

MEETING – RULEMAKING LIAISONS
July 25, 2003

I. INTRODUCTIONS

Ellen Phillips, Counsel to House Government Operations, Agency Oversight and Administrative Rules Committee
Stephen Cortes, Deputy General Counsel to Governor
Michelle Sutton, Coordinator, Small Business Regulatory Review Committee
Peggy Coe, Managing Editor, SOS/OAR
Rulemaking liaisons and other attendees

II. SMALL BUSINESS REGULATORY REVIEW COMMITTEE - Michelle Sutton has replaced Sandra Arnold as Coordinator of the Small Business Regulatory Review Committee. Michelle can be reached at 918-594-8418, Michelle_Sutton@odoc.state.ok.us. Our *Checklist for Permanent Rulemaking* has been revised to reflect this change. Replacement pages are being provided at this meeting, and the revised version will be updated on our website soon (www.sos.state.ok.us/oar/oar_welcome.htm).

III. APA-RELATED LEGISLATION – 2003 SUMMARY - This year the Legislature passed three bills related to the rulemaking process . . .

SB 437 --- APPROVED BY GOVERNOR AND EFFECTIVE 5/28/03

? Amends 75 O.S., Section 303 by adding an alternative method for notifying persons who may be affected by proposed rules. The amendment allows agencies to electronically notify interested persons that a copy of proposed rules and the rule impact statement are available on the agency's website, in lieu of mailing copies of the notice of rulemaking intent and rule impact statement.

HB 1075 -- APPROVED BY GOVERNOR 4/15/03; EFFECTIVE 7/1/03

- ? Changes terms to be served by certain members of Small Business Regulatory Review Committee [75 O.S., Section 503(D)].
- ? Amends terminology throughout Small Business Regulatory Flexibility Act [75 O.S., Sections 501 et seq.], changing language from "adversely affect(s) small business" to "may have an adverse economic effect upon small business."
- ? Amends rule impact statement requirements in APA [75 O.S., Section 303(D)(2)(g)], changing the language from requiring agencies to include a "determination of whether implementation of the proposed rule will have an adverse effect on small business" to a "determination of whether implementation of the proposed rule may have an adverse economic effect on small business."

SB 425 -- APPROVED BY GOVERNOR AND EFFECTIVE 5/26/03

- ? Amends 75 O.S., Section 250.4, exempting Commissioner of Public Safety from certain Article 1 provisions of the APA when promulgating certain rules.
- ? Creates a new section [74 O.S., Section 507], exempting Commissioner of Public Safety, when promulgating certain rules, from complying with the requirements of the Oklahoma Small Business Regulatory Flexibility Act [75 O.S., Sections 501 et seq.].

You can find a copy of these bills at www.lsb.state.ok.us. Click on "Text of Measures," and under the "Senate Measure" column (for SB 437) or the "House Measures" column (for HB 1085), click on "Enrolled" and scroll down to find the bill number.

Also, the *Checklist for PERMANENT Rulemaking* and *Oklahoma's Permanent Rulemaking Process - An Overview for Regulatory Agencies* have been revised to reflect these changes. Replacement pages are being provided at this meeting, and the revised versions will be updated on our website soon (www.sos.state.ok.us/oar/oar_welcome.htm).

- IV. CUTOFF DATE FOR 2003 SUPPLEMENT**- A reminder about the cutoff date for filing rules to be included in the *2003 Supplement* to the *Oklahoma Administrative Code* --- If your 2003 permanent rulemaking (i.e., rules and rule changes promulgated in 2003) are to be included in the *2003 Supplement*, the permanent rule documents must be **submitted by August 7, and accepted by August 15** for publication in the September 2 issue of the *Register*. **Any permanent rules finally adopted in 2003 that are not included in the 2003 Supplement (i.e., not accepted by August 15 for publication in the Register) are considered to be null and void.**
- V. LEGISLATIVE/GUBERNATORIAL DISAPPROVALS** - If any of your agency's emergency rules have not yet been published in the *Register*, please call the OAR as soon as possible. It is extremely critical that they be published in the *Register*, even if they are published late. Source notes must be added to the *OAC* to identify the existence of the emergency rules for that period of time, and the source notes must cross reference to *Register* publication.
- VI. LEGISLATIVE/GUBERNATORIAL DISAPPROVALS** - If any of your agency's proposed permanent rules were disapproved by the Legislature or the Governor this year, remember to file a Notice of Legislative Disapproval or a Notice of Gubernatorial Disapproval for publication in the *Register*. This is a step that is easily and often overlooked. The APA does not stipulate a specific deadline for filing these notices - so, if you have not already done so, it's not too late to file them now.
- VII. ONLINE CODE AND REGISTER** - Within a couple of weeks, the "unofficial" *Online Code* will be updated with permanent rules "effective as of July 10, 2003." This is our first year to do updates using the software that allowed us to put the *Code* online, so we could use your help in verifying its reliability. If you promulgated rules this year that became effective by July 10, please take a few minutes to check these changes on the website after the update is completed. You'll be able to tell when the update's been completed by looking at the "effective as of" date under the "View Code" button.
- VIII. AMENDMENTS TO ARR** - Amendments to the Administrative Rules on Rulemaking (ARR) were promulgated in the July 1 issue of the *Register*, with an effective date of July 11. These permanent amendments are identical to the emergency amendments that were promulgated last July. They reflect amendments made to the APA last year extending the required comment period, as well as the earliest possible date for scheduling a public hearing, from 20 to 30 days after publication of an NRI in the *Register*. ARR replacement pages are being provided at the meeting today, and the revised rules will appear on the website soon.
- IX. WHEN NOT TO AMEND A RULE** - As you begin planning your 2004 rulemaking, please take a look again at our handout on *WHEN NOT TO AMEND A RULE* . . . The handout has been included in previous years' seminar materials, and is available under "Informational Materials" on our website. There are times when the improvement that results from the amendment of a given Section or Appendix is not significant enough to justify all that is required and implied by the amendatory process. When amendments to a Section or Appendix will not change the meaning of the rule or provide a needed clarification, an amendatory action on that Section or Appendix may not be necessary. The handout asks you to consider a couple of questions before deciding that it's necessary to amend a Section or Appendix in your rules, and discusses the ramifications for the reviewers (Legislature, Governor, OAR), the issuing

agency, and the regulated public:

- ? ARE ANY OF THE AMENDMENTS TO THE SECTION/APPENDIX SUBSTANTIVE ENOUGH TO JUSTIFY THE PREPARATION, REVIEWS, AND PROCESSING TIME THAT IS REQUIRED TO AMEND THAT SECTION/APPENDIX?
- ? ARE ANY OF THE AMENDMENTS TO THE SECTION/APPENDIX SUBSTANTIVE ENOUGH TO WARRANT THE ADDITION OF AN "AMENDED AT" OR "REVOKED AND REENACTED AT" SOURCE NOTE IN THE *CODE*?

- X.** NEXT MEETING - Since we typically have a Rulemaking Seminar in early December, we're tentatively scheduling the next liaison meeting about halfway between today's meeting and the first of December. So . . . our next liaison meeting is tentatively scheduled for September 26. As usual, however, notices to confirm the date and location of the meeting will be sent to agency liaisons.