

ONEIDA NATION RULEMAKING GUIDEBOOK



Drafted by the Oneida Nation Legislative Reference Office
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www.oneidation.org/government



A good mind. A good heart. A strong fire.

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Welcome to the world of rulemaking. The Legislative Reference Office (LRO) has developed this guidebook to help you develop and certify rules that pertain to your agency's work. Please review the guidebook thoroughly and then contact the LRO with any questions you might have or for further guidance.

The LRO is here to guide you through the process and ensure that the rules your agency develops are compliant with the Oneida Nation's Administrative Rulemaking law.

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Definitions

Authorized Agency- any board, committee, commission, department, or officer of the Nation that has been granted rulemaking authority.

Business Day- Monday-Friday from 8:00am to 4:30pm, excluding holidays that are recognized by the Nation.

Financial Analysis- an estimate of the total fiscal year financial effects associated with the proposed rule prepared by the authorized agency proposing the rule. It includes- startup costs, additional personnel required to comply with the law, additional office related expenses, documentation costs, and an estimate of the amount of necessary time for an individual or agency to comply with the rule after implementation.

Entity- a board, committee, or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the majority of the Nation's eligible voters and also any department of the Nation.

Oneida Register- the free legal periodical published on the Nation's website by the Legislative Operating Committee which contains, at a minimum, agency rules, proposed legislation and notices, and either the Oneida Code of Laws or the directions to obtain free access to the Oneida Code of Laws.

Rule- a set of requirements delegated by a specific law and enacted by an authorized agency in order to implement, interpret and/or enforce a law of the Nation, which includes citation fee and penalty schedules.

Rulemaking Authority- the delegation of authority to authorized agencies found in the Nation's laws other than the Administrative Rulemaking law which allows authorized agencies to implement, interpret, and/or enforce a law of the Nation.

Statement of Effect- a legislative and legal analysis which explains the effects that adopting a rule would have on the Nation.

Nation- the Oneida Nation.

OBC- the Oneida Business Committee.

LOC- the Legislative Operating Committee.

LRO- the Legislative Reference Office.

Purpose & Background

The Administrative Rulemaking law was adopted by the Oneida Business Committee (OBC) on February 24, 2016.

The purpose of the Administrative Rulemaking law is to provide a process for the adoption and amendment of administrative rules. It is the policy of the Oneida Nation that:

1. An efficient, effective and democratic process is established for enacting and revising administrative rules,
2. Authorized agencies act in a responsible consistent manner when enacting and revising the administrative rules, and
3. That the authorized agency limits the rules to the authority granted to the agency through the law corresponding to the developed rules.

The Administrative Rulemaking law enables various agencies of the Nation to develop its own rules that ensure compliance with that agency's processes or with laws of the Nation. Although the Administrative Rulemaking law provides the general process for adoption and amendment of administrative rules, actual rulemaking authority will be delegated to various agencies through various other laws of the Nation. The Administrative Rulemaking law can be found in this guidebook in Appendix H.

Examples of Rules that may be developed:

1. Fee Schedule Rule for marriage licenses under the Marriage Law.
2. Harvest Numbers Rule under the Hunting, Fishing, Trapping Law.

