

# ONEIDA NATION RULEMAKING GUIDEBOOK



Oneida Nation Legislative Reference Office

Last Updated: December 2017

[www.oneidanation.org/government](http://www.oneidanation.org/government)



**ONEIDA**

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

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Welcome to 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.

## LRO Staff Contact Information:

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PO Box 365  
Oneida, WI 54155

## Definitions

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**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 costs, 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 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-** Oneida Nation.

**OBC-** Oneida Business Committee.

**LOC-** Legislative Operating Committee.

**LRO-** Legislative Reference Office.

## Purpose & Background

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The Administrative Rulemaking law was adopted by the Oneida Business Committee (OBC) on February 24, 2016. Amendments to the law were adopted by the OBC on August 9, 2017.

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 is delegated to agencies through 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 and 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.

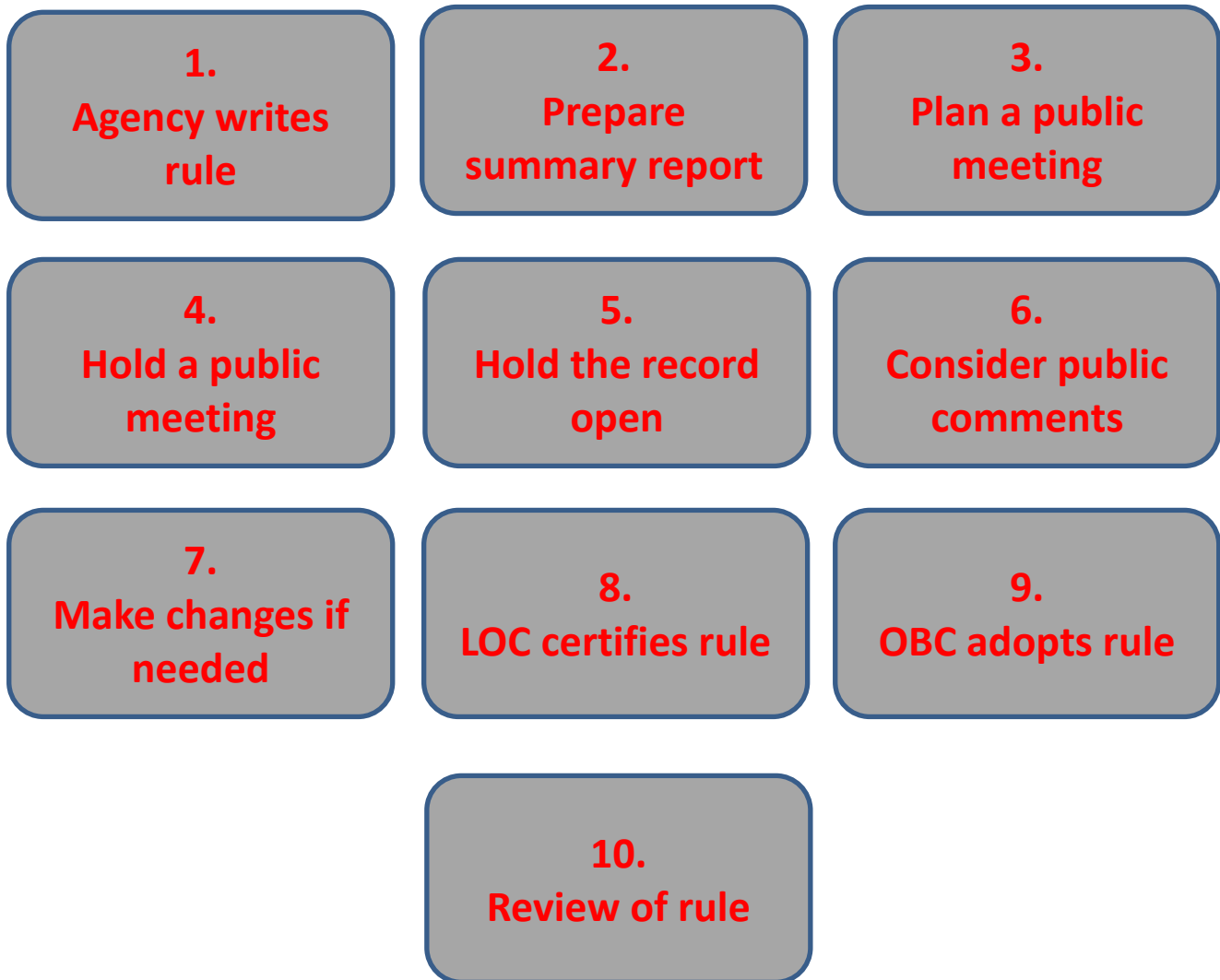
Any rules by an agency of the Nation that were already in effect at the time of the Administrative Rulemaking law's adoption remain in effect unless directed by the OBC to be updated based on the requirements found in the Administrative Rulemaking law. Any amendments to rules already in effect, and the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

