

Voluntary Report – Voluntary - Public Distribution

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Report Name: Mexico Releases Clarifications on NOM-051 for Refurbished Products

Country: Mexico

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Report Highlights:

On Wednesday, April 7, 2021, Mexico's Secretariat of Economy released updated criteria for imported reconditioned products to comply with NOM-051-SCFI/SSA1-2010 - General Specifications for Labeling of Prepackaged Food and Non-Alcoholic Beverages. The documents seek to clarify that refurbished food and non-alcoholic beverage products not destined to the final consumer are exempted from complying with NOM-051.

On Wednesday, April 7, 2021, Mexico's Secretariat of Economy released updated criteria for imported refurbished products to comply with NOM-051-SCFI/SSA1-2010 - General Specifications for Labeling of Prepackaged Food and Non-Alcoholic Beverages. The documents seek to clarify that refurbished food and non-alcoholic beverage products are exempted from complying with the NOM-051 regulation as the nature of the products is not destined to the final consumer.

Additional information and access to the PDF document in Spanish is available on the following Government of Mexico website:

[DGN.418.01.2021.941.pdf \(economia-noms.gob.mx\)](#)

The following is a non-official translation of the release. Please see the Spanish version for exact wording and final interpretation.

REACCONDITIONED PRODUCTS

NON OFFICIAL TRANSLATION - Release by the Ministry of Economy regarding the Criteria for the application of the Mexican Official Standards (NOM) NOM-051 -SCFI /SSA1- 2010 - Reconditioned products

Date: March 31, 2021

I. Background

Through a letter from Mrs. Eda Myrna Martínez Pazaran and others dated January 15, 2021, a query was submitted to the General Directorate of Standards regarding the application of the standard NOM-051-SCFI/SSA1-2010 “General Specifications for the Labeling of Prepacked Foods and Non-alcoholic Beverages Regarding Commercial and Sanitary Information” published in the Federal Registry on April 5, 2010 and its latest modification on March 27, 2020.

Due that the letter is signed by Mrs. Eda Myrna Martínez Pazara, who is an independent professional service provider representing legal entities that have interest in the matter, the standing is accredited before this authority to request the determination of a criterion that meets the provisions put forth for consideration of this General Direction.

Likewise, this criterion may be used by customs agents or authorities, or any other operator who has to apply NOM-051-SCFI/SSA1-2010.

II. Subject of the Criteria

The purpose of this criteria is to define whether imported products that are contained in a package, container or wrapper that does not correspond to the one that will be for sale to the final consumer—because it will be subject of refurbishing—are subject to compliance with NOM-051-SCFI/SSA1-2010.

III. Evaluation

Based on the provisions of Articles 8 of the Political Constitution of the United Mexican States; 34, Section XIII of the Organic Law of the Federal Public Administration, 15 of the Federal Law of Administrative Process; 5, 9, 64 of the Law of Quality Infrastructure; 2, Section A, Fraction II, Numeral 15,19,11,32,

Fractions VII and XI and 36, Fractions I and IX of the Ministry of Economy's Internal Regulations, issuing the following criteria on the Based on the provisions of Articles 8 of the Political Constitution of the United Mexican States; 34, Section XIII of the Organic Law of the Federal Public Administration, 15 of the Federal Law of Administrative Process; 5, 9, 64 of the Law of Quality Infrastructure; 2, Section A, Fraction II, Numeral 15,19,11,32, Fractions VII and XI and 36, Fractions I and IX of the Ministry of Economy's Internal Regulations, issuing the following criteria on the administrative interpretation of the content of NOM-051-SCFI/SSA-2010, for the purposes of Annex 2.4.1 of the Agreement by which the Ministry of Economy issues general rules and criteria on matters of foreign trade.

For the issuance of this criterion, this authority took into consideration, indistinctly, the provisions of the following normative instruments:

1. Quality Infrastructure Law,
2. Foreign Trade Law
3. NOM-051-SCFI/SSA1-2010 "General Specifications for the Labeling of Prepacked Foods and Non-alcoholic Beverages Regarding Commercial and Sanitary Information".