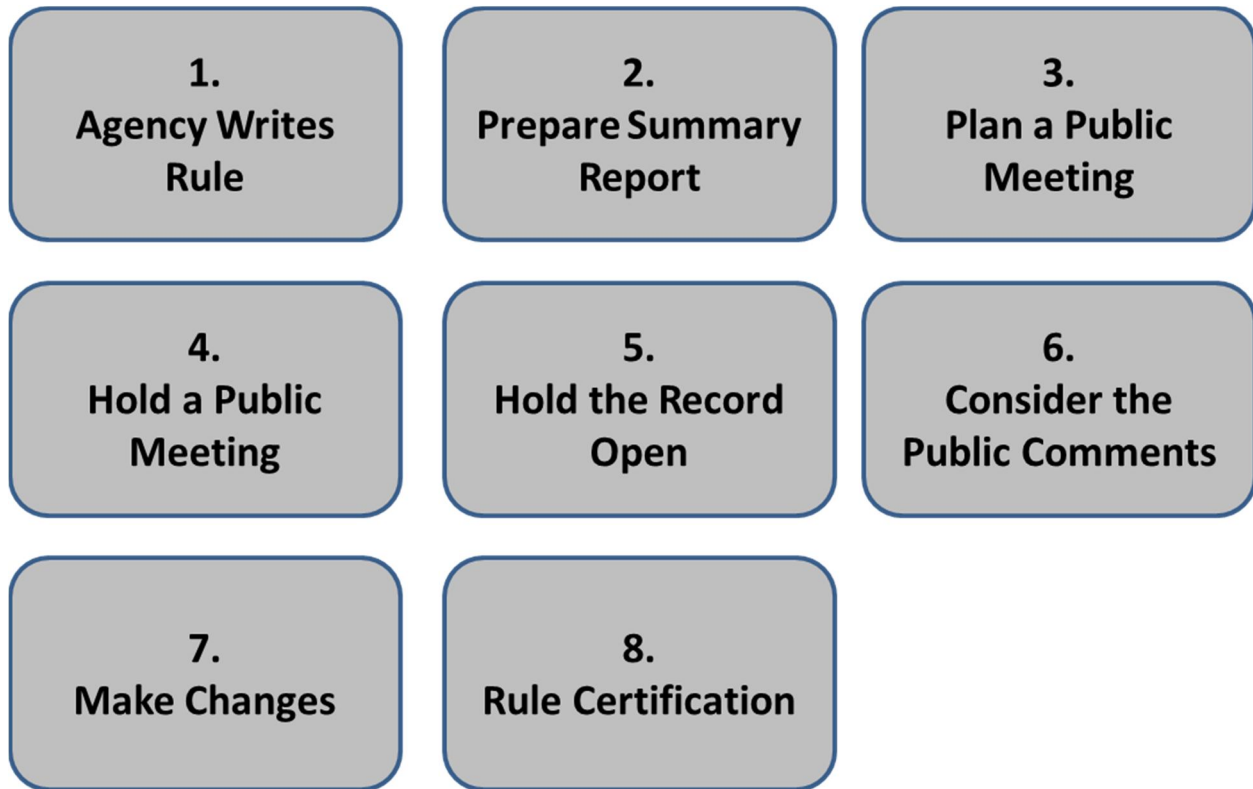
Rules that are developed in accordance with the Administrative Rulemaking law have the same force and effect as the law which delegated the agency rulemaking authority, and must be followed by both the general public and the agency promulgating the rule.

Any rules by an agency of the Nation that were already in effect at the time of the Administrative Rulemaking law's adoption remain in effect unless directed by the OBC to be updated based on the requirements found in the Administrative Rulemaking law. Any amendments to rules already in effect, and the adoption of any new rules must all follow the requirements of the Administrative Rulemaking law.

How to Promulgate a Rule

There are several steps to rule adoption required under the Administrative Rulemaking law. This is a brief overview of the rule promulgation (adoption) process. Appendix A of this guidebook provides a checklist to help your agency complete all the necessary steps to ensure your rules are in compliance with the Administrative Rulemaking law.

Summary of the Rulemaking Process under the Administrative Rulemaking Law



1. The Agency Writes a Rule

The first step in the rule promulgation process is the agency will write the rule. The agency may write rules that interpret the provisions of any law enforced or administered by it, but the rule may not exceed the rulemaking authority granted under the law for which the rule is being created. The Administrative Rulemaking law required the Legislative Operating Committee (LOC) to create a template for rules that authorized agencies shall comply with when drafting rules. The template illustrates the various sections that must be included in the rule and the format the rule should follow. The rules templates can be found in Appendix B and C of this guidebook.

The Administrative Rulemaking law allows an agency the option of holding a Solicitation of Comment on the General Subject Matter before the agency drafts a proposed rule. This gives the agency the option to begin their rulemaking process by holding a public meeting to gather comments or ideas before they begin actually drafting any proposed rules. It is important to note that if an agency decides to hold a Solicitation of Comment on the General Subject Matter the agency is still required to hold a public meeting that meets the requirements of the Administrative Rulemaking Law before the rule can be adopted.

2. The Agency Prepares a Summary Report

After an agency writes a rule, the agency shall prepare a summary report regarding each proposed rule. The summary report is a packet of information that must include the following:

1. Name of the proposed rule;
2. Reference to the law that the rule interprets (which law gave the agency rulemaking authority);
3. List of any other related laws that may be affected;
4. Brief summary of the proposed rule;
5. Statement of Effect (SOE); and
6. Financial Analysis.

The agency must request the SOE from the Legislative Reference Office (LRO). The SOE explains any legislative and legal impacts the proposed rule will have on the Nation.