## How to Promulgate a Rule

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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 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)
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 related costs;
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 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
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) business days before the public meeting is held in order to be compliant with the Administrative Rulemaking law. If the ten (10) business 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](mailto: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 Operating Committee at [LOC@oneidanation.org](mailto:LOC@oneidanation.org).

### **Special Notice**

The August 9, 2017 amendments to the Administrative Rulemaking Law include special notice. Special notice is recommended, but not required. Authorized agencies may provide additional public meeting notice to effected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs. It is up to the agency how special notice is provided. Examples may include;

- Landlord-Tenant Law: The Oneida Housing Authority may mail a public meeting notice to tenants and note that a proposed rule or rule change may affect their eligibility.
- Hunting, Fishing and Trapping law: The Conservation Department may choose to notify licensed hunters of a proposed harvest limit rule change.

## **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 after the public meeting/comment period- a second public meeting/comment period must be held.

## **8. The Agency Submits the Rule for LOC Certification**

After an agency has requested an SOE and completed a financial analysis, put the proposed rule 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. There are three requirements for certification;

1. The promulgation of the rule complied with the procedural requirements contained in the Administrative Rulemaking law
2. The administrative record is complete
3. The rule does not exceed its rulemaking authority or conflict with any other law, policy, rule, or resolution of the Nation.

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 comment period closed
  - e. Date the public comments were considered
  - f. Date the request to other agencies was made for financial analysis
4. Supporting documentation including but not limited to:
  - a. The Kalihwisaks public meeting notice. Either print the actual Kalihwisaks posting or provide a copy of the notice indicating the date it was published

- b. 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
  - c. 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
  - d. If the agency is not a board, committee, or commission a memo from the agency's highest level of management approving the proposed rule
  - e. 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 after the OBC adopts the rule.

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. the LOC will certify the rule, and will forward the packet to the OBC for adoption,

**OR**

- 2. If the LOC does not certify the rule, it will return the rule to the entity with feedback as to which of the three certification requirements were not met.

## **9. OBC Adopts the rule**

After the LOC has certified a rule, it will forward the rule to the OBC to consider adoption. The OBC may adopt the rule- in which case it would become effective on the effective date indicated. The OBC may also deny approval and send the rule back to the agency for changes.

After the OBC adopts the rule, it will be published 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.

## **10. Review of the Rule**

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The Administrative Rulemaking law requires agencies to conduct a review of each adopted rule at least once every two years after the rule is adopted by the OBC. See the Administrative Rulemaking law [106.12] for more information.

