exemption from the EHS Department [*3 O.C. 305.3-1(l)]*. The term permanent was added to the definition of food service establishment for clarity *[3 O.C. 3-1(e)]*.

- The terms consumer, food and person were added and used in the Law to provide clarity.

- The following definitions were added to reflect the addition of the cottage foods exemption *[3 O.C. 305.8-1]*: cottage food operator, cottage food products, direct sale, domestic residence, home-canned foods, and potentially hazardous food.

- The definition for prepackaged restaurant was added to reflect the prepackaged restaurant exemption *[3 O.C. 305.8-2]*.

- Definitions were added for citation, fine and penalty.

- Definitions for Licensing Department and Risk Management were removed from the Law because these departments are no longer referenced in the Law. The Oneida Business Committee and the Oneida Police Department were removed from the definition of close down because these two entities are no longer involved in the decision or act of closing a food service business down. The term tribal property was removed as it is not used in the amended Law. The term compliance was removed as this word is used in the everyday sense and does not require a definition.

C. ***Application*** *[3 O.C. 305.4]*. A separate section was added detailing that the Law applies to food service businesses, cottage food operators and prepackaged restaurants located or operating within the Reservation. A provision was added titled Liberal Construction which means the words are interpreted in a loose way which allows the Nation to exercise its sovereign jurisdiction to the fullest extent *[3 O.C. 305.4-2]*.

D. ***Compliance*** *[3 O.C. 305.5]*. This section was updated to provide clarity to the Law. The Law continues to adopt the current Federal Food Code and any additions or deviations from the Federal Food code are designed to be specific to the Nation. The Law will have priority with respect to any conflicts between the Law and the Federal Food Code *[3 O.C. 305.5-2]*.

E. ***Authority*** *[3 O.C. 305.6]*. This section of the Law has been amended. This section in the current Law is titled Responsibilities and Duties. The EHS Department is now responsible for issuing all licenses pursuant to this Law *[3 O.C. 305.6-1(a)]*. Previously; the Licensing Department was responsible to issue licenses *[3 O.C. 305.4-5 of Current Law]*. Additionally; the EHS Department is now required to set licensing fees *[3 O.C. 305.6-1(b)]* which are approved by OBC resolution *[3 O.C. 305.7-1(c)]*. Previously, the Licensing Department and the EHS Department jointly determined licensing fees updated on an annual basis with OBC approval *[3 O.C. 305.4-7 and 305.9-9 of Current Law]*.

- The current license fee schedule and fine and penalty schedule will be void with the adoption of the amended Law because these schedules are no longer included in the Law *[3 O.C. 305 Attachment A and Attachment B of Current Law]*. These schedules were removed from the law and implemented by OBC resolution to make them easier to update without requiring an amendment to the Law.

The requirement for EHS to conduct food handling classes was removed from this section *[3 O.C. 305.4-2 of Current Law]* and moved to the license eligibility section *[3 O.C. 305.7-2(b)(2)(B) and (c)(2)(B)]*. The Risk Management Department and the requirement to obtain insurance coverage was removed *[3 O.C. 305.4-6 of Current Law]*.

F. ***Licensing*** *[3 O.C. 305.7]*. This section was amended. The licensing and fees sections have been combined *[3 O.C. 305.6 and 305.5-9 of Current Law]*. The EHS Department was granted authority to receive, issue and renew licenses *[3 O.C. 305.7-1(a)]*. A provision was added requiring the EHS Department to waive a licensing fee when a food service business provides proof of payment to another governmental unit located within the boundaries of the Reservation for a similar license that covers the same term [*3 O.C. 305.7-1(c)(3)(B)]*. The Licensing Department was removed from the Law as the authority to issue licenses and all licenses will now be processed by the EHS Department instead.

- ***Impact.*** This change makes the process of issuing licenses more efficient for the EHS Department and license applicants.

A process was added requiring the EHS Department to make a determination to issue or deny an application for a license or license renewal within thirty (30) days following the submission of a

complete application including the payment of all applicable fees and any information contained in the standard operating procedure created by the EHS Department *[3 O.C. 305.7-1(a)]*.

