

# MODIFICATIONS TO NOM-044-SEMARNAT-2017

APRIL 2024

## Executive Summary:

- The Ministry of the Environment and Natural Resources (SEMARNAT, for its acronym in Spanish) has issued an agreement rescinding the extension for commencing compliance with certain provisions of NOM-044-SEMARNAT-2017 (NOM-044).
- To adhere to NOM-044, Mexico must ensure the availability of ultra-low sulfur diesel (ULSD).

On April 25, 2024, SEMARNAT published in the Official Gazette of the Federation (DOF, for its acronym in Spanish) the 'Agreement nullifying the extension of the compliance deadline for specified provisions of Charts 1, 2, and 4, Sections 4.1, and 4.2, exclusively pertaining to AA Standards, of Mexican Official Standard NOM-044-SEMARNAT-2017' (2017 Version). This standard establishes the maximum permissible emission limits for carbon monoxide, nitrogen oxides, non-methane hydrocarbons including nitrogen oxides, particulate matter, and ammonia emissions from the exhaust of new diesel-fueled engines intended for the propulsion of motor vehicles with a gross vehicle weight exceeding 3,857 kilograms, as well as from the exhaust of new motor vehicles with a gross vehicle weight exceeding 3,857 kilograms equipped with such engines. The standard was published on November 26, 2021.

As the title suggests, the purpose of this Agreement is to 'nullify' several provisions of NOM-044-2017 Version related to the enforcement timeline.

### What is the background of NOM-044-2017 Version?

- Previously, the automotive industry importing or manufacturing diesel engine vehicles weighing more than 3,857 kilograms was regulated by NOM-044-SEMARNAT-2006 ('2006 Version'),

which shared similar objectives and guidelines with the 2017 Version but featured more lenient pollution limits.

Under the NOM-044 2006 Version, compliance required obtaining a 'NOM Compliance Certificate' from the Federal Attorney's Office for Environmental Protection (PROFEPA, for its acronym in Spanish), certifying adherence to NOM-044. Failure to obtain this certificate incurred substantial fines and penalties.

- Subsequently, NOM-044-2017 Version was published in the DOF in 2018, aiming to update standards for new diesel engines to meet the EPA 2010 regulations of the United States and the Euro VI regulations of the European Union, which outline procedures for certifying diesel engines that significantly reduce atmospheric emissions.

Additionally, NOM-044-2017 Version mandates PROFEPA to issue a 'NOM Certificate', replacing the previous 'NOM Compliance Certificate', with non-compliance potentially resulting in various penalties. It is crucial to note that NOM-044-2017 Version repealed NOM-044-2006 Version.

- In addition, NOM-044-2017 Version introduced three standards for diesel engines: A, AA, and B, with A being the most polluting and B the least.



Within the framework of energy transition policies, NOM-044-2017 Version imposed restrictions on the production and importation of engines meeting A and AA standards until the end of 2020. However, until that date, NOM-044-2017 Version allowed more flexible regulations for AA engines until ULSD became widely available in the country.

- On November 11, 2020, SEMARNAT published in the DOF an Agreement extending the implementation deadline for certain provisions of NOM-044-2017 Version concerning AA standards, setting the new compliance deadline for the end of 2021. It emphasized that the regulations applicable to these engines would remain more flexible.

This extension was further prolonged until the end of 2024 through an Agreement published in the DOF by SEMARNAT on November 26, 2021. Consequently, the flexible guidelines, including the procedure for obtaining the NOM Certificate, will continue to apply.

- It is crucial to note that these extensions were deemed necessary due to the requirement of ULSD for compliance with NOM-044-2017 Version. However, as of now, ULSD is not universally available throughout the country.
- Despite the sensitivity of the matter, a non-governmental organization (NGO) initiated an amparo lawsuit against SEMARNAT's agreement extending the implementation of NOM-044-2017 Version until the end of 2024, alleging violations of the right to a healthy environment and health.

The lawsuit ruled in favor of the NGO, with the corresponding decision mandating: i) SEMARNAT to revoke the deadline extension for the implementation of NOM-044-2017 Version; ii) imported or manufactured diesel engines to comply with the regulations outlined in NOM-044-2017 Version within a 60-day timeframe during which SEMARNAT cannot impose sanctions; and iii) after this period, NOM-044-2017 Version must be enforced.

### **What is the issue?**

The primary impact of this decision falls upon companies involved in the manufacturing or importation of vehicles equipped with such engines. Although they have been diligently obtaining NOM Certificates in accordance with NOM-044-2017 Version, the reality is that this compliance has been based on more lenient standards.

It is worth noting that the amparo lawsuit between the NGO and SEMARNAT did not consider the companies holding NOM Certificates. These companies, without being part of the proceedings, will nonetheless be affected by the accelerated enforcement of the 2017 Version.

The recent publication by SEMARNAT in the DOF, which annuls the extension for the enforcement of provisions in Version 2017, fails to specify the 60-day period for the automotive sector to regularize, as dictated in the amparo ruling. It merely "nullifies" the extension agreement. Moreover, this new agreement does not address the fate of NOM Certificates obtained under the now nullified extension agreement.

Given the unavailability of ULSD, the sudden enforcement of NOM-044 2017 Version implies that numerous companies will struggle to comply with its standards.

### **What are the following scenarios?**

First and foremost, all parties must uphold their responsibility to safeguard the environment. While the automotive sector is committed to compliance with these standards given adequate resources, particularly access to ULSD, the repercussions of SEMARNAT's 'nullification' must be carefully assessed. The agreement's narrow scope and lack of clarity regarding limits, implications, and the fate of existing NOM Certificates raise significant concerns.

In response to this situation, the automotive sector may pursue an amparo lawsuit.



Key arguments would include: 1. the limited and vague nature of the nullification agreement; and 2. the omission of their involvement in the lawsuit initiated by the NGO against SEMARNAT, despite their clear legal interest in the matter."



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