

Title 3. Health and Public Safety – Chapter 305

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about the food

ONEIDA FOOD SERVICE

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305.1. Purpose and Policy

305.1-1. *Purpose.* The purpose of this law is to ensure the safety of food that is provided to consumers at retail or through an Oneida Nation Food Service Program by establishing a system of overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food handling, nontoxic/cleanable equipment and acceptable levels of sanitation on the premises of food service businesses; and promote fair dealings with members of the community through adoption of licensing requirements, exemptions, regulation, control, supervision and enforcement procedures that govern food service businesses within the jurisdiction of the Nation.

305.1-2. *Policy.* It is the policy of the Nation to protect the health, welfare and safety of the community and to strengthen the Nation’s self-governance by ensuring, through the exercise of its inherent sovereignty over the Nation’s resources and membership, that food provided at retail or through an Oneida Nation Food Service Program is unadulterated, prepared in a clean environment and honestly presented.

305.2. Adoption, Amendment, Repeal

305.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-13-01-B and amended by resolutions BC-02-25-15-C and BC-05-13-20-D.

305.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

305.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

305.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

305.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

305.3. Definitions

305.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Citation” means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against a person of a violation of law.

(b) “Close-down” means an order issued by the Department to discontinue operation of a food service business or exempt operation under section 305.8 of this law in order to protect the health, safety and/or welfare of the community.

- (c) “Consumer” means an individual who is a member of the public; takes possession of food; is not functioning in the capacity of a food service business, a cottage food operator, a prepackaged restaurant, or a food processing plant; and does not offer the food for resale.
- (d) “Cottage food operator” means an individual who, exclusively within the home kitchen of his or her domestic residence, produces cottage food products for direct sale only.
- (e) “Cottage food products” mean foods, produced within the home kitchen of a domestic residence, that are non-potentially hazardous, including non-perishable baked goods such as cakes, most fruit pies, breads, brownies, cookies and muffins; dry mixes; dried fruit; jams, jellies and preserves; home-canned foods such as apples, peaches and lemons or salsa, pickled vegetables and hot sauces; and other non-potentially hazardous foods that the Department characterizes as cottage food products for purposes of this law.
- (f) “Department” means the Environmental, Health and Safety Department within the Nation’s Environmental, Health, Safety and Land Division.
- (g) “Direct sale” means a consumer’s face-to-face purchase of a cottage food product from a cottage food operator that does not include purchases through consignment, mail order, or the internet, though nothing herein shall be interpreted to prohibit a cottage food operator from using the internet for the sole purpose of advertising his or her cottage food products.
- (h) “Domestic residence” means the single-family house or unit in a multiunit residential structure located at the address that the applicant lists as being his or her primary residence when applying to the Department for a cottage food exemption under this law.
- (i) “Emergency” means the occurrence or discovery of an unforeseen event that requires immediate attention, the absence of which could endanger the health or safety of others.
- (j) “Federal Food Code” means the most current edition of the United States Public Health Service, Food and Drug Administration Food Code.
- (k) “Fine” means a monetary punishment issued to a person for violation of this law.
- (l) “Food” means a raw, cooked or processed edible substance; ice; beverage; or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.
- (m) “Food service business” means, whether individually or collectively, a permanent food service establishment; a temporary food service establishment; and/or an independent food service operator. The following shall not qualify as a food service business under this law:
- (1) Private rummage sales;
 - (2) Community sponsored non-profit fundraising and/or charity events;
 - (3) Cottage food operators who satisfy the requirements of this law; and/or
 - (4) Prepackaged restaurants that satisfy the requirements of this law.
- (n) “Home-canned foods” means home-canned fruits and vegetables that are naturally acidic or have been acidified by pickling or fermenting and have an equilibrium pH of 4.6 or lower.
- (o) “Independent food service operator” means a person, other than one who qualifies as a cottage food operator, who sells, for profit, food that is prepared off-site, independent of a permanent establishment, at or within a location approved by the Department.
- (p) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

- (q) “License” means the tangible proof of authorization from the Department to operate a permanent food service establishment, operate a temporary food service establishment and/or function as an independent food service operator.
- (r) “Nation” means the Oneida Nation.
- (s) “Penalty” means a punishment, other than a fine, imposed on a person for violation of this law.
- (t) “Permanent food service establishment” means a permanent unit and/or location where food is processed on the premises, usually for retail sale, and intended for individual consumption, whether on or off the premises, including, but not limited to, the following:
- (1) A restaurant or other eating/drinking establishment that does not qualify as a prepackaged restaurant;
 - (2) A market or grocery store;
 - (3) A catering business;
 - (4) A bakery or confectionary;
 - (5) A convenience store or gas station store;
 - (6) An Oneida Nation Food Service Program; and/or
 - (7) A mobile food truck that requires a Department approved service base to operate.
- (u) “Person” means a natural person(s), sole proprietorship, partnership, corporation, limited liability company or any other form of a legal entity.
- (v) “Potentially hazardous food” means food that requires time and temperature control for safety to limit toxin formation or the growth of pathogenic microorganisms.
- (w) “Prepackaged restaurant” means an establishment that serves or sells only packaged foods that are prepared and packaged off-premise by a licensed processor with preparation on the premise limited to heating and serving.
- (x) “Reservation” means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (y) “Temporary food service establishment” means a non-permanent food service establishment that operates at a fixed location for a limited number of consecutive days in conjunction with a single event.