Once the subject of this criterion has been defined, the following must be considered:

1. On March 27, 2020, the Modification to Standard NOM-051-SCFI/SSA1-2010 "General Specifications for the Labeling of Prepacked Foods and Non-alcoholic Beverages Regarding Commercial and Sanitary Information" was published in the Official Gazette of the Federation, on April 5, 2010.

According to the content of NOM-051-SCFI/SSA1-2010, it follows that its purpose is to establish the commercial and health information that must be contained in the labeling of the product related to prepackaged food and non-alcoholic beverages intended for the final consumer, whether manufactured nationally or abroad, marketed in national territory, as well as determining the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

Numerals 1, 3.42 and 3.9, 3.17 and 3.42 establish the following:

1. Purpose and Scope of Application

The purpose of this Official Mexican Standard is to establish the commercial and health information that must be contained in the labeling of prepackaged products destined to the final consumer, whether manufactured in Mexico or abroad, marketed in national territory, as well as to determine the characteristics of such information and to establish a front labeling system, which must clearly and truthfully warn about the content of critical nutrients and ingredients that represent health risks in excessive consumption.

This Mexican Official Standard does not apply to:

- a) pre-packaged food and non-alcoholic beverages that are subject to commercial and health information provisions contained in specific Mexican Official Standards and that do not include this Official Mexican Standard as a normative reference, or in any other current federal regulation that explicitly excludes this regulation from compliance;

- b) food and non-alcoholic beverages in bulk;
- c) food and non-alcoholic beverages packaged at the point of sale; and
- d) other products determined by the competent authority, in accordance with its powers

3.9 consumer or final consumer

is the natural or legal person who acquires or enjoys as final recipient of a prepackaged product.

3.17 container

any container, or wrapper in which the prepackaged product is contained for sale to the consumer.

3.42 pre-packaged product

food and non-alcoholic beverages that are placed in a container of any nature, in the absence of the consumer and the amount of product contained therein cannot be altered, unless the container is opened or significantly modified.

Therefore, it is clear that the field of application of NOM-051-SCFI/SSA1-2010 is prepackaged food and non-alcoholic beverages intended for the final consumer.

The final consumer is understood to be the individual or company that acquires or enjoys a pre-packaged product as a final recipient.

In this context, it must be understood that the effective scope of the standard is subordinated to the existence of a packaged product, and that said container constitutes the efficient means of carrying it and thus presenting it to the subject who is going to acquire it as a final consumer.

In other words, if a product is contained in a package, but it does not represent the final and definitive container that will appear in front of the consumer's eyes to be acquired as a product at the point of sale, in that case the demonstration of compliance with the NOM should not be required.

In this context, we proceed to exemplify its application:

Imported prepackaged products that are contained in a package, container or wrapper that does not correspond to the one that will be for sale to the final consumer because they will be subject to reconditioning to be placed in their final package for sale to the final consumer should not be required to demonstrate compliance with NOM051-SCFI/SSA1-2010 at the point of entry into the country. Reconditioning is understood as to the handling for the extraction of products from a package, container, or wrapper in which they arrive to be in which they arrive to be prepared in the final package for sale to the final consumer. The packaging, container or wrapping of these products of foreign origin are intended solely for transportation and storage purposes only.

It should be considered that the Mexican Official Standards are a public policy measure aimed at protecting legitimate public interest objectives, such as commercial information, which acquires relevance when it is available at the point of sale to the final consumer for the choice of the product or to be acquired and/or consumed.

Thus, once the scope of application of NOM-051-SCFI/SSAI-2010 has been clarified, with regards to imported prepackaged products that are contained in a package, container or wrapper that does not correspond to the one that will be for sale to the final consumer because they will be subject to reconditioning, it is necessary to point out the following:

On July 10, 2020, the Ministry of Economy and the Ministry of Health, through the Federal Commission for Protection against Sanitary Risks (COFEPRIS), published in the Federal Registry the "Agreement establishing the criteria for the implementation, verification and surveillance, as well as for the evaluation of the conformity of the Amendment to the Mexican Official Standard NOM-051-SCFI/SSAI-2010, General Specifications for Food Labeling.

