

Regulatory Process for Non-Technical Regulations – Costa Rica

*THIS PROCESS ONLY APPLIES TO REGULATIONS THAT ADD OR MODIFY AN ADMINISTRATIVE BURDEN

SOURCES OF AUTHORITY TO REGULATE

Congress - Legislation

- A law requires a regulator to regulate in a specific area, usually without providing specific guidance on how to do so. The general guidance for any regulatory process is article 3, Law 8220, which establishes that every burden and therefore, regulation, shall adhere to clear and objective rules, and must take into consideration, inter alia: institutional cooperation, good faith, transparency, the rule of law, efficiency, and the effectiveness of the administrative activity.
- A regulator may also propose and adopt regulations under its general authority.

STEP 1: Development of a Draft Regulation

1) The regulator's staff drafts an outline of the draft regulation.

Note – the staff are not required to do so by law but they may:

- Consult with interested stakeholders;
- Create committees to draft the regulation; or
- Consult with other regulators or government institutions.

2) The regulatory agency's legal department reviews the outline and drafts the legal text of the regulation.

3) The head of the agency reviews the draft regulation and its RIA (including the cost-benefit analysis) and signs it.

4) The regulator uploads the draft regulation to the Sistema de Control Previo de Mejora Regulatoria ("SICOPRE") website. At this point in the process, the uploaded information is only viewable internally and is unavailable to the public.

- On SICOPRE, the regulator describes the drafts regulation and fills out the Regulatory Impact Assessment ("RIA") form.
 - The RIA has two sections:

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- 1) Section I (Control Previo de Mejora Regulatoria), which includes:
 - A description of the draft regulation; and
 - A questionnaire, with its corresponding answers, regarding the draft regulation’s impact on administrative burdens; and
- 2) Section II (Manifestación de Impacto Regulatorio), which includes:
 - A description of the problem that the draft regulation intends to solve;
 - A description of the draft regulation’s general objectives;
 - The regulator’s legal authority to regulate in the area;
 - The alternatives to the draft regulation that were considered and the cost-benefit analysis for each alternative;
 - The justification for why the draft regulation is the best option to solve the identified problem;
 - The details of the draft regulation’s administrative burden (for example, whether it adds or modifies an administrative burden, whether the administrative burden involves another regulator, the cost to the public of the administrative burden);
 - The regulatory agency’s budget to implement the administrative burden;
 - A description of how the regulator will evaluate the proposed regulation’s effectiveness in achieving its objectives;
 - A discussion of if/how interested stakeholders were consulted during the development of the regulation; and
 - A description of the results of a cost-benefit analysis for the draft regulation.

STEP 2: Costa Rica’s Regulatory Improvement Office Reviews the Draft Regulation

The Regulatory Improvement Office (Dirección de Mejora Regulatoria or “DMR”) of the Ministry of Economy, Industry, and Commerce (Ministerio de Economía, Industria y Comercio or “MEIC”) gains access to information regarding the draft regulation in SICOPRE and performs a preliminary review.

Note – DMR’s authority is limited to review of draft regulations that add or modify an administrative burden.

- Although not required by law, DMR reviews all draft regulations and accompanying RIAs to confirm whether an administrative burden does, in fact, exist.

Although not required by law, DMR sends the draft regulation to:

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- 1) MEIC’s Technical Regulation Body (Organo de Reglamentación Técnica or “ORT”) for its opinion on whether the draft regulation is a technical regulation (“RT”) and a review of relevant international commitments;
 - a. If ORT determines that the draft regulation is an RT, then the RT process begins (see RT Regulatory Process Flow Chart).
- 2) MEIC’s competition office for a competition analysis and opinion about the draft regulation; and/or
- 3) MEIC’s small business office (Pequeñas y Medianas Empresas or “PYME”) for an opinion regarding the effects of the draft regulation on small and medium-sized businesses.

Note – all the aforementioned opinions must be submitted back to DMR within five (5) business days.

STEP 3: Costa Rica’s Regulatory Improvement Office Opens the Public Comment Period on SICOPRE

The public comment period lasts a minimum of ten (10) business days.

STEP 4: Costa Rica’s Regulatory Improvement Office Reviews the Draft Measure and Public Comments

DMR reviews the proposed regulation in depth and in light of the public comments and issues its opinion on the administrative burdens that the proposed regulation will add or modify. DMR must provide its opinion within five (5) business days of the close of the comment period.

- If the regulatory agency proposing the regulation is part of the executive branch, DMR’s opinion is binding on the agency.
- If the agency proposing the regulation is an autonomous body (i.e., an independent agency), DMR’s opinion is non-binding.

Although not required to do so by law, the regulator generally responds to public comments on SICOPRE within 10 days.

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STEP 5: The Opinion of Costa Rica's Regulatory Improvement Office is Published on SICOPRE

If DMR's opinion requests minor changes to the proposed regulation, the regulatory agency (if not independent) makes them and sends the revised regulation to the President, if it is a Decree, or to the head of the agency, if it is another type of regulation.

If DMR requests substantial changes to the proposed regulation, the regulator (if not independent) makes them and goes back to Step 4.

STEP 6: The Final Regulation is Published

If the final regulation is a Decree, the agency sends it to the President's office for signature. If the final regulation is another type of regulation, it goes to the head of the agency for final approval.

The final regulation is then published in the Official Gazette and it enters into force on the date specified in the regulation.