305.4. Application

305.4-1. This law shall apply to all food service businesses, prepackaged restaurants and cottage food operators located or operating within the Reservation.

305.4-2. *Liberal Construction.* The provisions of this law shall apply to the fullest extent of the sovereign jurisdiction of the Nation and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

305.5. Compliance

305.5-1. No person shall operate a food service business without a valid, unexpired license from the Department.

- (a) Licenses to operate a food service business are non-transferable.
- (b) Unless otherwise provided herein, strict compliance with this law is required before a license may be issued or renewed.

305.5-2. *Federal Food Code.* The Nation finds that the Federal Food Code establishes a high level of stringent food and beverage handling safety standards that should govern all food service businesses to which this law applies.

(a) Unless otherwise provided herein, the Nation hereby adopts the entire Federal Food Code through incorporation by reference into this law.

(1) Any additions to or deviations from the Federal Food Code that are included within this law are designed to be specific to the Nation.

(2) Should a provision of this law conflict with a provision of the Federal Food Code, the provision of this law shall have priority over the Federal Food Code and govern.

(b) The Department shall maintain either an electronic or print copy of the most current edition of the Federal Food Code at its office location and shall make it available or accessible for inspection during regular business hours.

305.6. Authority

305.6-1. *Authority of the Department.* Subject to all applicable provisions and/or restrictions contained in this or any other governing law of the Nation, the Department shall be responsible for the administration and enforcement of this law, including, but not limited to, that the Department shall have the power to:

(a) Grant, deny, renew, suspend, reinstate and/or revoke licenses to operate food service businesses and make all other determinations regarding suitability for licensure and exemption from licensure;

(b) Establish licensing fee, fine and penalty schedules;

(c) Establish standard operating procedures to govern how it administers and enforces the provisions of this law;

(d) Perform all requisite inspections and conduct investigations when necessary; and/or

(e) Issue citations and corrective orders for violations of this law and/or when necessary to protect the welfare of the community.

305.7. Licensing

305.7-1. *Licenses.* The following shall govern the process for obtaining and renewing a license to operate a food service business:

(a) *License Application.* Persons shall be required to apply to the Department to receive or renew a license to operate a food service business pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

(1) That, the applicable licensing fee must accompany the application for licensure or license renewal; and

(2) That, the Department shall be required to issue or deny a license within thirty (30) days after receiving a complete application for licensure or license renewal, all applicable fees, and any other information required under the governing standard operating procedure.

(A) The issuance or renewal of a license may be conditioned on the applicant correcting a violation of this law within a set period of time, which if not corrected within the set time or after an extension of time approved by the Department, would render the license null and void.

(B) If the Department denies an application for licensure or license renewal, it shall provide the applicant, in writing, with its reason or reasons for the denial and information on how to appeal its decision.

(b) *License Period.*

(1) Licenses for permanent food service establishments and independent food service operators shall be issued and renewed by the Department for terms of one (1) year, commencing October 1st and ending September 30th of every year.

(2) Licenses for temporary food service establishments shall be issued by the Department to cover one (1) single event for a period of not more than fourteen (14) consecutive days.

(c) *License Fee.* The Department shall be required to set a licensing fee schedule, subject to approval by the Oneida Business Committee through adoption of a resolution, that is applicable to all food service businesses.

(1) The fee amount shall cover the initial license term for permanent food service establishments and independent food service operators and shall cover a single event of not more than fourteen (14) consecutive days for temporary food service establishments.

(A) A separate licensing fee shall be required when applying to renew a license for a permanent food service establishment or independent food service operator.

(B) The licensing fee for a permanent food service establishment license or independent food service operator license that was issued after October 1st shall be prorated for that term pursuant to a standard operating procedure established by the Department.

(C) Unless otherwise provided herein, if an application for licensure or license renewal is denied by the Department, the licensing fee submitted with the application shall be returned to the applicant in full.

(2) The Department shall post the licensing fee schedule in a prominent area within its offices and elsewhere as it deems appropriate.

(A) The licensing fee schedule shall include the fee established by the Department to operate a prepackaged restaurant pursuant to section 305.8 of this law.

