

## ***WHEN NOT TO AMEND A RULE . . . .***

Although we certainly don't want to discourage agencies from striving to improve the quality of their rules, **there may be times when the improvement that results from the amendment of a given rule** (i.e., a 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. **Consider the following before amending the Section/Appendix:**

- ARE ANY OF THE AMENDMENTS TO THE SECTION/APPENDIX SUBSTANTIVE ENOUGH TO JUSTIFY THE PREPARATION, REVIEW, AND PROCESSING TIME THAT IS REQUIRED TO AMEND THAT SECTION/APPENDIX?
  - \* Consider the review and processing time for the **OAR**:
    - *Proposed rules* - The OAR must review all amendatory language, whether substantive or not, in proposed rules. Reviewing for accuracy of current language and for proper use of strikeouts and underscoring is slow and tedious work.
    - *Finally adopted rules* - For every Section/Appendix that is amended, whether substantive or not, the OAR must review the conversion of that Section/Appendix from *Register* format to *Code* format, prepare a source note entry, process and maintain the paperwork, and publish it in the *Code/Supplement* each year.
  - \* Consider the review and processing time for the **Governor's office and the Legislature.**
  - \* Consider the preparation and processing time for the **issuing agency.** Typing strikeouts and underscoring in rules is extremely tedious and time-consuming work.
- ARE ANY OF THE AMENDMENTS TO THE SECTION/APPENDIX SUBSTANTIVE ENOUGH TO WARRANT THE ADDITION OF AN "AMENDED AT" SOURCE NOTE IN THE *CODE*, AND ALL THAT IT IMPLIES?
  - \* Consider the impact on the **regulated public and other users of the Code.** Users of the *Code* may be misled by source note entries citing to amendatory actions that do not significantly change or clarify the meaning of a rule. Further, the additional source note entries add to the user's research time.

***So, we recommend using the following as a guide for determining when to amend a rule and when NOT to amend a rule:***

- IF THE ONLY AMENDMENTS TO A SECTION/APPENDIX ARE TO BE NONSUBSTANTIVE AMENDMENTS, consider delaying the amendment of the Section/Appendix until substantive amendments are also needed. Are the only amendments those that "clean up"