- ***Impact.*** This requirement ensures applicants for new and renewal licenses receive a timely response from the EHS Department to avoid any potential delays by the EHS Department that could impact the applicant's food service business. The current Law does not contain a timeframe for issuing decisions regarding decisions of license eligibility.

The license issued may be conditional upon a correction of a violation within a set period and if not corrected within that time will nullify the license. If an application is denied, the EHS Department will provide the applicant with the reason for the denial in writing and instructions on how to appeal the decision *[3 O.C. 305.7-1(a)(2)]*.

- The current Law does not require written notification of the reason for the denial of a license.

The license fee schedule will be updated as necessary by the EHS Department and approved by the OBC by resolution *[3 O.C. 305.7-1(c)]*.

The prorated formula used by the EHS Department related to a reduction of a license fee when the application is received after October 1st will be added to the required standard operating procedure *[3 O.C. 305.7-1(c)(1)(B)]*. A provision was added that grants the EHS Department discretion to approve equivalent training to satisfy the Temporary Food Service establishment requirements *[3 O.C. 305.7-2(b)(2)(B)]* and the Independent Food Service Operator requirements *[3 O.C. 305.7-2(c)(2)(B)]*.

- ***Impact.*** This process alleviates the burden of duplicate training for applicants and the department when sufficient training has already been obtained by the applicant.

Oneida Food Service Programs are exempt from license fees. Additionally; the EHS Department will waive licensing fees when provided with proof that another governmental entity has already received payment *[3 O.C. 305.7-1(c)(3)]*.

- ***Impact.*** This provision eliminates double payments of licensing fees when an overlapping jurisdiction has already collected a fee.

The requirement that vendor fees be used for the operational budget of the EHS Department (80%) and the administrative budget of the License Department (20%) was removed *[3 O.C. 305.9-9 of Current Law]*. The amended Law is silent regarding where licensing fees are allocated which means these funds will be directed to the General Fund.

Oneida Tribal Enterprises and Oneida Tribal Businesses were removed from the licensing section of the Law *[3 O.C. 305.9-10 and 9-11 of Current Law]*. Although it is unclear what Oneida Tribal Enterprise Units and Oneida Tribal Business Units is referring to because there are no definitions provided for these entities in the current Law; it can be assumed that these entities are included in the amended Law under the definition of permanent food service establishment which includes restaurants, a market or grocery store, a convenience store, and Oneida Nation Food Service Programs. Permanent food service establishments are required to adhere to the amended Law *[3 O.C. 305.7-2(a)]*.

Licensing Timeframes

October 1 to September 31. The food service licenses issued by the Oneida Nation under this Law run from October 1 to September 31 of each year to match the Nation's fiscal year.

July 1 to June 30. Food service licenses in the State of Wisconsin and local municipalities within and around the Oneida Nation reservation run from July 1 to June 30 of each year.

G. ***Exemptions*** *[3 O.C. 305.8]*. This section was amended. The amended Law provides exemptions to cottage food operators and prepackaged restaurants if certain requirements contained in the Law are met. The meaning of exemption in an everyday sense is the process of freeing from an obligation imposed on others.

Exemptions in the Current Law were Removed and are not Governed by the Amended Law

- The private rummage sales, community sponsored non-profit fund raising and/or charity events in the exemption section of the current Law *[3 O.C. 305.11 of Current Law]* were moved to the definition section of the amended Law *[3 O.C. 305.3-1(m)]* as an example of what does not

qualify as a food service business and is therefore; although not explicitly stated in the Law, not governed by the Law.

- Food sold at GTC meetings was removed from the Law because this practice is not allowed.
- Food sold on land other than tribally owned land was removed because it is not necessary under the amended Law.