(B) The Department may amend the licensing fee schedule as it deems necessary, subject to approval by the Oneida Business Committee through adoption of a resolution.

(3) *Exemptions.*

(A) The Oneida Nation Food Service Programs and other non-profit service programs of the Nation shall not be required to pay a licensing fee to obtain a license under this law.

(B) The Department shall waive the licensing fee required hereunder upon proof from a food service business or prepackaged restaurant of payment to another governmental unit located within the boundaries of the Reservation for a similar license or permit to operate that covers the same term.

(C) Exemption from a licensing fee under (A) or (B) of this section shall not be considered a waiver of any other compliancy requirement within this law that is applicable to food service businesses and/or prepackaged

restaurants, nor shall it be considered a waiver of the Nation's authority to regulate food service businesses or prepackaged restaurants operating within its jurisdiction.

305.7-2. *License Eligibility.*

(a) *Permanent Food Service Establishments.* To be eligible to receive a license to operate a permanent food service establishment, applicants must:

- (1) Submit the appropriate licensing fee with their application;
- (2) Pass an inspection by the Department of the proposed premises for the permanent food service establishment; and
- (3) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a permanent food service establishment.

(b) *Temporary Food Service Establishments.* To be eligible to receive a license to operate a temporary food service establishment, applicants must:

- (1) Submit the appropriate licensing fee with their application;
- (2) Submit proof of having undergone either:
 - (A) Certification under the applicable food safety training offered through the Department; or
 - (B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.
- (3) Pass an inspection by the Department of the proposed premises for the temporary food service establishment; and
- (4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to operate a temporary food service establishment.

(c) *Independent Food Service Operators.* To be eligible to receive a license to function as an independent food service operator, applicants must:

- (1) Submit the appropriate licensing fee with their application;
- (2) Submit proof of having undergone either:
 - (A) Certification under the applicable food safety training offered through the Department; or
 - (B) Certification or training that the Department, in its discretion, deems equivalent to the corresponding food safety training offered through the Department.
- (3) Pass an inspection by the Department of the proposed premises designated in writing by the applicant as the food preparation site; and
- (4) Satisfy any other provision within or arising out of this law that is a prerequisite for licensure to function as an independent food service operator.

(d) *Training.* The Department shall provide reasonable opportunities for persons to undergo the food safety training that is referenced in section 305.7-2(b)(2)(A) and (c)(2)(A) of this law.

305.7-3. *License Placement.*

(a) *Permanent and Temporary Food Service Establishments.* A valid license shall, at all times, be posted in a conspicuous area within the premises of every permanent food service establishment and every temporary food service establishment.

(b) *Independent Food Service Operators.* A valid license shall, at all times, be prominently displayed on the body of the license holder whenever functioning as an independent food service operator.

305.8. Exemptions

305.8-1. *Cottage Food Sales.* Cottage food operators are exempt from the requirements of this law, except as follows:

(a) *Registration.* Before selling any cottage food products, individuals must register with the Department as a cottage food operator by providing, at a minimum, their:

- (1) Full name;
- (2) Address of domestic residence; and
- (3) Any additional information required by a standard operating procedure that the Department may establish, consistent with this law, to govern cottage food sales.

(A) By registering as a cottage food operator, the individual is confirming that the information he or she provided is correct and agreeing to operate within the confines of the exemption.

(b) *Labeling.* Cottage food products must be labeled with the following information:

- (1) The name and address of the cottage food operator;
- (2) The name of the cottage food product and the date on which it was prepared, processed or canned; and
- (3) A clearly legible sign or placard that states: “this product is homemade and not subject to inspection by the Nation.”

(c) *Home-canned Foods.* Individuals who intend to sell home-canned foods under the cottage food sales exemption must first complete the food safety training relating to canning that is approved by the Department.

305.8-2. *Prepackaged Restaurants.* Prepackaged restaurants are exempt from the requirements of this law, except as follows:

(a) *Authorization.* Before selling or serving any prepackaged foods, persons must apply to the Department for permission to operate as a prepackaged restaurant pursuant to the application process established by the Department through adoption of a standard operating procedure that conforms to this law and includes, at a minimum, the following:

- (1) That, the fee established by the Department to operate a prepackaged restaurant, as set forth in the licensing fee schedule referenced in section 305.7-1 of this law, must accompany the application;
- (2) That, the applicant passes an inspection by the Department of the proposed premises for the prepackaged restaurant; and
- (3) That, by applying to operate as a prepackaged restaurant, the applicant is agreeing to serve and/or sell only the prepackaged foods that are approved by the Department and to not engage in any food processing or preparation on the premises of the prepackaged restaurant other than the heating and serving of the food.

(A) The Department shall provide written notice, accessible to the public, of the prepackaged foods approved hereunder.

