

Operational Policy

Policy title:	Rulemaking: Community Engagement, Rule Advisory Committees, and Rule Advisory Committee Exceptions		
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Purpose

Oregon administrative rules (OARs) have the effect of law. When an agency takes rulemaking action the agency is bound by the terms of the rule. The Oregon Department of Human Services (ODHS) and the Oregon Health Authority (OHA) are committed to developing rules that foster equity and reduce unintended impacts to people and communities experiencing historical and contemporary injustices and oppression through transparency and engagement. Rule Advisory Committees (RACs) and other forms of engagement with people and communities provide the agencies with the opportunity to receive input from affected communities throughout the rulemaking process.

Description

This policy describes the ODHS and OHA criteria for meeting community engagement standards as part of the administrative rulemaking process. The policy sets standards for RACs, RAC exceptions, and other engagement options to support the agency's obligations under Oregon statute and the Administrative Procedures Act. It creates accountability by setting criteria for establishing and documenting community engagement, outreach, and participation.

Applicability

This policy applies to all ODHS and OHA staff engaged in rulemaking, including employees, contractors, volunteers, trainees, and interns.

As keepers of the public trust, all agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Employees who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

Policy

1. The administrative rulemaking actions of ODHS and OHA affect the lives of all persons living in Oregon. People living in Oregon have the right to provide input and advice on ODHS and OHA rulemaking.
2. Providing diverse opportunities for engagement in the rulemaking process implements the principles of equity, inclusion and transparency and ensures that ODHS and OHA allow affected

people and communities to have input into agency rulemaking actions and creates transparency in the rulemaking process.

3. Documenting equity considerations, engagement efforts, and transparency activities creates a thorough Rulemaking Record and defensible rules.
4. In order to implement the principles of inclusion and transparency, community engagement shall be part of all ODHS and OHA administrative rulemaking and be documented for the Rulemaking Record file.
5. ODHS and OHA staff shall engage people and communities likely to be affected by a rule as part of the rulemaking process. People and communities affected by a rulemaking action may include:
 - a. Oregon Tribes.
 - b. People who receive agency services.
 - c. Communities, partners, providers, and other interested parties.
 - d. People from a range of racial, ethnic, cultures, and linguistic backgrounds.
 - e. People of varying genders, gender identities, and sexual orientations.
 - f. People with disabilities.
 - g. People of varying social classes.
 - h. People representing different geographic areas of Oregon.
 - i. People of multiple generations.
 - j. People representing small business interests.
6. ODHS and OHA rulemaking staff shall presume that Tribes and communities of color have been and will be affected by agency rulemaking and make a special effort to engage those communities.
 - a. ODHS and OHA rule writers shall consult with the agency Tribal Liaison on engaging the Oregon Tribes in rulemaking in compliance with the ODHS and OHA Tribal Consultation Policy¹.
 - b. Tribes and communities of color may be engaged in the creation of the racial equity impact statement and recommendations for mitigation of inequities.
7. Community engagement includes but is not limited to:
 - a. Standardized RACs as described and outlined in this policy.
 - b. Inviting participation from individuals in an “at large” manner.
 - c. Seeking input from individuals who represent key organizations or interests.
 - d. Participating in statewide meetings, open houses, or facilitated discussions.
 - e. Using websites, blogs or social media to engage the public.
 - f. Input sessions.
 - g. Focus groups.
 - h. Interviews.
 - i. Surveys.
 - j. Interactive workshops.
 - k. Advisory committees.
 - l. Visioning sessions.

¹ ODHS and OHA are currently working to create a single Tribal Consultation Policy. Until the policy is complete, OHA staff shall continue following the OHA Tribal Consultation Policy and ODHS rule staff shall consult an agency Tribal Liaison about necessary Tribal consultation.

