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Official Mexican Norms and Mexican Normalization: The Ticket to Modernization in an Emerging Economy?

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OFFICIAL MEXICAN NORMS AND MEXICAN NORMALIZATION: THE TICKET TO MODERNIZATION IN AN EMERGING ECONOMY?

WILLIAM D. SIGNET*

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I. INTRODUCTION

Normas Oficiales Mexicanas (Official Mexican Norms, NOMs)¹ play an increasingly significant role in the regulation of economic conduct in Mexico. It is highly likely that any business that manufactures, assembles, imports or sells products, furnishes services, discharges, stores, or transports potentially harmful substances or employs workers in Mexico—in short, almost any business that has direct commercial dealings with or in Mexico—is now obligated to comply with at least one NOM.

Normalization, as it is generally understood, refers to a system or set of commonly accepted procedures whereby norms are adopted, and their compliance is initially accredited and periodically verified. Norms provide a benchmark by which performance and quality in goods, services, and commercial activities may be measured and evaluated, and by which points of similarity and compatibility between different goods and services may be confirmed. Such uniformity is most needed where people with

1. The Spanish word "*norma*" is a cognate of the English word "norm" and roughly conveys the same meaning; it is so translated in this Article. However, a *norma* may also be translated as "standard," and often is, particularly in deference to the international standards of the International Organization for Standardization (ISO) which have stimulated the development of Mexican normalization since the 1940s.

different cultural and national perspectives collaborate. Since World War II, the growth of international trade and manufacturing has spurred normalization. The globalization of economic activity has called for uniformity in the application of technical production standards. More interestingly, this phenomenon has also affected social policy, thus requiring producers to account for consumer values and attitudes, particularly in the areas of environmental and labor protection. This trend may soon cause the marketplace to require a small clothing factory in Thailand to adopt not only a foreign country's manufacturing standards but also that country's child labor laws.

One of the most notable features of normalization at the international level is the absence of compulsory legal enforcement. Generally, norms are advisory; it is the tyranny of the marketplace, not the police power of a particular government, that brings producers and other economic agents into line and often makes them eager to display the official symbols of certification. The incorporation, accreditation, and verification of norms in this context are derived from a variety of sources, which in general may be categorized as producer-driven,² consumer-driven,³ or those prepared by international agencies. The most commonly known of these international agencies is the International Organization for Standardization (ISO) responsible for promulgating and accrediting compliance with ISO standards.⁴

2. Industry groups or associations are required, for purely technical reasons, to agree on technical operating or production standards. Normalization in mature economies, such as that of the United States, is often *de facto*, arising out of commercial practices and activities. For example, computer manufacturers, not the U.S. government, determine compatibility standards for software and operating systems.

3. For example, U.S. President William Jefferson Clinton and clothing industry executives recently announced plans to adopt guidelines designed to protect child laborers in foreign countries. Kathy Kiely, *President, Retail Industry Hail Pact to Eliminate Sweatshops*, ARKANSAS DEMOCRAT-GAZETTE, Apr. 15, 1997, at 1A.

4. The ISO was established in Geneva in 1946 for the purpose of standardizing industrial and consumer products moving across national borders. Its initial purpose was to work consensually with national standardization bodies and industry representatives in setting technical industry standards, which was a priority of multinational corporations in particular. In the 1980s, it moved into "soft" standardization practices such as total quality management (ISO 9000 series) and, in the 1990s, into environmental management total quality management (ISO 1400 series). Today, ISO encompasses the national standards bodies of 111 member countries, with varying levels of participation by each of these countries. Although ISO standards are intended to be voluntary, member countries frequently adopt standards or versions of standards developed by the ISO as mandatory national standards. They may also be adopted by industry trade associations and other private sector organizations.

At the national level, however, normalization is often compulsory, particularly in less technologically advanced countries, where governments wishing to achieve competitiveness in the global market are tempted to decree standards rather than allow them to evolve naturally within the domestic marketplace.⁵ For example, Country X may decree that the rail gauges of its locomotives, its telephone switching systems, or its port container-handling facilities, be the same as or compatible with those of Country Y. The promulgation of mandatory rather than precautionary business standards and norms and their application to an ever-widening circle of products and activities, which in Mexico takes place through the issuance of NOMs, represents a departure from the conventional or international process of normalization.

The purpose of this Article is to assess the use and impact of normalization in Mexico, a country that falls somewhere between the third world and the first in its economic, social, and political development, and which, like the Asian Tigers its current government emulates, makes no secret of its arriviste pretensions. Its population is roughly ninety million, and its economy—about the size of Switzerland's—is the largest, the most industrialized, and the biggest exporter in the Spanish-speaking world. It received membership in the Organization for Economic Cooperation and Development in 1987, and in 1994 joined the United States and Canada in the world's largest trade and investment bloc. Its bilateral trade with the United States has quadrupled in seven years. It has opened one parastatal industry after another to private ownership, and one economic sector after another to foreign investment.

The globalization and privatization of the Mexican economy, both occurring at the same time, has forced Mexican policymakers to address two questions. First, how does Mexico compete in the world economy? Second, how does Mexico regulate the activities of private companies within its borders?

5. Policy makers in developing nations such as Mexico are also pressured by elements in their society that prospered under the former more autarkic system and are being injured by the opening of the economy. Ironically, normalization can be manipulated to serve their interests as well, by erecting non-tariff barriers to entry. Mexican importers made precisely these claims after the Secretariat of Commerce and Industrial Development issued NOM-050-SCFI-1994 and NOM-SCFI-1994. See, e.g., *Labeling: Mexico Clarifies Labeling Rules, Lists Goods Subject to Standards*, 14 Int'l Trade Rep. (BNA) 975 (June 4, 1997).

The following analysis argues that normalization has achieved too prominent a place in the Mexican legal system because of its apparent but illusory ability to answer both questions. The current condition of the Mexican economy is one of entirely new industries being privatized and opened to foreign capital and competition.⁶ There is a considerable amount of political pressure to validate the economic efficiency and competitiveness justification for privatization while simultaneously satisfying domestic demands for worker and environmental protection.⁷ To this end, Mexican lawmakers may be extremely tempted to use the existing body of national and international norms as a source of "off-the-shelf" wisdom which, through a simple act of legislative incorporation, can be imposed on the entire economy. This is precisely what Mexican lawmakers have chosen to do.

While the process of legislation through the incorporation of national and international norms may have a certain plausibility and attraction particular to an international audience, such a process is not likely to be an effective substitute for carefully crafted and cohesive regulation. First, "off-the-shelf" is not always the same as "ready-to-wear." Norms, particularly at the

6. *Apertura*, or opening, is part of the concept of *neoliberalismo*, associated mainly with the administration of Carlos Salinas de Gortari, but which was introduced as a predominant economic policy during the administration of his predecessor, Miguel de la Madrid Hurtado. Many of the investment liberalization measures promised by Mexico in the North American Free Trade Agreement, as well as in the General Agreement on Tariff and Trade, have been implemented in recent years to varying degrees. Private ownership in general, and foreign ownership in certain cases, has been introduced through legislative changes. This was done in telecommunications pursuant to passage of the *Ley Federal de Telecomunicación* [Federal Law of Telecommunications], D.O., 7 de junio de 1995. In the transmission, storage and distribution of natural gas, these changes were made pursuant to the enactment of the *Regulaciones de Gas Natural* [Natural Gas Regulations], D.O., 8 de noviembre de 1995. The refining and marketing of secondary petrochemical products was introduced through amendments to the Regulatory Law to Article 27 of the *Constitución en el Sector de Petróleo* [Constitution in the Petroleum Sector], D.O., 13 de noviembre de 1996. Finally, banking refinements were made by amendments to the *Ley de Títulos y Operaciones de Crédito* [Law of Credit Institutions], D.O., 22 de julio de 1994, 15 de febrero de 1995, 28 de abril de 1996, 30 de abril de 1996, 23 de mayo de 1996.

7. This pressure may be elevated by the loss of a majority of the Chamber of Deputies by members of the Institutional Revolutionary Party in national elections held in July 1997. The two main opposition parties, the National Action Party and the Democratic Revolutionary Party, have traditionally called for macroeconomic policies, respectively, in which the government remains able to counter the free market's perceived threat to national goals and principles and in which workers are accorded greater security and participation in economic progress.

international level, fail to take into consideration national history and local conditions. These are particularly critical factors in environmental, health, and labor legislation. Second, the most appropriate use of norms is to suggest a conventional or acceptable way to manufacture a product or perform a service or activity. Deviation from the standard is not necessarily inefficient or immoral and certainly should not be criminal, but criminal sanctions are one consequence of non-compliance now appearing in Mexican legislation. Third, the particular manner in which norms have been inserted into Mexican legislation appears to be ill-advised and will probably not survive a constitutional challenge. Even legislation that makes non-compliance with certain NOMs a criminal offense fails to identify the specific norms whose compliance is mandated. For example, *Código Penal para el Distrito Federal en Materia Comun y para toda la Republica en Materia Federal* (Penal Code of the Federal District in Ordinary Matters and for the Entire Republic in Federal Matters) imposes criminal sanctions on air polluters in the Federal District, and refers to emissions "from stationary sources in accordance with applicable norms."⁸ Reasonable people may differ as to the identity and number of norms that address discharges from stationary sources. This is hazardous guesswork when the result of non-compliance could include a three-year jail sentence.

Examining the manner in which normalization has been imposed in Mexico, this Article will assess the historical background of normalization in Mexico, together with current legislation, the current infrastructure of compliance and enforcement, and the recent legislation that has demonstrated the tendency to adopt norms as a means of regulating the Mexican economy and of achieving social and economic goals.

II. BACKGROUND OF MEXICAN NORMALIZATION

Inspired by the international normalization movement organized in the aftermath of World War II, Mexico over the last half century has had an active interest in normalization at both the national and international levels.⁹ In 1943, the *Departa-*

8. CÓDIGO PENAL PARA EL DISTRITO FEDERAL EN MATERIA COMUN Y PARA TODA LA REPUBLICA EN MATERIA FEDERAL, art. 145(II), D.O., 14 de agosto de 1931, *as amended by* D.O., 13 de diciembre de 1996 [hereinafter Penal Code].

9. Mexico has been a member of the ISO since its foundation in 1946. See discussion *supra* note 1.

mento de Pesas y Medidas (Department of Weights and Measures) was converted into the *Dirección General de Normas* (General Directorate of Norms) within the *Secretaría de Comercio y Fomento Industrial* (Secretariat of Commerce and Industrial Development) which to this day is the primary agency responsible for normalization. Through the enactment of *Ley de Normas Industriales* (Law of Industrial Norms),¹⁰ the General Directorate of Norms was given the power to prepare norms on product nomenclature and quality and industrial operations, which it formulated on the basis of information supplied from chambers of commerce and industry, groups of manufacturers and consumers, and normative committees formed by representatives proposed by the Secretariat of Commerce and Industrial Development and chambers of commerce. Few norms were proposed in this initial period.

