

Voluntary Report – Voluntary - Public Distribution

Date: June 17, 2021

Report Number: MX2021-0033

Report Name: Mexico Proposes New Official Standard -NOM- for Product Placement in Supermarkets and Stores

Country: Mexico

Post: Mexico City ATO

Report Category: Food and Agricultural Import Regulations and Standards - Narrative

Prepared By: Fabiola Cortez and Denise Soria

Approved By: Rhiannon Elms

Report Highlights:

This report intends to inform U.S. processed foods and non-alcoholic beverage companies about a draft proposal for a new Mexican Official Standard (or NOM in Spanish) that -based on a preliminary announcement- would mandate product placement in stores and supermarkets depending on the number of warning signs and cautionary legends on the product, and place additional restrictions on in-store promotions of products that have warning signs and cautionary legends. The proposed standard project remains in draft status and is not expected to be available for public comment until January 2022. This report also contains information about amendments to Mexico's General Health Law regarding the advertisement of products based on NOM-051 Front of Pack Labeling regulations (NOM-051 FOPL).

General Information:

Domestic and imported prepackaged, processed foods, and non-alcoholic beverages in Mexico are subject to labeling regulations including the Front-of-the-Pack labeling (FOPL) requirement entered into force on October 1, 2020.

FAS encourages U.S. exporters to be in constant communication with in-country importers to ensure full compliance with NOM-051 regulations and other official standards that may apply to imported products. The in-country importer serves as the legal representative with Mexico's regulatory authorities.

Proposed Mexican Official Standard Project - "NOM-XXX-SE/SSA1-2021, General specifications for distribution and consumer information in retail stores – advertising, commercial, and health information".

Background

On July 1, 2020 the *Quality Infrastructure Law* was published in the Federal Registry (DOF in Spanish) and entered into force. It calls for the participation of the public, and social and private sectors to develop and enforce Mexican Official Standards (NOMs) and Regulations. This law was created within the framework of the USMCA as part of Mexico's improvement process to comply with the treaty in terms of product quality and competitiveness. To compliment this law, the *National Quality Infrastructure Program 2021* was officially launched (through publication in the DOF) on February 25, 2021 and is comprised of representatives from a wide range of ministries, including the Ministries of Economy and Health. Its main objective is to plan, conduct, coordinate and inform the activities of normalization, standardization, and metrology at national level.

Mexican Official Standard Project

According to a preliminary announcement published at the DOF, the newly proposed Mexican Official Standard Project (further referred to as draft project) is being conceived within this *National Quality Infrastructure Program* and would "provide consumer information and protect consumer's rights". The draft project was initiated according to public policy recommendations by government authorities regulating retail sales. One recommendation is to display products according to the number of warning signs, to alert consumers to nutritional content. Currently, companies pay grocery stores for prime shelf space with high customer traffic (including at checkout registers), and product highlights and promotions.

This draft project is also likely to place regulations on in-store promotions by prohibiting the use of posters, banners, mascots, or other elements that promote consumption of products that have warning signs and cautionary legends. Information or advertising that compare prices would also be regulated and must not be misleading for consumers. Additionally, the draft project recommends segregating products -mainly health products- that offer unproven health benefits. Also

recommended is a monitoring and evaluation system upon enforcement (most likely the Consumer Protection Commission – PROFECO in Spanish).

However, at this time no official draft of the project has been made public. Post anticipates the NOM project proposal will remain in draft status from January through December 2021. After authorities come to an agreement on the final draft, it will be published in the National Commission for Regulatory Improvement (CONAMER, in Spanish) at which point it will be open for public comment and economic assessment. Only after comments are received and addressed, and the economic impact assessment is properly conducted, the draft proposal will be published in the DOF and enter into force. FAS Mexico will continue to report on relevant details related to official comment periods and enforcement timelines as the information becomes available.

Amendments to the General Health Law

Mexico's General Health Law provides for and regulates public health protections. The law is also responsible for overseeing the sanitary control regulation for services and products such as food and medicine. The law was amended on October 1, 2019, under the *Regulation of Sanitary Control of Products and Services*, and *Advertising* chapters. As a result, the NOM-051 (FOPL) entered into force in October 2020, and updates to regulations on product advertising were notified to CONAMER in September 2020 and are awaiting final publication.

The Ministry of Health first submitted amendments to CONAMER on June 3, 2020 and again on September 10, 2020 after receiving and taking into consideration public comments and the mandatory economic impact analysis. Said amendments include changes to articles within the *Regulation of Sanitary Control of Products and Services*, and articles related to *advertising regulations*. The final amendments will enter into force after final evaluation by CONAMER and through publication in the DOF. At this time there is no known timeline for final approval and publication to the DOF (public comments are no longer being accepted).