Chart 1: Explanation of Exemptions

The definition of food service business means, whether individually or collectively, a permanent food service establishment, a temporary food service establishment, and/or an independent food service operator. The following shall not qualify as a food service business under this Law *[3 O.C. 305.3-1(m)]:*	
The amended Law does not apply to the events listed below, so the exemption detailed in the current Law is no longer required *[3 O.C. 305.11 of Current Law]*. These events do not have to follow this Law. This has not changed from the current Law.	The entities listed below do not qualify for a food service business license, but are eligible for an exemption by meeting specific requirements further described in section 305.11:
• private rummage sales	• cottage food operators
• community sponsored non-profit fundraising and/or charity events	• prepackaged restaurants

- Private rummage sales, community sponsored non-profit fundraising and/or charity events were moved to the definition section as examples of events that do not qualify as a food service business because these events are not governed by the amended Law.
- Cottage food operators and prepackaged restaurants do not qualify as a food service business under the Law and are eligible for an exemption if specific requirements contained in the Law are met. The purpose of the exemption in the amended Law is to remove much of the requirements of the Law for these particular entities. The Nation is still afforded the opportunity to have some oversight over these entities in certain circumstances such as inspection of an entity if an outbreak of a foodborne illness occurs that can be tied back to the exempted entity.

Cottage Food Sales [3 O.C. 305.8-1]. The EHS Department has the authority under the amended Law to add or subtract any additional qualifying foods from the list of cottage foods *[3 O.C. 305.3-1(e)]* that are processed or packaged at a person's home kitchen of a domestic residence and only for direct sale to the consumer *[3 O.C. 305.3-1(d)]*. Cottage food operators are exempt from the requirements of the Law upon registering with the EHS Department, which requires that they disclose the cottage food operator's name and domestic address where products will be produced. Additionally, the cottage food operator is required to package and label their cottage food products with the name and address of the operator, date processed, name of food product, and display a sign that states that the products are homemade and not subject to inspection by the Nation *[3 O.C. 305.8-1]*. Home canned foods require a food safety training approved by the EHS Department *[3 O.C 308.8-1(c)]*. The EHS Department has the authority to inspect the cottage food operator's domestic residence, if a complaint is received or event giving rise to the EHS Department's reasonable suspicion of noncompliance of the cottage food exemption *[3 O.C. 305.8-3]*.	**Cottage Food Sales** What Are Cottage Food Products? Cottage food products are foods produced in a home kitchen of a domestic residence that are non-potentially hazardous which means that it does not require any type of temperature control to prevent it from going bad. Cottage food products include: 1. Home baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins, dry mixes, dried fruit; 2. Home canned naturally acidic fruits and vegetables or with a pH of 4.6 or lower such as apples, peaches and lemons; 3. Acidified by pickling or fermenting home canned salsas, pickled vegetables and hot sauces with a pH of 4.6 or lower; 4. Jams, jellies and applesauce; and 5. Other non-potentially hazardous foods the EHS department characterizes as cottage food products for purposes of this law. Cottage food products have a low risk to health and most states in the country have exempted these products with varying levels of oversight, permit, license, or inspection requirements. Cottage food laws function as an exemption to general food safety laws and allow small processors to sell their products directly to consumers on a small scale *[University of Arkansas Cottage Foods Model Food Code]*. Some states have implemented a requirement to register an address and the name of the individual preparing cottage foods *[Montana Code 50-50-116, page 10]* to conduct some type of inspection should an outbreak occur directly linked to cottage food products *[Montana Code 50-50-301(3), page 18]*.

Chart 2: Cottage Foods License Exemptions Comparison

Cottage Foods License Exemptions Comparison Home Bakers and Home Canners						
	Oneida Nation Reservation		State of Wisconsin		State of Minnesota	
Provision	Home Bakers	Home Canners	Home Bakers	Home Canners	Home Bakers	Home Canners
License	No	No	No	No (under $5000 in sales)	No (under $18,000 in sales)	No (under $18,000 in sales)
Registration	Yes	Yes	No	No	Yes	Yes
Required Training	No	Yes	No	No (training is recommended)	Yes	Yes
Inspections	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion	Yes Complaint Received or Reasonable Suspicion
Label Requirements	Yes	Yes	Yes	Yes	Yes	Yes