Beginning in 1961, more norms were established, and the Mexican government created a structure for the development and implementation of norms. In that year, the *Ley General de Normas, Pesas y Medidas* (General Law of Norms, Weights and Measures)¹¹ established the obligatory nature of the norms forming part of the *Sistema General de Pesas y Medidas* (General System of Weights and Measures) as well as those norms established by the Secretariat of Commerce and Industrial Development for materials and products which may affect personal safety, and for products for export and domestic consumption. The government also encouraged the creation and use of advisory committees and the creation of an infrastructure of quasi-governmental and private entities providing consultation, accreditation, and certification. Of the former, the most significant were the *Sistema Nacional de Acreditamiento de Laboratorios de Prueba* (National Testing Laboratories Accreditation System, SINALP), the *Sistema Nacional de Calibración* (National Calibration System), the *Unidad de Fomento para Control de la Calidad* (Unit for the Promotion of Quality Control), and the *Centro Nacional de Información de Normalización Integral* (National Center of Integrated Normalization). To the present day, quasi-governmental groups, chambers of commerce and in-

10. *Ley de Normas Industriales* [Law of Industrial Norms], D.O., 11 de febrero de 1946.

11. *Ley General de Normas, Pesas y Medidas* [General Law of Norms, Weights and Measures], D.O., 7 de abril de 1961.

dustry, and other advisory bodies continue to function and play a significant role in the preparation of norms and in the certification of compliance.¹²

The norms developed by such quasi-governmental and private bodies number in the thousands and are considered precatory in the sense that they recommend, but do not impose, standards. Today, they are generally known as Mexican norms in contrast to NOMs. Mexican norms will be discussed in greater detail below.¹³ This distinction between binding NOMs and non-binding Mexican norms was formalized in the 1988 Law on Metrology and Normalization.¹⁴ That law, which immediately preceded and whose title is confusingly similar to the current Federal Law on Metrology and Normalization, established both obligatory and non-obligatory NOMs.¹⁵

III. CURRENT LAW ON METROLOGY AND NORMALIZATION

Since 1992, the Federal Law on Metrology and Normalization¹⁶ (Normalization Law) has established the legal bases and procedures governing the issuance of NOMs. The Normalization Law also developed the bureaucratic framework for the implementation of the two purposes which appear in its title: metrology (the science of weights and measures) and normalization. With respect to the former goal, treated in Articles 5 through 38, the Normalization Law established the General System of Units of Measurement,¹⁷ the requirements for the manufacture, importation, repair, sale, and verification of measuring instruments,

12. This is evidenced by the roles assigned to the National Normalization Commission, national normalization advisory committees, and national normalization organisms, discussed *infra* Part VI.

13. See discussion *infra* Part IV.B.

14. *Ley Sobre Metrología y Normalización* [Law on Metrology and Normalization], D.O., 28 de enero de 1988. The title of this law is only distinguished from the current law by the word "Federal" in the name of the latter.

15. Under the 1988 Law, Official Mexican Norms (NOMs) were only obligatory when they dealt with the subject areas listed in Article 61 (e.g., measuring instruments or clothing articles), or could be declared obligatory with the intervention of the competent agency involved when they dealt with the subject areas enumerated in Article 62 (e.g., food and beverages or export articles).

16. *Ley Federal Sobre Metrología y Normalización* [Federal Law on Metrology and Normalization], D.O., 1 de julio de 1992 [hereinafter Normalization Law].

17. For example, under the Normalization Law Article 5, the official units of measurement in Mexico are: for length, the meter; for mass, the kilogram; for time, the second; for thermal temperature, the Kelvin scale; for intensity of electric current, the ampere; and for luminous intensity, the candle. Normalization Law, *supra* note 16, art. 5.

the National Calibration System, the National Metrology Center, and privately-owned and accredited calibration laboratories.¹⁸

The Normalization Law attempted to bring order to the previously complicated array of Mexican norms, voluntary NOMs, obligatory NOMs, and the various public and private entities that had previously participated in the formulation and enforcement of Mexican norms. It accomplished these goals in four steps. First, the Normalization Law repealed in its entirety the previous 1988 Law on Metrology and Normalization. Second, it revoked the effectiveness (in terms of being mandatory) of all previously issued obligatory norms, rules, technical specifications, *circulares* (administrative directives), and guidelines. Third, it recast all previously issued voluntary NOMs as Mexican norms. Finally, the Normalization Law phased out all non-accredited testing laboratories.¹⁹

In terms of reorganizing the patchwork of governmental and private normalization organisms and entities, the Normalization Law created a new intersecretarial committee, called *Comisión Nacional de Normalización* (National Normalization Commission), with over-arching responsibility for coordinating normalization programs.²⁰ It also clarified the roles of advisory committees and organisms, and reordered the functions of the three basic types of private entities involved in certification and verification: national certification organisms; testing laboratories (for which purpose it renewed the operation of SINALP); and verification units.²¹ Each of these entities will be discussed in greater detail below.²²

18. NOMs may also prescribe metrology standards and conventions as well as the symbols used therein. Several NOMs, for example, deal with measurement standards in various medical equipment. See, e.g., *NORMA Oficial Mexicana NOM-007-SCFI-1993, Instrumentos de medición-taxímetros electrónicos*, D.O., 13 de octubre de 1993 (electronic taxi cab meters); *NORMA Oficial Mexicana NOM-005-SCFI-1993, Instrumentos de medición-sistemas para medición y despacho de gasolina y otros combustibles líquidos*, D.O., 13 de octubre de 1993 (gasoline); *NORMA Oficial Mexicana NOM-013-SCFI-1993, Instrumentos de medición. Manómetros con elemento elástico. Especificaciones*, D.O., 14 de octubre de 1997 (manometers); *NORMA Oficial Mexicana NOM-010-SCFI-1993, Instrumentos de medición-instrumentos para pesar de funcionamiento no automático requisitos técnicos y metrológicos*, D.O., 15 de enero de 1993 (weighing instruments).

19. Normalization Law, *supra* note 16, art. tercero.

20. *Id.* arts. 58-61.

21. *Id.* arts. 68-74, 81.

22. See discussion *infra* Part VI.

Finally, the Normalization Law delineated the respective competences of the agencies involved in normalization, the procedures for the preparation and promulgation of NOMs, and the mechanisms and sanctions available for their enforcement.²³

IV. OFFICIAL MEXICAN NORMS

A. *Official Mexican Norms Defined*

NOMs may best be defined as federal compulsory standards imposed on products, services, processes,²⁴ activities, and workplace conditions in Mexico that are issued by departments of the Mexican federal government under authority of the Normalization Law. The Normalization Law Article 3 provides the official definition of NOMs. The definition consists of three elements that are at the heart of a major shortcoming in Mexican legislation: NOMs are defined as those norms which are "issued by competent agencies [of the Mexican federal government]," they are "issued for the purposes set forth in Article 40," and they are "obligatory."²⁵ Unfortunately, these three official definitional elements do not distinguish NOMs from other forms of economic regulation. As to the first, almost all governmental regulations may be described as mandates issued by governmental departments. As to the second, the purposes for which NOMs may be

23. Normalization Law, *supra* note 16, art. 76.

24. Article 3(XVI) defines a "process" as the "entirety of activities related to the production, obtaining, processing, manufacture, preparation, preservation, mixing, conditioning, packaging, handling, assembly, transportation, distribution, storage or sending or supplying to the public of products and services." *Id.* art. 3(XVI).

25. *Id.* art. 3(XI). A "NOM" is defined as the technical regulation, of obligatory observance, issued by competent agencies, for the purposes set forth in Article 40, which establish rules, specifications, attributes, directives, characteristics, or prescriptions applicable to a product, process, installation, system, activity, service, or method of production or operation, as well as those relative to terminology, symbols, packaging, marking, or labeling, and those applicable to their compliance or application.

Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal sobre Metrología y Normalización, art. 3(XI), D.O., 20 de mayo de 1997 [hereinafter Amendment to Normalization Law].

Aside from the word "technical" in reference to "regulation," it is difficult to determine how this definition would not apply to almost any law or regulation applicable to human industry or commerce.

issued, enunciated in Article 40,²⁶ occupy whole swatches of legislative terrain: protection against products or processes which

26. Article 40 of the Normalization Law states that NOMs may be issued to provide for:

- (I) The characteristics and/or specifications which must be met by products or processes when they constitute a risk to the health of persons or may damage human, animal or vegetable health, the environment, the work environment, or may affect the preservation of natural resources;
- (III) The characteristics and/or specifications which must be met by services when they may constitute a risk to the health of persons or damage human, animal, or vegetable health, the environment or work environment, or in the case of the furnishing of services in a general manner to the consumer;
- (IV) The characteristics and/or specifications related to measuring instruments, measurement patterns and methods of measuring, verifying, calibrating and marking the same;
- (V) The specifications and procedures for packing and packaging products which may constitute a risk to the health of persons or damage the health of persons or the environment;
- (VII) The health, safety and hygiene conditions which must be observed in work centers and other public meeting centers;
- (VIII) The terminology, phrases, abbreviations, symbols, diagrams, or drawings which must be employed in language used in industry, commerce, services, or communications;
- (IX) The description of emblems, symbols and countersigns for the purposes of this Law;
- (X) The characteristics and/or specifications, criteria, and procedures which may permit the environment and ecosystems to be protected and improved, as well as the preservation of natural resources;
- (XI) The characteristics and/or specifications, criteria and procedures which may permit the health of persons, animals and vegetables to be protected and developed;
- (XII) The determination of commercial, sanitary, ecological, quality, safety and hygienic information and the requirements which must be met by labels, packaging, packing, and advertising of products and services to provide information to the consumer or user;
- (XIII) The characteristics and/or specifications which must be met by equipment, materials, devices, and in industrial, commercial, service and household installations for purposes related to sanitation, aquaculture, agriculture, fishing, ecology, communications, safety or quality, particularly when they may be dangerous;
- (XV) Support of names of origin on domestic products;
- (XVI) Characteristics and/or specifications which must be met by apparatuses, communications networks and systems, and related services to protect general ways of communication and the safety of users;
- (XVII) The characteristics and/or specifications, criteria, and procedures for the handling, transportation and confinement of hazardous materials and industrial wastes and radioactive substances; and
- (XVIII) Others which may be required to standardize products, methods, processes, systems, or practices in industry, commerce or services under other legal provisions, provided the provisions of Articles 45 and 47 are observed.

Normalization Law, *supra* note 16, art. 40 (I), (III)-(V), (VII)-(XIII), and (XV)-(XVIII).

present a risk of damage to human or animal health, the environment, and workplace conditions; consumer protection and information; standardization in commercial practices, symbols, signage, and technical systems (or homologation, as it is called in relation to the technical synchronization or compatibility of telecommunications systems and networks); and protection of names of origin (e.g. "tequila"). In short, it appears that a NOM can be about many things that the Mexican government may legitimately regulate. Further, almost anything the government may choose to regulate may fall within the definition of a NOM, regardless of whether the promulgating agency chooses to call it a NOM.

