

# State of Oregon Natural Resource Cabinet Rulemaking Guidance: Public Engagement & Transparency Best Practices

*v5 FINAL 01.08.2026*

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# Governor Kotek's 2025 Rulemaking Letter

## *Direction to improve transparency in process*

Effective May 2025, Executive Branch agencies were directed to update rulemaking protocols to reflect the following:

### Update all Agency websites to include:

- All proposed, temporary, and permanent rules
- All public comments during a rulemaking
- A rulemaking annual planning calendar
- Link to the SoS Administrative Rules Database
- Continue current practices for posting to the Oregon Transparency website and follow SoS processes/requirement

+ all Agencies shall include the impact of rulemaking on their respective workloads when asked about the impact of new legislation, beginning with the 2026 legislative session.



# Enhanced Guidance for NR Agencies

## *Efficiency, Transparency, Accountability*

Oregon's 14 natural resource agencies have individually focused on improving their rulemaking processes to be in line with the Governor's expectations. There is more work to be done to ensure consistency across agencies that often share interested parties who actively participate in the processes of multiple agencies.

Enhanced guidance for NR agencies seeks to achieve the following:

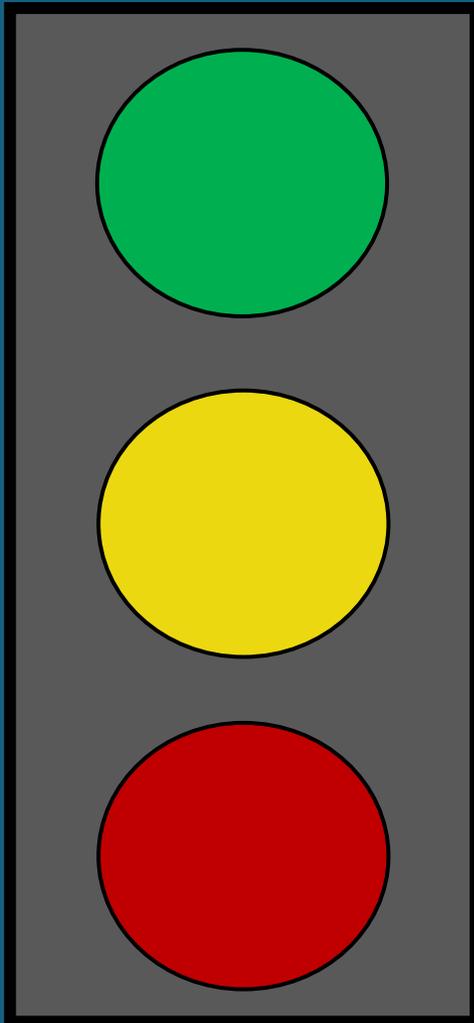
- **Efficiency:** streamlining some rulemaking processes while adding important feedback loops in others
- **Transparency:** Refining how opportunities for public engagement are executed
- **Accountability:** Creating more opportunities for interaction with our Boards and Commissions within the constraints of open meetings laws.

# Thoughtful Planning: Spotlight Analogy

*Efficiency, Transparency, Accountability*



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**Tier 1: Standard, Non-Controversial**

**Tier 2: 'Gray Area'**

**Tier 3: High Public Interest; Substantive**

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# Tier 1 Rulemakings

*Defined as: rulemakings that are standard, not of high public interest, and function as “routine” or “housekeeping” rulemakings*

- **Project Memo:** A brief project memo should explain potentially impacted interested parties/constituencies of the rule, and the rationale behind the tier assignment. Agency leadership should approve all Tier 1 rulemaking project memos.
- **Tier 1 Examples:** DSL’s Rocky Shores Habitat Management Strategy Rulemaking
- **RAC Guidance:** Not required.



# Tier 2 Rulemakings ●

*Defined as: the 'gray area'*

- **Project Memo:** Tier 2 and Tier 3 both require comprehensive project memos. Agencies must ensure sufficient time in the planning process to account for public notification throughout the rulemaking process and public participation. Agency leadership should approve Tier 2 project memos.
- **Tier 2 / 'Gray Area' Considerations:** more than a minimum level of process and engagement without extended and direct engagement of the agency's commission/board beyond that required by ORS 183, and any agency-specific statutory requirements. Some public interest is identified, but the rulemaking is not controversial enough to require a 'Tier 3' designation.
- **Tier 2 Examples:** DSL's Division 89: General Authorizations



# Tier 2 Rulemakings



*Defined as: the 'gray area'*

- **RAC Guidance:** The expectation is for all RACs to be scoped to provide members, key constituencies, and interested parties with meaningful engagement. Representation should be balanced among representatives of interests most directly affected by rulemaking.
- **Feedback Loops:** In the spirit of transparency, RAC members should see their feedback represented in the progress of rule language drafting, with special emphasis before the very end of the RAC process when draft rules are finalized and the agency issues the formal rulemaking notice.
- **Public Engagement:** Agencies should consider at least one remotely accessible rule hearing during the formal rulemaking process public comment period that also provides time for the RAC members and the public to ask questions of agency staff specific to the proposed rule language.

# Tier 3 Rulemakings ●



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*Defined as: rulemakings of the greatest public interest - including fee changes, changes in policy that will alter long-standing practices or definitions, or other complexities*

- **Project Memo:** project memos for Tier 2 and Tier 3 contain the same requirement for a comprehensive project memo. Tier 3 rulemakings are expected to be the most robust rulemakings. Agency leadership must approve all Tier 3 rulemaking project plans. **A discussion with the relevant Board/Commission in anticipation of the rulemaking is required.** The exception to this guidance is communication with Land Board advisors prior to project commencement at DSL.
- **Tier 3 Considerations:** High touch rulemaking processes require the longest timeline to adoption, including RAC/TAC involvement, public comment, agency response to public comments, opportunity for direct interaction between the commission/board with interested members of the public, and finally adoption of final rules by the agency's board/commission.
- **Tier 3 Examples:** DEQ's Climate Protection Program

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**RAC Guidance:** The expectation is for all RACs to be scoped to provide members, key constituencies, and interested parties with meaningful engagement. Representation should be balanced among representatives of interests most directly affected by rulemaking.

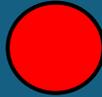
Prior to issuing the formal rulemaking notice, agency staff should consistently fully brief the RAC on draft rules.

**Feedback Loops:** Agencies are expected to continue to provide RAC members and the public with clarity on direction as public comments are reviewed, with the goal of ensuring that they understand the Agency's general inclination in response to substantive comments raised prior to proposing final rules for adoption by a board/commission. If necessary, agencies should open a second public comment period for this purpose.

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# Tier 3 Rulemakings



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**Public Engagement:** The Agency will have at least one in-person and one remote rule hearing that also both provide time for the public to ask questions of agency staff specific to the proposed posted rule language.

**Board & Commission Engagement:** Knowing that the most complex rulemakings will have input from Commissioners/Board Members, agencies should ensure ample time for discussion about the draft rules posted for a Tier 3 rulemaking at a Board or Commission meeting. Advance communication with Board/Commission announcing posting of draft rule language is required.