## Emergency Rules

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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 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. Agency Writes 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 related 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 business days before the public meeting is held
- ☐ Send the public meeting notice to the Oneida Register to be published a minimum of 10 business days before the public meeting is held
- ☐ Consider providing special notice

#### **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) business 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 submitted for an SOE, agency has created a financial analysis, 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:
  - ☐ 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 and forward it to the OBC for adoption

**OR**

  - ☐ LOC will not certify the rule, and will return the rule to the agency with feedback as to which certification requirements were not met and the agency will complete those requirements

## 9. OBC Consider Adoption of Rule

- ☐ The OBC adopts the rule
- OR**



- ☐ The OBC denies approval and sends the rule back to the agency and/or requests changes

#### **10. Agency Reviews the Rule**

- ☐ The agency is required to review the rule at least once every two years. The agency should consider whether the rule continues to serve its intended purpose and if any amendments are necessary.



**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.*

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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.*

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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.

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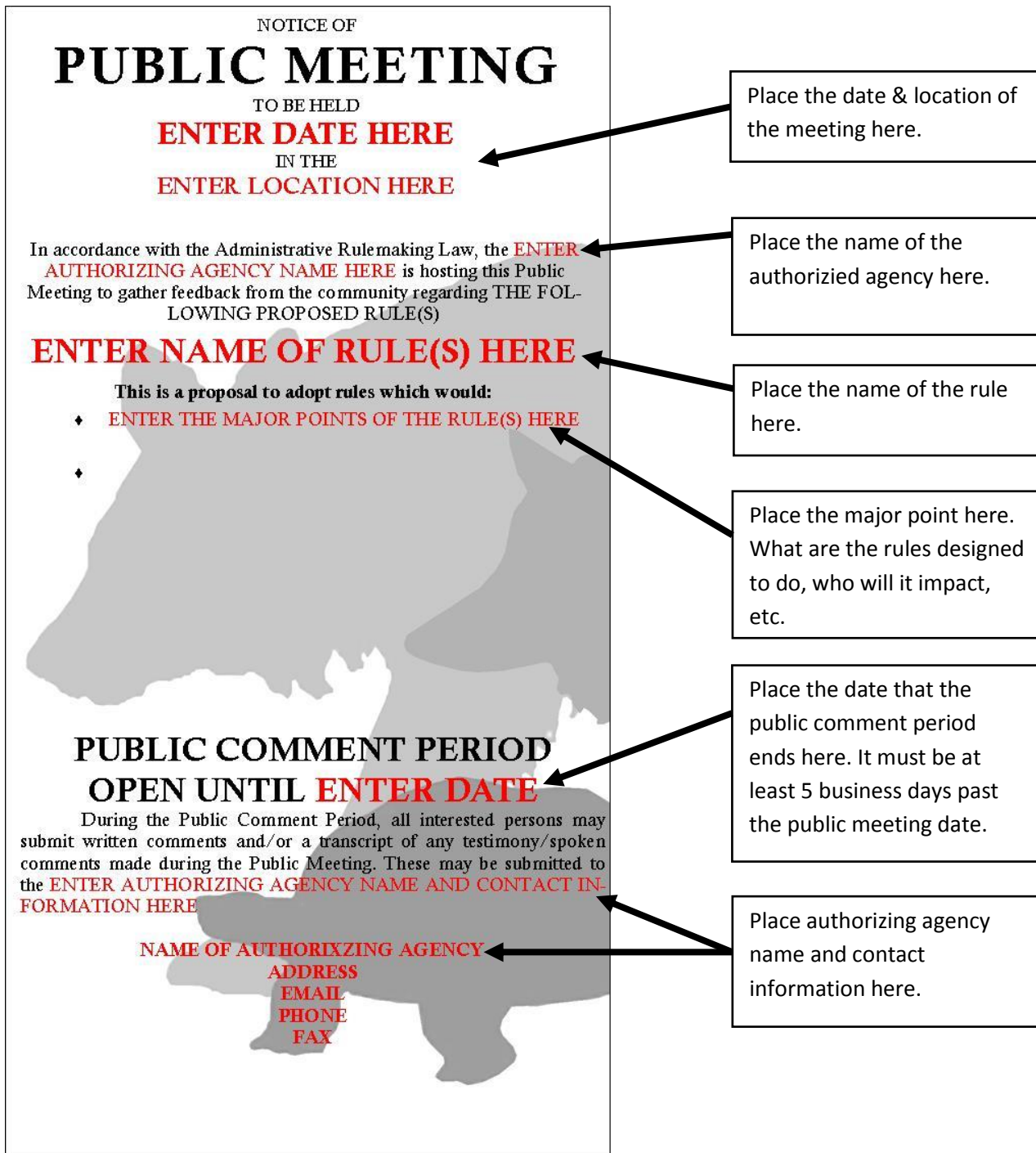
**Note:** *In addition- the agency must send a written request to each entity which may be financially affected by the rule- asking that they provide information about how the rule would financially affect them.*