The latter observation is significant partly due to the following paragraph, which follows the enumeration of purposes set out in Article 40:

The criteria, rules, instructions, manuals, administrative decrees, guidelines, procedures, and other similar provisions of an obligatory nature which agencies may be required to establish, and which refer to the areas and purposes established in the article, may only be issued as Official Mexican Norms in accordance with the procedure established in this Law.²⁷

This provision must be imputed to poor draftsmanship, for it cannot possibly be intended to mean what it purports to say. The Secretariat of Health, for example, is a Mexican federal agency whose competence includes protection of the public's health, a leading purpose for which NOMs may be promulgated under Article 40. In implementing its mandate, it issues numerous regulations that impose standards on businesses and the public. Yet, the plain language of Article 40 would require the Secretariat to issue all such regulations in the form of NOMs.

The third definitional element of NOMs, their obligatory nature, is problematic because of the very broadness of the purpose and meaning of NOMs. This flaw in the definition of NOMs has created difficulty in interpretation and regulatory inconsistency in laws and regulations that refer to "normalization" or to NOMs themselves. For example,²⁸ the Law of Foreign Commerce requires all "normalization" affecting imported merchandise to be

27. Amendment to Normalization Law, *supra* note 25, art. 40 (XV)-(XVIII).

28. For a more detailed explanation, see discussion *infra* Part IX.D.

contained in NOMs, and further requires the Secretariat of Commerce and Industrial Development to publish a list of NOMs affecting imported merchandise which will be enforced at the time of importation.²⁹ It would certainly improve customs practices if importers and customs agents could be assured that such provisions were observed in practice; however, they are not.³⁰ The lack of enforcement may stem from the fact that normalization is never precisely defined in the Normalization Law, or, to the extent that it is defined, it is defined in a way that does not sufficiently distinguish it from other forms of economic regulation.

B. *Official Mexican Norms Distinguished from Mexican Norms*

As noted above, Mexican Norms have been issued for decades.³¹ Because of changes in the statutes that have regulated normalization in Mexico, their status and characteristics have not always been well understood, and the differences between Mexican Norms and NOMs have not always been a settled matter.

The Normalization Law Article 3(X) defines a Mexican Norm as

that prepared by a national normalization organism, or the Secretariat [of Commerce and Industrial Development], within the terms of this Law, which provides for a common and repeated use, rules, specifications, attributes, testing methods, directives, characteristics or prescriptions applicable to a product, process, installation, system, activity, service, or

29. *Ley de Inversión Extranjera* [Law of Foreign Commerce], D.O., 26 de julio de 1993, art. 26.

30. Rules restricting the importation of merchandise which may present a risk to humans or animals, for example, are contained in several discrete resolutions: (i) those requiring compliance with NOMs, discussed below; (ii) those requiring the prior permission of the Secretariat of Commerce and Industrial Development; (iii) those requiring the prior permission of the Secretariat of Agriculture, Livestock-Raising and Rural Development; (iv) those requiring the prior permission of the Secretariat of Health; (v) those requiring the prior permission of the Secretariat of the Environment, Natural Resources and Fishing; and (vi) those subject to the requirements of the Intersecretarial Commission for the Control of the Processing and Use of Pesticides, Fertilizers and Toxic Substances.

31. See discussion *supra* Part II.

method of production or operation, as well as those relative to terminology, symbols, packaging, marking or labeling.³²

Mexican Norms are thus distinguished from NOMs in several respects. First, NOMs are always issued by federal departments of Mexico. Mexican Norms, in contrast, are issued by quasi-public "national normalization organisms," discussed below,³³ or by the Secretariat of Commerce and Industrial Development in areas that are not covered by national normalization organisms.³⁴ Second, Mexican Norms are considered to be non-binding,³⁵ whereas all NOMs are legally compulsory.³⁶

The drafting and dissemination of NOMs also distinguish them from Mexican NOMs. Once prepared by its respective national normalization committee, a draft Mexican Norm is made available for public inspection for sixty days prior to issuance. Both the extract of the draft, as well as a *declaratorio* (declaration) of final issuance, are published in Mexico's primary reporter, the *Diario Oficial*.³⁷ The same procedure must be followed in effecting their modification or cancellation.³⁸ Each year, matters intended for inclusion in Mexican Norms to be issued in the following year must be included in the National Normalization Program.³⁹

Unfortunately, the Normalization Law offers producers, sellers, and service providers few reasons to be concerned about complying with Mexican Norms. The Normalization Law suggests only two situations in which Mexican Norms apply. First, goods and services which federal agencies acquire, lease or contract for, are subject to any Mexican Norms which may be applicable.⁴⁰ Article 55 also requires that such goods and services comply with applicable NOMs and with "international norms," if no Mexican Norms apply. Second, the Normalization Law Arti-

32. Amendment to Normalization Law, *supra* note 25, art. 3(X).

33. See discussion *infra* Part VI.

34. Amendment to Normalization Law, *supra* note 25, art. 51-B. As of this writing, the Secretariat declares the effectiveness of Mexican norms at the rate of four to twelve per month.

35. *Id.* art. 51-A.

36. Normalization Law, *supra* note 16, art. 3(XI).

37. Amendment to Normalization Law, *supra* note 25, art. 51-A(III).

38. *Id.*

39. *Id.* art. 51-A, B. For a discussion of the National Normalization Program, see *infra* Part VI.

40. Normalization Law, *supra* note 16, art. 55.

cle 54 states that when, in civil, commercial, or administrative disputes, the specifications of products or services are omitted, those contained in NOMs—or in their absence, in Mexican Norms—may be substituted.

In that Mexican Norms are not obligatory, a problem arises in that many NOMs expressly refer to Mexican Norms without clarifying if such reference is intended to make the latter mandatory in any given sense.⁴¹ Also, the full texts of NOMs are published in the *Diario Oficial*, Mexico's counterpart to the U.S. Federal Register. Mexican Norms, on the other hand, are only identified in the *Diario Oficial* by their reference number and short title. The only means of examining their text appears to be a visit to the reading room of the Secretariat of Commerce and Industrial Development.

V. FEDERAL DEPARTMENTS ACTIVE IN NORMALIZATION

Since the implementation of the Normalization Law, over 500 NOMs, or roughly twenty per month, have been issued by the various departments of the Mexican federal government. These departments include the *Secretaría de Comercio y Fomento* (Secretariat of Commerce and Industrial Development, SCFI),⁴² the *Secretaría de Desarrollo Social* (Secretariat of Social Development),⁴³ the *Secretaría de Comunicaciones y Transportes* (Secretariat of Communications and Transportation), the *Secretaría del Trabajo y Previsión Social* (Secretariat of Labor and Social Welfare),⁴⁴ the *Secretaría de Medio Ambiente, Recursos Naturales y Pesca* (Secretariat of the Environment, Natural Resources and Fishing),⁴⁵ the *Secretaría de Agricultura, Ganadería, y Desarrollo Rural* (Secretariat of Agriculture, Livestock-Raising and Rural Development),⁴⁶ the *Secretaría de Salud* (Secretariat

41. Almost all NOMs contain a section entitled "References" which refer, without any comment or explanation, to other NOMs or Mexican Norms. *Id.* art. 54.

42. The Secretariat of Commerce and Industrial Development is identified in NOM references by the abbreviation "SCFI."

43. The Secretariat of Social Development is identified in NOM references by the abbreviations "ECOL" and "EDIF." *Id.* art. 59.

44. The Secretariat of Labor and Social Welfare is identified in NOM references by the abbreviation "STPS."

45. The Secretariat of the Environment, Natural Resources and Fishing is identified in NOM references by the initials "PESC," "REC NAT," "SEMARNAP," "SAGAR," "ECOL," and "CNA." *Id.*

46. The Secretariat of Agriculture, Livestock-Raising and Rural Development is

of Health),⁴⁷ the *Secretaría de Turismo* (Secretariat of Tourism),⁴⁸ and the *Secretaría de Energía* (Secretariat of Energy).⁴⁹

It should be noted that the names and competence of many federal agencies have changed within such time period. Only the current surviving agencies have been listed in the preceding paragraph. For the same reason, as may be observed in the footnotes corresponding to the names of secretariats listed above, a particular agency may be identified in NOM references by several sets of initials corresponding to the initials of the agency whose competence it inherited.

Any department of the Mexican federal government can issue NOMs within its prescribed area of competence. However, the Secretariat of Commerce and Industrial Development is by law⁵⁰ the lead government agency in terms of the following: (1) administration, through preponderant participation in inter-secretarial commissions and normalization committees; (2) maintenance of the registry of accredited normalization committees, certification organisms, laboratories, and verification units; (3) issuance of Mexican Norms in certain cases; and (4) issuance of NOMs in a catch-all category prescribed under Article 40.⁵¹ Also, within the general scheme of Mexico's federal public administration, the Secretariat of Commerce and Industrial Development has competence over non-tariff barriers to entry in international trade, of which NOMs form a significant part.

Given the breadth of matters treated under normalization in Mexico, together with the fact that all normalization and non-tariff barriers to entry dealing with normalization must be issued in the form of NOMs, the coverage of the NOMs issued to date in terms of subject matter appears incomplete, and the allocation of coverage among the various departments of the federal

identified in NOM references by the initials "ZOO" and "FITO." *Id.*

47. The Secretariat of Health is identified in NOM references by the abbreviation "SSA."

48. The Secretariat of Tourism is identified in NOM references by the abbreviation "TUR."

49. The Secretariat of Energy is identified in NOM references by the initials "NUCL," "SE," "ENER," and "SEMP." *Id.*

50. *Id.* art. 39.

51. Under the Normalization Law Article 39, the Secretariat of Commerce and Industrial Development is given primary competence to issue NOMs in the areas referred to in sections I to IV, VIII, IX, XII, XV, and XVIII of Article 40 of the present law. *Id.* For the text of these sections, see *supra* note 26.

public administration appears arbitrary in many cases.⁵² The following analysis of current NOMs illustrates these points.

The Secretariat of Commerce and Industrial Development has issued approximately seventy NOMs, of which the largest number (twenty) deal, in one way or another, with the safety of appliances and equipment which use natural gas or liquefied petroleum gas as a fuel. It is hard to understand why this subject matter is not allocated to the Secretariat of Energy. Many other NOMs that the Secretariat of Commerce and Industrial Development has issued deal with informational requirements for various goods and services. Some of these (e.g., NOMs governing the contracting of services for social events⁵³ or laundry and ironing services⁵⁴) appear to stray from the conventional subject matter of normalization and essentially amount to consumer protection regulation (e.g., commercial practices relating to physical beautification services,⁵⁵ auto repair shops,⁵⁶ multi-level and door-to-door sales organizations,⁵⁷ funeral services,⁵⁸ and time-sharing services).⁵⁹

The Secretariat of Social Development has issued approximately ninety-one NOMs, almost all of which appear to belong to

52. The National Normalization Commission has adopted some policies for allocating subject areas among various secretariats whose competences intersect, but since these bases are not generally published, the result can be confusing. For example, there appears to be an informal policy of allocating NOMs dealing with food and beverage among federal agencies as follows: processed foods to the Secretariat of Health; fish and shellfish to the Secretariat of the Environment, Natural Resources and Fishing; and non-processed agricultural products to the Secretariat of Agriculture, Livestock-Raising and Rural Development.

53. *NORMA Oficial Mexicana NOM-111-SCFI-1995, Prácticas comerciales-elementos informativos y requisitos para la contratación de servicios para eventos sociales*, D.O., 23 de agosto de 1996.