The financial analysis is prepared by the agency and must include the following:

1. Start-up costs;
2. Personnel costs;
3. Office space cost;
4. Documentation costs; and
5. An estimate of the amount of time necessary for an individual or agency to comply with the rule.

In addition to creating the financial analysis, the agency must send a written request to each entity which may be affected by the rule asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within ten (10) business days after the request is made, the financial analysis can note which entities did not provide a response.

A template for a summary report can be found in Appendix D. A template for a financial analysis can be found in Appendix E of this guidebook.

Once an agency has completed the summary report regarding each proposed rule, the summary report will then be attached to the proposed rule when presented for public comment and for approval through the LOC and ultimately the OBC.

3. The Agency Plans a Public Meeting

A proposed rule, except a rule promulgated under the emergency rule exemption, must be preceded by a public comment period, which must include a public meeting. The agency must choose a date and location for a public meeting.

When deciding where to host a public meeting it is important to remember that the Administrative Rulemaking law requires all public meetings to be audio recorded. The Oneida Business Committee Conference Room and the Executive Conference Room are set up for recording public meetings. Consider holding the meeting at one of those locations. Agencies can contact the Business Committee's Secretary's Support Office at 920-869-4314 to reserve the room and request technical assistance with recording equipment.

After choosing a date and location for the public meeting, the agency must develop a public meeting notice. The public meeting notice must include the following:

1. Information about how to electronically access the summary report;
2. A statement that hard copies of the summary report and proposed rule will be available at the public meeting;
3. Date, time, place of the public meeting;
4. Time period during which the agency shall accept public comments; and
5. Contact information of the agency- name, address, phone number, and other information for people to use if they want to submit written comments.

A public meeting notice template can be found in Appendix F of this guidebook.

The agency then must send the public meeting notice to both the Kalihwisaks and the Oneida Register and request that the notice be published. The public meeting notice must be published in the Kalihwisaks and on the Oneida Register a minimum of ten (10) days before the public meeting is held in order to be compliant with the Administrative Rulemaking law. If the ten (10) day minimum notice requirement is not met then the public meeting does not comply with the Administrative Rulemaking law and another public meeting that does meet the requirements of the law will have to take place. It is very important for an agency to check the Kalihwisaks submission deadlines and print dates when planning a public meeting.

The Kalihwisaks' deadline dates are every second and fourth Thursday of the month, unless otherwise noted. The Kalihwisaks' publish dates are every first and third Thursday of the month unless otherwise noted. Materials can be dropped off at the Kalihwisaks office at 2701 West Mason Street, Green Bay, or mailed to Kalihwisaks, P.O. Box 365, Oneida WI 54155. Information can also be sent via email at Kalihwisaks@oneidanation.org or phoned in to 920-496-5632.

The agency can have the public meeting materials published on the Oneida Register by emailing the materials to Legislative Reference Office (LRO) attorney Tani J. Thurner at tthurner@oneidanation.org.

4. The Agency Holds a Public Meeting

The agency shall hold a public meeting at the date, time, and place designated in the meeting notice. The agency shall create and bring in a sign in sheet for the meeting attendants to register on by signing their name. A template for a public meeting sign in sheet can be found in Appendix G of this guidebook.

The agency shall have a representative of the agency preside at the meeting. The representative of the agency shall provide a brief description of the rule and the nature of its requirements. The agency representative shall then open the public meeting for comments. It is important to remember that the Administrative Rulemaking law requires all public meetings to be audio recorded. Any persons making oral comments during the public meeting is required to state their name for the record. The agency representative is not required to comment or respond to comments at the meeting, but may choose to offer clarity or comments at his or her discretion.

5. The Agency Holds the Public Comment Period Record Open

The agency shall hold the public comment period in which written comments can be submitted to the agency open for at least five (5) business days after the public meeting. If the agency chooses, the agency can extend the public comment period as it deems appropriate as long as the agency posts an amended Notice of Public Meeting that meets the same requirements as the original public meeting notice at any time prior to the close of the original public comment period which identifies the extended comment period end date.

6. The Agency Considers the Public Comments

The agency shall fully consider all oral and written comments received during the public comment period and during any public meeting held regarding a proposed rule. The Administrative Rulemaking law requires the agency to prepare a memorandum containing the public comments that were received, both orally and written, and the agency's response to each comment. To show that each comment received was fully considered it is best practice to write each comment received verbatim in the memorandum and then respond to each comment individually.