*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**

<b>Type of Cost</b>	<b>Description/Comment</b>	<b>Dollar Amount</b>
Start Up Costs		
Personnel Costs		
Office Related Costs		
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**

The image shows a public meeting notice template with a light gray background featuring a faint map of Washington state. The template includes several red placeholder text fields. Black arrows point from these fields to callout boxes on the right side of the page, which provide instructions on where to place specific information. The callouts are: 1. 'Place the date & location of the meeting here.' pointing to the date and location fields. 2. 'Place the name of the authorized agency here.' pointing to the 'ENTER AUTHORIZING AGENCY NAME HERE' field. 3. 'Place the name of the rule here.' pointing to the 'ENTER NAME OF RULE(S) HERE' field. 4. 'Place the major point here. What are the rules designed to do, who will it impact, etc.' pointing to the 'ENTER THE MAJOR POINTS OF THE RULE(S) HERE' field. 5. 'Place the date that the public comment period ends here. It must be at least 5 business days past the public meeting date.' pointing to the 'ENTER DATE' field in the 'PUBLIC COMMENT PERIOD' section. 6. 'Place authorizing agency name and contact information here.' pointing to the 'NAME OF AUTHORIZING AGENCY', 'ADDRESS', 'EMAIL', 'PHONE', and 'FAX' fields.

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 authorized agency here.

Place the name of the rule here.

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

Place the date that the public comment period ends here. It must be at least 5 business 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**

	<b>Name</b>	<b>Phone or Email</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		
<b>6</b>		
<b>7</b>		
<b>8</b>		
<b>9</b>		
<b>10</b>		
<b>11</b>		
<b>12</b>		
<b>13</b>		
<b>14</b>		
<b>15</b>		
<b>16</b>		



## Appendix H.

### Title 1. Government and Finances – Chapter 106

#### ADMINISTRATIVE RULEMAKING

Thotihá·tú lutyánłashlu·níhe?

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

106.1.	Purpose and Policy	106.9.	Effective Date of Rules
106.2.	Adoption, Amendment, Repeal	106.10.	Emergency Rules
106.3.	Definitions	106.11.	Creating and Maintaining an Administrative Record
106.4.	General	106.12.	Review by the Authorized Agency
106.5.	Preparation of Proposed Rules	106.13.	Judicial Review of a Rule
106.6.	Public Comment Period on Proposed Rules	106.14.	Standard of Review for Actions Taken by Authorized Agency
106.7.	Legislative Operating Committee Certification		
106.8.	Oneida Business Committee Adoption		

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#### 106.1. Purpose and Policy

106.1-1. *Purpose.* The purpose of this law is to provide a process for the adoption and amendment of administrative rules.

106.1-2. *Policy.* It is the policy of the Nation to ensure there is an efficient, effective and democratic process for enacting and revising administrative rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising administrative rules.

#### 106.2. Adoption, Amendment, Repeal

106.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-24-16-C and amended by BC-08-09-17-A.

106.2-2. 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.

106.2-3. 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.

106.2-4. 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.

106.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 106.3. Definitions

106.3-1. 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) “Authorized agency” means any board, committee, commission, department, program or officer of the Nation 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 Nation.

(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, and 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 Oneida 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 or program of the Nation.

(e) "Nation" means the Oneida Nation.