54. *NORMA Oficial Mexicana NOM-067-SCFI-1994, Requisitos de información que deben satisfacer los prestadores de servicios de tintorería, lavandería, planchaduría y similares*, D.O., 20 de abril de 1995.

55. *NORMA Oficial Mexicana NOM-110-SCFI-1995, Prácticas comerciales e información en la prestación de los servicios para el embellecimiento físico*, D.O., 21 de agosto de 1996.

56. *NORMA Oficial Mexicana NOM-068-SCFI-1994, Requisitos de información en la prestación del servicio de reparación mantenimiento de automóviles en agencias o locales establecidos*, D.O., 24 de marzo de 1995.

57. *NORMA Oficial Mexicana NOM-035-SCFI-1994, Criterios de información para los sistemas de ventas fuera de local comercial*, D.O., 1 de julio de 1994.

58. *NORMA Oficial Mexicana NOM-036-SCFI-1994, Elementos informativos para la contratación de servicios funerarios*, D.O., 13 de julio de 1994.

59. *NORMA Oficial Mexicana NOM-029-SCFI-1993, Información comercial-elementos normativos del servicio de tiempo compartido*, D.O., 30 de noviembre de 1993.

the competence of the Secretariat of the Environment, Natural Resources and Fishing. More than half deal with discharges of wastewater; twenty-seven deal with air emissions, particularly from vehicles; eighteen deal with the definition and controlled confinement of hazardous materials; others deal with noise pollution and protection of marine life.⁶⁰ Prior to amendments to the *Ley General del Equilibrio Ecológico y de Protección al Ambiente* (General Law of Ecological Equilibrium and Environmental Protection), this Secretariat, formerly known as the Secretariat of Social Development and Ecology (SEDUE) was the primary governmental department in charge of environmental compliance.

The Secretariat of Labor and Social Welfare has issued the most NOMs of any agency, numbering 116. This is largely due to the sixty-five identically formatted⁶¹ NOMs dealing with the presence of gases in the workplace.

The Secretariat of the Environment, Natural Resources, and Fishing, which would logically appear to be the agency with greatest competence to issue norms, is in fact among the agen-

60. See, e.g., *NORMA Oficial Mexicana NOM-003-ECOL-1993, que establece los límites máximos permisibles de contaminantes en las descargas de aguas residuales a cuerpos receptores provenientes de la industria de refinación de petróleo y petroquímica.* [which establishes maximum permissible limits of contaminants in discharges of waste water into containment bodies from the petroleum and petrochemical refining industry.], D.O., 18 de octubre de 1993; *NORMA Oficial Mexicana NOM-036-ECOL-1993, que establece los métodos de medición para determinar la concentración de ozono en el aire ambiente y los procedimientos para la calibración de los equipos de medición.* [which establishes methods of measurement to determine ozone concentrations in the atmosphere and procedures for the calibration of measuring equipment.], D.O., 18 de octubre de 1993; *NORMA Oficial Mexicana NOM-052-ECOL-1993, que establece las características de los residuos peligrosos, el listado de los mismos y los límites que hacen a un residuo peligroso por su toxicidad al ambiente.* [which establishes the characteristics of hazardous wastes, the list thereof, and limits which determine a hazardous waste due to its toxicity to the environment.], D.O., 22 de diciembre de 1997; *NORMA Oficial Mexicana NOM-059-ECOL-1994, que determina las especies y subespecies de flora y fauna silvestres terrestres y acuáticas en peligro de extinción amenazadas, raras y las sujetas a protección especial, y que establece especificaciones para su protección.* [which determines species and sub-species of terrestrial and aquatic flora and fauna in danger of extinction, rare, or subject to special protection, and which establishes specifications for their protection.], D.O., 16 de mayo de 1994.

61. See, e.g., *NORMA Oficial Mexicana NOM-039-STPS-1994, Higiene industrial-medio ambiente laboral, determinación de O-Cloro fenol en aire, método de cromatografía de gases.* D.O., 18 de diciembre de 1995. The Secretariat of Labor and Social Welfare has issued many NOMs that follow this general format: "Industrial hygiene. Workplace environment. Determination of [e.g., xylene] in the air. [Testing, e.g. 'gas chromatography'] method."

cies which has issued the fewest (twenty-nine). Apparently, the Secretariat has been given no competence to issue NOMs in the traditional environmental areas of wastewater discharge, air emissions, and disposal of toxic substances. Instead, it has become a kind of game warden of Mexico, regulating the capture of marine and forest life, although recently it has issued two NOMs which deal with municipal water systems. Recent changes to the General Law of Ecological Equilibrium and Environmental Protection⁶² may have the effect of referring environmental matters covered in NOMs to this agency.

The Secretariat of Agriculture, Livestock-Raising and Rural Development has issued over seventy-one NOMs, the great majority of which deal with meat safety and the control and eradication of pests.⁶³

The Secretariat of Health is the second-highest issuer of NOMs, most of which deal with food and beverages, and medical services and practices.⁶⁴ Curiously, only three involve the speci-

62. D.O., 28 de enero de 1996, *as amended by* D.O., 13 de diciembre de 1996.

63. See, e.g., *NORMA Oficial Mexicana NOM-005-ZOO-1993, Campaña Nacional contra la Salmonelosis Aviar* [National Campaign against Avian Salmonellosis], D.O., 1 de septiembre de 1994; *NORMA Oficial Mexicana NOM-009-ZOO-1994, Proceso sanitario de la carne* [Sanitary meat processing], D.O., 16 de noviembre de 1994; *NORMA Oficial Mexicana NOM-016-ZOO-1994, Análisis de mercurio en hígado, músculo y riñón de bovinos, equinos, porcinos, ovinos y aves por espectrometría de absorción atómica* [Analysis of mercury in the liver, muscle and kidneys of cattle, horses, pigs, sheep, and birds, through atomic absorption spectrometry], D.O., 9 de marzo de 1995; *NORMA Oficial Mexicana NOM-011-ZOO-1994, Cuarentena exterior para prevenir la introducción y diseminación de plagas de los cítricos* [Establishing an external quarantine to prevent the introduction of citrus pests], D.O., 12 de octubre de 1994.

64. See, e.g., *NORMA Oficial Mexicana NOM-027-SSA1-1993, Bienes y servicios. Productos de la pesca. Pescados frescos-refrigerados y congelados. Especificaciones sanitarias*. [Goods and services. Fish products. Canned fish. Sanitary specifications.], D.O., 3 de marzo de 1995; *NORMA Oficial Mexicana NOM-007-SSA2-1993, Atención de la mujer durante el embarazo, parto y puerperio y del recién nacido. Criterios y procedimientos para la prestación del servicio*. [Treatment of women during pregnancy, labor, delivery, and post-partum. Criteria and procedures for the furnishing of medical services.], D.O., 6 de enero de 1995. The Secretariat of Health also issues several NOMs that appear to overlap with air quality standards in NOMs issued by other agencies, such as the Secretariat of Social Development and the Secretariat of Labor and Social Welfare. See, e.g., *NORMA Oficial Mexicana NOM-020-SSA1-1993, Salud ambiental. Criterio para evaluar la calidad del aire ambiente con respecto al ozono (O₃). Valor narmado para la concentración de ozono (O) en el are ambiente, como medida de protección a la salud de la población*. [Environmental health. Criteria for evaluating environmental air quality with respect to ozone (O₃). Standard value for ozone concentration in the air as a means of protecting public health.], D.O., 23 de diciembre de 1994. For a particularly good example, see *NORMA Oficial Mexicana NOM-047-SSA1-1993, que establece los límites biológicos máximos permisibles de disolventes orgánicos en el personal ocupacionalmente ex-*

fications of medications.⁶⁵ Most surprisingly, in view of the tremendous risks for public health presented by unsanitary water and food, only four NOMs deal with water storage, and only one NOM deals with the handling of food in restaurants.⁶⁶

The Secretariat of Tourism, the government agency that arguably has the least logical connection with normalization, has issued five NOMs dealing with subjects such as the complaint forms used in hotels and the liability insurance which must be furnished by providers of lodging services.⁶⁷

The Secretariat of Energy has issued over twenty NOMs, most dealing with the disposal of radioactive wastes.⁶⁸

VI. NORMALIZATION PROGRAMS AND ENTITIES

As noted above,⁶⁹ Mexican normalization programs since the 1940s have enlisted the participation of a wide variety of quasi-governmental and private organisms and companies composed of government, academic, scientific, commercial, and public representatives whose primary purpose is to provide and solicit technical information, prepare NOM proposals, and formulate Mexican Norms. One of the primary goals of the 1992 Normalization Law was to establish and delineate their identities, responsibilities, and accreditation.⁷⁰ In addition, the Normalization Law

puesto. [which establishes maximum permissible limits of organic solvents for employees with occupational exposure thereto.], D.O., 23 de septiembre de 1996.

65. See, e.g., *NORMA Oficial Mexicana NOM-073-SSA1-1993, Estabilidad de medicamentos*, D.O., 8 de marzo de 1996 [Stability of medications.].

66. *NORMA Oficial Mexicana NOM-093-SSA1-1994, Bienes y Servicios. Practicas de higiene y sanidad en la preparación de alimentos que se ofrecen en establecimientos fijos*, D.O., 4 de octubre de 1995 [Goods and services. Hygiene and health practices in the preparation of food offered in stationary establishments.].

67. One particular NOM which is not likely to be enforced, particularly on the Internet, is NOM-004-TUR-1995. *NORMA Oficial Mexicana NOM-004-TUR-1995, de los formatos foliados y de porte pagado para la presentación de sugerencias y quejas de servicios turísticos relativos a empresas de sistemas de intercambio de servicios turísticos* [Serially paginated forms and carriage-paid forms for presenting suggestions and complaints in relation to tourist services by companies providing systems for the exchange of tourist information], D.O., 10 de agosto de 1995.

68. See, e.g., *NORMA Oficial Mexicana NOM-008-NUCL-1994, Límites de contaminación superficial con material radiactivo*, D.O., 5 de marzo de 1996 [Limits of surface contamination by radioactive materials]; *NORMA Oficial Mexicana NOM-020-NUCL-1995, Requerimientos para instalaciones de incineración de desechos radiactivos* [Requirements for facilities for the incineration of radioactive wastes], D.O., 15 de agosto de 1996.

69. See discussion *supra* Part II.

70. Normalization Law, *supra* note 16, art. 1.

regularized the status of the three types of private companies that play a role in certification and verification of NOM compliance.⁷¹

The various names and types of entities may seem confusing. To attempt a simplification: among governmental or quasi-governmental entities, there is one entity, the National Normalization Commission, which is placed at the apex of NOM administration and program formulation and is primarily composed of and controlled by representatives of government secretariats. There are also numerous *Comités consultivos nacionales de normalización* (national normalization advisory committees) in specific economic sectors whose primary function is to take *anteproyectos* (draft proposals) of proposed NOMs, turn them into official proposals, and administer the process by which they become legally effective. Finally, there are numerous *Organismos nacionales de normalización* (national normalization organisms) which, in their respective sectors, formulate Mexican Norms, as opposed to NOMs.