8. ODHS and OHA staff shall consider the factors outlined in sections five through seven of this policy when creating a plan to engage with people and communities. Staff shall:
 - a. Evaluate the rulemaking action and determine the people and communities likely to be affected by the rulemaking action.
 - b. Collaborate with the people and communities on the best way to engage, including time, place, and method of communication.
 - c. Compile the input of the people and communities for Rulemaking Record file whether the input is received in a standardized RAC or other method of engagement.
9. To engage people and communities in RACs or other community engagement activities, ODHS and OHA staff may use an application process, interest form, or any other tool that supports equitable representation across affected communities without over or under representation by any group of individuals and communities.
10. To engage people and communities in RACs or other community engagement activities, ODHS and OHA staff shall use multiple avenues of communication, including non-electronic and non-traditional methods since many affected individuals and communities may be better reached through other methods.
11. When engaging people and communities, whether through a RAC or a different community engagement method such as those outlined in section seven of this policy, ODHS and OHA staff shall have enough meetings to make sure that input is meaningful and complete.
 - a. How much community engagement takes place is a decision made by program and rule staff on a case-by-case basis depending on the people and communities affected by the rule.
 - b. What format community engagement takes is a decision made by program and rule staff on a case-by-case basis depending on the needs of the people and communities affected by the rule.
12. To foster equity, engagement of people and communities, whether through a RAC or different method, shall:
 - a. If held in a physical location, ensure that the physical location provides access to individuals with disabilities.
 - b. If held in a physical location, ensure location and location access, including access to local public transportation, have been considered.
 - c. Include an option for remote attendance through audio or video conference.
 - d. Include opportunities for meeting during non-traditional times.
 - e. Include the option for people to request spoken or signed language accommodations.
 - f. Include the option for people to request additional accommodations not mentioned in this policy.
 - g. Include the option for people to request translation of the rule text into a language other than English.
13. ODHS and OHA staff shall document all community engagement that is part of the rulemaking process and include the documentation in the Rulemaking Record.
14. Rulemaking actions for a temporary rule or a statutory minor correction under Oregon Revised Statutes (ORS) 183.335(7) are generally done without community engagement. In the case of temporary rulemaking action, community engagement shall occur during the permanent rulemaking process.
15. One way to engage people and communities is a standardized RAC. For the purposes of this policy, a RAC shall:

- a. Be made up of at least five people representing the balanced and varied interests of people and communities likely to be affected by the rule.
 - b. Provide input on the proposed rule text.
 - c. Provide recommendations on the Proposed Notice of Rulemaking.
 - d. Provide recommendations on the fiscal impact statement, including advice on mitigating the cost of compliance for small businesses. Meeting time shall be specifically dedicated to reviewing the fiscal impact statement.
 - e. Provide recommendations on the racial equity impact statement, including recommendations related to reducing the impact on affected Tribes or communities of color. Meeting time shall be dedicated to review of the racial equity impact statement.
16. The role of a RAC is advisory.
- a. All RAC recommendations shall be considered.
 - b. ODHS and OHA staff make the final decisions about rule content.
17. Except in very limited circumstances, ODHS and OHA shall not:
- a. Maintain standing RACs.
 - b. Use blanket invitations to mass email lists of interested parties as the only method of inviting individuals to participate in a RAC.
18. If RACs are recruited using email lists of interested parties, ODHS and OHA staff shall document what method was used to ensure RAC membership included adequate representation of all affected people and communities.
19. ODHS and OHA staff:
- a. Shall not participate as members of a RAC in their official capacity but may attend a RAC as a representative of a community in their own time.
 - b. May be invited to review and advise on proposed rules if:
 - A. Additional subject matter expertise is needed.
 - B. The rules being proposed affect the rules of another program or division.
 - c. May attend RACs in their official capacity for the purpose of hearing community input.
20. To foster candid communication among RAC members, legislators shall not participate in or attend RAC meetings.
- a. Legislators are notified of rulemakings during the filing process and have their own 49-day comment period.
 - b. Legislators may be consulted by staff prior to the RAC.
 - c. ODHS and OHA staff shall provide the public record of RAC comments to Legislators, if requested.
 - d. The ODHS or OHA agency director may approve an exception to this limitation.
21. The ODHS and OHA Administrative Rules Program Manager or, if unavailable, the OHA Central Operations Manager shall approve a RAC Exception under the following circumstances:
- a. Documented community engagement outside a standardized RAC as described and outlined in this policy.
 - b. Rule changes that are administrative or housekeeping in nature, including but not limited to minor language corrections, changes to Cost of Living Allowances or the Federal Poverty Level.
 - c. Rulemaking that is the result of federal or state legislation that mandates the rulemaking with no room for interpretation of the rule text.

