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Petroleum products and petrochemicals marketing: new regulation

On July 26, 2022, the Commission for Regulatory Improvement ("CONAMER") published a decree project through which the Energy Regulatory Commission ("CRE") is proposing to enact the "Administrative general rules that establish the requirements for applying, updating or modifying petroleum products or petrochemicals marketing and distribution (through infrastructure different from oil pipelines) permits, except liquefied petroleum gas for both activities" (the "Administrative Rules"); the project is currently under review by CONAMER.

According to CRE, the objective of the Administrative Rules is to provide applicants and permit holders that commercialize and distribute petroleum products or petrochemicals, with legal certainty regarding the requirements and evaluation criteria applicable upon the submission of new permit requests, as well as for updating, modifying, or verifying the compliance of obligations of existing permits.

Below is a summary of the most relevant proposed provisions applicable to petroleum products and petrochemical marketing permit holders:

- Marketers that acquire their products from other marketers, may only sell such products to distributors, service stations or end users (not other marketers), which may impact the business structure of many permit holders; failure to comply with this obligation may derive in the permit's termination.
- A procedure for granting permit requests is proposed, establishing the deadlines within which the CRE must decide a request, as well as the formalities that applicants must follow in order to submit any complementing information.
- For marketing permits, the applicant must submit information related to the strategies and actions to be pursued in order to conduct this activity (logistic routes, client data base or potential suppliers), as well as a market study showing the estimated annual sales for the following 5 years, the geographic areas in which it will operate, a social impact report, among others.
- Applicants must submit an affidavit guaranteeing service conditions to assure product availability as required, protecting user's interests and incentivizing efficiency in the development of the sector, while promoting competition through fair prices to supply the products uninterruptedly.
- Within 90 calendar days following the approval of a permit, the permit holder must deliver a manual describing its organization and procedures; operative and accounting control mechanisms; a code of conduct, and control procedures for compliance of integrity standards (anti-corruption and anti-discrimination).
- Permit holders must comply with energy policies established by the Ministry of Energy, or else, their marketing permit could be terminated.

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- In addition to statistical information reports that permit holders must submit to the CRE on a weekly basis, they must also inform monthly estimated commercial margins per sold product in each selling point, within the first 10 business days of each month.
- Marketers must submit a monthly report to the CRE informing the discounts or conventional prices that they offer or have established with their clients in each selling point, and describe the procedures and requirements in order to offer such discounts or prices.
- In order to modify a marketing permit, the CRE is proposing to include general requirements regarding the formalities and procedures that the applicant must follow, as well as specific requirements depending on the type of modification that is requested (i.e., transfer, merger, change in control and spin-off).
- The Administrative Rules specify the cases in which a permit holder must request for an updated permit, including the following:
 - A change in the name of the permit holder or that of its shareholders or partners;
 - Corrections to existing permits derived from minor omissions or errors included in the permit applications (the must not be related to the ownership of the permit, the nature of the activities included in the permit or other substantial elements).
 - Including or eliminating a product from a permit, as long as they belong to the same kind of product, where permit holders must distinguish between petroleum products and petrochemicals.
 - A modification in the corporate or equity structure of the permit holder, as long as it does not derive in the sale of shares or interest that, directly or indirectly, imply the assumption of control over the permit holder by the acquiring party (i.e., change in control).
 - A modification in the project's investment amount.

If the CONAMER approves the Administrative Rules as proposed, please bear in mind that transitory provisions establish that such rules must apply not only to all permit applicants but also to current petroleum and petrochemical marketing permit holders.

In addition, in terms of the Administrative Rules' transitory provisions, permit holders will have a 90 calendar day period before they must comply with the obligations and requirements included therein or else authorities would be in a position to initiate a sanctioning procedure, as established under the applicable regulations.

We consider that the Administrative Rules, as proposed, may contravene several constitutional provisions and, thus, could be challenged through the corresponding legal remedies once they officially enter into force.

If you require any additional information, please contact Oscar Lopez Velarde (olopezvelarde@ritch.com.mx) or Juan Jose Paullada (jpaullada@ritch.com.mx), partners from Ritch Mueller's administrative litigation practice.

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