Although cottage food producers are exempt from the requirements of the Law, there will be some oversight to protect the Nation from potential foodborne illness that may arise from the production of cottage foods. The LOC decided that some oversight for cottage food producers would be in the best interest of the Nation. The Law will require home bakers and canners to label their products, register with their name and address of domestic residence where cottage foods are produced and undergo inspections if a complaint is made or if the EHS Department has reasonable suspicion of noncompliance with the requirements for a cottage food sales exemption *[3 O.C. 305.8-3]*. For comparison; the State of Wisconsin exemption requires labeling of cottage food products but does not require a license, registration or training for cottage food producers that make less than $5,000 from the sale of cottage foods per year. Inspections are limited to certain circumstances. The State of Minnesota requires the

labeling of cottage food products, registration of cottage foods producers with the local health authority in the county where the domestic residence is located, training requirements related to the production of cottage foods and inspections under certain circumstances.

Prepackaged Restaurants *[3 O.C. 305.8-2]*. Prepackaged restaurants are establishments that serve and/or sell only prepackaged foods with preparation on site limited to heating and serving *[3 O.C. 305.3-1(w)]*. The LOC added an exemption to the Law for prepackaged restaurants with the following criteria: a reduced fee, fewer inspections and no training requirement *[LOC Work Meeting 11/15/19]*. Prepackaged restaurants are exempt from the requirements of the Law except that they must apply with the EHS Department which includes a requirement for an inspection and agree to sell only prepackaged foods approved by the Department *[3 O.C. 305.8-2]*. The EHS Department has discretion to draft a standard operating procedure for the application process and will determine how the EHS Department will keep track of prepackaged restaurants *[3 O.C. 305.8-2(a)]*. The Food safety training or certification is not required but can be ordered by the EHS Department by the issuance of a corrective order *[3 O.C. 305.8-2(b)]*. The reason the training requirement was removed for prepackaged restaurants is because these establishments are limited to heating precooked foods according to directions on the package and the LOC determined this doesn't require food handling training due to low risk to public health. The EHS Department will provide written notice to the public of prepackaged foods allowed under this exemption *[3 O.C. 305.8-2(a)(3)(A)]*. The EHS Department may inspect prepackaged restaurants as often as deemed necessary for cause; but only once per year without cause *[3 O.C. 305.8-2(c)]*.

Enforcement of cottage food operations and prepackaged restaurants includes an inspection by the EHS Department based on a receipt of a complaint or reasonable suspicion by the EHS Department *[3 O.C. 305.8-3(a)]* which may result in an action by the EHS Department according to the Violations, Enforcement section detailed below *[3 O.C. 305.10]*. Exemption status does not limit the liability of the owner of a cottage food operator or a prepackaged restaurant from damages that may happen due to the sale of their products *[3 O.C. 305.8-3(c)]*.

H. ***Inspections*** *[3 O.C. 305.9]*. This section has been clarified. The EHS Department is authorized to conduct two (2) inspections at any time during reasonable hours per license term for any reason; in addition to any inspections required for the issuance of a license under section 305.7 of this Law *[3 O.C. 305.9-1]*. Additionally; the amendments clarify that the EHS Department may conduct an unscheduled inspection based on the receipt of a complaint, an outbreak of a foodborne illness or reasonable suspicion of a violation of this Law or an emergency *[3 O.C. 305.9-2]*. Any reinspection as a result of a violation of this Law requires additional fees *[3 O.C. 305.9-3]*.