22. When a group intended to serve as a RAC doesn't contain people representing all interested or affected people or communities, the group does not qualify as a standardized RAC. ODHS and OHA rulemaking staff shall:
 - a. Document the input of the individuals and people and communities that attend the intended RAC, including recommendations about changes to the rule text, the fiscal impact statement, and the racial equity impact statement.
 - b. Make at least two additional attempts to get input from representatives of the missing and affected people and communities and document those outreach attempts for the rulemaking record, as well as any input provided.
 - c. Request a RAC exception from the Administrative Rules Program Manager or, if unavailable, the OHA Central Operations Manager.
 - d. Maintain this information in the Rulemaking Record file.
23. When ODHS and OHA rulemaking staff choose not to have a RAC and instead engage affected people and communities in other ways, ODHS and OHA rulemaking staff shall:
 - a. Document and maintain information about how alternate input was requested and provided to the agency.
 - b. Document what people and communities were consulted for alternate input.
 - c. Document whether the alternate input included recommendations related to the racial equity impact statement and the fiscal impact statement.
 - d. Request a RAC exception from the Administrative Rules Program Manager or, if unavailable, the OHA Central Operations Manager.
 - e. Maintain this information in the Rulemaking Record file.
24. When ODHS and OHA rulemaking staff do not have a RAC, rulemaking staff can limit potential delays to rulemaking by:
 - a. Ensuring that the fiscal impact and racial equity statements are reviewed by interested people and communities during the alternate engagement process; or
 - b. Appointing an advisory body (formerly fiscal impact advisory committee) for the sole purpose of reviewing the fiscal impact statement and racial equity statements.
 - c. Using the Secretary of State's Small Business Advisory Committee to review the fiscal impact statement.
25. ODHS and OHA staff managing the RAC shall use available tools to promote an inclusive environment where all RAC members:
 - a. Can communicate the perspective of the community or experience they represent as a RAC member.
 - b. Are given the opportunity to speak during the RAC.
 - c. Understand the role and limitations of a RAC.
 - d. Are informed about the limits of ODHS and OHA statutory authority.
26. ODHS and OHA RACs shall be held in a format that allows for the public to attend or listen but, with some exceptions, are not subject to the public meeting law and an opportunity for public comment is not required. ODHS and OHA rulemaking staff should consider posting information about the public's ability to attend RACs through:
 - a. Posting on the state's transparency website.
 - b. A press release through the appropriate Office of Communications.
 - c. Posting on the agency website.
27. The public meeting law applies to the following:

- a. Chapter 101 Public Employees Benefit Board
 - b. Chapter 111 Oregon Educators Benefit Board
 - c. Chapter 331 Health Licensing Office
 - d. Chapter 332: Board of Direct Entry Midwifery
 - e. Chapter 338 Environmental Health Registration Board
 - f. Chapter 410 Medical Assistance Programs
 - g. Chapter 418 Home Care Commission
 - h. Chapter 817 Board of Cosmetology
 - i. Chapter 819 Board of Certified Advanced Estheticians
 - j. Chapter 824 Behavior Analysis Regulatory Board
 - k. Chapter 834 Board of Licensed Dieticians
 - l. Chapter 853 Long Term Care Administrators Board
 - m. Chapter 944 Oversight and Accountability Council
 - n. Any ODHS and OHA program created by Oregon Revised Statutes Chapter 414.
28. In order to support equity, transparency, and standardization, the ODHS and OHA Administrative Rules Program Manager shall provide an annual report to ODHS and OHA leadership related to community engagement and RAC Exceptions.
29. RAC documentation is part of the permanent Rulemaking Record file maintained by the Division Rules Coordinator and includes:
- a. The RAC invitation with:
 - A. Statement of need and fiscal impact.
 - B. Racial equity impact statement.
 - C. Rule text given to the RAC members for consideration.
 - b. Recommendations made by the RAC for changes to the:
 - A. Statement of need and fiscal impact, including recommendations related to mitigating implementation costs on small businesses.
 - B. Racial equity impact statement, including recommendations related to reducing the impact on affected Tribes or Communities of color.
 - C. Rule text.
 - c. Any communication received from RAC members outside the RAC related to the rule text the racial equity statement, or statement of need and fiscal impact.
 - d. Contact list for RAC recruitment.
 - e. Attendance log for RAC members that includes, name, affiliation, and email address.
 - f. Any other minutes, transcripts, or recordings of the RAC meetings.
 - A. Recordings are not required to be maintained for the rulemaking file if a full transcript is available.
 - B. Transcripts or edits to the rule text in track changes are the preferred method of documenting RAC meetings.
30. A digital rulemaking file stored in a centralized agency location is the preferred method of maintaining the rulemaking record.

References

[ORS 183.333 Policy statement; public involvement in development of policy and drafting of rules; advisory committees](#)
[ORS 183.335\(2\)\(b\)\(E\) Fiscal impact and racial equity statement](#)
[ORS 183.336 Cost of compliance effect on small businesses](#)
[ORS 183.540 Reduction of impact on small businesses](#)
[OAR 137-001-0007 Public input prior to rulemaking](#)
[Attorney General Administrative Law Manual](#)
[Attorney General Model Rules](#)

Forms referenced

Noticed of Proposed Rulemaking worksheet
OHA 2140 RAC Approved language tool, member handout
OHA 2141 RAC Agenda template
OHA 2142 RAC Invitation
OHA 2143 RAC Introductory slideshow
Racial and Equity Impact Tool

Related policies

ODHS|OHA Tribal Consultation Policy
Rulemaking: Roles, Responsibilities, and Requirements

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Policy history

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