



Oregon

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MEMORANDUM

To: Agency Rulemaking Coordinators

From: Berri Leslie, State Chief Operating Officer

Date: March 21, 2025

Subject: Governor's Rulemaking Expectation – Implementation Guidance

The Governor published a [letter of expectation](#) about agency rulemaking on Feb. 19, 2025. The intent of this expectation is to improve customer service for Oregonians through rulemaking transparency and consistency across state agencies. This memorandum provides guidance to agencies on implementing the Governor's rulemaking expectation. It outlines a general approach to meet the expectation and responds to questions received from agencies since the Governor's letter.

General Agency Approach to Meet Rulemaking Expectation

To meet the Governor's rulemaking expectation, an agency shall (in order of applicability):

1. Comply with established law
2. Follow established statewide procedure
3. Implement changes and any detail outlined in the Governor's letter and this memorandum
4. Define for itself how to best improve rulemaking transparency and consistency

The Governor's rulemaking expectation is established as an addition to existing Oregon state government rulemaking practices. Agencies must comply with established law and statewide procedures of the Secretary of State (SOS) and Oregon Legislature. Agencies shall look to the Governor's Feb. 19, 2025 letter and this guidance memorandum for agency-level changes to make, with precedent given to established law and statewide procedure. An agency shall have the authority to determine specific details where specific implementation details are not mentioned in the letter or this memorandum. The following question may help to frame agency decisions about specific details:

What specific [option, approach or decision] best improves public transparency and consistency, meets the needs of Oregonians directly impacted by agency rulemaking and advances agency mission and goals?

Clearly reasoned responses to this question would be compliant with the Governor's expectation.

Mission: Lead state agencies through collaboration in service of Oregonians.

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When the letter describes what an agency rulemaking webpage must include, what is meant by "all rulemaking documents"?

The scope of agency rulemaking webpages shall be:

- Agency rulemakings (as opposed to established rules)
- Both current and recent (for what is considered "recent," see next question)
- Of any form (proposed, temporary, or permanent)

The content of established agency administrative rules is not in the scope of the Governor's expectation. Agencies may (but are not required to) include an index of established rules, but they shall link to the Oregon Administrative Rules Database (OARD) as the authoritative record for text and documentation of established rules. Further guidance on how specifically to link to the OARD can be found later in this memorandum.

When the Governor's letter describes what agency rulemaking webpages must include, "all rulemaking documents" describes any agency documents that materially inform or operationalize a specific rulemaking, except where information would fall under a public records exemption under Oregon Revised Statute (ORS) 192.345 and 192.355¹. In situations where specific information is exempt from public disclosure, agencies shall comply with ORS 192.338 by separating out exempt and non-exempt information to publish that which is non-exempt.

Agencies are not expected to create additional rulemaking documentation or modify existing documentation to comply with the Governor's expectation. Specific documents listed in the Governor's letter (including but not limited to a "statement of potential fiscal impact" and "Agency FAQ") are intended as examples of documents that agencies would be expected to publish, if they exist. Agencies do not need to create those types of documents where statute, statewide procedure and the subject of a particular rulemaking do not require an existing document like the examples in the Governor's letter.

Related questions from agencies:

- Do we need FAQs for rulemaking?
- Do we need to do a deeper study of fiscal impact analysis?
- For this central page, does the Governor expect that agencies list current/ongoing rulemakings, recently adopted rules, or every rule currently adopted by the agency?
- In the FAQ follow up, could we get more distinction of what we are calling rulemaking documents? What is the minimum on rulemaking documents?
- Regarding "FAQ documents," is the Governor referring to FAQs regarding the agency's larger rulemaking process? Or is she referring to FAQs specific to each rule itself?
- What are some examples of "all rulemaking documents"? Are these specific to the rulemaking process, or is the intent that this central page be perpetually updated after the adoption of a rule?
- Would like more distinction of what is being included in all rule making documents?

¹ Oregon Revised Statutes (2023 Edition) available at https://www.oregonlegislature.gov/bills_laws/ors/ors192.html

How long must rulemaking information remain on agency webpages?

Agencies shall determine the length of time that defines “recent” rulemakings and thereby what is included on agency webpages. In the spirit of public transparency, the Governor expects that this period will not be less than three months following the later of either the filing of a permanent order for the rulemaking or any agency public announcement of the adoption of the rule.

Agencies shall assign an individual with the task of ensuring each webpage is updated to reflect current rulemakings and remove rulemakings older than the agency-defined period of posting. As agencies remove information from webpages, each agency shall retain records for the period prescribed by their own policies and by Secretary of State retention schedules for rulemaking records.² Agency webpages shall also include a description of how customers can obtain information for past rulemakings as well as contact information for obtaining assistance.