7. The Agency Can Make Changes to the Rule

After the public comments are fully considered, the agency can make changes to the draft of the proposed rule that the agency feels are appropriate. If substantial changes are made to the proposed rule, another public meeting must be held. If another public meeting is to be held then the agency must start over at step three (3).

8. The Agency Submits the Rule for Certification

After an agency has had a proposed rule analyzed, put through the public comment process, and changed as needed the agency is ready to submit the proposed rule for certification. The agency is required to submit the proposed rule and the items it must contribute for the administrative record to the LOC, which is responsible for certifying that promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

The certification packet that the agency must create and give to the LOC must include the following:

1. An LOC Agenda Request form;
2. The draft proposed rule;
3. A memorandum from the agency to the LOC with the following contents:
 - a. Timeline of dates that each rulemaking requirement was completed;
 - b. Date the public meeting was posted;
 - c. Date the public meeting(s) was held;
 - d. Date the public comments period closed;
 - e. Date the public comments were considered; and
 - f. Date the request to other agencies was made for financial analysis.
4. Supporting Documentation including but not limited to:
 - a. Various drafts of the rule considered before the public meeting;
 - b. The Kalihwisaks public meeting notice. Either print the actual Kalihwisaks posting or provide a copy of the notice indicating the date it was published;
 - c. If the rule is being amended and not adopted, the redline drafts of the rule. Redline drafts are the drafts that indicate the proposed changes to the amended rule from the current rule;
 - d. If the agency is a board, committee, or commission the minutes from the agency's meeting during which the proposed rule was considered as an agenda item;
 - e. If the agency is not a board, committee, or commission a memo from the agency's highest level of management approving the proposed rule; and
 - f. Any other supporting information (the LRO may request additional information).
5. The Summary Report that was submitted for public meeting. (Note: If the draft or any elements of the summary report changed after the public comment period the agency shall provide an updated summary report.)
6. A memorandum from the agency to the LOC with the following contents:
 - a. All the written and spoken comments that were received during the public comment period and the agency's responses to each comment; and
 - b. The date the rule will go into effect. (Note: The agency shall determine a rule's effective date, provided that a rule may not become effective until the LOC has provided the agency with the written certification that the rule complies with all procedural elements required in the Administrative Rulemaking law.)

A representative from the agency must then attend the LOC meeting in which the agency's rule is on the agenda. The LOC will review the certification packet the agency provided and do one of two things:

1. If the entity has completed all the procedural requirements, the LOC will certify the rule, and will forward the packet to the OBC for review, and publish the rule on the Oneida Register;
OR
2. If the LOC does not certify the rule, it will return the rule to the entity with feedback as to which procedural requirements were not met.

Prior to publishing the approved rule on the Oneida Register, the LOC shall create and/or update the administrative history on each rule which must include the original effective date of the rule and the effective date of any amendments made to the rule.

Once the LOC certifies the proposed rule and sends the certification packet with written certification that the requirements of the Administrative Rulemaking law have been fulfilled, the certified rule will be reviewed by the OBC.

If the agency does not receive written notice from the OBC of intent to repeal or amend the rule within thirty (30) days of the date the OBC is provided notice of the rule, the rule will remain in effect as submitted and certified by the LOC.

If the OBC repeals the rule adopted by the agency, the rule that was in effect immediately prior to those rules repealed, if any, will automatically be reinstated and effective immediately upon the repeal of the rule adopted by the agency.

If upon review the OBC has concerns or would like to request revisions to the rule, the OBC is required to work with the agency to address those concerns. Unless the OBC repeals the rule, the rule will remain in effect while the agency and the OBC work jointly to amend the existing rule. If the OBC wishes to pursue amendments to the rule, the OBC has six (6) months from the date the amendments are initiated by the OBC to complete the amendments through one of the following actions:

1. If the agency and the OBC agree on the content of the amendments, the agency shall adopt the revised rule that has been agreed upon. If the revisions to the rule were substantial, the agency shall hold an additional public comment period for the rule, and the process would restart back to the public comment period planning stage.
2. If the agency and the OBC do not agree on the content of the amendments, the OBC may defer the rule to the LOC for revisions as directed by the OBC. If the LOC makes substantial changes to the rule, the LOC shall hold an additional public comment period. When the rule is ready for adoption the LOC shall forward it to the OBC for consideration.

If a revised rule is not adopted by either the agency or the OBC within six (6) months from the date the amendments are initiated by the OBC, the rule originally adopted by the agency will remain in effect.

