

In 2018, the Legislative Assembly amended the Administrative Procedures Act to establish the Small Business Rules Advisory Committee (SBRAC). ORS 183.407 provides the statutory authority detailing the SBRAC’s purpose, membership, and duties. As it is understood, when making or reviewing administrative rules, state agencies have the option of using the SBRAC instead of creating their own rules advisory committees.

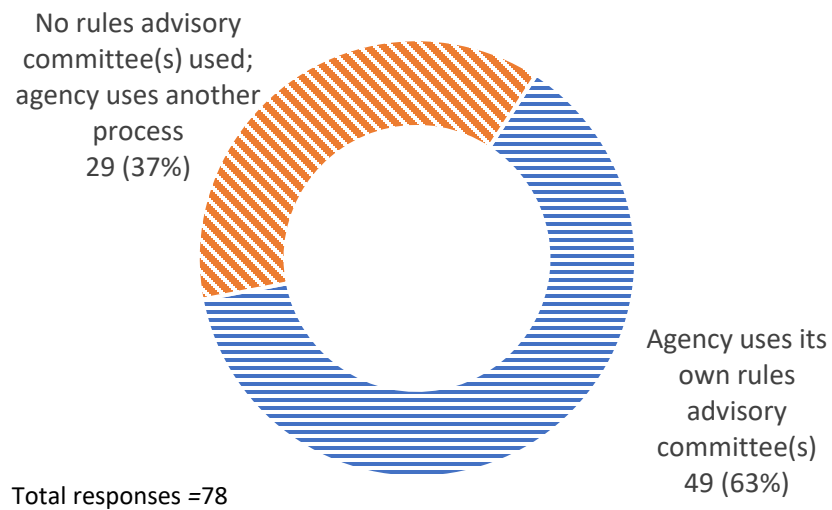
This year marks five years since the legislature enacted the law that created the Small Business Rules Advisory Committee. The Office of Small Business Assistance reviewed the history and use of the SBRAC.

As defined in the Administrative Procedures Act, small business “means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses, and which has 50 or fewer employees.” The statutory definition specifically excludes coordinated care organizations. [ORS 183.310(10)]

The Office of Small Business Assistance surveyed agencies about their use of the Small Business Rules Advisory Committee. In November 2022, all rules coordinators listed in the online rules coordinator directory maintained by the State Archives were asked to participate in this survey. Our survey had a 75% response rate. Some agencies submitted a single response that addressed rulemaking by the entire agency. Other agencies submitted multiple responses, with each addressing rulemaking by a particular administrative unit or program. In total, we received 78 usable responses.

As shown in Figure 1, while 63% of agencies reported using an agency-appointed rules advisory committee, 37% reported using no committee and relying instead on other ways to engage stakeholders.

Figure 1. *How State Agencies Engage Stakeholders in Rulemaking*



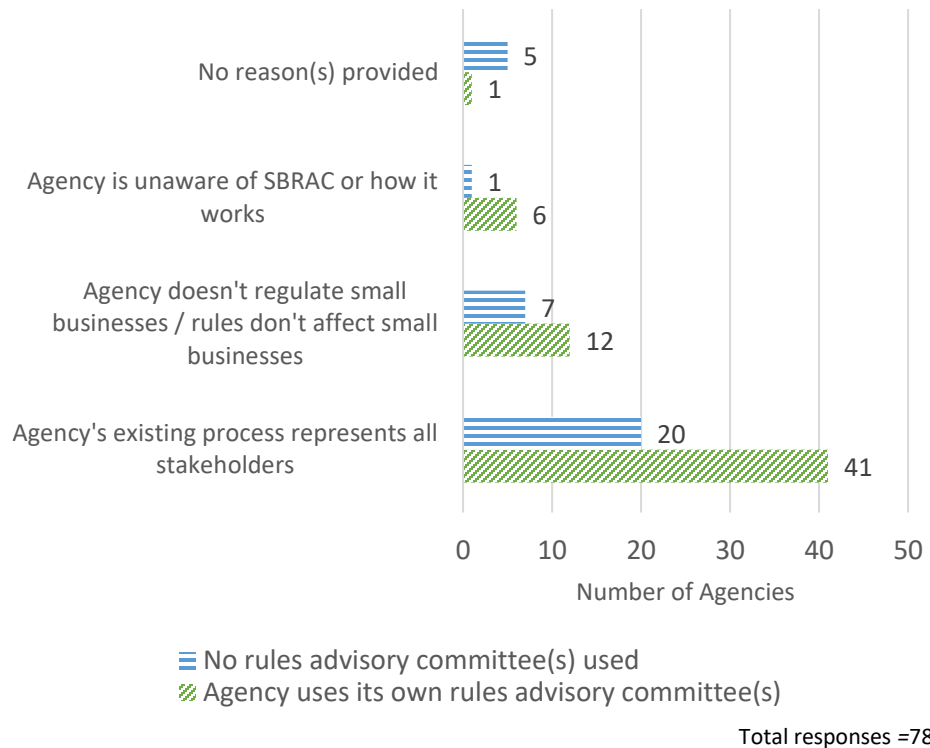
The survey also offered an open-ended comment for agencies to explain why the Small Business Rules Advisory Committee isn't used. Responses were sorted into four categories:

