

KEY CHALLENGES MOVING FORWARD

Many regulations, institutions, resources needed

The development of regulatory frameworks and institutions may also pose major challenges to reform. Midstream and downstream regulations will have to build on narrow existing foundations, as the scope of the Energy Regulatory Commission (CRE) had been limited to natural gas transport and distribution pipelines, gas regasification facilities, LPG markets and installations, and the permitting of independent power producers and self-generators. The proposed legislation widens the scope of the CRE and grants it much greater regulatory powers. Its workload will grow dramatically.

The pool of talent and experience that they will be able to tap may be limited by the growth of regulation in the upstream and in other sectors. The CRE will need significant additional funds to recruit, train, and retain staff, and to make extensive use of outside consultants. In all these efforts time will be essential. The upstream regulator, the CNH, faces even greater challenges. Until now it had few regulatory responsibilities as it was originally designed mainly to offer advice and technical support to the Department of Energy. Given the overpowering presence of Pemex and the asymmetry in technical knowledge and resources, the CNH was left with little space to grow and, to a certain extent, was captured by the state oil company.

The legislation before Congress gives much greater independence to the two regulators, which will be coordinated by the Department of Energy, although it is legally their equal. This is a major step forward, as is the financial and administrative autonomy that they are being granted, although some potential problems could emerge. For example, the CNH's role as a regulator should seemingly exclude it from promoting private investment. This may require efforts to protect regulators from being captured by private interests. In the past, the main dangers lay in the intervention of government and powerful state-owned companies. It was always an uncomfortable situation when a government agency, embedded in the Department of Energy, had to regulate other government entities. Now they will also have to deal with powerful private interests.

Potential issues for safety, environmental regulations

Two structural problems regarding safety and environmental regulation may also loom on the horizon. The decision to segregate safety and environmental regulation from the two

existing regulatory agencies follows experience in other countries. However, the National Industrial Safety and Environmental Protection Agency for the Energy Sector has been attached to the Environmental and Natural Resource Department¹ instead of structuring it as an independent regulatory commission. Given the highly specialized nature of some of its activities, the high costs involved in regulation, and its role in dealing with potentially catastrophic events and accidents that can arise in the energy sector, it has been suggested that it would have been more beneficial in the long run to attach the new agency to the Department of Energy and give it the same legal status and structure as that of the other two regulators. Unfortunately, this decision was included in the Constitutional amendment so that its modification would require a new amendment.² Overall, this section of the draft legislation is less clear than other areas. More work and input from industry specialists should ultimately clarify some outstanding questions.

The CNH will have to deal with very demanding tasks in the short-run. There are very few people in Mexico that combine technical skills, economic expertise, and regulatory experience. This specific set of competencies cannot be improvised and their development takes years, not months. Given the Pemex technical monopoly and its problems in the development of petro-technical personnel, recruitment will be difficult. The CNH will also have to guard itself against overdependence on retired engineers and geoscientists whose fundamental loyalty is to Pemex. In any case, the more competent will tend to migrate to private industry. Up until now, the CNH was given very limited resources. It will now have to rely extensively on outside consultants, given its own staffing problems. The Commission will need adequate funding for all of this and for developing the infrastructure needed for managing a great volume of data.

¹ Agencia Nacional de Seguridad Industrial y Protección al Medio Ambiente del Sector Energético and Secretaría de Medio Ambiente y Recursos Naturales (Semarnat).

² Transitional article 9.