Among purely private entities, there are three types of companies that are accredited to assist the government in certification and enforcement of NOM compliance: *Organismos de certificación* (certification organisms), *Laboratorios de prueba y calibración* (testing and calibration laboratories), and *Unidades de verificación* (verification units). Each of these entities will be examined in turn.

The National Normalization Commission, treated in Articles 58 through 61 of the Normalization Law, is composed of under-secretaries of the primary NOM-producing government secretariats, and by members of various academic, business, and private groups at the invitation of the secretariats involved. Its primary functions are to approve and oversee the implementation of the annual National Normalization Program,⁷² establish the rules to coordinate the activities of the public and private

71. Certification organisms, testing laboratories, and verifications units, discussed *infra* this Part.

72. The National Normalization Program is normally published in early Spring of each year in the *Diario Oficial de la Federación*, and is supplemented several times in the months following. It is composed of a listing of subject areas which will be "normalized" during the coming year in NOMs and Mexican Norms. No Mexican Norm (Normalization Law, art 51-A) and, except in emergency cases, no Official Mexican Norm (Normalization Law, art. 61-A) may be issued in a subject matter which is approved in the National Normalization Program.

sector in the preparation and enforcement of norms, recommend new norms, and resolve conflicts between other committees.⁷³

National normalization advisory committees, treated in Articles 62 to 64 of the Normalization Law, administer the process through which *anteproyectos* (draft proposals) for NOMs become *proyectos* (proposed NOMs), and proposed NOMs are then made effective. These committees are organized under guidelines issued by the National Normalization Commission. Their members come from the secretariats involved in the subject matter or industry sector in which the committee is involved, as well as from commercial and private interests.⁷⁴

National normalization organisms, treated under Articles 65 to 67 of the Normalization Law, formulate and issue Mexican Norms. They may also recommend that Mexican Norms they have issued become NOMs. They are non-governmental entities accredited by the Secretariat of Commerce and Industrial Development whose members include representatives of the government, industry, distributors, consumers, and all other groups with an interest in the subject matter.⁷⁵

Certification organisms are private companies accredited to certify compliance with specific NOMs, discussed below, in a role intended to be auxiliary to the government. In so doing, they may issue their own certifying seals and marks.⁷⁶

Laboratorios de prueba (testing laboratories) are private companies accredited to test samples of products for NOM compliance. They are inscribed in the National Testing Laboratory Accreditation System, whose official emblem they may use. The results of their testing are contained in a signed report that has validity before any agency of the federal government.⁷⁷

Verification units are "physical or moral persons who have been accredited to carry out verification activities in coordination with the competent agencies."⁷⁸ Verification is discussed below. The results of their analyses are contained in minutes signed by the unit, and which will be valid once recognized by the govern-

73. Normalization Law, *supra* note 16, arts. 59-61.

74. *Id.* art. 62.

75. *Id.*

76. *Id.* art. 78.

77. *Id.* arts. 62, 83.

78. *Id.* art. 3(XVII).

ment agency involved.

Certification organisms, testing and calibration laboratories, and verification units (collectively known as "accredited persons")⁷⁹ receive accreditation by satisfying several requirements⁸⁰ administered by relatively new private companies⁸¹ called "accreditation entities." Accreditation is not general. In other words, a particular accredited person may be accredited to verify compliance with only one or a few designated NOMs. Once the accreditation entity has determined that the applicant company has satisfied these requirements, official accreditation will be granted by the particular government agency involved in the subject matter for which accreditation is being given.⁸² Names and addresses of accredited private companies, as well as national normalization organisms, are published periodically in the *Diario Oficial*.⁸³

VII. CONTENT: FORMAL REQUIREMENTS

Under Article 41 of the Normalization Law, each NOM must contain the following:

- (i) its title, reference number, and, if applicable, a reference to the norms on which it is based;
- (ii) an identification of the product, service, method, process, installation, or, if applicable, the purpose of the norm;
- (iii) the specifications and characteristics corresponding to the product, service, method, process, installation, or establishments set forth in the norm based on its purpose;
- (iv) the applicable methods of proof relative to the norm and, as the case may be, to sampling;

79. Amendment to Normalization Law, *supra* note 25, art. 3(XV-A).

80. Normalization Law, *supra* note 16, art. 68

81. This was created pursuant to amendments to the Normalization Law. Amendment to Normalization Law, *supra* note 25, art. 68.

82. Normalization Law, *supra* note 16, art. 38(VI).

83. See, e.g., *Relación de organismos nacionales de normalización, organismos de certificación, laboratorios de pruebas, laboratorios de calibración y unidades de verificación acreditados*, D.O., 23 de septiembre de 1996.

(v) the data and other information which must be contained in the products or, otherwise, in their packaging or packing, as well as the size and characteristics of the various materials indicated;

(vi) the degree of harmonization with international norms and guidelines when they exist;

(vii) the bibliography corresponding to the norm;

(viii) the name of the agency or agencies which will enforce compliance with the norm, in the event the subject matter falls within the competence of more than one agency; and

(ix) other statements considered appropriate for the due understanding and scope of the norm.⁸⁴

Mexican Norms, as opposed to NOMs, must contain all the information noted above, but do not have to name the agency responsible for enforcing compliance.

VIII. PROCEDURE FOR PROMULGATION⁸⁵

Departments of the *secretarías del estado* (federal public administration), not the legislature, issue NOMs.⁸⁶ Each department, within its respective competence, may participate each year in the formation of the National Normalization Program whereby it may submit proposals for the NOMs it intends to issue.⁸⁷ It may thereafter implement the National Normalization Program in its respective area of competence by issuing NOMs.⁸⁸ It may also create national committees for evaluation and consultation; provide such committees with necessary ad-

84. Normalization Law, *supra* note 16, art. 41(I)-(IX).

85. *Promulgación* (Promulgation), which consists of publication in the *Diario Oficial*, is the final procedural step required for a federal law to become effective. However, the date the law becomes effective is stated in the text of the law and is almost never the date of publication.

86. *Id.* arts. 3(XI), 43-48.

87. *Id.* art. 38.

88. *Id.*

vice; "certify, verify and inspect that products, processes, methods, installations, services, or activities comply with NOMs;" and "participate in evaluation committees⁸⁹ for accreditation, and approve certification organisms, testing laboratories, and verification units on the basis of the results of such committees."⁹⁰

The government secretariat usually prepares *anteproyectos* (draft proposals) for NOMs and then presents them to the national normalization advisory committee assigned to the subject area.⁹¹ The agency may also present a draft as the result of initiatives presented by private interests.⁹² In addition, national normalization organisms which, as noted below, are the groups generally responsible for issuing Mexican Norms, may submit Mexican Norms they have issued to such advisory committees as proposed NOMs.⁹³ The committees, in turn, based on the aforementioned drafts, will prepare the formal NOM *proyectos* (proposals).⁹⁴

All draft NOMs, when submitted to a committee for discussion, must be accompanied by a "regulatory impact statement"⁹⁵ which explains its purpose, alternative methods which were considered for achieving the same purpose and the reasons for rejecting them, and the present value of the costs and benefits associated with the plan presented in the draft, in comparison with other alternative methods. The advisory committee to which a draft has been presented must prepare its observations within seventy-five calendar days. The sponsoring government agency will then respond to such observations within thirty calendar days and will make essential changes as necessary. When the agency does not consider the observations justified, it may request the president of the advisory committee to order the publication of the draft, without modification, as a proposed NOM.⁹⁶

Proposed NOMs are published in their entirety in the *Diario Oficial* so that interested parties may have sixty calendar days

89. *Id.* art. 38(IV), (V). Amendment to Normalization Law, *supra* note 25, art. 38(VI). See discussion, *supra* Part VI.

90. Normalization Law, *supra* note 16, art. 38(VI).

91. *Id.* art. 44.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* art. 45.

96. *Id.* art. 46.

to present their comments to the corresponding committee.⁹⁷ In addition, during such time period, the analysis prepared in connection with the draft, described above, will be made available to the public at the offices of the committee.⁹⁸ At the end of the sixty-day period, the advisory committee will review the comments received and, as the case may be, will modify the proposal within forty-five calendar days.⁹⁹ The agency must order the publication of the responses to the commentaries in the *Diario Oficial*. Once approved by the advisory committee, the NOM will be issued by the competent agency and published in the *Diario Oficial*.

These requirements do not apply in the case of emergency NOMs issued pursuant to Article 48.¹⁰⁰ In such cases, the competent agency may prepare the NOM with the participation of other competent agencies, but without going through the draft and proposal process. The same agency will order publication of the emergency NOM in the *Diario Oficial* for a maximum period of effectiveness of six months, subject to renewal, once only, for an additional six months. If the agency decides to further extend the time period of the NOM, or to make it effective indefinitely, the agency must present it as a draft within the procedures outlined earlier.¹⁰¹

NOMs must be reviewed every five years and the results of the review reported to the Nationalization Commission. If the results are not reported, the NOM will expire and its cancellation will be published in the *Gaceta Oficial de la Federación* (Official Gazette of the Federation).¹⁰²

IX. APPLICATION AND COMPLIANCE

The question of whether NOMs apply to a given activity, product, or service can be answered very simply: all products, processes, methods, installations, services, or activities in Mexico must comply with NOMs.¹⁰³ There appear to be no exceptions and no limitations save the implied limitation of Mexican terri-

97. *Id.* art. 47(I).

98. *Id.*

99. *Id.* art. 47(II).

100. *Id.* art. 47(IV).

101. *Id.* art. 48.

102. Amendment to Normalization Law, *supra* note 25, art. 51(A).

103. Normalization Law, *supra* note 16, art. 52.

torial jurisdiction. The more complicated questions concern the manner and time in which compliance must be demonstrated.

The Normalization Law envisions a framework of compliance and enforcement that may be described as rules based on self-policing, certification, verification, use of official marks and countersigns, as well as special rules applicable to imports.

A. *Self-Policing*

The Normalization Law, to a limited and still untested extent, requires producers, manufacturers, and service providers that are subject to NOMs to maintain "quality control systems consistent with applicable norms."¹⁰⁴ They are also obligated to "systematically verify the specifications of their products or services and their processing, using sufficient and adequate laboratory equipment and appropriate testing methods, as well as to perform statistical control over production such that compliance with such specifications may be evaluated."¹⁰⁵

No guidelines or other rules have been issued to explain the manner in which such quality control, testing, and statistical control systems are to be maintained, and there are no specific provisions sanctioning the failure to maintain such systems.

B. *Certification*

Certification is defined as the "procedure through which it is assured that a product, process, system or service conforms to norms, guidelines, or recommendations of organisms engaged in national or international normalization."¹⁰⁶ Certification consists of the evaluation of processes, products, services, and installations, which may be conducted through visual inspection, sampling, testing, field visits, or evaluation of quality control programs, as well as by subsequent monitoring.¹⁰⁷ Under recent amendments to the Normalization Law,¹⁰⁸ certification to evaluate compliance with NOMs is to be carried out in accordance

104. *Id.* art. 56.

105. *Id.*

106. *Id.* art. 3(III).

107. *Id.* art. 80(I).

