DHS Policy
Oregon Department of Human Services

Director's Office

Policy Title:	Rule Advisory Committees				
Policy Number:	DHS-010-012	Version:	2.0	Effective Date:	June 1, 2012

Approved: _____ **Date:** 2/4/2015

Overview

Description: A rule advisory committee (RAC) must be used while developing or amending a rule. The RAC must be used prior to giving notice of intent to adopt, amend, or repeal an administrative rule. This policy outlines the process for establishing a RAC and the role of the RAC.

Purpose/Rationale: RAC's are used to seek public input to the maximum extent possible during the development of the proposed rulemaking prior to giving notice of intent to adopt, amend, or repeal an administrative rule. RAC's allow the public and stakeholders to provide input and suggestions during the development of new rules, amendment or repeal of existing rules, and the fiscal impact of the proposed rulemaking.

Applicability: RAC's must be established and used for all Department of Human Services' (DHS) rules in which there are issues that will substantially impact the interests of persons or entities, outside of DHS, who will likely be affected by the proposed rulemaking. RAC's must be used for all DHS rules except those that are administrative or housekeeping in nature or which have been granted an exception by the DHS Rules Coordinator.

Exceptions: Exceptions to the RAC requirement must be approved by the DHS Rules Coordinator.

Policy

1. General

All DHS staff responsible for drafting administrative rules must establish and convene a RAC during the development of proposed rulemaking.

2. Compliance

a. Failure to use a RAC is not a basis for invalidating a rule. DHS staff may request an exception from the DHS Rules Coordinator prior to the development of the proposed rulemaking. If an exception is granted DHS staff must explain why a RAC was not used on the notice of proposed rulemaking documents. All exceptions must be approved by the DHS Rules Coordinator.

b. Reasons for exceptions include but are not limited to: COLA or Federal Poverty Level

adjustments and subsequent change in income standards, annual changes to expected family contribution, Pell Grant amount, or amendments to update standards incorporated by reference. Exceptions will not be granted for substantive rule changes.

c. If an exception to the RAC requirement has been granted, and an objection to the fiscal impact statement is raised, DHS may be required to convene a Fiscal Impact Rule Advisory Committee to review and amend the fiscal impact statement.

3. Implementation of a Rule Advisory Committee

A RAC must be established prior to the development of each proposed rulemaking and should be composed of the same members throughout the entire rulemaking process. If appropriate, an existing Division or DHS standing committee, with or without additional members, may be used as a RAC. If a standing committee is used, DHS must consider whether the committee adequately represents the interests of persons who will likely be affected by the proposed rulemaking.

4. When a Rule Advisory Committee is Needed

a. A RAC must be used for all permanent rule filings, unless an exception has been granted by the DHS Rules Coordinator.

b. For temporary rules, a RAC must be used before the temporary rule is filed as a permanent rule, unless an exception has been granted by the DHS Rules Coordinator.

5. Membership

a. A good faith effort must be made to ensure that RAC members represent the interests of persons who will likely be affected by the proposed rulemaking. Clients, client advocates, interested parties, and stakeholders must be invited to participate on the RAC. The RAC will work with DHS staff in the development and drafting of the proposed rulemaking. The RAC's role is advisory only. DHS will consider RAC input. However, DHS will make the final decision on whether or not the RAC's input will be incorporated into the proposed rulemaking.

b. When the proposed rulemaking impacts another Division within DHS, the impacted Division must be invited to send a representative to participate. The Division representative is not considered a RAC member.

c. Field staff who are invited to participate on the RAC are considered RAC members.

d. The majority membership of a RAC must be other than DHS employees. Outside entities or advocacy groups may send only one representative to participate on the RAC, unless an exception is granted by the DHS Rules Coordinator. The outside entity or advocacy group may choose the representative.

e. If no responses to invitations to participate are received or no representative from an invited outside entity attends the RAC meetings, the rulemaking notice must state that

a RAC was not used because there was no response.

6. Committee Role

a. The purpose of the RAC is to provide input on the development and drafting of the rule and the content of the fiscal impact statement. A RAC's role is advisory only.

b. If the RAC believes there will be a significant adverse impact on small businesses when reviewing the fiscal impact statement, DHS must seek the RAC's recommendations on mitigating the cost of compliance for the small businesses.

7. Meetings

a. A sufficient number of meetings must be held to ensure that RAC input is meaningful and complete. Meetings may be held in person, by conference call, video conference, or email or a combination thereof. Members may also send written comments throughout the development of the proposed rulemaking. An e-mail only meeting should not be used if at least one RAC member has made a timely request for a different type of meeting. A request shall be considered timely if it is made within six working days of the date that a RAC invitation and proposed rule amendments are sent to RAC members.

b. RAC meetings are open to the public, but are not subject to the public meeting laws.

c. Members of the public may attend, but may not participate.

8. Minutes and Attendance

a. Meeting minutes must be taken. Minutes may be written or recorded. The minutes should indicate the type of meeting held.

b. An attendance log containing name, organization, and address must be completed for each RAC meeting.

c. The minutes and attendance log are to be maintained by the Division Rule Coordinator in the official rule filing file.

References

- ORS 183.333, Policy statement; public involvement in development of policy and drafting of rules; advisory committees.
- ORS 183.336, Cost of compliance effect on small business.
- ORS 183.540, Effects of rules on small businesses.
- OAR 137-001-0007, Public Input Prior to Rulemaking

Contacts

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Policy History

- **Version 1.0:**
  - 01/01/2009 – Initial Release
- **Version 2.0:**
  - 06/01/2012 – Second Release; Remove requirement for one in-person meeting