



Comisión  
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**Evaluación y  
Productividad**

# EXECUTIVE SUMMARY

Regulatory Review for SMEs

2021

## **Regulatory Review for SMEs**

In 2019, the National Productivity Commission published a report titled "Regulatory Quality in Strategic Sectors," highlighting the regulatory complexity in Chile. The most recent OECD national report (2021) ranked Chile as the country with the highest level of complexity in regulatory processes.

In the present study, "Regulatory Review for SMEs," the CNEP conducted a comprehensive analysis of the regulatory environment affecting the development of SME enterprises, evaluating both the efficiency of the permit-granting process and the relevance of the regulations. The objective was to establish a simple regulatory system where the requirements, goals, and procedures for obtaining the necessary permits to start an activity are clearly defined, preventing regulatory compliance from becoming an unnecessary barrier for this type of company. Furthermore, it is essential to acknowledge the prevailing global context of the Covid-19 health crisis, which has had a significant impact on the economy, particularly for smaller businesses that have faced a sharp decline in sales. Approximately 100,000 smaller businesses disappeared during the pandemic months, so it is crucial to stimulate entrepreneurial initiatives as quickly as possible. This study aims to contribute to this national effort by proposing public policy recommendations that help reduce regulatory barriers that, through lengthy processing times or high compliance costs, are affecting the initiation and development of SME operations in Chile.

The characterization of smaller businesses, which include micro, small, and medium-sized enterprises, has been traditionally challenging, primarily due to their composition heterogeneity. They vary in a wide range of dimensions, such as the economic sector they belong to, productivity levels, and labor intensity, among other factors. The consensus in Chile is that smaller businesses are those with annual revenues below 2,400 UF for microenterprises, between 2,400 and 25,000 UF for small enterprises, or yearly payments between 25,000 and 100,000 UF for medium-sized enterprises. The Internal Revenue Service (SII) has primarily used this criterion based on annual sales. The second criterion differentiates according to the number of employees (following an amendment to Law 20,416

of the Labor Code), defining four categories: micro (1 to 9 workers), small (10 to 49 workers), medium (50 to 199 workers), and large enterprises (200 or more workers). For this study, and to provide a multidimensional perspective, the analysis based on business size considers the sales criterion, the number of workers criterion, and a proposed mixed criterion that combines the two standards mentioned above.

## Findings

Small-sized businesses account for 98% of active companies in our country, with a 62% share for micro, 30% for small, and 6% for medium-sized enterprises. While indicators such as sales and employment generated are comparatively lower than those in large companies (which have an 87% share in sales and a 56% share in work), it is relevant to study the regulatory ecosystem in which they operate. For the execution of any activity or venture, it is necessary to have an administrative authorization or permit as a preventive control measure so that the Administration can verify ex-ante compliance with legality and ensure that such activities do not harm or endanger the public interest. Once the permit or authorization is obtained, the entrepreneur can freely carry out the planned activity. After the initiation of the activity, various public services continue with supervision, ensuring that operations comply with the limitations or conditions of the current regulations.

For micro, small, and medium-sized enterprises (MSMEs) or smaller-sized enterprises (SMEs), successfully facing these regulatory challenges is highly complex. The lack of personnel, knowledge, time, and resources makes the required effort proportionally more significant than in the case of larger companies, which also implies a higher probability of failure in the process. Additionally, the set of permits required to carry out economic activities has become a highly complex system that tends towards entropy. The causes are diverse: firstly, regulatory design and implementation, as well as supervision, are generally carried out in silos. Since the various regulations do not necessarily correspond to the design of projects developed by individuals - which combine multiple activities that transcend different regulatory categories - coordination problems within the State often arise. Additionally, regulations tend to accumulate over time, overlapping and even generating

areas of contradictions between new regulations and existing ones that acted either directly or indirectly on the subject matter and were never explicitly repealed.

Smaller-sized companies undertake projects of lower complexity. They are, therefore, subject to a smaller regulatory burden in terms of the number of permits required to start their activities. However, they are not exempt from the complexities of the permit system, mainly affected by areas with little clarity, contradiction, or lack of efficiency in its management.