(f) "Officer" means an individual holding the position of chairperson, vice chairperson, secretary or treasurer on a board, committee or commission of the Nation, including the Oneida Business Committee.

(g) "Oneida Register" means the Legislative Operating Committee's publication on the Nation's website containing, at a minimum, agency rules, proposed legislation and notices, and the Oneida Code of Laws.

(h) "Rule" means a set of requirements enacted by an authorized agency in order to implement, interpret and/or enforce a law of the Nation, which may include citation fee and penalty schedules.

(i) "Rulemaking authority" means the delegation of authority to authorized agencies found in the Nation's laws, other than this law, which allows authorized agencies to implement, interpret and/or enforce a law of the Nation.

(j) "Standard operating procedures" means 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.

(k) "Statement of effect" means an analysis of the proposed rule which explains potential conflicts and effects that adopting a rule would have on the Nation's current legislation.

#### **106.4. General**

106.4-1. *Administrative Rulemaking.* Only authorized agencies may promulgate rules. Authorized agencies shall be granted rulemaking authority by a law of the Nation, provided that, this law does not confer rulemaking authority. 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. Authorized agencies shall adhere to the rulemaking procedures as provided in this law.

(a) Rules developed pursuant to this law have the same force and effect as the law which delegated the authorized agency rulemaking authority and shall be followed by both the general public and the authorized agency promulgating the rule.

(b) A rule developed pursuant to this law shall not conflict or supersede a law, policy or rule of the Nation or a resolution passed by the Oneida Business Committee or the Oneida General Tribal Council.

(c) This law does not apply to the Nation's standard operating procedures.

106.4-2. *Solicitation of Comment on General Subject Matter.* For the purpose of soliciting public comments, ideas and opinions, an authorized agency may hold a public meeting on the general subject matter of a possible or anticipated rule before preparing a proposed rule. A public meeting under this subsection does not satisfy the public comment period requirements of section 106.6 with respect to promulgation of a specific proposed rule.

106.4-3. *Substantial Compliance.* Any rule hereafter adopted is valid only if adopted in substantial compliance with this law. 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 shall follow the requirements of this law.

106.4-4. *Exemption to Administrative Rulemaking Requirements.* When an authorized agency is delegated rulemaking authority through a new law or an amendment to an existing law, any standard operating procedures, policies, or plans the authorized agency is currently using and wishes to continue using as a rule shall be presented to the Legislative Operating Committee for acknowledgement and publication as a rule on the Oneida Register as long as the following conditions are met:

- (a) The standard operating procedure, policy or plan shall have no substantive change to its content; and
- (b) A preliminary review by the Oneida Law Office shall reveal no conflict between the standard operating procedure, policy or plan and any law, policy, rule, or resolution of the Nation.
- (c) The existing standard operating procedure, policy, or plan shall be formatted into the administrative rulemaking template approved by the Legislative Operating Committee.

### **106.5. Preparation of Proposed Rules**

106.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for rules with which authorized agencies shall comply; the template is not subject to the procedural requirements of this law.

- (a) At a minimum, all rules shall 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 shall be in a logical manner.

106.5-2. *Summary Report.* The authorized agency shall prepare a summary report regarding each proposed rule. The summary report shall be attached to the proposed rule when presented for public comment, and included in the administrative record for certification by the Legislative Operating Committee and ultimately for adoption by the Oneida Business Committee. The summary report shall include the following:

- (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, rules, or resolutions that may be affected by the proposed rule;
- (c) a brief summary of the proposed rule;
- (d) any changes made to the proposed rule based on the public comment period required by section 106.6, if applicable;
- (e) a statement of effect for the rule prepared by the Legislative Reference Office upon request by the authorized agency; and
- (f) the financial analysis.
  - (1) The authorized agency shall prepare the financial analysis. 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 shall be included in the financial analysis.

