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Mexico: Highlights on the new food and beverage labeling

This document is divided into four parts. The first one is a summary of the most relevant aspects of the Mexican Official Standard NOM-051, the second one provides a brief introduction and background to standard on front labeling. The third one summarizes the most relevant considerations of said regulation and its impact on the packaged food industry, and the fourth one provides a brief legal analysis.

I. Summary

On March 27, 2020, was published in the Federal Official Gazette an amendment to NOM-051-SCFI / SSA1-2010, which rules the front labeling specifications for prepackaged food and non-alcoholic beverages ("NOM-051"). This amendment brings forward substantial changes to the current labeling regulations, such as the following:

- **IT DOES NOT APPLY** to (i) prepackaged food and non-alcoholic beverages subject to commercial and health information provisions contained in other federal rules or regulations; (ii) food and non-alcoholic beverages in bulk, (iii) food and non-alcoholic beverages packaged at the point of sale; and (iv) other products determined by the competent authority.
- **IT ALLOWS** to incorporate on the label recommendation or recognition seals or captions of professional organizations or associations, **PROVIDED** the product assessment is supported by the appropriate documentation with scientific, objective and reliable evidence.
- **IT DOES NOT ALLOW** health claims or nutritional claims directly related to the seal that has been declared on the label.
- **IT DOES NOT ALLOW** the inclusion on the label of children's characters, animations, cartoons, celebrities, athletes or pets, interactive elements, as well as references on the label to external elements that, being directed at children, incite, promote or encourage consumption, purchase or choice of products with excess of critical nutrients or sweeteners.
- **IT INCORPORATES** an octagonal seal system, to warn if the product contains excess calories, sodium, sugars, trans and saturated fats, as the case may be, and sets forth **SPECIAL CONDITIONS** for those products whose main exhibition surface is shorter than 40 cm² and 5 cm².



Below, you will find a brief legal analysis of NOM-051, with more specific and detailed insights on the scope and repercussions of said standard in the commercialization of products of the food industry.

II. Introduction and Background

On March 27, 2020, the amendment to NOM-051¹ was published in the Federal Official Gazette.

Said document updates and substantially modifies NOM-051, in force in Mexico since April 5, 2010, incorporating new prohibitions and guidelines for the design of the frontal labeling of food and non-alcoholic beverages, introducing a transition period of five years divided into three phases, to make such changes.

The tightening of world standards for food front labeling is not new, on the contrary, it has gained ground in recent years. Chile, for example, became a benchmark in the matter after publishing in June 2016, Law No. 20,606 on Nutritional Composition of Food and its Advertising, through which it introduced special labeling for genetically modified foods, i.e. those made up of unnaturally altered genetic material, which covers practically all packaged and marketed food.

This norm, like the Mexican one, was designed driven by the logic that everyone who consumes a food product is entitled to do so in an informed way. Therefore, it provides that nutritional information must be easily understood to effectively guarantee the right to information of all consumers².

Consequently, now in Mexico as in Chile, every corporation in the food industry, whether national or foreign, to market their products must separately and independently label the ingredients and nutritional information table, to generate a real visual impact on the consumer, thus guaranteeing the informed consumption of products.

III. Considerations on NOM-051

The amendments to NOM-051, abrogated the decree that issued the guidelines referred to in article 25 of the Regulations of Health Control of Products and Services that must be observed by producers of prepackaged food and non-alcoholic beverages for the purposes of the information that must be displayed in the front exhibition area, as well as the criteria and characteristics for obtaining and using the nutritional mark referred to in Article 25 Bis of the Regulations of Health Control of Products and Services, published in the Federal Official Gazette on April 15, 2014.

¹ To view the complete text of the amendment to NOM-051, click on the following link: https://www.dof.gob.mx/2020/SEECO/NOM_051.pdf

² Méndez López, Adalberto (2020); "Responsibility of the Company towards the Consumer"; Viewed on March 28, 2020, published by Fortuna, Negocios y Finanzas (Magazine). Website: <https://revistafortuna.com.mx/contenido/2019/12/30/responsabilidad-de-la-empresa-frente-al-consumidor/>



NOM-051 does not apply to (i) prepackaged food and non-alcoholic beverages that are subject to provisions of commercial and health information contained in specific Mexican Official Standards and that do not include NOM-051, as a normative reference or to any other federal regulation that explicitly excludes the present ordinance for its compliance; as well as (ii) food and non-alcoholic beverages in bulk, (iii) food and non-alcoholic beverages packaged at the point of sale; and (iv) the other products determined by the competent authority.

Likewise, it establishes that the application of said NOM must be implemented jointly with other Mexican Official Standards, namely:

- NOM-008-SCFI-2002, General Measurement Units System (November 27, 2002).
- NOM-030-SCFI-2006, Commercial information-declaration of quantity on the label-specifications (November 6, 2006).
- NOM-086-SSA1-1994 Goods and services-food and non-alcoholic beverages with modifications in their composition. Nutritional specifications (June 26, 1996).
- NOM-106-SCFI-2017 Design characteristics and conditions of use of the Official Password (September 8, 2017).

Provides a new definition of the front labeling system in section 3.47, establishing that this is the information system located on the main exhibition surface, which shows truthfully, directly, clearly, simply and visibly, if a prepackaged product presents an excessive energy content, critical nutrients and/or ingredients that represent a health risk if consumed in excess.

It should be noted that this definition provides a much more rigorous standard, since, it contains elements to effectively guarantee the right to information³, by requiring that the labeling provide information of a truthful, direct, clear, simple and visible nature.