Related questions from agencies:

- How long do notices need to stay on the website? Until the rule is adopted permanently?
- How long do we need to post comments on the website?
- How long does the rulemaking information need to be maintained on the agency’s webpage after it’s considered Permanent and in effect?
- If recently adopted rules should be included, do agencies have discretion in determining how far back should they go (for example, rules adopted in the last 3 months, 6 months, or calendar year)?
- Related to second bullet point for publishing public comments, “during the rulemaking process”: For how long? During Rulemaking process means until Perm Order filed, as that ends process. Do you mean for a period of time, for example we publish Perm orders for one-year.
- What is the timeline of how long rules/rulemaking need to be posted?

² Secretary of State retention schedules are outlined in OAR 166 and can be accessed at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=591>

How do agencies ensure rulemaking documents meet new federal accessibility requirements for website content?

For any web content developed to meet the Governor's expectation, agencies are advised to immediately begin complying with federal accessibility standards that will be required of state agencies beginning in 2026. Both the federal government³ and the Oregon Department of Administrative Services⁴ provide guidance on meeting these accessibility requirements. While agencies are not yet required to comply with these standards, the Governor expects that agency rulemaking webpages will be fully compliant once the federal requirement is in effect in 2026.

[Read the "Federal Rule: Accessibility of Web Information and Services Frequently Asked Questions" for more information.](#)

Related questions from agencies:

- What guidance will DAS be providing to ensure that written public comment publicly posted meets ADA-related accessibility standards? If a member of the public submits written public comments that do not meet accessibility standards, are state agencies required to remediate those comments? Or are we directed to post comments regardless of their accessibility status?

³A fact sheet on the forthcoming Federal requirement is available here: <https://www.ada.gov/resources/2024-03-08-web-rule/>

⁴ DAS guidance on meeting the new requirement can be found here:
<https://www.oregon.gov/eis/Documents/Federal%20Accessibility%20Rule%20FAQ%20Final.pdf>.

How should pages link to the Oregon Administrative Rules Database (OARD) and integrate with Secretary of State processes?

The main agency rulemaking page shall include a link to the OARD landing page and some sort of description explaining that the OARD should be referenced as the authoritative record for the text of all established rules. Agencies shall avoid reposting from OARD the content of established rules. Agencies should instead link to OARD content where relevant. If an agency chooses to list specific, established rules on its webpage, the agency shall include in those lists direct links to each of the OARD webpages for each referenced rule.

As described in response to other questions, agencies shall comply with existing statewide rulemaking procedures, such as those administered by SOS, and agencies are not required to create additional/different documentation to comply with the Governor's expectation.

Related questions from agencies:

- Can you clarify the expectation that "All proposed, temporary, and permanent rules must appear publicly on agency websites"? We'd like to confirm that this can be fulfilled via a link from our agency's website to OARD and does not require separately duplicating the entire body of OAR. Not only would the latter interpretation be taxing on agency staff, but it would pose legal risk. With OARD serving as the official record, agencies will struggle to keep parity with every filing, leading to potential discrepancies and problems down the road.
- ODOE staff conduct rulemakings under two chapters, 330 (ODOE programs and processes, subject to approval by department director) and 345 (Energy Facility Siting Council processes, subject to approval by the council). Please provide guidance on how to provide a single link for stakeholders to connect with information about rulemakings involving these two separate chapters. [Currently the main ODOE rulemaking page includes information about current and recent rulemakings for both chapters, while the EFSC main landing page also links to more extensive information about current and past EFSC rulemakings.]
- Related to the first bullet point for "All...rules must appear publicly on agency websites...": Do you mean the full rule? We have a statement & link to the specific SOS Rules for our chapter [Shared Services rules can be found in Chapters 407 and 419.], as the official copy. Having to create PDFs for full rules is prone to errors and requires ongoing maintenance.
- The rulemaking notice referenced in the guidance document appears to be different from the SOS notification of rulemaking as the SOS notice does not contain FAQs or minutes/recordings from RACs. Should this requirement be modified to ensure the rulemaking notice definition is consistent with the model rules and APA, and require the additional information be supplementary to the SOS Notice?
- With regards to linking to the OARD, the letter specifies the main landing page for the database. Is it sufficient if an agency already links to each rule division maintain by the agency? Or does the agency need to link to the OARD landing page specifically?
- With regards to posting "all rulemaking documents must appear on that central page or subpage and must include rulemaking notices that contain...summaries of the proposed rule," does this mean that summaries outside of what is included in the Notice of Proposed Rulemaking must be posted prior to the publication of the Notice in the Oregon Bulletin? Similarly, is the "statement of potential fiscal impact of the proposed rule" different than what is published in the Notice? This is unclear because the first two bullets are components of the Notice and the second two are not.