108. Amendment to Normalization Law, *supra* note 25, art. 73.

with procedures prepared by the government agency involved and that will be published in the *Gaceta Oficial de la Federación*. The Normalization Law distinguishes "official" certification and certification requested by private entities for their own purposes. The former is the method by which the state enforces NOM compliance, by certifying that given processes, products, methods, installations, services, or activities comply with specifications established in NOMs.¹⁰⁹ The latter may be requested by private parties for their own particular purposes, such as for exportation.¹¹⁰

Private parties can request the relevant government agency, or an accredited company (be it a certification organism, testing laboratory, or verification unit) to evaluate its compliance with NOMs for any official or private purpose.¹¹¹

In theory, certification becomes most relevant in international import or export operations. Article 53 of the Normalization Law provides that when a given product or service must comply with a NOM, similar products or services, upon importation, must also comply with the specifications established in such norm. For such purpose, prior to entering the country, the product must be accompanied by the certificate or authorization of the Mexican agency competent to regulate such product or service, or by an accredited certification organism. In practice, however, this general rule has been cut back considerably, and importations are governed by special rules detailed below.

C. Verification

It is important to note that the Mexican federal government has the legal authority to confirm compliance with NOMs at any stage of operation, distribution, or sale, through verification, defined as the "visual confirmation or demonstration, through sampling, measurement, laboratory testing, or document examination."¹¹² In addition, prior certification is no guarantee that verification will not take place at a later time, even, in the case of imported merchandise, when compliance with NOMs has been

109. *Id.*

110. *Id.* art. 74.

111. *Id.*

112. *Id.* art. 3(XVIII).

demonstrated through certification or verification at the point of entry into the country.¹¹³

Verification appears to be a process which encompasses two primary procedures. The first method, which the Normalization Law barely mentions, appears to consist of a kind of off-site discovery mechanism by which businesses may be required to provide competent authorities with such documents, reports, and information as may be requested in writing, as well as product samples which may be requested when necessary.¹¹⁴ A second method consists of on-site inspections or *Visitas de verificación* (verification visits) conducted by government agencies at which samples may be taken and tested for compliance with NOMs specifications.

In addition to verifying NOM compliance, verification visits may be conducted under the authority of the Normalization Law for the purposes of confirming net content or drained mass, product ingredients, labeling requirements (which of course can be part of NOMs specifications), or the "truthfulness of commercial information."¹¹⁵

When there is more than one competent agency, the verification will be carried out by the agencies in accordance with coordination agreements.¹¹⁶ Government agencies may conduct inspection visits for the purpose of confirming compliance with NOMs, independently of whether or not "procedures for evaluating compliance"¹¹⁷ have been established.¹¹⁸ However, when the company which is the subject of the visit has an opinion, certificate, report, or other document issued by an "accredited person"¹¹⁹ compliance with NOMs will be recognized.¹²⁰

The lack of express notice provisions in the Normalization Law indicates that verification visits may probably be conducted

113. *Acuerdo que identifica las fracciones arancelarias de las Tarifas de la Ley del Impuesto General de Importación y de la Ley de Exportación, en las cuales se clasifican las mercancías sujetas al cumplimiento de las normas oficiales mexicanas en el punto de entrada de la mercancía al país*, D.O., 28 de diciembre de 1995.

114. Normalization Law, *supra* note 16, art. 88.

115. *Id.* art. 94(II).

116. *Id.* art. 94.

117. *Id.* art. 91. See discussion *supra* Part IX.B.

118. Normalization Law, *supra* note 16, art. 91.

119. Amendment to Normalization Law, *supra* note 25, art. 3(XV-A). An "accredited person" is defined as a certification organism, testing laboratory, or verification unit.

120. Normalization Law, *supra* note 16, art. 96.

without prior notice. On the other hand, other provisions of the Normalization Law suggest, if they do not expressly affirm, that verification visits may only be conducted pursuant to an *oficio* (official commission letter)¹²¹ issued by the particular agency outlining the terms and scope of the visit.¹²²

The Normalization Law is equally vague in detailing the circumstances in which verification may be conducted by private verification units, although it is apparent from several provisions, as well as other resolutions which have been promulgated in relation to NOMs, that verification units are intended to be utilized by private businesses on a voluntary basis. Article 85 of the Normalization Law, for example, states that "verification units, at the request of an interested party, may verify compliance with NOMs," though only in those fields or areas in which they have been officially accredited. The Normalization Law Article 101 states that "only persons expressly authorized by the Secretariat or by the competent agency may collect [product samples]" but certification organisms and verification units "may collect such samples only when so requested by the owners or persons in charge of the establishments."¹²³ Another example, not arising from the Normalization Law itself but from separate resolutions,¹²⁴ involves the special provisions regarding NOM compliance on importation of goods into the country, detailed below, which permit certain importers to use verification units to confirm NOM compliance in a general deposit warehouse or private facilities within the country. Another example that the

121. *Id.* art. 95.

122. The Normalization Law Article 95, for example, states that verification visits by the Secretariat of Commerce and Industrial Development or competent agencies may only be carried out by authorized personnel, with prior current proof of identification and presentation of the *oficio de comisión* (official commission letter); and may be carried out during working days and hours unless the official commission letter expressly authorizes non-working days or hours. *Id.*

123. *Id.* art. 101.

124. *Acuerdo que reforma, adiciona y deroga diversas disposiciones de los acuerdos que identifica las fracciones arancelarias de las tarifas de la Ley del Impuesto General de Importación y de la Ley del Impuesto General de Exportación en las cuales se clasifican las mercancías sujetas al cumplimiento de las normas oficiales mexicanas en el punto de su entrada al país, y en el de su salida, y que deben ostentar etiquetas de información comercial en idioma español en el punto de entrada de la mercancía al país*, D.O., 24 de febrero de 1997. *Acuerdo por el que se establecen los procedimientos de verificación a que se sujetarán los importadores de mercancías que opten por cumplir con las normas oficiales mexicanas NOM-050-SCFI-1994 y NOM-051-SCFI-1994 en el territorio nacional*, D.O., 24 de febrero de 1997.

Normalization Law suggests but does not expressly state is that the second verification testing which may be requested by an interested party, in the event the first testing revealed non-compliance, may be performed by a verification unit contracted by the affected party.¹²⁵

The resulting report of each verification visit is detailed minutes, signed by the competent agency, the verification unit, or, as the case may be, by the laboratory, and the representative of the business which was visited.¹²⁶

As noted earlier, if verification reveals lack of compliance, the Secretariat of Commerce and Industrial Development, at the request of the interested party, may authorize a second verification, and may designate another laboratory for such purpose. If the results differ, the first testing will be negated. If they are the same, the first testing will be deemed confirmed.¹²⁷

The verification procedure does not necessarily stop commerce. While the verification procedure is being carried out, the lot from which the sampling came may be sold or distributed only under the strict liability of the owner or director of the enterprise.¹²⁸ In the event that there is good cause to believe that the sale of the product may seriously harm the health of persons, animals or plants, or irreversibly damage the environment or ecosystems, the lot from which the samples were taken may not be commercialized and will remain under the responsibility of the owner or director of the enterprise from which it was collected.¹²⁹ When verification proceedings concern products, activities, or services regulated under the General Health Law, the provisions of that law govern.¹³⁰

D. Special Rules for Importations

The question most often presented by importers and customs agents concerns the manner and time for demonstrating that imported products comply with applicable NOMs. Most of the rules and resolutions issued by the Secretariat of Commerce and

125. Normalization Law, *supra* note 16, art. 93.

126. *Id.* art. 92.

127. *Id.* art. 93.

128. *Id.* art. 108, ¶ 1

129. *Id.* art. 108, ¶ 2.

130. *Id.* art. 108, ¶ 3.

Industrial Development since the passage of the Normalization Law in 1992 have attempted to answer this question, although not in a completely satisfactory manner, as the following discussion will show.

According to the Law of Foreign Commerce, the importation, circulation and transit of merchandise in Mexico is subject to NOMs and, with regard to normalization, no provisions, other than NOMs, may be applied to the importation, circulation or transit of merchandise.¹³¹ In addition, the Law of Foreign Commerce requires the Secretariat of Commerce and Industrial Development to determine the list of products subject to NOM compliance, which compliance must be verified by customs authorities at the point of entry into the country, and to publish such list in the *Diario Oficial*.¹³²

This provision, like the final paragraph of the Normalization Law Article 40 (which states the same thing, only applied to all laws), simply cannot mean what it says, as long as Article 40 appears to constitute the only current guide as to the meaning and extent of normalization in Mexico. If, for example, normalization includes "the characteristics and/or specifications which must be met by products or processes when they constitute a risk to the health of persons or may damage human, animal or vegetable health, the environment, the work environment, or may affect the preservation of natural resources,"¹³³ how can it possibly be argued that the Secretariat of Agriculture, Livestock-Raising and Rural Development, for example, cannot prevent the importation, or transit through Mexico, of infected cattle unless it has had the time and foresight to have issued a NOM on such matter? Can corrective governmental action be challenged on the grounds that the regulations promulgated by that Secretariat are not NOMs?

Indeed, the enactments and practices of several agencies, including the Secretariat of Commerce and Industrial Development, as well as provisions of the Normalization Law itself, seem to ignore Article 26 of the Law of Foreign Commerce. Several resolutions have been enacted which subject importations of pre-

131. *Ley de Inversión Extranjera* [Law of Foreign Commerce], D.O., 27 de julio de 1993, art. 26.

132. *Id.*

133. Normalization Law, *supra* note 16, art. 40(I).

scribed merchandise to the prior permission of a given agency.¹³⁴ It may be assumed that the criteria used by such agencies in determining prior permission are not derived solely on the basis of NOMs.

Furthermore, the Normalization Law states that "when an Official Mexican Norm does not exist, competent agencies may require that the products or services to be imported display the international specifications with which they comply, those of the country of origin, or, in the absence thereof, those of the manufacturer."¹³⁵ This provision is of doubtful validity. Not only does it contradict Article 26 of the Law of Foreign Commerce, it contradicts the Secretariat of Commerce and Industrial Development's own pronouncements that

only the merchandise subject to Official Mexican Norms which have been identified within the terms of the corresponding tariff sections and nomenclature, in accordance with Articles 20 and 26 of the Law of Foreign Commerce ... may be enforced by customs authorities at the point of entry or departure from the country.¹³⁶

Through several resolutions published in the *Diario Oficial*,¹³⁷ which have generally been amended or updated every four months or so, the Secretariat of Commerce and Industrial Development has listed the tariff categories of a large number of

134. Rules restricting the importation of merchandise which may present a risk to humans or animals, for example, are contained in several discrete resolutions: (i) those requiring compliance with NOMs, discussed below; (ii) those requiring the prior permission of the Secretariat of Commerce and Industrial Development; (iii) those requiring the prior permission of the Secretariat of Agriculture, Livestock-Raising and Rural Development; (iv) those requiring the prior permission of the Secretariat of Health; (v) those requiring the prior permission of the Secretariat of the Environment, Natural Resources and Fishing; and (vi) those subject to the requirements of the Intersecretarial Commission for the Control of the Processing and Use of Pesticides, Fertilizers and Toxic Substances.

135. *Id.* art. 53, ¶ 3.