If revisions are made to the rule by either the agency or the OBC, the party making the revisions shall provide a final version of the rule to the LOC. The LOC shall then update the Oneida Register with the final version of the rule.

Emergency Rules

Emergency situations may arise in which an agency needs a rule before all the requirements of promulgation of the Administrative Rulemaking law can be met. An agency may present the LOC with a proposed emergency rule without a public comment period being held if it finds there is an emergency situation that requires the enactment or amendment of a rule for the immediate preservation of the public health, safety, or general welfare of the Reservation population and the enactment or amendment is required sooner than would be possible under the normal rulemaking process.

In emergency situations, the agency shall submit to the LOC the proposed emergency rule with reasoning to justify the emergency and a summary report, provided that the deadline for other entities' submission of financial impacts may be reduced to a minimum of two (2) business days.

Once the LOC receives the emergency proposed rule and summary report, the LOC shall review the submission and take one of the following actions:

1. Reject the proposed emergency rule on the basis that there is no valid emergency; or
2. Accept that there is a valid emergency and forward the emergency rule to the OBC.

If the proposed emergency rule is forwarded to the OBC, the OBC will review the proposed emergency rule, the summary report, and the reasoning suggested for the emergency situation. The OBC will then do one of the following:

1. Reject the proposed emergency rule on the basis there is no valid emergency; or
2. Accept that there is a valid basis for an emergency and adopt, by motion, the emergency rule.

The OBC, if it deems it necessary, can decide to make revisions to the emergency rule when it adopts the rule. If the OBC makes revisions to the emergency rule that the agency does not support, the agency may address its concerns when the agency begins the process for enactment of the permanent rule.

An emergency rule becomes effective immediately upon its adoption by the OBC and remains in effect for a period of up to six (6) months, with an opportunity for a one time emergency extension of up to six (6) months. The one time emergency extension can be brought up by the agency directly to the OBC for consideration and shall become effective upon the OBC's approval and adoption by motion.

An emergency rule will:

1. Expire when six (6) months have passed since the emergency rule went into effect and an emergency Rule extension has not been approved; or

2. expire when six (6) months have passed since the emergency rule extension went into effect; or
3. no longer be in effect when a rule is permanently adopted in the emergency rule's place before the emergency rule expires under (1) or (2).

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

If the agency wants the emergency rule to be adopted as a permanent rule, then the agency shall follow the regular procedures as provided in the Administrative Rulemaking law to adopt the permanent rule.

APPENDIX A.

Rule Promulgation Checklist

1. The Agency Writes a Rule.
 - Agency used rule template (Appendix B) to draft proposed rule

2. Agency Prepares Summary Report
 - Prepare a Summary Report (template found in Appendix D) which includes:
 - Name of proposed rule
 - Reference to the law that the rule interprets
 - List of any other related laws that may be affected
 - Brief summary of the proposed rule
 - State of Effect (SOE) from Legislative Reference Office
 - Financial Analysis (template found in Appendix E) which includes:
 - Start-up costs
 - Personnel costs
 - Office space costs
 - Documentation costs
 - Estimate of the amount of time necessary for an individual or agency to comply with the rule
 - Responses to agency's written request that entities affected by the rule provide information describing how the entities will be financially affected

3. Agency Plans a Public Meeting
 - Choose a date and location for a public meeting
 - Ensure recording equipment will be available for public meeting
 - Develop a public meeting notice (template in Appendix F) that includes:
 - Information about how to electronically access the summary report
 - A statement that hard copies will be available at the public meeting
 - Date, time, and place of the public meeting
 - Duration of the public comment period
 - Contact information of agency- name, address, phone number, and other information for people to use if they want to submit written comments
 - Send the public meeting notice to the Kalihwisaks to be published a minimum of 10 days before the public meeting is held
 - Send the public meeting notice to the Oneida Register to be published a minimum of 10 days before the public meeting is held

4. Agency Holds a Public Meeting
 - Create and bring a sign in sheet for the meeting attendants to register (template in Appendix G)
 - Record public meeting
 - Have representative of the agency preside over the meeting. The representative will provide a brief description of the rule and the nature of its requirements
 - Open the meeting for public comments and have each oral speaker state their name for the record

5. Agency Holds the Public Comment Period Record Open
 - Hold the public comment period open for at least five (5) business days after the public meeting
 - If the agency deems it appropriate to hold the public comment period open for a period longer than five (5) days after the public meeting, post an amended Notice of Public Meeting that meets the same requirements as the original public meeting notice at any time prior to the close of the original public comment period which identifies the extended comment period end date