Article Fourteen of the Agreement on Criteria states that the Ministry of Economy will submit to the consideration of the Foreign Trade Commission the adequacy of the Agreement by which the Ministry of Economy issues general rules and criteria on foreign trade matters published in the Federal Registry on December 31, 2012 and its amendments (Rules Agreement), to add the Modification and validate the import operations of goods subject to its compliance at the point of entry to the country.

Article 64 of the Law on Quality Infrastructure (LIC) states that when a good, product, process or service must comply with a certain Mexican Official Standard or the Standards referred to therein, its similar products to be imported must also comply with the specifications established therein, in the terms provided for in the Law on Foreign Trade. For such purpose, the standardizing authorities will determine, depending on the level of risk, which products subject to Mexican Official Standards must demonstrate their compliance at the point of entry into the country, which will be identified in the Foreign Trade Rules, through the corresponding scope fractions.

In accordance with the provisions of Articles 20 and 26 of the Foreign Trade Law, only the official Mexican standards determined by the Ministry of Economy may be enforced at the point of entry of the goods into the country, and the goods subject to such standards must be identified in terms of their tariff fractions and the corresponding nomenclature, according to the respective Tariff.

And according to Articles 17, 20 and 26 of the Foreign Trade Law, the NOMs Annex is the Agreement through which the Ministry of Economy determines the Official Mexican Standards that must be enforced at the point of entry of the goods into the country. Therefore, this regulatory instrument cannot be used to modify the scope of application of an official Mexican standard.

It should be noted that as a result of the review of the import operations of goods subject to compliance with the Mexican Official Standards of Commercial Information, a high number of operations did not demonstrate compliance with official Mexican Commercial Information Standards at the point of entry into the country, when they were intended for the direct use of the individual who imports them, or those that are not to be sold to the public as imported.

For this reason, it was appropriate to eliminate such exceptions and ensure that users have the necessary tools to identify the information in an appropriate and clear manner regarding the correct specifications of quantity, characteristics, composition, quality, price, nature and content of the products in Spanish, according to the general system of units of measurement, as well as the risks they represent, allowing them to be sure that their use is reliable, and thus avoid a possible risk to their health and physical integrity, or that of their families in any part of the national territory.

Therefore, on October 1, 2020, the "Agreement of Rules" was published in the Federal Registry, updating the reference of NOM-051-SCFI/SSAI-2010 and repealing the exceptions in compliance with Mexican Official

Standards of Commercial Information and Labeling, which applied to goods that were imported to be used directly by the individual who imported them and goods that were not to be sold to the public as imported.

However, notwithstanding the exceptions eliminated, the "Rules Agreement", as indicated in previous paragraphs, said normative instrument does not modify the objective and scope of application of an official Mexican standard; in that sense, if the inputs not destined to the final consumer are not subject to compliance with NOM-051 - SCFI/SSA1 -2010; consequently, at the point of entry into the country the inputs not destined to the final consumer are not subject to compliance either.

In that sense, and taking into consideration the points of assessment described above, as well as the legal basis expressed, these General Guidelines issue the following:

CRITERIA

FIRST. The General Directorate of Standards interprets that imported prepackaged products that are contained in a package, container or wrapper that does not correspond to the one that will be for sale to the final consumer because they will be subject to reconditioning are not subject to compliance with NOM-051-SCFI/SSA1-2010.

SECOND. For the purposes of the provisions of the Annex of NOMs, merchandise that enters the country as imported pre-packaged products that are contained in a package, container or wrapper that does not correspond to that which will be for sale to the final consumer since they will be subject to reconditioning are not subject to demonstrate their compliance with NOM051-SCFI/SSA1-2010.

THIRD. Therefore, for the purposes of carrying out the customs and foreign trade operation, imported pre-packaged products that are contained in a package, container or wrapper that does not correspond to the one that will be for sale to the final consumer because they will be subject to reconditioning, must declare on the customs declaration the identifier code "EN" plus the corresponding complement "ENOM", "U" or "E" in accordance with Appendix 8 of Annex 22 of the General Rules of Foreign Trade of the Trade Administration Service

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Attachments:

No Attachments.