What do rulemaking calendars need to include?

Rulemaking calendars need to include any anticipated rulemaking activity – including rules advisory committees (RACs) meeting dates, public comment opportunities and anticipated adoption dates. Calendars are not limited to only rulemaking activity and may (but are not required to) include other agency public meetings. Agencies may choose the calendar format that best fits agency and customer needs (e.g., .pdf, interactive calendar, etc.), though agencies are advised to consider the guidance in this memorandum on soon-to-be-required federal accessibility standards.

In this initial year of the Governor’s expectation, agencies shall post rulemaking calendars by May 1, 2025. For all subsequent years, agencies shall post updated rulemaking calendars to their websites by January 31.

If an agency has no planned rulemaking activity, the agency does not need to produce a calendar. That agency should nonetheless maintain an agency rulemaking webpage as described in the Governor’s letter, even if the content on that page is limited. That page shall include a statement updated each year by the deadline for agency rulemaking calendar updates that the agency does not have planned rulemaking activity as of the date posted. The statement shall include the month and year of the date the statement is updated (ex. “As of January 2028, [AGENCY] does not have planned rulemaking activity for the following calendar year.”).

Related questions from agencies:

- Can the public rulemaking calendar be posted as a PDF and updated regularly? Does it need to be in a calendar format or can it be a list of rulemakings with the anticipated dates of when the rulemaking will begin? What are the details that need to be included (e.g., the start dates for drafting rules, the start dates of RAC meetings)?
- Can the rulemaking calendar include other agency public meetings or should it be solely for rulemaking?
- Can we get guidance if you are not anticipating rulemaking changes? How do we address that as far as a posting a calendar?
- Do agencies have discretion in how they format their calendars? Can we maintain a written list of relevant rulemaking/dates (such as public comment opportunities and anticipated adoption dates)?
- Please provide more guidance about the level of detail required to meet the expectations for an agency rulemaking planning calendar (Monthly? Quarterly? Which events – projected RAC meeting dates, hearings, filing of hearing notices and final rules?).
- We have a rulemaking Board, so we cannot open rulemaking without approval of the Board. The agency may plan to request the Board to open rules, but we don't know how the Board will vote until they vote. So would the calendar include the proposed rules, or do we update the calendar once we have Board approval?
- What information must be included as part of an “annual rulemaking plan”? If we were to include our anticipated rulemakings, public comment opportunities, and anticipated adoption dates, would that satisfy this requirement?

What should be on rulemaking calendars vs. the Oregon Transparency site?

Whether an Oregonian is navigating from an agency's homepage or from the Oregon Transparency website for Administrative Rules⁵, the goal of the expectation is to ensure that rulemaking information is "...no more than one click⁶ away."

The Oregon Transparency website for Administrative Rules serves a specific function: a centralized access point to navigate to the rulemaking webpage for each state agency. The Oregon Transparency site will only contain the name of an agency and a link to that agency's main rulemaking webpage. It will not contain further rulemaking information (ex. information on proposed rules, recently adopted rules, the rulemaking planning calendar, etc.).

Since the Oregon Transparency website serves only as a centralized access point, any information about agency rulemaking (ex. rulemaking calendars, public meetings on rule-related items) shall be linked or embedded directly on an agency's rulemaking webpage. As described in this guidance, agencies shall use statute, statewide procedure, the Governor's letter, this memorandum and their own discretion to determine which meetings should be posted on rulemaking calendars.

Each agency is expected to ensure:

1. The Oregon Transparency website currently contains the correct link to the agency rulemaking webpage. If not, provide an updated working link to the website team no later than May 1, 2025; and
2. The Oregon Transparency website team is provided an updated link whenever the URL for the agency rulemaking webpage may change in the future.

Agencies shall not change the URL of their main rulemaking webpage without also simultaneously sharing that updated web address with the Oregon Transparency website team.

Related questions from agencies:

- Can we link to the Oregon Transparency website public meeting calendar for our department rule planning calendar?
- Do we need to post only public meetings to the transparency website or do we need to post all rule-related meetings?
- Do we need to post only public meetings to the transparency website, or do we need to post all rule-related meetings? / I'm also curious if we can post all meetings that are open to the public to the transparency website or if we can only post meetings that meet the statutory definition of a public meeting.