(2) If an authorized agency does not receive a response from one (1) or more entities regarding its request for the financial effects of the rule on the entity within ten (10) business days of the date of the request, the authorized agency may submit a financial analysis noting which entities were non-responsive to its request.

#### **106.6. Public Comment Period on Proposed Rules**

106.6-1. *Required Public Comment Period.* A proposed rule shall be preceded by a public comment period, which shall include a public meeting.

(a) A rule promulgated under the emergency rules exemptions described in section 106.10 shall not be required to have a public comment period or public meeting.

(b) 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.

106.6-2. *Public Meetings.* A public meeting on a proposed rule shall be held in accordance with the following requirements.

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

(1) *Special Notice.* It is recommended, but not required, that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs. The extent and form of any such notice is within the authorized agency's discretion to determine.

(b) *Requirements for Public Meeting Notice.* The public meeting notice shall include:

(1) the date, time, and location of the scheduled public meeting;

(2) information for electronically accessing the proposed rule and summary report and a statement that hard copies of the materials will be available with the authorized agency; 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 written comments.

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

(d) *Presiding Representative.* 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.

(1) The authorized agency's presiding representative is not required to comment or respond to comments at the meeting, but may at his or her discretion.

(e) *Time Limitation.* The authorized agency's presiding representative may impose a time limit for all oral testimony. Any time limit imposed shall not be less than five (5) minutes and shall be applied to all persons equally.

(f) *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.

(g) The authorized agency shall audio record the public meeting and persons who provide oral comments shall state their name for the record.

(h) 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.

106.6-3. *Extension of Public Comment Period.* The authorized agency may extend the public comment period as it deems appropriate by posting an amended public meeting notice. The amended public meeting notice shall follow the posting requirements found in section 106.6-2(b). The amended public meeting notice shall identify the extended public comment period ending date and may be posted at any time prior to the close of the original public comment period.

106.6-4. *Consideration of 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.

106.6-5. *Public Comment Memorandum.* Once all public comments are received and the public comment period closes, the authorized agency shall draft a memorandum containing all public comments received and the authorized agency's response to each comment.

106.6-6. *Substantial Changes to Proposed Rule.* The authorized agency shall hold an additional public meeting for the proposed rule if substantial changes are made to the proposed rule after the public comment period ends and all public comments are considered.

## **106.7. Legislative Operating Committee Certification**

106.7-1. *Submission of Rule Certification Materials.* After the public comment period has expired and the authorized agency has considered all public comments received, the authorized agency shall submit the proposed rule and all items contained in the administrative record described in section 106.11 to the Legislative Operating Committee.

(a) The authorized agency shall submit the rule for certification by the Legislative Operating Committee within six (6) months after the public comment period has expired, unless the Legislative Operating Committee determines there is good cause to go outside the time limits.

106.7-2. *Requirements for Certification.* The Legislative Operating Committee is responsible for certifying the proposed rule meets the following requirements:

(a) that promulgation of the rule complies with the procedural requirements contained in this law;

(b) that the administrative record is complete; and

(c) that the rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation.

106.7-3. *Rule Certification.* Upon receipt of a complete rule certification submission the Legislative Operating Committee shall take one (1) of the following actions:

(a) *Certify the Rule.* If the Legislative Operating Committee determines the authorized agency has complied with the requirements for certification stated in section 106.7-2, the Legislative Operating Committee shall certify the proposed rule.

- (1) Upon certification of the rule the Legislative Operating Committee shall forward the administrative record to the Oneida Business Committee.
- (b) *Deny Certification of the Rule.* If the Legislative Operating Committee determines that the authorized agency has not complied with the certification requirements stated in section 106.7-2 the Legislative Operating Committee shall not certify the proposed rule.
  - (1) Upon the denial of certification of the rule the Legislative Operating Committee shall return the proposed rule to the authorized agency with specific feedback as to which requirements were not fulfilled.
  - (2) The authorized agency may resubmit the proposed rule for certification by the Legislative Operating Committee once all requirements for certification have been met.