There are positive advances regarding expediting the company creation processes and activity initiation with the Internal Revenue Service (SII), however, the journey to develop a venture of any size only ends once obtaining the municipal operating authorization, which allows for the start of operations. Indeed, the timelines for formalizing a company constitute an initial barrier. This study determined that even for the smallest companies, the time necessary to obtain the respective permits exceeds six months and increases according to the company's size, with SMEs taking up to 1.5 years. Additionally, the percentage of companies that initiate activities with the SII and ultimately obtain municipal operating authorization also depends on their size, only 13% of microenterprises, and 18% of small enterprises. These contrasts with the results for larger companies: for medium-sized enterprises, it exceeds 30%, and for large companies, it reaches 90%.

Conducting a comprehensive analysis of permits, regulations, and potential barriers to entrepreneurship has been challenging in this study. The information needed to analyze the regulatory system around SMEs is scattered across different sources, with no standardized formats regarding variables as relevant as the economic activity code. For example, 22% of the consulted municipalities still need records of information regarding aspects that must be regularized to obtain the definitive municipal operating authorization from the Municipal Works Departments, hindering public policy analysis. Ultimately, there needs to be more clarity regarding the sanitary permits required to develop a significant number of economic activities. Additionally, there is a great need to harmonize and clarify the sanitary permit system, for some practices conducted by the authorities need clear normative support.

Despite the need for more clarity, the National Productivity Commission managed to identify and prioritize the most relevant permits for initiating economic ventures in our country, finding that these permits revolve around a series of sanitary procedures aimed at obtaining the operating authorization known as the municipal patent. These procedures consist of the following:

1. Sanitary permits.
2. Permits required by special laws.
3. Operating permission or municipal patent.

### 1.- Sanitary Permits

Among the sanitary permits, the National Productivity Commission prioritized the food processing permits in its analysis, as this category is highly relevant for SMEs. Additionally, it is closely related to the hotel and tourism sectors. The permit's objective is to ensure safe and healthy products, and it is valid for three years, which extends automatically for equal successive periods unless the interested party communicates their decision not to continue. Considering the sanctions imposed by the Regional Health Departments through sanitary proceedings and the involvement of food establishments in outbreaks of related diseases, the protective purpose of the food permit is adequately safeguarded. The Commission finds that the food authorization has a short processing time, taking less than 11 days, and this period is met over 99% of the time, with high approval rates (92%).

On the other hand, a series of activities require a Sanitary Report. It serves as a permit since Article 83 of the Sanitary Code establishes the obligation for the sanitary authority to issue a report on the effects that the installation, expansion, or relocation of industries may have on the environment before granting an operating authorization or standard patent by the municipalities. The norm adds that to issue this report, the sanitary authority will consider the communal or intercommunal zoning plans and the risks that the industry's operation may pose to its workers, the neighborhood, and the community. Its protective scope is broad, including workers' health and environment, the area, and the community, and it is required for certain industrial activities and, in some cases, commercial ones. Due to the broadness of its objective and the lack of associated requirements, it generates confusion regarding its

scope. Furthermore, there needs to be more clarity - among public entities and users - regarding the economic activities that require the sanitary report, resulting in inefficiencies in the processing procedures. Additionally, the processing time for the sanitary report exceeds 60 days, with an average of more than 130 days for rejections.

In essence, there needs to be more clarity regarding the regulatory processing time for the sanitary report, which hampers the management analysis and the performance indicators definition. The Metropolitan Region (RM) accounts for 39% of the procedures, with an average processing time reaching 122 calendar days. Nationwide, 23.6% of the requests are rejected, over 50% of them in the RM.

This scenario has led the health authority to create mechanisms to expedite and streamline the permit-granting process. One of the mechanisms proposed is the "immediate permit," which targets companies with low-risk activities that do not pose significant threats to health or safety or require an Environmental Impact Assessment System (SEIA). This streamlined procedure involves a simplified application process, a sworn statement from the permit holder, and proof of fee payment. The immediate permit aims to expedite the authorization process for these companies, allowing them to start their operations promptly.