⁵ The Oregon Transparency website for Administrative Rules can be found here:

<https://www.oregon.gov/transparency/pages/administrative-rules.aspx>

⁶ For clarification, a "click" from the Transparency Portal does not count. The link can either direct users to the agency's homepage (where a subsequent click would count) or link directly to the agency's rulemaking page, where the information should be readily available.

What public comments should the agency post?

Agencies shall post public comments defined as such by the Oregon Administrative Procedures Act, which includes comments from the public beyond RAC members. General questions about rulemaking that do not reference specific rulemaking processes do not need to be considered public comment. Agencies may adopt instructions for how the public is to provide public comment so long as these instructions comply with statute governing public rights to access. Agencies shall check comments and redact any personal information that may have been included by commenters prior to publishing comments on their webpages.⁷

Agency rulemaking webpages shall only include comments received during the rulemaking public comment period as defined by the Oregon Administrative Procedures Act.⁸ Any particular questions about consideration of comments should be directed to the Department of Justice (DOJ) counsel for the agency, as it may be a fact-specific determination and agencies may have their own organic statutes or administrative rules that would bear on the inquiry. If agencies have questions about how to handle comments that come in after a deadline, or the extent to which particular comments must be considered or may be discussed, they should contact their DOJ counsel.

See remaining questions for more further guidance about public comments.

Related questions from agencies:

- Can agencies set requirements in order for written public comment to be accepted (for example, all written comments must be submitted to a specific email box)? Do agencies have discretion in how we define “written public comment”?
- Clarification is requested on the definition of a “community engagement activity.”
- Do agencies have discretion in determining the length of their public comment periods? For example, ODE would interpret our public comment period for permanent rules to begin when either 1) we notice rules through the Secretary of State; or 2) they first appear on a State Board of Education agenda (whichever comes first). We would interpret the public comment period to conclude once the State Board of Education approves them via a formal vote. This is approximately 2-4 months (at least 49 days) and includes multiple public comment opportunities.
- Do comments in a chat during a RAC meeting or a public webinar regarding a rulemaking that we receive BEFORE the public comment period begins need to be posted?
- How does DAS define “community engagement activity”? Are they specific to currently proposed rulemakings? Does this include surveys, engagement spaces, or emails from individual members of the public?

⁷ “Personal information” is defined in ORS (2023) 646A.402(12) and can be accessed at:

[https://www.oregonlegislature.gov/bills_laws/ors/ors646a.html#:~:text=\(12\)\(a\)%20%E2%80%9CPersonal%20information%E2%80%9D%20means%3A](https://www.oregonlegislature.gov/bills_laws/ors/ors646a.html#:~:text=(12)(a)%20%E2%80%9CPersonal%20information%E2%80%9D%20means%3A)

⁸ The APA requires that agencies consider any comments received during the public comment period: “The agency shall consider fully any written or oral submission.” See ORS 183.335(3)(a) at

https://www.oregonlegislature.gov/bills_laws/ors/ors183.html#:~:text=The%20agency%20shall%20consider%20fully%20any%20written%20or%20oral%20submission.

- If an agency has many opportunities for the public to provide feedback on rules (web form, listening sessions, workgroups)-are agencies required to post written comments from these types of engagement activities?
- If an agency receives written public comment regarding a rule that it is not currently updating, do we need to post that public comment, and if so, where?
- Is “public comment period” limited to the APA/rulemaking public comment period as published on the Notice of Rulemaking (aligned with OAR137-001-0007)? Or do we need to publish comments received on the rule topic received outside of the APA comment period?
- Is there guidance for how to handle written public comments and questions received outside of the public comment period? Meaning, can the agency discuss the subjects of rulemaking with members of the public individually?
- Should agencies publish comments/questions that come up in the Teams chat function during RAC meetings, public webinars, public hearings, etc.? [More detailed guidance about whether and how to publish comments and questions received during the rulemaking process, other than formal written comments, would be helpful.]
- What guidance can DAS offer agencies so that it is transparent and clear to the public what comments will or will not be considered during the rulemaking process, so that members can appropriately target their engagement? Remembering the goal is to improve customer service.
- Which written comments need to be included, those published during APA comment period or outside process??
- With regards to posting “comments made in writing during rulemaking advisory committee meetings,” do questions from the public sent to the agency about rulemaking count as comments? Or is this limited to comments and correspondence received by the agency from RAC members?

What is considered a sufficient response to comments, and can comments be summarized?