I. ***Violations, Enforcement*** *[3 O.C. 305.10]*. This section has been amended. The amendments authorize EHS Department as the sole entity to issue and enforce violations of this Law. Non-compliance with the Law may result in the EHS Department issuing the following: a license suspension or revocation, a corrective order which may include an order to close down, and/or a citation *[3 O.C. 305.10-1]*. Any food service business or prepackaged restaurant ordered to close down must comply with the corrective order issued, pass a reinspection and pay any applicable fees by the EHS Department before being eligible for operation. Citations were added to the Law and include fines, penalties and/or corrective orders as set forth in the fine and penalty schedule established by the EHS Department, subject to approval by the OBC resolution *[3 O.C. 305.10-1(c)]*. Any food service business or prepackaged restaurant ordered to close down will only be eligible for a probationary license for six (6) months which is the same as the current Law *[3 O.C. 305.10-2(a)]*. Food services business ordered to close down are not entitled to a reimbursement of any portion of the licensing fee or fees *[3 O.C. 305.10-2(b)]*.

The Licensing Department, Oneida Police Department and Oneida Business Committee were removed from this section of the Law to streamline this process within the EHS Department *[3 O.C. 305.12-5 of Current Law]*. Forfeitures were removed from the Law *[3 O.C. 305.12-7(d) of Current Law]*.

J. ***Appeal Rights*** *[2 O.C. 305.11]*. Persons who disagree with the decisions of the EHS Department regarding anything other than a citation can appeal the decision to the Area Manager of the Environmental, Health, Safety and Land Division *[3 O.C. 305.11-1]*.

- The appeal must be made within ten (10) business days of receiving the decision from the EHS Department. The Area Manager has five (5) business days to make a determination and will send the decision in writing by registered mail (return receipt requested) or deliver the written determination in person to the person who filed the appeal. The Area Manager may suspend the time frames if an investigation is necessary *[3 O.C. 305.11-1(b)(1)]*. The Area Manager's decision is final unless appealed to the Trial Court of the Judiciary if it is believed that the decision was:
  - contrary to law;
  - without any reasonable basis; and/or
  - an abuse of power.
    - This Law authorizes the Trial Court to exercise jurisdiction over appeals of the Area Manager's decision *[8 O.C. 801.5-2]* when the above exist; following the Oneida Judiciary Rules of Civil Procedure *[8 O.C. 803]*.
- Decisions of the Trial Court are appealable to the Court of Appeals *[8 O.C. 801.8-2(a)(1)]* following the Rules of Appellate Procedure *[8 O.C. 805]*. Decisions of the Court of Appeals are final.

Persons who wish to contest the issuance of a citation for violation of this Law must appear in person and will follow the procedure contained in the Nation's laws and policies governing citations *[3 O.C. 305.11-2]*.

- There are not currently any laws of the Nation governing citations. A law is currently being developed governing citations.

K. ***Minor Drafting Changes.*** The Law has been clarified through additional minor drafting changes.

L. ***Insurance*** *[3 O.C. 305.7 of Current Law]*. Insurance requirements and the Risk Management Department was removed from the Law. Insurance is no longer referenced in the Law. The LOC has determined that each individual food service business is liable for any damages caused by the food they sell, and insurance is obtained at the discretion of each food service business.

SECTION 6. RELATED LEGISLATION

A. **Reference to Other Laws**. The following laws of the Nation are referenced in this Law and legislative analysis and are required to be followed:

- Judiciary *[8 O.C. 801]*. The Trial Court of the Judiciary has subject matter jurisdiction where laws of the Nation specifically authorize the Trial Court to exercise jurisdiction *[8 O.C. 801.5-2]*. The Oneida Food Service law authorizes the Trial Court to hear appeals of EHSLD Area Manager decisions related to anything not issued by citation and when the Area Manager's decision is believed to be contrary to law, without any reasonable basis or an abuse of power *[3 O.C. 305.11]*. The Judiciary law authorizes the Court of Appeals to review final orders and judgments of the Trial Court *[8 O.C. 801.8-2(a)(1)]*.
- Oneida Judiciary Rules of Civil Procedure *[8 O.C. 803]*. This Law governs the procedure used when filing an action with the Oneida Judiciary.
- Rules of Appellate Procedure *[8 O.C. 805]*. This Law governs the procedure used when filing an action with the Court of Appeals and is used in conjunction with the Oneida Judiciary Rules of Civil Procedure.
- Legislative Procedures Act *[1 O.C. 109]*. This Law governs the format that will be followed for all Laws of the Nation. The format of the amended law was updated to meet requirements in this Law.