1. The agency's existing rulemaking process works sufficiently to represent all stakeholders. (61 responses)
2. The agency doesn't regulate small businesses, or its rules generally don't affect small businesses. (19 responses)
3. The agency is unaware of the SBRAC, its purpose, or how it works. (7 responses)
4. The agency didn't respond to the question. (6 responses)

Each response was coded for all the categories that applied. If an agency's answer fit multiple categories, the response was coded accordingly. The number of responses for each category, when added together, equals more than the 78 (the total number of responses) because 15 responses matched two categories.

As shown in Figure 2, 61 of the 78 agencies that responded to the survey stated they don't use the Small Business Rules Advisory Committee (SBRAC) because their agency's existing process works sufficiently to represent all stakeholders. It's the most popular reason for not using the SBRAC—both for agencies that use their own rules advisory committee and agencies that use no rules advisory committee. In other words, 78% of the respondents see no need to use the SBRAC because they believe the existing process works well.

Figure 2. Reasons Why Agencies Don't Use the SBRAC



Nineteen agencies—or about a quarter of all responses—indicated they don’t regulate small businesses, or their rules don’t affect small businesses. Seven agencies—or 9% of all responses—indicated a lack of familiarity with the Small Business Rules Advisory Committee and its purpose.

Summary of findings:

1. No available archival or anecdotal evidence suggests the SBRAC has met or formally organized. Since June 2, 2018, when the law that created the SBRAC became effective, the Small Business Rules Advisory Committee has existed in statute but not in actuality.
2. Agency rules coordinators were surveyed to learn about their use of the SBRAC. More than 75% of agency rules coordinators believe their agency’s existing rulemaking procedures work well and sufficiently involve stakeholders.
3. Not all agencies have a clear understanding of what the SBRAC does. Around 9% of rules coordinators were unaware of the SBRAC and its intended purpose.
4. Between 2019 and 2021, 74% of agency rule reviews omitted reporting how a rule affects small businesses, as required by ORS 183.405.

5. Rulemaking information is not consistently available on Agency websites. A noteworthy exception is the Department of Consumer and Business Services, which has a central [“Rule-making information”](#) page that links to individual pages maintained by each division. The division pages include proposed rules, notices of upcoming rulemaking, directions on how to comment, and advisory committee membership rosters and meeting materials.

The OSBA and State Archives worked together to develop recommendations on what State Archives could do to assist in developing awareness and education such as developing materials, hosting a web page with information and several other actions to support the effort of the SBRAC. However, it is important to consider notable barriers to the SBRAC to determine if the SBRAC is the solution to ensuring small businesses are a part of rulemaking.

The SBRAC and its members may require a commitment of time and resources for the following purposes, but not limited to:

- Training or education related to diversity, equity, and inclusion to understand impact to small businesses owned by minorities, women, veterans, or those with disabilities or impairments.
- Training on Oregon Government Ethics Law and the Oregon Government Ethics Commission’s *Guide for Public Officials*
- Training on Administrative Procedures Act and the *Oregon Attorney General’s Administrative Law Manual*
- Training on Public Records Law, Public Meetings Law, and the *Attorney General’s Public Records and Meetings Manual*
- Training on how to conduct rules review and produce rule review reports.
- Training on how to determine fiscal impact.
- Administrative support to assist with onboarding and disseminating information.

Aside from the above, there is another consideration concerning the ability of the SBRAC to host all the expertise it would take to examine rules effectively across many industries. For example, a grocery store owner may not be able to accurately weigh in on a proposed rule related to the construction trade or vice versa.

It is our hope that you find this information to be insightful regarding the use of the SBRAC. In the interest of Oregon small businesses, we are happy to further engage to learn how the OSBA team can help in this effort to engage small businesses and consider the impacts in rulemaking.



Please contact us if you have questions or want to learn more about our work.

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