136. *Acuerdo que identifica las fracciones arancelarias de las Tarifas de la Ley del Impuesto General de Importación y de la Ley de Exportación, en las cuales se clasifican las mercancías sujetas al cumplimiento de las normas oficiales mexicanas en el punto de entrada de la mercancía al país*, D.O., 28 de diciembre de 1995.

137. *Id.*, as amended, D.O., 28 de junio de 1996, and D.O., 13 de noviembre de 1996; *Acuerdo que identifica las fracciones arancelarias de la Tarifa de la Ley del Impuesto de Importaciones en las cuales se clasifican las mercancías que deben ostentar etiquetas de información comercial en idioma español en el punto de entrada de la mercancía al país*, D.O., 26 de diciembre de 1995 [hereinafter *Acuerdo*].

products which must comply with NOMs at their point of entry into Mexico. The list of tariff sections, as well as the specific means of regulation set out in the content of the resolutions themselves, is changed often enough that the reader should not rely on this Article as a general guide. Nevertheless, it may be helpful to describe the rules which were current through March 1997. If the product in question falls within the specific list of tariff categories contained in the rule, three possible scenarios may arise.

First, the importer may be required to attach to the *pedimento* (customs entry form) an original or simple copy of the NOM document or certificate issued by a competent government agency or by a certification organism.¹³⁸ Second, the product, at the time of importation, may be required to carry labels meeting informational or Spanish language requirements.¹³⁹ Third, used

138. *Acuerdo que identifica las fracciones arancelarias de las Tarifas de la Ley del Impuesto General de Importación y de la Ley de Exportación, en las cuales se clasifican las mercancías sujetas al cumplimiento de las normas oficiales mexicanas en el punto de entrada de la mercancía al país*, D.O., 28 de diciembre de 1995, art. 5.

139. Article 6 of the *Acuerdo*, requires that commercial information labels display the information contained in the sections and chapters of commercial information indicated in Article 3. *Acuerdo*, *supra* note 137, art. 5. Article 3 is divided into:

Part I: Tariff sections of products which must contain the information contained in subsection 4.1 of NOM-004-SCFI-1993, Commercial information—Labeling of textile products, articles of clothing and their accessories, D.O., 13 de octubre de 1993;

Part II: Tariff section of products which must contain information described in Chapter 4 (Specifications) of NOM-020-SCFI-1994, Commercial information—Labeling of Hides and Natural Cured Skins and Artificial Materials with such appearance, Shoewear, as well as products prepared with such materials, D.O., 3 de enero de 1996;

Part III: Tariff sections of products which must contain information described in Chapter 5 (Commercial Information) of NOM-024-SCFI-1993, Commercial information—Electronic, Electric and Electrodomeestic Appliances—Instructions and Warranties for domestic and imported products, D.O., 28 de agosto de 1993;

Part IV: Tariff sections of products which must contain information described in Chapter 5 (Labeling) of NOM-032-SCFI-1993, Commercial information—Brandy-Alcoholic beverages, D.O., 17 de diciembre de 1993;

Part V: Tariff sections of products which must contain information described in Chapter 4 (Marking and Labeling) of NOM-055-SCFI-1994, Commercial information—Flame-retarding or flame-proof materials and/or inhibitors—Labeling, D.O., 8 de diciembre de 1994.

Part VI: Tariff sections of products which must contain information described in Chapter 2 (Specifications) of NOM-003-SSA1-1993, "Environmental health-sanitary requirements which must be satisfied in the labeling of paints, stains, varnishes and lacquers." D.O., 12 de agosto de 1994.

Id. art. 3.

or second-hand merchandise falling within tariff categories subject to NOM compliance at the point of entry, may be imported as components provided that the NOM document or certificate indicates that the merchandise is used or second-hand and the importer notes in the customs entry form the code which the Secretariat of Commerce and Industrial Development may provide to identify such merchandise prior to activating the random selection device.¹⁴⁰

There are also many exceptions to the requirement of NOM compliance at the point of entry¹⁴¹ which have much in common with the usual list of articles which, in most countries, are exempt from payment of customs duties: passenger baggage and other personal articles; household and personal goods; samples; merchandise imported by residents of frontier zones, up to certain dollar limits; goods brought in by embassies, scientific and cultural organizations; and goods imported under a customs regime other than definitive importation, such as warehouse entry, temporary importation, or international transit.

In addition, in February 1997, the rules requiring that compliance be evidenced at the point of entry into the country were amended¹⁴² to allow importers to comply with NOMs within the country in one of two ways. First, the labeling requirements set out in two of such NOMs¹⁴³ may be satisfied while the goods are in the country under the customs regime of warehouse entry in a general deposit warehouse which has been accredited as a verification unit. Second, importers who have been inscribed in the *Padrón de Importadores* (List of Importers) for at least two years, and who have imported at least \$100,000 of merchandise during the preceding year, may bring the merchandise to private

140. *Id.* art. 9.

141. *Id.* art. 10. However, the products described in Article 2 of the resolution, generally consisting of food products, must comply with NOMs at the point of entry without exception.

142. *Acuerdo por el que se establecen los procedimientos de verificación a que se sujetarán los importadores de mercancías que opten por cumplir con las normas oficiales mexicanas NOM-050-SCFI-1994 y NOM-051-SCFI-1994 en el territorio nacional*, D.O., 24 de febrero de 1997.

143. *NORMA Oficial Mexicana NOM-050-SCFI-1994, Información comercial. Disposiciones generales para productos* [Commercial information. General provisions for products], D.O., 24 de enero de 1996; *NORMA Oficial Mexicana NOM-051-SCFI-1994, Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preempacados* [General labeling specifications of prepackaged food and non-alcoholic beverages], D.O., 24 de enero de 1996.

facilities where compliance will be confirmed by a verification unit also specially accredited in commercial information.

E. Labeling and Marking

Competent agencies, in coordination with the Secretariat of Commerce and Industrial Development, may establish countersigns used to authenticate that products or services have been evaluated for compliance with NOMs or Mexican Norms.¹⁴⁴ Products or services subject to NOMs may voluntarily display such official countersigns, as well as the proprietary seal of the "accredited person" who evaluated compliance. Government agencies may also make display of the countersign mandatory for certain products, in which case the product must undergo evaluation by the agency or an "accredited person."¹⁴⁵ In practice, few specific regulations and resolutions have been issued implementing labeling provisions of the Normalization Law. As of March 1997, official countersigns are used only in relation to tequila.¹⁴⁶

X. SANCTIONS AND PENALTIES

The Normalization Law provides for various kinds of administrative sanctions for NOM violations as well as for inaccurate product labeling or advertising. In all cases, the sanctions must be based on prescribed facts and conditions,¹⁴⁷ and subject to proceedings for administrative appeal.¹⁴⁸ The sanctions available under the Normalization Law alone may be described as administrative injunction against further sales,¹⁴⁹ a fine,¹⁵⁰ the temporary or permanent closure of the business,¹⁵¹ administrative arrest for up to thirty-six hours,¹⁵² and the suspension or cancellation of the document which certifies the results of the

144. Amendment to Normalization Law, *supra* note 25, art. 76.

145. *Id.* art. 76, ¶ 3.

146. *Aviso relativo de la NOM-EM-004-SCFI-1994, que establece las características y uso de la contraseña oficial.* [which establishes characteristics and use of official countermarks.], D.O., 5 de abril de 1995.

147. Normalization Law, *supra* note 16, art. 114.

148. *Id.* art. 121.

149. *Id.* art. 57.

150. *Id.* art. 112(I).

151. *Id.* art. 112(II)

152. *Id.* art. 112(III),

evaluation of compliance with NOMs, as well as use of the official countersign.¹⁵³

A. *Administrative Injunctions*

When a product or service fails to comply with a specific NOM, the competent governmental authority may immediately prohibit its distribution and sale until it is conditioned, reprocessed, repaired, or replaced.¹⁵⁴ If such remedies are not possible, they may take measures necessary so that the product or service may not be used or furnished.¹⁵⁵ If the product or service is already in the flow of commerce, sellers or providers are obligated to refrain from selling or furnishing it from the time they are notified of the resolution or the resolution is published in the *Diario Oficial*.¹⁵⁶ If non-compliance with the norm may significantly damage the health of persons, animals, plants, the environment, or ecosystems, sellers must refrain from selling the products or providing the services from the moment they become aware of non-compliance.¹⁵⁷ Organs of mass media must disseminate such facts immediately at the request of the competent agency.¹⁵⁸ Producers, manufacturers, importers, and their distributors, are obligated to recover non-complying products immediately.¹⁵⁹ The persons responsible for non-compliance may be obligated to provide the sellers with complying products or services or make up for their value, as well as pay expenses incurred for such treatment, recycling or final disposal.¹⁶⁰ Any delay may be punishable by daily fines in accordance with Normalization Law Article 112 Section I.¹⁶¹ In addition, when information contained in labels or packaging of products, in whatever form, or in the advertising of such products, is "inexact," the Secretariat of Commerce and Industrial Development or the competent agencies in a coordinated manner, may order their modification, granting a time period strictly necessary for such

153. Amendment to Normalization Law, *supra* note 25, art. 112(V).

154. Normalization Law, *supra* note 16, art. 57, ¶ 1.

155. *Id.*

156. *Id.* art. 57, ¶ 2.

157. *Id.*

158. *Id.*

159. *Id.* art. 57, ¶ 3.

160. *Id.* art. 57, ¶ 4.

161. *Id.* art. 57, ¶ 5.

purpose, without prejudice to any sanction which may be appropriate.¹⁶²

B. Administrative Fines

Fines ranging from 20 to 3000 times the minimum general daily wage¹⁶³ may be imposed for less serious violations such as the failure to file reports with government agencies, the failure to present the document which confirms compliance with NOMs, and the violation of a NOM with respect to commercial information which does mislead a consumer.¹⁶⁴ More serious fines ranging from 500 to 8000 times the minimum general daily wage may be imposed if a product, process, service, method, facility, or activity subject to a compliance evaluation is substantially modified without giving notice to the competent agency or accredited person who performed the evaluation, if the document which states the results of a compliance evaluation is used for another purpose, or if the provisions contained in a NOM are violated.¹⁶⁵ Fines ranging from 3000 to 14,000 times the minimum general daily wage may be imposed for engaging in conduct which deceives the consumer or is misleading, for displaying countersigns and other insignia without authorization, or for disposing of products whose sale has been enjoined.¹⁶⁶ The most serious fines, ranging from 5000 to 20,000 times the minimum daily general wage, are reserved for conduct which endangers human, animal or plant life, or the environment, or the other matters covered in the Normalization Law Article 40.¹⁶⁷ In addition to administrative injunctions and fines, administrative detention of up to thirty-six hours may be imposed,¹⁶⁸ and violations may also result in the total or partial closure of the business.¹⁶⁹

162. *Id.* art. 109.

163. This represented approximately U.S. \$3.20 in 1997.

164. Amendment to Normalization Law, *supra* note 27, art. 112-A(I).

165. *Id.* art. 112-A(II).

166. *Id.* art. 112-A(III).

167. *Id.* art. 112-A(IV). For the text of Article 40, see *supra* note 26.

168. Amendment to Normalization Law, *supra* note 25, art. 112(III).

169. *Id.* art. 112(II).