6. Agency Considers the Public Comments
 - Consider every comment received
 - Prepare a memorandum containing the public comments that were received, both orally and written, and the agency's response to each comment

7. Agency Can Makes Changes to the Proposed Rule
 - Agency makes any changes to the rule it deems appropriate
 - If substantial changes are made, another public meeting must be held (Start over at step three)

8. Agency Submits the Rule for Certification
 - Rule has been analyzed, put through public comment process, and changed as needed
 - Create certification packet which includes:
 - LOC Agenda Request Form
 - Draft proposed rule
 - Memo from the agency to the LOC with the following contents:
 - Timeline of dates that each rulemaking requirement was completed
 - Date the public meeting was posted
 - Date the public meeting(s) was held
 - Date the public comments period closed
 - Date the public comments were considered
 - Date the request to other agencies was made for financial analysis
 - Supporting documentation including but not limited to:

- Various drafts of the rule considered before the public meeting
- The Kalihwisaks public meeting notice- either print the actual Kalihwisaks posting or provide a copy of the notice indicating the date it was published
- If the rule is being amended (not adopted)- the redline drafts. These are the drafts that indicate the proposed changes to the amended rule- from the current rule
- If the agency is a board, committee, or commission- the minutes from the agency's meeting during which the proposed rule was considered as an agenda item
- OR**
- If the agency is not a board, committee or commission, a memo from the agency's highest level of management approving the proposed rule
- Any other supporting information (LRO may request additional information)
- Summary Report that was submitted for public meeting (*Note: If the draft or any other elements of the summary report changed after the public comment period- be sure an updated summary report is submitted*)
 - Name of proposed rule
 - A reference to the law that the proposed rule interprets, along with a list of any other related laws or rules that may be affected by the proposed rule
 - Brief summary of the proposed rule and any changes made to the proposed rule based on the public comment period
 - Statement of Effect
 - Financial Analysis
- Memo from the Agency to the LOC with the following contents:
 - All the written and spoken comments that were received during the public comment period and the agency's responses to each comment
 - The date the rule will go into effect
- Attend LOC meeting in which your rule is on the agenda
 - If the agency has completed all procedural requirements, the LOC will certify the rule, forward it to the OBC for review, and publish the rule on the Oneida Register
 - OR**
 - LOC will not certify the rule, and will return the rule to the agency with feedback as to which procedural requirements were not met and the agency will complete those requirements
- OBC reviews rule

- Agency does not receive written notice from OBC of intent to repeal or amend the rule within thirty (30) days of the date the OBC is provided notice of the rule, so the rule remains in effect as submitted and certified by the LOC

OR

- OBC repeals the rule adopted by the agency, so the rule that was in effect immediately prior to those rules repealed, if any, will automatically be reinstated and effective immediately upon the repeal of the rule adopted by the agency

OR

- OBC requests revisions are made to the rule and the OBC works with the agency to address the issues. Rule remains in effect while OBC and agency amend the rule. OBC has six (6) months from the date the amendments are initiated by the OBC to complete the amendments through one of the following actions:
 - Agency and OBC agree on the content of the amendments, so the agency shall adopt the revised rule that has been agreed upon. If the revisions to the rule were substantial, the agency shall hold an additional public comment period for the rule.
 - Agency and OBC do not agree on the content of the amendments, OBC may defer the rule to the LOC for revisions as directed by the OBC. If the LOC makes substantial changes to the rule, the LOC shall hold an additional public comment period. When the rule is ready for adoption the LOC shall forward it to the OBC for consideration.

**APPENDIX B.
Individual Rule Template**



Title__. Title Name – Chapter__
NAME OF LAW
Rule #_ – Name of Rule

- 1.1 Purpose and Authority
- 1.2 Adoption, Amendment and Repeal
- 1.3 Definitions
- 1.4 Topic of Rule

1.1 Purpose and Authority

- 1.1-1. *Purpose.* [Add a purpose statement].
- 1.1-2. *Authority.* The __ Law delegates rulemaking authority to the [add authorized entity] pursuant to the Administrative Rulemaking law.

1.2. Adoption, Amendment and Repeal

- 1.2-1. This rule was adopted by the [add authorized entity] in accordance with the procedures of the Administrative Rulemaking law.
- 1.2-2. This rule may be amended or repealed by the [add authorized entity] and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law.
- 1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.
- 1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule shall control.
- 1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to [add topic of rule].

