

How should stakeholders navigate Mexico's complex and changing chemical regime?

The transition to a comprehensive chemicals inventory regime in Mexico will be lengthy. In the meantime, industry must deal with a complicated regulatory landscape, says Madeleine Boyer of Beveridge & Diamond

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The regulation of chemical substances in Mexico is spread across a variety of laws and agencies, just as it is in most Latin American countries. This makes for a complex regulatory regime that can be difficult – and often frustrating – for stakeholders to navigate, from citizens to companies alike.

Mexico has been in the global vanguard for environmental issues in some areas – reverse logistics and climate change for example. The laws governing chemical substances, however, is one of the last areas calling for modernisation since Mexico began overhauling its environmental legal framework in 1988.

Their time appears to have finally come. But the road to a comprehensive chemicals inventory regime in Mexico will not be easy. Nor is it likely to be realised soon.

Background

Last November Mexico's General Health Council (Consejo de Salubridad) or CSG issued a blueprint for a comprehensive overhaul of the country's chemical substance laws and policies. This followed a historic series of technical meetings that brought together representatives from across Mexican and international governmental bodies.

The blueprint, An Integrated National Policy on the Management of Chemical Substances (La Política Nacional Integral para la Gestión de Sustancias Químicas), sets out seven key actions. The first and most fundamental of these is the adoption of an entirely new legal framework for chemicals under a general law for their integrated management (Ley General para la Gestión de Sustancias Químicas).

While a draft is not publicly available, the CSG is calling for a law that will:

- cover all programme sectors and agencies;
- revamp distribution of legal authorities and jurisdictions;
- establish a national registry of chemical substances (ReNaSQ), requiring industry to provide information on risks to ensure adequate management;
- implement an environmental health monitoring system for chemical substances (SiRas);
- establish a permitting and enforcement system;
- mandate a rigorous and efficient regulatory regime;
- provide for citizen participation;
- ensure constitutional and human rights are guaranteed; and
- establish a national strategy for the investigation of chemical substances, among others.

Challenges

Binding changes do not seem imminent. The blueprint outlines a timeline for the new law, including its introduction to the Congress of the Union this year and projected passage in 2021. Even before coronavirus Covid-19, those deadlines seemed very ambitious.

Meanwhile, even once the law is adopted, it may well take years for the competent authorities to adopt implementing regulations (Reglamentos) and the official Mexican standards or NOMS (Normas Oficiales Mexicanas) that will bring those laws fully into force.

The political landscape for chemicals also presents a variety of unique jurisdictional challenges that are perhaps at the heart of why modernisation has been so protracted. Agencies with long-standing authorities – including the secretaries of environment (Semarnat), economy (SE), health (SSA), agriculture (Sader), labour (STPS) and transportation (SCT), as well as inter-secretarial bodies (for example Cofepris) among others – have historically had competing policy views on chemicals regulation and eschewed change.

Add to the mix the inevitably intense industry and consumer scrutiny, crafting a law that suits all parties and maturing it to adoption will be no easy task. While there is no doubt that the Mexican Congress can move swiftly and unexpectedly on environmental issues, tangible new standards still seem a long way away.

Complying with Mexico's existing chemicals laws

While at time of writing the new law has yet to be introduced, Mexican agencies have been busy over the past year increasing their attention to the implementation and oversight of the country's existing chemicals laws. Those laws carry substantial fines and penalties for non-compliance and are robust in their own right.

Businesses should follow five practical compliance tips during what may be an extended period of transition.

1. Confirm applicability of international laws and anticipate the potential for some differences

Mexico is a strong international participant on the environment. And the country has adopted and ratified key conventions and protocols relating to chemicals, including among others:

- the Basel, Rotterdam, Stockholm and Minamata Conventions;
- the Chemical Weapons Convention;
- the Montreal Protocol;
- the Climate Change Convention; and

- the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Local implementation of these conventions may not completely harmonise with the international treaty and important nuances may exist.

2. Know the domestic laws that apply, your competent authorities and expect more than one law – and more than one agency – to have jurisdiction

Chemicals regulation is housed in a number of laws and an equally wide range of agencies. This makes the task of identifying which law applies, the correct competent authority and who has jurisdiction challenging. The type of chemical (pesticide, cosmetic, medicine) will typically govern the set of laws and agencies. But there can be multiple agencies that require authorisations across the chain of commerce – for import, export, manufacture, distribution, use to final disposal or take-back. Permit and license application forms can have additive requirements, some of which are substantive in nature and effectively amend laws and regulations.

3. Your product or active ingredient may already require registration, including submission of significant supporting data

Even in the absence of a comprehensive chemicals inventory law, it is not the case that they are free from registration or data submission requirements. For example, Mexico's regulations on the registration, import and export of pesticides, plant nutrients and toxic or dangerous substances (Reglamento en Materia de Registros, Autorizaciones de Importación y Exportación y Certificados de Exportación de Plaguicidas, Nutrientes Vegetales y Sustancias y Materiales Tóxicos o Peligrosos) require significant technical information as part of the chemical and active ingredient registration process. Current rules do not provide for streamlined follow-on data recognition for registered products and that can complicate the processing of applications.

4. Your product might be regulated even if not specifically listed so look closely for catch-all provisions

Mexico does not have a system for new chemical registration. Instead, listed chemicals are regulated, making for potentially significant regulatory gaps in some instances. However, many chemical lists, for example the various agreements or acuerdos that list regulated substances, will typically include a catch-all category entitled Los demás or "the others". That broad omnibus category could be the legal basis for regulation of a new product or one that is not specifically listed. Also, keep in mind that the acuerdos are routinely amended and comprehensive lists not published. Be sure to check all lists.

5. Translating your product label and safety data sheet (SDS) from English to Spanish may not deliver full compliance, even though Mexico has adopted the GHS system

Be sure to check specific labelling and information requirements for your products, including those that will apply during transportation, in the workplace and for consumers. A simple translation into Spanish is rarely enough. Expect hybridisation in any new Mexico chemicals proposals too – more than likely we will see a fusion of best international practices with a uniquely Mexican execution and something for everyone.

The views expressed in this article are those of the expert author and are not necessarily shared by Chemical Watch.

Madeleine Boyer will be speaking at the Chemical Watch [Latin America regulatory update](#) virtual conference on Wednesday 24th June.

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