As part of the Governor's expectation, agencies are expected to include some sort of response to public comments on their agency rulemaking webpages. Each agency has discretion to determine the exact shape that this response takes, so long as the approach aligns with both the agency's specific context and the goals of the Governor's expectation in including the posting of public comments, which are to:

1. Increase transparency by proactively communicating the quantity and substance of feedback that an agency receives for a particular rulemaking; and
2. Build public trust in the integrity of rulemaking by illustrating connections (or lack of connections) between comments made and final rules as adopted.

An agency may determine that the expectation is best served by some sort of summary of comments received. This might be the case in a rulemaking where a large number of public comments have been received, or where numerous comments include duplicative, form-like content. If an agency posts some sort of summary, the agency should have a full list of each public comment received already prepared when a summary is posted. This list shall be available on standby in agency files in the event of a public records request. In the event an agency does not receive any public comments, the agency shall note that on their agency webpages where comments would otherwise be posted or summarized. Again, any questions about how to respond to specific comments should be directed to the DOJ counsel for the agency.

Related questions from agencies:

- Can we summarize comments if we receive over a certain amount? DOC received over 600 comments for a recent rulemaking. That's a lot for the public to filter through and digest.
- Clarification is requested for the intent on the requirement to post rule changes as a result of comment received.
- If the answer to #1 is 'yes,' is it sufficient to post questions received in chat during webinars or in emails, along with agency responses, in an FAQ document on the agency webpage for the rulemaking in question?
- If we receive no comments, do we need to note that none were received?
- Is there an expectation to respond to each individual comment with how the rule was amended based on that comment or can they be summarized?
- What about when we get form letters from letter writing campaigns? Can we roll those up into one?
- What if we have 100's of comments, do we need to post every comment, or will a summary document suffice?
- Will agencies have the discretion of when to post comments, including summarizing comments? And will a summary of comments suffice?

What information should be posted about individuals making public comments?

Agencies should ensure that public comments include an attribution to a source. If an agency posts individual comments on its webpage, then attributions for each comment shall be published there as well. If a summary of comments is posted online, then the full list of public comments on standby in agency files (see guidance in previous question) should include an attribution for each individual comment.

At minimum, an attribution shall include:

- First name
- Last name initial
- Affiliation or type of stakeholder
(ex. Berri L., state government)
(ex. Mary M. general public)

Agencies have discretion to post additional information provided by commenters but should consider the context of the particular rulemaking and the extent to which doing so may discourage individuals from making public comments. Agencies are not required to include contact information for commenters and should follow existing agency policies and procedures for the inclusion of contact information and obtaining of permission prior to posting.

If a public records request is made for further information about a commenter or contact information, state public records law will determine, on a case-by-case basis depending upon the individual facts, whether certain information can be redacted prior to disclosing in the request. Again, prior to publishing comments on their webpages, agencies shall check comments for and redact any personal information that may have been included by commenters.⁹

Related questions from agencies:

- Also, do we redact personal info in comments, or notify like OLIS (for bill testimonies)?
- Can agencies seek the approval of public commenters prior to uploading their written public comment? Or are we required to post their comments regardless of their wishes?
- Do the public comments need to include the name and contact information of the individual providing the comment? Or just the comments themselves? Asking for clarification so that we can let folks know who are making comment if their personal information will be posted on the website. The comments are already public information, of course, but not currently preemptively posted.

⁹ "Personal information" is defined in ORS (2023) 646A.402(12) and can be accessed at:

[https://www.oregonlegislature.gov/bills_laws/ors/ors646a.html#:~:text=\(12\)\(a\)%20%E2%80%9CPersonal%20information%E2%80%9D%20means%3A](https://www.oregonlegislature.gov/bills_laws/ors/ors646a.html#:~:text=(12)(a)%20%E2%80%9CPersonal%20information%E2%80%9D%20means%3A)

When do agencies need to post public comments?

Agencies have discretion to determine when to post public comments received so long as that agency's approach is consistent for all comments being made for a particular rulemaking. An agency may choose to post comments as they are received or may determine that the context and customers are better served by posting at a single point in time at the close of the public comment period. Agencies shall post comments to their webpages no later than the close of the particular rulemaking process.

Agencies shall only post comments made during the official public commenting period. If a comment comes in after the deadline and an agency wants to consider it, then the agency needs to publicly extend the comment deadline for everyone. Again, if agencies have questions about how to handle comments that come in after a deadline, or the extent to which particular comments must be considered or may be discussed, agencies should contact their DOJ counsel.

Related questions from agencies:

- Do agencies have the discretion to determine the timelines for posting comments themselves?
- How quickly do comments need to be posted? Like, as we receive them, or all at once, once the comment period closes? And how long do they need to stay up?
- Regarding the requirement to post comments made during the comment period – must the comments be posted as they are received, or may they be posted at the end of the comment period?