1.3. Definitions

- 1.3-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.
 - (a) “Department” means the __.

1.4. Topic of Rule

- 1.4-1. Rule information
 - (a)
 - (1)
 - (A)
 - (i)
 - (b)
 - (c)

- 1.4-2. List requirements

End.

Original effective date: [add effective date established by authorized entity] (Certified by LOC on)

End.

**APPENDIX C.
Rule Handbook Template**



Title __. Title Name – Chapter ____
Name of Law
Rule Nos. __ through __ – Name of Rule

I. Purpose, Delegation, Adoption, Amendment and Repeal

- 1-1. *Purpose.* [Add a purpose statement].
- 1-2. *Authority.* The __ Law delegates rulemaking authority to the [add authorized entity] pursuant to the Administrative Rulemaking law.
- 1-3. These rules were adopted by the [add authorized entity] in accordance with the procedures of the Administrative Rulemaking law.
- 1-4. These rules may be amended or repealed by the [add authorized entity] and/or the Oneida Business Committee pursuant to the procedures set out in the Administrative Rulemaking law. For the purpose of future amendments to these rules, each article is a separate rule and may be amended as such.
- 1-5. Should a provision of these rules or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.
- 1-6. In the event of a conflict between a provision of these rules and a provision of another rule, internal policy, procedure, or other regulation; the provisions of these rules shall control.
- 1-7. These rules supersede all prior rules, regulations, internal policies or other requirements relating to [add topic of rule].
- 1-8. This article I applies to each subsequent rule listed herein.

II. Definitions

- 2-1. This section shall govern the definitions of words and phrases used within this rule. All words not defined herein shall be used in their ordinary and everyday sense.
 - (a) “xxx” means the __.

III. Individual Rule Heading [Each subsequent rule will appear as a article with numbering as provided in this example wherein the first number represents the article number and the second number references the section number within the article]

- 3-1.
 - (a)
 - (1)
 - (A)
 - (i)
- 3-2.
 - (a)
 - (1)
 - (A)
 - (i)

IV. Individual Rule Heading [Each subsequent rule will appear as a article with numbering as provided in this example wherein the first number represents the article number and the second number references the section number within the article]

4-1.

- (a)
 - (1)
 - (A)
 - (i)

4-2.

- (a)
 - (1)
 - (A)
 - (i)

End.

Adopted in whole [Insert Date of Adoption] – Effective [Insert Effective Date] – LOC Certified [Insert Date of LOC Certification]

Rule 3 Amended [Insert date of Rule 3 Amendments adoption] – Effective [Insert Effective Date] – LOC Certified [Insert Date of LOC Certification of the Amendments]

APPENDIX D.
Summary Report Template

Original effective date:

Amendment effective date:

Name of Rule:

Name of law being interpreted:

Rule Number:

Other Laws or Rules that may be affected:

Brief Summary of the proposed rule:

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Appendix E.

Note: *In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.*

APPENDIX E.
Financial Analysis Template

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs		
Personnel		
Office		
Documentation Costs		
Estimate of time necessary for an individual or agency to comply with the rule after implementation		
Other, please explain		
Total	Annual Net Revenue	

APPENDIX F.

Public Meeting Notice Template

NOTICE OF
PUBLIC MEETING
TO BE HELD
ENTER DATE HERE
IN THE
ENTER LOCATION HERE

In accordance with the Administrative Rulemaking Law, the **ENTER AUTHORIZING AGENCY NAME HERE** is hosting this Public Meeting to gather feedback from the community regarding THE FOLLOWING PROPOSED RULE(S)

ENTER NAME OF RULE(S) HERE

This is a proposal to adopt rules which would:

- ◆ **ENTER THE MAJOR POINTS OF THE RULE(S) HERE**
- ◆

PUBLIC COMMENT PERIOD
OPEN UNTIL ENTER DATE

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the **ENTER AUTHORIZING AGENCY NAME AND CONTACT INFORMATION HERE**

NAME OF AUTHORIZING AGENCY
ADDRESS
EMAIL
PHONE
FAX

Place the date & location of the meeting here.

Place the name of the authorizing agency here.

Place the name of the rule here.

Place the major point here. What are the rules designed to do, who will they impact, etc.

Place the date that the public comment period ends here. It must be at least 5 days past the public meeting date.

Place authorizing agency name and contact information here.

APPENDIX G.**Public Meeting Sign In Sheet Template**

Name of Proposed Rule
Date, Time, Location of Public Meeting

	Name	Phone or Email
1		
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APPENDIX H.

