**The Role of The Office of Attorney General In the Regulatory Review Process**

* **Commonwealth Attorneys Act, 71 P.S. §§ 732-101 – 732-508**
  + *The Attorney General shall review for form and legality, all proposed rules and regulations of Commonwealth agencies before they are deposited with the Legislative Reference Bureau as required by section 207 of the act of July 31, 1968 (P.L. 769, No. 240), known as the “Commonwealth Documents Law.”—****71 P.S. § 732-204(b).***
* **Commonwealth Documents Law, 45 P.S. §§ 1102 – 1208**
  + *§ 1205 – Duties of the “Department of Justice”*
* **Regulatory Review Act, 71 P.S. §§ 745.1 – 745.14**
* **1 Pa. Code § 13.16**

1. **Regulation “As Proposed”**

After a Proposed Regulation has been drafted, the drafting agency sends it to the OAG for review. If the agency is under the Governor’s jurisdiction, the proposed regulation is routed through the Office of General Counsel before it is sent to the OAG.

When a Regulation Packet comes to the OAG it typically includes a statement regarding public policy and a statement from the agency explaining the fiscal impact on small business.

The OAG has **30 days** to review a Proposed Regulation and provide a response to the agency.

**Reviewed by the OAG (Legal Review Section, Civil Law Division) for:**

* 1. ***Form***
     1. Is the proper paperwork completed?
        1. Preamble – lays out each proposed regulatory section and describes its purpose
        2. Regulatory Analysis Form – standard form created by IRRC - examples of fields include: financial statements, explanation of who will benefit from regulation, & cost/benefit analysis
        3. Annex – the actual text of the proposed regulation
     2. Does it make sense?
     3. Is it internally consistent?
     4. Is it consistent with this agency’s other regulations?
     5. Is the language plain, clear, unambiguous?
     6. Are the cross references accurate?
  2. ***Legality***
     1. Does the agency have statutory authority to issue regulations?
     2. Is it within the statutory authority of this agency to regulate this subject?
     3. Any constitutional issues?
     4. Will this regulation violate other state/federal laws or regulations?

**OAG issues “approval” or “disapproval” 732-204(b)**

* If the Attorney General determines that a rule or regulation is in improper form, not statutorily authorized or unconstitutional, he shall notify in writing within 30 days after submission the agency affected, the Office of General Counsel, and the General Assembly through the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives of the reasons for the determination.
* The Commonwealth agency may revise a rule or regulation to meet the objections of the Attorney General and submit the revised version for his review.
* Should the agency disagree with the objection, it may promulgate the rule or regulation with or without revisions and shall publish with it a copy of the Attorney General's objections.
  + The Attorney General may appeal the decision of the agency by filing a petition for review with the Commonwealth Court in such manner as is provided for appeals from final orders of government agencies pursuant to 42 Pa.C.S. § 763 (relating to direct appeals from government agencies) and may include in the petition a request for a stay or supersedeas of the implementation of the rule or regulation which upon a proper showing shall be granted.
* If a rule or regulation has been submitted to the Attorney General and he has not approved it or objected to it within 30 days after submission, the rule or regulation **shall be deemed to have been approved**.

1. **Regulation “As Final”**

After the Regulation has been through the review process with IRRC, the final version of the Regulation is sent back to the OAG for a second review, following the same process outlined above.