The following serves as a courtesy (partial) translation of the articles amended and added.

Regulation of Sanitary Control of Products and Services

Article 2: The definitions of flavored beverages, snacks, chocolate, multiple or collective packaging and prepackaged were eliminated, and the following definitions were added

1. **Front of Pack Labeling**: a simplified information system in the main display area of the package, which provides a truthful, clear, quick, and simple warning sign of the content of the product that exceeds the maximum levels of critical nutrients or meets the nutritional profiles of energy content, added sugars, saturated fats, trans fats, sodium and other critical nutrients and ingredients determined by the Mexican Ministry of Health.
2. **Portion**: quantity of product suggested to be consumed or generally consumed as daily

intake, expressed in units of measure of the General System of Units of Measurement.

3. ***Critical nutrients***: those components of the diet that may be a risk factor for chronic non-communicable diseases (such as diabetes).

Article 9: Nutritional characteristics (for example, vitamins added) must be included, as well as its physical (consistency), chemical (processes that might change the product) and biological (organic, fermented) characteristics.

Article 11 bis: A new article that requires products warn which components, raw materials, ingredients, and additives, may represent a health risk to consumers, by ingestion, application, or by handling of the product through the mandatory cautionary legends.

Article 13: States that for sanitary control of finished products and raw materials, the Ministry of Health may require from manufacturers, the nutritional specifications of the products and its raw materials, in addition to the biological, chemical, and physical specifications.

Article 15: In addition to establishing the microbiological, toxicological or health risk specifications of the products, they must establish the nutritional specifications.

Article 25: Nutritional labeling (NOM-051) is considered part of general sanitary information. The NOMs corresponding to each type of product shall determine the general health information to be included on the label or specific information when, due to the size of the package or container or the conditions of the process or any other condition, not all the required information can appear on the package. The information included in the label must be truthful and must be described and presented in such a way as not to mislead the consumer about its nature.

The following articles were added:

Article 25 Bis: Establishes that prepackaged food and non-alcoholic beverages must include the front of pack labeling established in NOM-051 and must not use any other labeling.

Article 25 Bis 1: Products intended for children must not contain elements that incite, promote, or encourage their consumption, purchase, or choice; nor refer to outside elements with the same purpose.

Article 25 Bis 2: The Ministry of Health, in coordination with researchers and higher education institutions (public and private), shall establish the portions to be taken as reference, which shall be published by the authority in their official websites and permanently updated by the Ministry of Health (or at the request of the interested parties).

Article 25 Bis 3: The Ministry of Health shall determine additives, ingredients, or substances that, present in the products or at certain levels, may generate a health risk, in which case the products containing them must include a *cautionary legend* about their consumption. This article makes a

particular emphasis on products intended for children.

Article 25 Bis 4: The labeling of prepackaged products may include graphic or textual elements that indicate that they have been endorsed by societies or professional associations, when appropriate documentation is presented that supports scientific evidence. The evaluation of the product must be in accordance with the provisions of Article 32 of the *Federal Consumer Protection Law*. For the granting of the endorsement, these products must not present warning signs or cautionary legends and must specify the target population and the specific health condition to which the consumption of these products is targeted.

Regulation on Advertising

The articles below were amended:

Article 6: Advertising of products and services, shall not include seals or endorsement legends by professional organizations or associations when it is not supported by scientific evidence of the evaluation of the product (as established in article 32 of the of the *Federal Consumer Protection Law*).

Article 80: To obtain an advertising permit, in addition to the official paperwork and the information and documentation established, the product label must be submitted to the authorities for approval; this applies in the case of pre-packaged food, non-alcoholic beverages, and food supplements.

The following articles were added:

Article 24 Bis: The advertising of pre-packaged products which labeling includes excess energy, critical nutrients and ingredients that represent a health risk in excessive consumption, must include warning signs and cautionary legends (according to NOM-051), and must not include seals or endorsement legends by professional organizations or associations.

Article 24 Bis 1: The advertising of pre-packaged products that include one or more warning signs or cautionary legends, must not include children's characters, animations, cartoons, celebrities, athletes or mascots, interactive elements (visual-special games or digital downloads) aimed at children that promote or encourage the consumption, purchase, or choice of such products.

For questions, please contact:

U.S. Agricultural Trade Office in Monterrey

Prol. Av. Alfonso Reyes #150, Col. Valle Poniente

Santa Catarina, NL 66196

T: + 52 (81) 8047-3100 ext. 3232

E: atomonterrey@fas.usda.gov

U.S. Agricultural Trade Office in Mexico City

Liverpool #31, Col. Juárez

Mexico City, CDMX 06600

T: +52 (55) 5080-2000 ext. 5282

E: atomexico@fas.usda.gov

Attachments:

No Attachments.