Chapter 17 Administrative Rulemaking Thotih<=& lutyani<slu-n\$he>

they are the leaders, they are making the laws, policies and rules

17.1. Purpose and Policy	17.7. Oneida Legislative Operating Committee Certification of Procedural Compliance and Business Committee Review
17.2. Adoption, Amendment, Repeal	17.8. Effective Date of Rules
17.3. Definitions	17.9. Emergency Rules
17.4. General	17.11. Judicial Review of a Rule
17.5. Preparation of Proposed Rules	
17.6. Public Comment Period on Proposed Rules	

17.1. Purpose and Policy

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

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

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

17.2. Adoption, Amendment, Repeal

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

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

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

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

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

17.3. Definitions

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

- (a) “Authorized Agency” means any board, committee, commission, department, or officer of the Tribe that has been granted Rulemaking Authority.
- (b) “Business Day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Tribe.
- (c) “Financial Analysis” means an estimate of the total fiscal year financial effects associated with a proposed Rule prepared by the Authorized Agency proposing the Rule. It includes startup costs, personnel, office, documentation costs, an estimate of the amount of time necessary for an individual or agency to comply with the Rule after implementation.

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

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

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

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

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

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

17.4. General

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

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

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

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

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

17.5. Preparation of Proposed Rules

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

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

- (1) “1-1” means the first section.
- (2) “(a)” means the first subsection.
- (3) “(1)” means the second subsection.
- (4) “(A)” means the third subsection.
- (5) “(i)” means the fourth subsection.

(6) All other numbering after the fourth subsection must be in a logical manner.

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

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

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

17.6. Public Comment Period on Proposed Rules

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

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

(a) The Authorized Agency shall set a date for the public meeting and have the notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting.

(b) The notice must include:

- (1) information for electronically accessing the summary report required under Section 17.5-2 and a statement that hard copies will be available with the Entity;

- (2) the date, time, and place of the scheduled public meeting; and
- (3) the name, address, phone number, and other appropriate information to submit written comments on the Rule and the time period during which the Authorized Agency shall accept comments.

(c) The Authorized Agency shall hold a public meeting at the date, time and place designated in the meeting notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If revisions are made to the Rule by either the Authorized Agency or the Oneida Business Committee, such party making the revisions shall provide a final version of the

Rule to the Legislative Operating Committee. Upon receipt, the Legislative Operating Committee shall update the Oneida Register with the final version of the Rule.

17.8. Effective Date of Rules

17.8-1. The Authorized Agency shall determine a Rule's effective date, provided that a Rule may not become effective until the Legislative Operating Committee has provided the Authorized Agency with the written certification required by Section 17.7-2(a). A failure to publish an approved Rule by its effective date does not change the effective date of the Rule.

17.9. Emergency Rules

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

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

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

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

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

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

- (a) expire when six (6) months have passed since the emergency Rule went into effect and an emergency Rule extension has not been approved; or

- (b) expire when six (6) months have passed since the emergency Rule extension went into effect; or
- (c) no longer be in effect when a Rule is permanently adopted in the emergency Rule's place before the emergency Rule expires under (a) or (b).

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

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

17.10. Creating and Maintaining an Administrative Record of Rules

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

- (a) A memorandum provided by the Authorized Agency containing the Rule's procedural timeline including the dates the requirements of this Law were fulfilled by the Authorized Agency and any supporting documentation, which includes, but is not limited to:
 - (1) Drafts of the Rule considered for the required Public Meeting;
 - (2) The Public Meeting notice;
 - (3) If the Rule is being amended, redline drafts from the currently effective Rule;
 - (4) Minutes from the agency's meeting during which the proposed Rule was considered as an agenda item, or, if the Authorized Agency is not a board, committee or commission, a memo from the Entity's highest level of management approving the proposed Rules; and
 - (5) Any other supporting information that may be requested by the Legislative Reference Office;
- (b) The summary report required under Section 17.5-2 provided by the Authorized Agency;
- (c) A memorandum provided by the Authorized Agency containing the public comments that were received, both orally and written, and the Authorized Agency's response to each comment; and
- (d) The effective dates of the original Rules and any Rule amendments subsequently made as established by the Authorized Agency.

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

17.11. Judicial Review of a Rule

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

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

17.12. Standard of Review for Actions Taken by Authorized Agencies

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

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

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

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

End.

Adopted – BC-02-24-16-C