

Alert | Energy & Natural Resources



January 2021

Amendments to Regulations for Import/Export of Hydrocarbons and Hydrocarbon Products in Mexico

On Dec. 26, 2020, Mexico's Ministry of Energy (SENER) published in the Federal Official Gazette (DOF), a resolution that establishes the goods for which import and export activities are subject to regulation by SENER (the Resolution), whereby SENER amends the existing regulation related to such import and export activities and its corresponding permits.

Changes to the Existing Regulation

The Resolution changes the conditions to obtain an import or export permit (the Permit) for hydrocarbons and oil products (the Products). This GT Alert summarizes the most relevant aspects.

A. General Requirements.

New obligations have been added to apply for a Permit:

- (i) To provide information regarding the final destination of the Products subject to the Permit.
- (ii) To potentially provide evidence of the relation to main clients, with invoices and letters of intent, not only with contracts.

- (iii) To submit a monthly projection of the Products' cost of entry into the country and the volume to be imported during the term of the Permit.
- (iv) To provide evidence of compliance with the Compulsory Stockholding Obligations (CSO) for applicants that hold a marketing and/or distribution permit, performing purchase and sale transactions with service stations or end users.
- (v) To submit a document stating that the applicant is up-to-date in the compliance of administrative, tax and customs obligations.

B. 20-year Permit.

Securing a 20-year import permit is no longer available to applicants. The maximum term for a Permit under the Resolution is five years.

To obtain such five-year Permit, in addition to the requirements set forth for a one-year Permit, the applicant must also comply with the following two requirements:

- (i) Demonstrate contractual commitments from potential customers for at least five years.
- (ii) Provide evidence of “existing storage and/or transportation infrastructure for the applicable Products, or evidence that it is developing new infrastructure or expanding its current one.” This requirement is similar to the one included before the issuance of the Resolution; however, there is no clarity regarding SENER’s new interpretation of the obligation to “have infrastructure” and the means to evidence its compliance.

SENER will be required to decide on the grant or rejection of a permit within 12 working days from the date of receipt of the application. After this period, if no notification of the granting of the permit has been made, the request will be deemed rejected. The fact that, for this type of permit, deemed rejection is contemplated will most likely generate legal uncertainty for individuals. This can represent costly and unnecessary delays, hindering the productive chains of planned projects.

Regarding this procedure, the Resolution grants SENER the power to deny permits due to possible effects on the country's public finances or on the goods being imported or exported, or to the detriment of the State, a fact that generates legal uncertainty for individuals, adding a certain amount of subjectivity to the permitting process.

C. Volume Adjustment.

Pursuant to the Resolution, if the requested volume is not justified, SENER may adjust the volume of the Permit to the volume it considers justified.

D. Extension of Permits.

According to the Resolution, one-year permits may be extended twice and for the same original term. The previous regulations allowed permit holders to request an extension of the permit up to three times.

Before the issuance of the Resolution, 20-year permits could be extended once and for up to half the original term. The Resolution indicates that the five-year permits may be extended once and for the same term.

E. Revocation.

The Resolution includes two new revocation events:

- (i) Permit holders failing to inform SENER of any changes or updates regarding the initial conditions by which the Permit was requested and granted, including, for example, changes in the bylaws and shareholding structure of the Permit holder, and
- (ii) Cases where the Tax Administration Service (SAT) informs SENER that the buyer's corporate name or fiscal address abroad is false or non-existent.

F. Expiration.

Pursuant to the Resolution, SENER may declare the expiration and, therefore, early termination of a Permit in the event that the holder does not perform import or export activities in a consecutive period of 30 calendar days (for one-year Permits) or 365 calendar days (for five-year Permits).

G. Monthly Reports.

Permit holders must submit a monthly report within 10 business days following the end of the corresponding month.

Possible Legal Actions Regarding the Resolution

As the Resolution has been published in the DOF, affected parties may seek remedies under the Amparo Law (*Ley de Amparo*), which establishes that general self-applied norms may be subject to indirect protection, that is, those that by their simple entry into force generate a damage to the individual or company. Legal action may be started in federal courts within the 30-day period counted from the day of publication. The basis on which to seek the protection of federal courts could be, among others, the violation of principles of legality, non-retroactivity of the law, damage to legitimate expectations, and lack of progressiveness.

** This GT Alert is limited to non-U.S. matters and law.*

Author

This GT Alert was prepared by:

- [Erick Hernández Gallego](#) | +52 55-5029.0060 | ehernandez@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. ▸ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ▸Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP.*

∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2021 Greenberg Traurig, LLP. All rights reserved.