

Title 1. Government and Finances – Chapter 106
ADMINISTRATIVE RULEMAKING

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

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 This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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