XI. OFFICIAL MEXICAN NORMS' INCORPORATION INTO OTHER LAWS

In several instances during recent years, Mexican legislators have addressed important social and economic issues by adopting NOMs as substantive regulation. Two notable examples—the first regulates workplace safety throughout Mexico, the second sanctions environmental crimes in the Federal District—illustrate this trend.¹⁷⁰

The regulation of workplace safety falls under the famous Federal Regulations for Labor Safety, Hygiene and the Environment.¹⁷¹ While the name and the publicity that accompanied this new legislation indicate a long-overdue response to a significant problem, these Regulations, in effect, do little but state the following: employers must observe NOMs—any NOMs, not specific ones—in establishing workplace safety conditions.¹⁷² The following language in Article 27 typifies the approach to substantive regulation found in the Regulations:

Workcenters in which processes, operations, and activities are carried out involving a risk of fire or explosion as a consequence of raw materials, sub-products, products, merchandise or wastes handled, must be designed, constructed and controlled, according to the type and degree of risk, in accordance with applicable Norms.

While difficult to believe, the last five words or those to such effect are appended to most of the 168 articles contained in these Regulations. The drafting approach of the Secretariat of Labor and Social Welfare appears to have consisted of listing every conceivable threat to workplace health and safety—building

170. *Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo* [Federal Regulations for Labor Safety, Hygiene and the Environment], D.O., 21 de enero de 1997; Penal Code, *supra* note 8.

171. *Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo* [Federal Regulations for Labor Safety, Hygiene and the Environment], D.O., 21 de enero de 1997.

172. Given the fact that Article 3 of the Normalization Law requires that all regulations dealing with workplace safety be promulgated in the form of NOMs, it is particularly ironic that a workplace safety regulation such as this one, which is not promulgated in the form of a NOM, refers back to NOMs in terms of enunciating substantive safety standards. Normalization Law, *supra* note 16, art. 3.

safety;¹⁷³ electrical installations;¹⁷⁴ fire prevention (quoted above); the handling, transportation and storage of dangerous chemical substances;¹⁷⁵ ventilation;¹⁷⁶ personal protection equipment¹⁷⁷—and then adopting NOMs in the place of new, substantive rules.¹⁷⁸

An even more egregious and dangerous example of NOM incorporation is the recent addition of a new chapter 25 to the Penal Code for the Federal District, called "Environmental Crimes."¹⁷⁹ A jail term from three months to six years,¹⁸⁰ and a fine from 1,000 to 20,000 times the daily wage may be imposed on the violator who:

In violation of Official Mexican Norms referred to in Article 147 of the General Law of Ecological Equilibrium and Environmental Protection, carries out, authorizes, or orders the carrying out of activities which, in accordance with the same law, may be considered highly hazardous and which may cause damage to the public health, natural resources, flora, fauna, or ecosystems.¹⁸¹

173. *Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo*, D.O., 21 de enero de 1997, art. 19 ("buildings and shops in which work centers are located ... must be designed and constructed observing the provisions of local ordinances and applicable Norms.").

174. *See id.* art. 47 ("electrical installations ... in work centers must be designed and installed with safety apparatuses and protection, and indicate the voltage and current of the charge installed, ... in accordance with applicable Norms.").

175. *See id.* art. 58 (providing that "for the handling, transportation, and storage of dangerous materials and chemical substances, the employer must establish preventive measures and systems for attending to emergencies, in accordance with the corresponding Norms.").

176. *See id.* art. 99 (providing that "work centers must have natural or artificial ventilation, in accordance with the corresponding Norms.").

177. *See id.* art. 101 ("in work centers where there may exist agents in the workplace atmosphere which may affect health or endanger the life of workers, ... the employer must provide [workers] with adequate personal protection equipment, in accordance with the corresponding Norms.").

178. Only one source of workplace danger, containers subject to high-pressure or steam, requires the employer to actually evidence compliance with NOMs, either by asking the Secretariat of Labor and Social Welfare or a private accredited verification unit to certify compliance.

179. *Crímenes Ambientales* [Environmental Crimes], D.O., 13 de diciembre de 1996.

180. The jail term may be increased by up to three years in certain cases when the violation occurs in a populated area.

181. Penal Code, *supra* note 8, art. 414.

In violation of ... applicable Official Mexican Norms, emits, issues, or discharges into the atmosphere, gases, smoke, or dust, or authorizes or orders such actions, which may cause damage to the public health, to natural resources, or to fauna, flora, or ecosystems, provided such emissions arise from a fixed source under federal jurisdiction, in accordance with that prescribed in the General Law of Ecological Equilibrium and Environmental Protection.¹⁸²

In violation of ... Official Mexican Norms, generates emissions of noise, vibrations, thermal or luminous energy, arising from emitting sources under federal jurisdiction ... which may cause injury to public health, natural resources, flora, fauna, or ecosystems.¹⁸³

Similar penalties may be imposed under Article 416 of the Code on the person who, in violation of NOMs:

I. Discharges, deposits, or leaks, or so authorizes or orders, wastewater, chemical or biochemical liquids, wastes or contaminants in soils, marine waters, rivers, basins, or reservoirs and other water deposits or flows under federal jurisdiction, which cause or may cause damage to the public health, to natural resources, flora, fauna, the quality of watershed water or ecosystems, ... or

II. Destroys, drains or fills wetlands, marshes, salt marshes [tidal streams], or morasses.

The above two enactments make no or little attempt¹⁸⁴ to

182. *Id.* art. 145(II).

183. *Id.* art. 415(III).

184. The quoted portion of Article 415(II) of the Penal Code for the Federal District is the only part of the two enactments discussed which refers to a specific kind of NOM, that is, those NOMs referred to in Article 147 of the General Law of Ecological Equilibrium and Environmental Protection. Article 147 states, in relevant part that "[t]he carrying out of industrial, commercial or service activities shall be conducted in conformity with that provided ... in the Official Mexican Norms referred to in the preceding article." *Id.* art. 147. Actually, the preceding Article 146 does not refer to any NOMs at all, nor does it even mention NOMs, but, rather, states "the Secretariat ... will establish the classification of activities which must be considered highly risky." *Id.* art. 146. It can only be presumed that such classification will be contained in NOMs if the reference in Article 147 is to make any sense at all. Since the relevant portions of these articles are contained in recent amendments (*Ley General del Equilibrio Ecológico y de Protección al*

identify or limit the number of NOMs the violation of which would constitute prohibited or sanctionable conduct, and for such reason businesses are left to wonder which of the more than 500 NOMs published may be invoked by a government agency in enforcement or penalty proceedings. An informal analysis of the more than 500 NOMs issued through the end of 1996, not including the more than 100 NOMs issued by the Secretariat of Labor and Social Welfare which directly deal with workplace safety, indicates the following numbers of NOMs with possible application to the two legislative enactments mentioned. Forty-four address discharges of water or other liquids. Twenty-eight discuss emissions of gases, smoke, dust and other contaminants into the atmosphere. Thirty address the safety of equipment and machinery in the workplace. Thirty-four address hazardous wastes. Twenty-eight deal with protection of flora and fauna.

In addition, the method of legislation-through-NOM-incorporation leads to uncertainties in methods of enforcement and provides a sterling example of how bureaucracies and regulations propagate and entangle themselves. Note that the second legislative enactment discussed above pertains to the Federal District of Mexico; it is not federal law in the general sense. The act not only incorporates NOMs, which are federal law, into the substantive environmental law of the Federal District, but also, in effect, incorporates federal environmental standards through reference to the General Law of Ecological Equilibrium and Environmental Protection. If such norms are now incorporated into the body of substantive environmental rules in that federative entity, may the administrative machinery of the Federal District now be utilized in their enforcement?

Ambiente, D.O., 28 de enero de 1988, as amended by D.O., 13 de diciembre de 1996), it is still too early to determine what such NOMs may be.

The NOMs mentioned in Article 147 of the General Law of Ecological Equilibrium and Environmental Protection refer to the NOMs issued under Article 146, which, in turn, are defined as those issued by the Secretariat. The entire scope of Article 414 of the Penal Code could be very limited because the December 1996 amendment to the General Law of Ecological Equilibrium and Environmental Protection changed the definition of Secretariat from the Secretariat of Social Development and Ecology (which has issued a great deal of NOMs on environmental matters) to the Secretariat of the Environment, Natural Resources and Fishing (which has issued almost none). It is difficult to discern the intent of the drafters of the Penal Code amendments, because the amendments to both the Penal Code and the federal ecology law were promulgated on the same day.

The problem is a real one in light of the recent promulgation of the Regulations for Administrative Verification for the Federal District,¹⁸⁵ which drastically changed the rules governing on-site visits of businesses in the Federal District to verify non-compliance with laws related to the preservation of the environment and ecological protection among other things. Businesses in each delegation (akin to a borough) will be classified according to their level of environmental risk and listed in a new Business Verification System. High-risk businesses will be visited annually. Businesses with no particular risks or with moderate risk will be visited on the basis of random selection operated in a manner such that companies with moderate risk will stand a better chance of being selected for a verification visit than companies with no particular risk. Even more importantly, the Regulations detail the procedural and formal requirements applicable to such verification visits which in certain respects are not consistent with the existing federal law. If a business located in the Federal District is subject to an administrative search which uncovers violations of the same federal environmental legislation and norms, whose rules and procedures apply, those of the Federal District or those of the federal government?

XII. CONCLUSION

Mexican normalization over the last fifty years has manifested a pattern that may be typical of countries at an intermediate stage of development and that are opening their economies to the processes of economic globalization: norms and normalization programs prevalent in the international arena, but which are only advisory, are copied; then, as the need for competitiveness in the international marketplace and regulation of private activity at home grows, such norms become mandatory; finally, their scope is extended to an ever-growing number of economic sectors and jurisdictions through simple incorporation.

By applying normalization in an obligatory and universal fashion to an increasingly greater percentage of the economy and number of activities, Mexico's normalization program has shown signs in recent years of becoming the method of choice by which

185. *Reglamento de Verificación Administrativa para el Distrito Federal* [Regulations for Administrative Verification for the Federal District], D.O., 11 de abril de 1997.

several federal departments are imposing compulsory standards on an ever-growing number of products, services and activities, many outside the traditional ambit of normalization. More troubling still, legislators at both the federal and state levels, even when drafting criminal legislation, have begun to use the NOMs system as a short-hand method of regulating the economy and business behavior, substituting NOMs, through simple incorporation, in the place of carefully crafted legislation.

The inherent difficulty in recent developments is that NOMs and the normalization movement they represent are picking up too much of the baggage of economic regulation in Mexico, a burden that they were neither intended nor designed to support. As a general rule, NOMs fall far short of being good standards of business and particularly criminal conduct. In one sense, they are far too loose, because they often fail to spell out with great precision what a given company is required to do. In another sense, they are too technical, because they only spell out one procedure or process which is deemed to be recommended, or which is the internationally conventional method. Technical deviation from those specifications does not necessarily imply conduct which is economically inefficient, and certainly does not involve the presence of criminal or even immoral behavior. To impose NOMs on everyone may be counterproductive and may invite the twin evils of general inobservance and arbitrary enforcement. To present such legislation as an effective response to fundamental problems is to invite disappointment down the road, and delay the arrival of real change.