

General Regulatory Process – Mexico

*INDEPENDENT REGULATORY ENTITIES ARE NOT REQUIRED TO FOLLOW THIS PROCESS

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.
- A regulator may also propose regulations under its general authority.

STEP 1: Development of a Draft Regulation

To develop the draft regulation, the regulator creates a working group that may include interested stakeholders. The working group develops and approves the draft regulation.

The regulator is required to prepare an RIA only when the draft regulation adds costs for citizens. If the regulator believes that the draft regulation would not add costs, it may indicate as such to the Federal Commission of Regulatory Improvement (Comisión Federal de Mejora Regulatoria or “COFEMER”). If COFEMER agrees with the regulator’s assessment, the regulator is not required to submit a Regulatory Impact Assessment (“RIA”) (Manifestación de Impacto Regulatorio) to COFEMER. If COFEMER disagrees with that assessment, the regulator must either eliminate the costs or conduct an RIA.

- To determine whether a draft regulation adds a cost to the citizen, COFEMER examines four areas of the draft regulation:
 - Does the draft regulation create new or stricter obligations for citizens?
 - Does the draft regulation add to or modify an administrative burden?
 - Does the draft regulation reduce or restrict citizens’ rights?
 - Could the draft regulation affect citizens’ rights or obligations or impose administrative burdens in the future?

Assuming that the regulator must complete an RIA, the next step is for it to determine which type of RIA to conduct. For this purpose, the regulator uses the Regulatory Impact Calculator to identify, for example, all expected impacts of the draft regulation, the number of affected parties, and the number of years over which impacts are expected to occur. Depending on the answers, the calculator will indicate to the regulator what type of RIA it must perform. (When the regulator submits its responses to the calculator, the system also indicates whether a draft measure needs to be notified to the WTO and alerts DGN and SE.)

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STEP 2: The Draft Regulation is Subject to Public Comment

The regulator must submit the draft regulation and its corresponding RIA to COFEMER at least thirty business days before the draft regulation is expected to enter into force.

Unless the regulator received an exemption from COFEMER (i.e., the draft regulation does not add costs), COFEMER publishes the draft regulation and its corresponding RIA for public comment on SYRIA (<http://www.cofemersimir.gob.mx>) and/or in the Official Gazette (Diario Oficial or “DOF”).

The SYRIA website includes, for each draft regulation:

- a) the text of the draft regulation;
- b) the draft regulation’s RIA;
- c) the public comments; and
- d) opinions issued by COFEMER.

In the case of non-NOMs, the regulator, in consultation with any working group that helped develop the measure, responds to comments received by interested stakeholders and revises the draft regulation.

In the case of NOMs, the national standardization consulting committee (“CCNN”) that oversees the process of developing the draft NOM must consider and respond to the comments received. CCNN must also explain why certain comments were not taken into account in the final NOM, and publish its responses to comments in the DOF at least 15 calendar days before the final NOM is published in the DOF.

STEP 3: COFEMER Analyzes the Draft Regulation’s RIA

COFEMER analyzes the revised regulation, its corresponding RIA, and the regulator’s consideration of the public comments, and determines whether the draft regulation complies with the Regulatory Quality Agreement (Acuerdo de Calidad Regulatoria or “ACR”).

The ACR requires that the draft regulation be issued under the following conditions:

- a) the regulator has complied with its legal obligations;
- b) the draft regulation complies with Mexico’s international obligations; and
- c) the draft regulation’s competition and market efficiency benefits exceed its costs.

As part of its analysis, COFEMER reviews the cost-benefit analysis, the regulator’s use of standards, its consideration of alternatives, and other factors.

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COFEMER must provide one of the following opinions based on its ACR analysis:

- a) Approve the regulation, which means that the regulation can be published in the DOF;
- b) Request additional information from the regulator that justifies the draft regulation; or
- c) Deny issuance of the draft regulation in the DOF.

If, in COFEMER's opinion, the RIA is unsatisfactory, COFEMER may request additional information from the regulator. COFEMER's request for additional information must:

- a) detail the RIA's elements that require correction;
- b) explain the reasons why COFEMER considers the RIA incomplete or insufficient; and
- c) detail the type of corrections requested.

If the regulator's corrections are sufficient in COFEMER's opinion, COFEMER prepared a final opinion approving the regulation, and it can be published in the DOF. If the regulator's corrections are insufficient in COFEMER's opinion, COFEMER requests additional information from the regulator and the process repeats itself until the regulator makes sufficient revisions to the measure such that COFEMER will approve it, or the regulator prepares a justification as to why it will not follow COFEMER's recommendations. (The amount of time that COFEMER has to respond to a regulator's submission of information depends on the level of impact of the RIA: it has more time to review if it's a high impact RIA than if it's a moderate impact RIA.)

While COFEMER's opinion is technically non-binding, as a practical matter the regulator cannot publish a regulation in the DOF if it does not follow COFEMER's recommendations, because COFEMER can decide not to issue a final opinion, which is required for publication.

STEP 4: The Regulator Publishes the Regulation in the Official Gazette

Once COFEMER issues a final opinion, the regulator finalizes the regulation, publishes it in the DOF and, if it's not a TBT or SPS measure, the regulation enters into force. The RIA and correspondence between COFEMER and the regulator are made public on SYRIA.

If the regulation is a TBT or SPS measure, DGN notifies the WTO TBT and/or SPS Committee for a 60-day comment period. The regulator is required to take the comments into account. If the regulator substantially revises the regulation, it is obliged to send it back to COFEMER to repeat Step 3, but this does not always occur. The regulator published the final regulation in the DOF, with an effective date of not less than six months from publication.