(b) Permission to operate as a prepackaged restaurant shall not be conditioned on any prior training or certification in food safety.

(1) Paragraph (b) shall not prohibit the Department from issuing a corrective order under section 305.10 of this law that requires food safety training or certification.

(c) The Department may reinspect the prepackaged restaurant premises during reasonable hours as often as it deems necessary so long as it does not exceed more than one (1) time per year, absent cause.

305.8-3. *Enforcement.* Violations of this section shall be enforced pursuant to section 305.10 of this law.

(a) Upon receipt of a complaint or its own reasonable suspicion of noncompliance with this section, the Department, in its discretion, may conduct an inspection of a prepackaged restaurant or a cottage food operator's domestic residence; provided, the inspection of the cottage food operator's domestic residence is limited to the subject matter of the complaint or event giving rise to the Department's reasonable suspicion.

(b) This section does not preempt the application of any other law of the Nation or other local governing ordinance to which individuals must comply.

(c) This section does not limit the liability of the owner of a prepackaged restaurant or a cottage food operator for damages that arise out of their sale or service of food hereunder.

305.9. Inspections

305.9-1. In addition to the inspections required under section 305.7 of this law, no more than two (2) times per license term, the Department may, for any reason, enter a food service business to conduct an inspection, so long as at a reasonable hour.

305.9-2. The Department may, at any time during the term of a license, enter a food service business to conduct an unscheduled inspection based on the following:

(a) Receipt of a complaint;

(b) Outbreak of a food borne illness; and/or

(c) Reasonable suspicion of a violation of this law or an emergency.

305.9-3. Any reinspection that must be conducted by the Department as a result of a violation of this law, will result in an additional fee as set forth in the license fee schedule.

305.10. Violations, Enforcement

305.10-1. *Non-compliance.* Violations of this law may result in any one or more of the following as determined by the Department:

(a) The suspension or revocation of a license or license exemption status;

(b) The issuance of a corrective order, including, but not limited to, an order to close-down; and/or

(c) The issuance of a citation that may include one or more of the fines, penalties and/or corrective orders set forth in the fine and penalty schedule established by the Department, subject to approval by the Oneida Business Committee through adoption of a resolution.

(1) Failure to pass an inspection conducted pursuant to this law may be cause for the issuance of one or more of the enforcement mechanisms set forth herein.

(2) Citations shall be issued and processed in accordance with the procedures contained in the Nation's laws and policies governing citations.

305.10-2. In addition to satisfying any other mandate issued by the Department hereunder, a food service business, cottage food operator or prepackaged restaurant that has been closed-down due to a violation of this law must further pass a reinspection by the Department before being eligible for operation.

(a) A food service business that has been closed-down may only receive a probationary license for six (6) months upon evidence of satisfactory compliance with this law.

(1) After six (6) months of satisfactory compliance with this law, as determined by the Department upon a follow-up inspection, the license holder may apply for an annual license.

(b) A food service business or prepackaged restaurant that has had its license or license exemption status suspended or has become subject to a close-down order shall not be entitled to a reimbursement of all or any portion of the fee or fees submitted in accordance with the licensing fee schedule.

305.10-3. *Emergency.* The Department may order a close-down of a food service business, cottage food operation and/or prepackaged restaurant immediately on an emergency basis upon evidence of a serious health and/or safety threat to the community.

(a) Persons issued a close-down order by the Department as an emergency measure hereunder must provide evidence of compliance to the Department and pass an inspection by the Department prior to being allowed to re-open and/or continue operations.

305.11. Appeal Rights

305.11-1. *Decisions Not Issued Pursuant to a Citation.* Decisions of the Department that are not issued pursuant to a citation may be appealed, in writing, to the Department's Area Manager.

(a) The written appeal shall be submitted to the Area Manager within ten (10) business days of receiving the decision upon which the appeal is based.

(b) The Area Manager shall render a decision within five (5) business days of receiving the appeal. The decision shall be sent by registered mail (return receipt requested) or delivered in person to the appellant.

(1) The Area Manager may suspend the time limits for rendering a decision if he or she determines that more investigation on the matter is necessary.

(c) The Area Manager's decision shall be final unless a good faith argument exists to appeal to the Trial Court of the Judiciary on one or more of the following grounds:

(1) That, the decision is contrary to law;

(2) That, the decision is without any reasonable factual basis; and/or

(3) That, the decision constitutes an abuse of power.

(A) Appeals initiated hereunder shall be conducted in accordance with the Judiciary law and any applicable rules of procedure.

305.11-2. *Decisions Issued Pursuant to a Citation.* Decisions of the Department that are issued pursuant to a citation may be contested in accordance with the procedures contained in the Nation's laws and policies governing citations.

(a) A mandatory appearance at the citation pre-hearing is required of all persons wishing to contest a citation issued by the Department hereunder.

End.

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