## **2.- Permits established by special laws**

Article 26 of the Municipal Revenue Law states in its second paragraph that the municipality will be obliged to immediately grant the respective patent once the taxpayer has provided all the required permits established by any particular law, as applicable. This task presents a challenge for both users and municipalities, as it assumes that they are aware of all the permits established by special laws regarding all the activities carried out in their territories. The analysis concerning the special permits that municipalities must require to grant operating authorization is heterogeneous and generally conducted on a case-by-case basis. Of the 54 analyzed municipalities, 43 authorize granting provisional patents without having the special permits established by law. Among them, 30 have formalized this through an ordinance, and 13 through practices without normative support.

### 3.- Municipal operating authorization

The municipal operating authorization is the final procedure necessary to ensure the operation of premises, offices, establishments, kiosks, or specific places in the localities. It corresponds to the municipal patent, which is the tax that individuals or legal entities must pay to the municipalities for engaging in any profitable economic activity, whether commercial, industrial, or professional. However, there is a high degree of heterogeneity in the processing of operating authorizations among different municipalities, such as:

1. Requirements for provisional patent processing.
2. The scope and the competent authority of sanitary permits.
3. The interpretation of permits required by special laws.

Additionally, there is a high dispersion of processing times for patents. 25% of the patents granted annually by municipalities are provisional patents, and less than 50% become permanent.

### Recommendations

The present regulatory review offers general and specific recommendations regarding SMEs. In the first place, (i) the recommendations correspond to general aspects aimed at improving the structural processes of permit processing. The specific recommendations (ii) are relevant to sanitary permits, and (iii) there are recommendations regarding municipal operating authorizations.

#### *i. General Recommendations*

**Recommendation 1:** The Ministry of Economy should develop processing guidelines for the main categories of ventures undertaken by smaller-sized enterprises, focusing on permits indicated in sectoral regulations.

**Recommendation 2:** The Ministry of Economy should coordinate activities that promote the harmonization of the SII's classification of economic activities with sanitary regulations and municipal authorities.

**Recommendation 3:** The Municipalities Division of Subdere, within its scope of responsibilities, will coordinate with municipalities to establish a uniform format for the

presentation of information on municipal patents and for the analysis and monitoring of public policies to promote microenterprises and SMEs.

*ii. Specific Recommendations for Sanitary Permits*

These recommendations aim to facilitate the knowledge, processing, and obtaining of such permits for future entrepreneurs.

**Recommendation 4:** Modify Article 83 of the Sanitary Code, converting the Sanitary Report into a permit limited to industrial activities, precisely indicating the elements it protects (worker health), the requirements for accreditation, and its granting period.

**Recommendation 5:** Issue a general regulatory-level norm (Model Circular No. 114) that allows for the periodic updating of the list of sanitary permits, whether explicit or implicit, indicating:

- A list of activities subject to each permit
- The conditions and risk thresholds for implementing a mode without a visit
- The above generates three categories of expressly identified activities:
  - Not subject to any sanitary permit
  - Subject to a sanitary permit, with immediate permit processing
  - Subject to a sanitary permit, with processing involving a visit or inspection

The last two categories can be updated annually based on risk criteria established by the health authority.

*Specific recommendations for municipal operating authorizations:*

**Recommendation 6:** Amend Article 26 of the Municipal Revenues Law, stating that:

a. The municipality shall be obliged to grant the respective patent immediately once compliance with applicable location, urban planning, and sanitary regulations has been verified, without prejudice to authorizations provided for in other regulations.

To do so, the municipality must review:

- Location
- Compliance with sanitary permits (according to the list contained in the general regulation issued by the health authority)
- Compliance with permits granted by the Municipal Works Department (DOM)



To demonstrate compliance with the remaining applicable permits, the taxpayer shall submit a sworn statement. If the taxpayer doesn't obtain the required permits, the granted patent will expire, and a fine will be imposed without prejudice to the sanctions established by sectoral laws.

b. Provisional patents may be granted to taxpayers who demonstrate the following:

- Location
- Compliance with sanitary permits (according to the list contained in the general regulation issued by the health authority)
- Being in the process of obtaining other permits

Its duration shall be one year, renewable for an additional year.