#### **106.8. Oneida Business Committee Adoption**

106.8-1. *Oneida Business Committee Consideration.* The Oneida Business Committee shall review and consider the proposed rule, the administrative record, and the Legislative Operating Committee's certification of compliance.

106.8-2. *Oneida Business Committee Adoption.* After review of all materials submitted and consideration of the proposed rule, the Oneida Business Committee may take one of the following actions:

- (a) *Adopt the Proposed Rule.* The Oneida Business Committee may adopt, by motion, the proposed rule. A majority vote is required for the adoption of a rule by the Oneida Business Committee.
  - (1) The Legislative Operating Committee shall be responsible for publishing the rule on the Oneida Register upon adoption by the Oneida Business Committee.
- (b) *Deny Adoption of the Proposed Rule.* The Oneida Business Committee may deny adoption of the proposed rule if the Oneida Business Committee has any concerns and/or requested revisions to the rule. The Oneida Business Committee may request that the authorized agency work with the Oneida Business Committee to address any concerns.

#### **106.9. Effective Date of Rules**

106.9-1. The authorized agency shall determine a rule's effective date, provided that a rule may not become effective until the Oneida Business Committee adopts the proposed rule.

106.9-2. A failure to publish an approved rule on the Oneida Register by its effective date does not change the effective date of the rule.

#### **106.10. Emergency Rules**

106.10-1. *Emergency Promulgation of a Rule.* An authorized agency may present the Legislative Operating Committee with a proposed emergency rule if the following conditions are met:

- (a) An emergency situation exists 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
- (b) The enactment or amendment is required sooner than would be possible under the normal rulemaking procedures.

106.10-2. *Submission of an Emergency Rule.* The authorized agency shall submit the following to the Legislative Operating Committee for emergency rule submission:

- (a) the proposed emergency rule;
- (b) justification for the emergency promulgation of the rule; and
- (c) the summary report.

(1) For the financial analysis contained in the summary report, the deadline for entities' submission of financial impacts pursuant to section 106.5-2(f) may be reduced to a minimum of two (2) business days.

106.10-3. *Legislative Operating Committee Review.* Upon receipt of the emergency rule, 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.

106.10-4. *Oneida Business Committee Adoption.* 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.

106.10-5. 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.

106.10-6. *Emergency Rule Extension.* There is an opportunity for a one-time emergency extension of an emergency rule for 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.

106.10-7. *Expiration of an Emergency Rule.* An emergency rule will expire when:

- (a) six (6) months have passed since the emergency rule went into effect and an emergency rule extension has not been approved; or
- (b) six (6) months have passed since the emergency rule extension went into effect; or
- (c) a rule is permanently adopted in the emergency rule's place before the emergency rule expires under (a) or (b).

106.10-8. *Permanent Adoption of Emergency Rule.* If permanent adoption of the emergency rule is desired, the authorized agency shall follow the normal rulemaking procedures as provided under this law to adopt the permanent rule. The authorized agency may start the permanent adoption process immediately after the emergency rule is adopted.

106.10-9. The Legislative Operating Committee shall publish the emergency rule on the Oneida Register.

### **106.11. Administrative Record of Rules**

106.11-1. *Creation of an Administrative Record.* The authorized agency shall create an administrative record of all proposed and adopted rules. The administrative record shall 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;
- (b) The summary report required under section 106.5-2;
- (c) Draft of the proposed rule, and a draft of the rule considered for the required public meeting;
- (d) The public meeting notice;
- (e) The public meeting sign-in sheet;
- (f) If the rule is being amended, redline drafts from the currently effective rule illustrating the proposed amendments;
- (g) Minutes from the authorized 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 authorized agency's highest level of management approving the proposed rule;
- (h) 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
- (i) The effective dates of the original rule and any rule amendments subsequently made as established by the authorized agency; and
- (j) Any other supporting information that may be requested by the Legislative Reference Office.

