

General Regulatory Process – Peru

*THIS PROCESS ONLY APPLIES TO PROPOSED REGULATIONS THAT ADD OR MODIFY AN ADMINISTRATIVE BURDEN OR WHEN THE PROPOSED REGULATION REQUIRES THE APPROVAL OF THREE OR MORE REGULATORY ENTITIES

SOURCES OF AUTHORITY TO REGULATE

1) Congress - Legislation

- A law requires a regulator to regulate in a specific area, usually without providing specific guidance on how to do so.

2) Self-Initiation

- A regulator proposes regulations under its general authority.

STEP 1: Development of a Draft Regulation

1) The regulator develops a draft regulation.

To develop the draft regulation, the regulator must prepare:

- a) A description of motivation for issuing the regulation (Exposición de Motivos) and a justification for the draft regulation; and
- b) A cost-benefit analysis of the draft regulation (in cases where the draft regulation impacts financial or economic sectors).

2) The regulator's legal department reviews.

The legal department prepares a legal analysis (including an analysis of the draft regulation's consistency with existing regulations and international agreements) and drafts the legal text of the regulation.

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STEP 2: The Regulator Submits the Draft Regulation to PCM

The regulator submits its draft regulation with accompanying analyses to the Coordination Secretariat within the Presidency of the Council of Ministries (“SC-PCM”). SC-PCM forwards the proposal to PCM’s Secretary of Public Management Department (Secretaría de Gestión Pública de la Presidencia del Consejo de Ministros, or “SGP-PCM”) to review and determine whether the draft regulation adds or modifies an administrative burden.

- a) If the draft regulation adds or modifies an administrative burden, it is submitted to the Multisectorial Regulatory Quality Commission (Comisión Multisectorial de Calidad Regulatoria or “CCR”) within PCM and undergoes a Regulatory Quality Analysis (Análisis de Calidad Regulatoria or “ACR”). CCR’s opinion is binding on the regulator. If the regulator makes the necessary adjustments recommended by CCR’s opinion, the draft regulation moves on to Step 3. If the regulator fails to incorporate CCR’s opinion, including any proposed modifications, into a revised regulation, the draft regulation cannot move to the next step.
- b) If the draft regulation does not add or modify an administrative burden, it progresses to the next step.

STEP 3: SC-PCM Submits the Draft Regulation to Three Entities

SC-PCM submits the draft regulation to:

- 1) the Ministry of Economy and Finance (Ministerio de Economía y Finanzas or “MEF”) for an analysis of the draft regulation’s budgetary and economic impacts (cost-benefit analysis);
- 2) the Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos or “MINJUS”) for an analysis of the draft regulation’s constitutionality and legality; and
- 3) PCM for an assessment of whether the draft regulation is consistent with the guidelines of administrative simplification.

The regulator must address the comments by the three aforementioned entities before moving to the next step.

STEP 4: SC-PCM Submits the Draft Regulation to CCV

The draft regulation is sent to PCM to be discussed by the Vice-ministerial Coordinating Council (Comisión de Coordinación Viceministerial or “CCV”).

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CCV is in charge of reviewing and discussing multi-sectoral regulatory proposals. At this stage, any of the 35 participating vice-ministers may raise substantive or procedural issues. The draft regulation will not be adopted until all issues have been resolved and the vice-ministers reach a consensus.

FLOATING STEP: The Proposed Regulation is Published for Public Comment

At any time during the regulatory process before the measure enters into force, the regulator must make the proposed regulation publicly available for comment in Peru's Official Gazette ("El Peruano"), on its website or through any other method for a period of at least 30 days, at which point the measure enters into force. The regulator has no obligation to take the comments into account.

In the case of proposed RTs, the regulator publishes them in El Peruano for 60 days and Peru's TBT Inquiry Point, MINCETUR, notifies them to the WTO, the Andean Community, and FTA partners for a 90-day comment period. If comments are received, MINCETUR sends them to the regulator so that the comments can be taken into account. MINCETUR can always weigh in during the process with any international trade concerns. If no comments are received, MEF reviews the measure and, if it approves, the regulator can publish the final regulation in El Peruano. In general, RT's do not enter into force for six months after publication.

Note that the goal of Peruvian authorities is to publish each proposed RT in El Peruano and notify the proposed RT to the WTO, Andean Community, and FTA partners at the same time. In practice, this is not always possible and, generally speaking, the international notifications are made after the domestic comment process has taken place.

STEP 5: The Final Regulation Reaches the Office of the President

The final regulation is reviewed by the Office of the President's legal department to determine its constitutionality and legality. If the regulation is constitutional, the President signs it, and the final regulation is published in El Peruano and enters into force.