B. There are no conflicts between the proposed amendments and the Oneida Code of Laws.

SECTION 7. IMPLEMENTATION

A. ***Inspections***. Inspection authority has not changed. The EHS Department has authority to conduct inspections twice per year at their discretion *[3 O.C. 305.9-2]*.

B. ***Resources and Implementation***. The EHS Department will utilize existing staff to implement and enforce this Law *[3 O.C. 305.6]*. The Licensing Department staff and Risk Management Department staff were removed from the Law.

C. ***Due Process.*** Parties who disagree with decisions of the EHS Department regarding any decisions not issued by citation can appeal to the Area Manager of the Environmental, Health, Safety and Land Division. Area Manager decisions that are believed to be contrary to law, without any reasonable basis or an abuse of power can be appealed to the Trial Court of the Judiciary *[3 O.C. 305.11]*. Decisions of the Trial Court are appealable to the Court of Appeals *[8 O.C. 801.8-2(a)(1)]*. Citations issued can be appealed in person in accordance with the procedure contained in the Nation's laws and policies governing citations *[3 O.C. 305.11-2]*.

SECTION 8. OTHER CONSIDERATIONS

A. ***Citations Law.*** A citation for a violation of this Law will be processed in accordance with the procedure contained in the Nation's laws and policies governing citations *[3 O.C. 305.10-1(c)(2)]*.

- There are currently no laws of the Nation governing citations. There is a Citations law on the LOC's active files list that is currently being developed.

B. ***Fiscal Impact***. Please refer to the fiscal impact statement for any fiscal impacts.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation.
  - i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee *[1 O.C. 109.6-1]*.
  - ii. Fiscal impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject matter of the legislation, or by the Finance Office, upon request of the Legislative Operating Committee *[1 O.C. 109.6-1(a) and (b)]*.
  - iii. The fiscal impact statement is important in the decision-making process related to legislation developed by the Legislative Operating Committee. When a fiscal impact statement is requested from the Finance Department; the Chief Financial Officer will submit a Fiscal Impact Statement to the LOC within ten (10) days of final approval of the draft legislation *[Resolution BC-09-25-19]*.

Research Citations

Cottage Food Exemption, 2019 Minnesota Statutes. *https://www.revisor.mn.gov/statutes/cite/28A.152*

FDA Food Code *https://www.fda.gov/food/retail-food-protection/fda-food-code*

Montana Code Annotated Statute for: Retail Food, Temporary Event Permitting and Cottage Foods
https://dphhs.mt.gov/Portals/85/publichealth/documents/FCS/Retail%20food%20MCAs.pdf

2009 Wisconsin Act 101 *http://docs.legis.wisconsin.gov/2009/related/acts/101*

University of Arkansas Cottage Foods Model Food Code. *https://www.tribalfoodcode.com/*

Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov

ONEIDA

TO:	Lawrence E. Barton, Chief Financial Officer Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
FROM:	David P. Jordan, Legislative Operating Committee Chairman
DATE:	March 18, 2020
RE:	Oneida Food Service Code Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Oneida Food Service Code. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. *[1 O.C. 109.6-1]*. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. *[1 O.C. 109.3-1(c)]*.

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. *[1 O.C. 109.6-2]*. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. *[1 O.C. 109.6-1]*.

Oneida Business Committee resolution BC-09-25-19-A titled, "*Interpreting 'Fiscal Impact Statement' in the Legislative Procedures Act*" provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the LOC, provide a fiscal impact statement to the LOC.

On March 18, 2020, the Legislative Operating Committee approved the final draft of the proposed amendments to the Oneida Food Service Code. Therefore, the LOC is directing the Finance

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Department to provide a fiscal impact statement on the proposed amendments to the Oneida Food Service Code by April 1, 2020.

A copy of the proposed amendments to the Oneida Food Service Code, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action
Provide the LOC a fiscal impact statement of the proposed amendments to the Oneida Food Service Code by April 1, 2020.