106.11-2. *Maintenance of the Administrative Record.* The authorized agency shall provide the Legislative Reference Office a complete administrative record for each proposed and adopted rule. The Legislative Reference Office shall maintain a complete administrative record for all proposed and adopted rules.

106.11-3. Prior to publishing approved rules on the Oneida Register the Legislative Operating Committee shall create and/or update the administrative history on each rule which shall include the original effective date of the rule and the effective date of any amendments made to the rule.

### **106.12. Review by the Authorized Agency**

106.12-1. *Biennial Review.* The authorized agency shall conduct a review of each adopted rule promulgated by the authorized agency at least once every two years after the rule is adopted by the Oneida Business Committee.

106.12-2. *Consideration during Review.* During the review the authorized agency may consider, but is not limited to the consideration of, whether the rule continues to serve its intended purpose and if any amendments to the rule are necessary.

106.12-3. The authorized agency shall have the authority to decide if amendments to a rule are necessary to pursue. The Oneida Business Committee shall not compel an authorized agency to amend a rule.



**106.13. Judicial Review of a Rule**

106.13-1. The Oneida Nation Trial Court 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 the Nation's Judiciary law. 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.

106.13-2. 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 106.11 from the Legislative Reference Office and shall submit the administrative record to the Oneida Nation Trial Court.

**106.14. Standard of Review for Actions Taken by Authorized Agencies**

106.14-1. Any entity of the Nation hearing an appeal or contest of an action taken pursuant to rules created under the authority delegated to an authorized agencies 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; or
- (c) If at the second level of appeal, remand the matter for further consideration.

106.14-2. When hearing an appeal or contest of an action, the hearing body shall recognize that the authorized agency is accepted by the Nation 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 Nation'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;
- (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.*

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Adopted – BC-02-24-16-C  
Amended – BC-08-09-17-A

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## **BC Resolution # 08-09-17-A Administrative Rulemaking Law Amendments**

- 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 Oneida Business Committee adopted the Administrative Rulemaking law ("the Law") through resolution BC-02-24-16-C; and
- WHEREAS,** the intent of the Law was to create a standardized process for how entities of the Nation may promulgate rules in furtherance of the responsibilities delegated to them to interpret, implement and/or enforce laws and policies of the Nation; and
- WHEREAS,** the amendments to the Law clarify that a rule developed pursuant to this Law shall not conflict or supersede a law, policy, rule, or resolution of the Nation; and
- WHEREAS,** the amendments to the Law provide an exemption to the administrative rulemaking process requirements, or grandfather clause, for those current and existing standard operating procedures and policies the authorized agency wishes to continue using so long as there are no substantive changes to the content of the standard operating procedures and policies when delegated rulemaking authority and the Oneida Law Office conducts a preliminary review of the materials for potential conflicts; and
- WHEREAS,** the amendments to the Law provide a recommendation that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs; and
- WHEREAS,** the amendments require additional public meetings to be held on a proposed rule if substantial changes are made to the proposed rule after a public meeting, and also set a time limitation for when an authorized agency shall submit a proposed rule for certification to the Legislative Operating Committee after the public comment period has expired; and
- WHEREAS,** the amendments clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule, require the Oneida Business Committee to adopt all proposed rules, and clarify that rule shall not become effective until after adoption by the Oneida Business Committee; and
- WHEREAS,** the amendments to the Law require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted; and

**WHEREAS,** public meetings on the proposed law were held on June 26, 2017, and June 29, 2017, in accordance with the Legislative Procedures Act, and the public comments were received, reviewed and accepted by the Legislative Operating Committee on July 19, 2017; and

**NOW THEREFORE BE IT RESOLVED,** that the amendments to the Administrative Rulemaking law are hereby adopted and effective immediately.

#### **CERTIFICATION**

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 9<sup>th</sup> day of August, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 7 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

  
\_\_\_\_\_  
Lisa Summers, Tribal Secretary  
Oneida Business Committee

\*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."