

COMPARING MEXICAN AND OSHA HEALTH & SAFETY REGULATIONS- PART 2

In this two-part series, we continue exploring some of the major similarities and differences between the Mexican and US regulatory frameworks. We will also address the Mexican enforcement policies and practices and provide some suggestions for U.S. health and safety professionals working with Mexican facilities.

HOW SIMILAR ARE NOMS AND OSHA STANDARDS?

In a previous article we described how the Mexican health and safety regulatory framework is organized in comparison with the U.S. model. Now, we will discuss how compatible the NOMs and OSHA standards actually are in content by taking a look at a couple of commonly cited OSHA standards and their Mexican counterparts.

Hazard Communication: NOM-005-STPS-1998 vs. OSHA 29CFR 1910.1200

NOM-005-STPS-1998, is the standard regulating health and safety conditions in workplace where chemical substances are utilized. It is somewhat similar to OSHA's Hazard Communication standard, as shown from the following requirements:

Standard Requirements	NOM-005-STPS-1998	OSHA 29CFR 1910.1200
Job Hazard Assessment	X	
Hazard Determination (by manufacturer)		X
Written H&S Safety Program	X	X
Product Labeling		X
Employee Training	X	X
Material Safety Data Sheets	X	X
Worker Right-to Know	X	X
Engineering, Administrative and Personal Protection Measures	X	
Confined Space Entry Procedures	X	

NOM-005 contains some elements, such as confined space entry and engineering controls, which are addressed by separate standards in the OSHA model. California's Injury and Illness Prevention Program (Title 8 § 3203) also provides for job hazard assessments. Conversely, product labeling is contained in a different Mexican standard, NOM-114-STPS-1994, which actually defines the MSDS format.

Permissible Exposure Limits: NOM-010-STPS-200029 vs. CFR 1910.1000

NOM-010-STPS-2000 regulates health and safety conditions in the workplace where chemical substances can generate contamination. It establishes the Permissible Exposure Limits (PELs) and requires conducting personal exposure monitoring, implementing administrative, engineering and PPE control measures, and providing annual medical evaluations. The PEL list references the 1993-1994 ACGIH Threshold Limit Values. The Mexican standard provides very detailed guidance for designing and conducting air monitoring studies in the work place. As part of the streamlining effort NOM-010 eliminated over 65 STPS analytical methods NOMs by stating that generally acceptable analytical procedures shall be used to determine contaminant levels.

In contrast, the Airborne Contaminants standard (29 CFR 1910.1000), also establishes the PEL, and requires employers to: monitor the work environment when exposures may exceed the PEL, institute control measures when exposures to airborne contaminants are found to exceed the PEL, and states that the person evaluating the monitoring and control methods shall be competent in industrial hygiene practice.

For U.S. professionals auditing or assessing facilities in Mexico, the main points to remember are to compare the actual PELs in the two standards, and to realize that the Mexican system allows area, rather than personal monitoring in some circumstances, which can affect the Time-Weighted-Average (TWA) determinations.

How are these standards enforced? For a point of reference let us first look at comparative injury and illness statistics between the two countries.

Mexican workers suffered about 342,000 injuries and illnesses in 1999, according to official statistics compiled by the Labor and Social Welfare Secretariat (STPS for its Spanish acronym) Of these, about 15,000 resulted in permanent disabilities, and 1137 were work-related deaths. Mexico's incidence rate of lost work-day injuries was 2.86 per 100 workers, which closely matches the 2.90 per 100 workers from the United States Bureau of Labor Statistics for 1998. When comparing work-related fatalities for the same years, the U.S. rate was 5.75 deaths per 100,000 workers, much lower than Mexico's incidence rate of 9.59.

So, how does the Mexican regulatory enforcement system work? STPS conducts inspections for federally-regulated employers, while state agencies can assume inspection duties for state-regulated facilities under agreements with STPS.

Baja California's statistics for 1999 help to illustrate this situation. This border state has the largest concentration of foreign-owned *maquiladoras* in Mexico, as well as a strong domestic industry sector. The State Labor Directorate conducted almost 5,000 routine compliance reviews in the state. In the same period, 191 health and safety inspections were conducted. This means that less than 4% of all labor inspections in the state addressed health and safety issues. Since the number of complaint-driven inspections reported was also 191, it appears that the only time state inspectors checked health and safety conditions was when alerted by employees.

This situation is not uncommon. Due to a lack of financial and technical resources, it is generally recognized that enforcement is weak and uneven. Instead, STPS relies on a number of enforcement alternatives, including voluntary compliance programs, self-regulation, and industry-union agreements. As of July, 2000 STPS has signed 77 self-regulations accords as part of the "Employers and Workers Responsible for Workplace Health and Safety" campaign, which involves a baseline diagnostic by STPS followed by a company-developed compliance plan to be verified by STPS inspectors and a company-designated health and safety consultant through periodic inspections.

In addition to its voluntary compliance programs, STPS practices enforcement through implementation of extra-governmental compliance mechanisms, such as Verification Units. These are private individuals or firms approved by STPS to conduct third-party inspections and make rulings on specific standards for which they are certified. Currently there are 46 authorized verification units in the country (most of them located in Mexico City) approved for one or more of the 36 current standards. There are also 22 approved testing laboratories, which are authorized to conduct sampling and analysis for specific standards. Like the verification units, their findings are accepted by STPS as valid to demonstrate compliance for one year, or as determined by the specific standard.

Verification Units and testing laboratories are hired and paid by the companies they inspect, which has opened this program to conflict-of-interest criticisms from unions and international worker's rights groups.

US health and safety professionals helping to assess, audit, or improve work place conditions and compliance status in Mexican operations will generally have less of problem with the technical aspects of the task than in applying the regulations. Having a basic understanding of how the Mexican regulatory system works, the next challenge is how to stay current.

There are a number of resources available to help health and safety professionals stay current with Mexico's health and safety regulations. For Spanish readers, one source is the *Diario Oficial* (Mexican Federal Register), which publishes laws, regulations, proposed and final NOMs and other regulatory information in Spanish on a daily basis. These issues can be obtained in paper or electronic format through subscription services. Other options include free online resources from governmental agencies, such as:

- STPS web page (www.stps.gob.mx), provides viewable regulatory texts as well as other information on agency programs.
- General Directorate of Standards ([http:// cronos.cta.com.mx/cgi-bin/normas.sh/cgis/](http://cronos.cta.com.mx/cgi-bin/normas.sh/cgis/)) part of the Department of Commerce (SECOFI), contains downloadable text of regulations from a number of agencies.

In addition, the Mexican Hygiene and Safety Association (www.amhsac.org.mx), a member organization, offers courses, books, and other resources on regulatory topics. All of these sites have some limitations in that they are available only in Spanish and they do not update their regulations on a very reliable schedule.

Another alternative is receiving regulatory updates from your company's Mexican H&S staff, or subscribing to one of several regulatory publishers that offer the Spanish versions in searchable form.

For English speakers, MexRegs.com, is currently the only online source of Mexican environmental and health and safety regulations in both English and Spanish with a searchable regulatory database. We also provide constant updates, regulatory news and highlights, and other services to members.

If you have questions or comments about this article please contact us at (619) 297-8060 or send us at email members@mexregs.com.
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