Numerals fourth and sixth, concerning specifications and nutritional declarations, respectively, impose new obligations and prohibitions.

In this regard, it becomes relevant those relating to the possibility of incorporating stamps or captions of recommendation or recognition by professional organizations or associations, provided such are supported by the appropriate documentation that proves with scientific, objective and reliable evidence, the product assessment in accordance with the provisions of article 32 of the Federal

³ It should be considered that said right constitutes a guarantee of access to information, to inform and to be informed, the latter including the powers to receive objective and timely information, complete and universal, that is, for all people without exclusion (Article 6 of the Mexican Constitution, 19 of the Universal Declaration of Human Rights, 19.2 of the International Convention on Civil and Political Rights and 13.1 of the American Convention on Human Rights).



Consumer Protection Law, relating to the provisions applicable to misleading or abusive information or advertising.

In this sense, the standard also establishes that no health properties or nutritional properties directly related to the seal that has been declared on the label shall be made, except for those declarations that are appropriately made displayed on the information surface according to section 4.1.3 of the NOM-030-SCFI-2006 (referred in previous lines).

Likewise, NOM-051 provides that prepackaged products that bear one or more warning stamps or the sweeteners caption, must not include on the label children's characters, animations, cartoons, celebrities, athletes or pets, interactive elements, such as, visual and spatial games or digital downloads, as well as a reference on the label to other elements that, being directed at children, incite, promote or encourage the consumption, purchase or choice of products with excessive critical nutrients or sweeteners.

It also adds new protections to prepackaged products that have a designation of origin or geographical indication protected or recognized by the Mexican State, categorically prohibiting the use of the word "imitation" to imitation products on their labeling, forcing to describe said products, without confusing the consumer, for which it also prohibits the use of words such as "type", "style" or some other similar term, in the name of the product.

It establishes that the designation of the prepackaged product must correspond to those established in the Mexican Official Standards or specific legal provisions and in the absence of these, it provides for the following order of priority for the name of a designation: (i) commonly used name; (ii) description according to the basic characteristics of the composition and nature of the prepackaged product, or (iii) International Codex Alimentarius Standard.⁴

Finally, NOM-051, starting from its section 4.5.3.4, incorporates an octagonal seal system similar to the Chilean one, to warn consumers in a simplified way, if the product contains excess calories, sodium, sugars, trans and saturated fats, according to the case.

In this regard, the incorporation of said system is applicable as long as the content of the product corresponds to the terms established for such purpose by the standard, which is described in the following chart (Table 6 of NOM-051):

⁴ Also known as the "Alimentary Code", it is the set of standards, guidelines and codes of practice approved by the Codex Alimentarius Commission (CAC) of the Food and Agriculture Organization of the United Nations (FAO). CAC is the core element of the Joint FAO / WHO Food Standards Program and was established by FAO and the World Health Organization (WHO), in order to protect the health of consumers and promote fair practices in the food trade. To consult the Codex, click the following link: <http://www.fao.org/fao-who-codexalimentarius/es/>



	Energy	Sugars	Saturated Fats	Trans Fat	Sodium
Solids in 100 g of product	≥ 275 kcal total	≥ 10% of the total energy from free sugars	≥ 275 kcal total ≥ 10% of the total energy from free sugars ≥ 10% of total energy from saturated fat	≥ 1% of total energy from trans-fat ≥	1 mg sodium per kcal or ≥ 300 mg
Liquids in 100 ml of product	≥ 70 kcal total or ≥ 8 kcal of free sugars				Calorie-free drinks: ≥ 45 mg sodium
Legend to use	EXCESS CALORIES	EXCESS SUGARS	EXCESS SATURATED FAT	EXCESS TRANS FAT	EXCESS SODIUM

It should be noted that the standard provides special conditions for those products whose main exhibition area is shorter than 40 cm² and 5cm², imposing only the obligation to include a single stamp indicating the number that corresponds to the amount of nutrients that meet the profile established in the aforementioned chart (Normative Appendix A of the NOM-051, provides the characteristics and dimensions of said system, taking into account the characteristics packaging design and size).

IV. Conclusions and Considerations

Although the new frontal labeling system for prepackaged food and non-alcoholic beverages is similar to that used in Chile since 2016, it can be said that the Mexican is much more rigorous by imposing more obligations and restrictions.

Consequently, and in response to the new regulatory requirements, NOM-051 impacts not only on the redesign of packaging, but also on the corporate and brand image of the products marketed, as it restricts the possibility of influencing the consumption of the product through misleading or abusive advertising strategies, or those that promote consumption among infants, if such have a high concentration of added calorie content, as well as free sugars, fats and sodium.

The three phases through which the new front labeling will begin to be gradually be implemented, will initiate with the first stage (i) starting from October 1, 2020, concluding on September 30, 2023 (three years), (ii) the second will begin from October 1, 2023 to September 30, 2025 (two years) and, finally, (iii) the third will begin on October 1, 2025, date from which the calculation and evaluation of the complementary nutritional information shall be conducted fully applying the provisions contained in NOM-051 (the NOM sets forth the labeling to be implemented in each of the referred stages).

The need for specialized and multidisciplinary control and compliance systems is imminent, given that the new standard incorporates obligations regarding human rights, health, consumer law and metrology.



Given the advertising restrictions imposed by the standard, corporate social responsibility programs tend to strengthen and increase as a mechanism for preventing legal risks and as tools to socialize the nutritional benefits of marketed products, as well as the health risks associated with the intake of certain foods.

With the publication and entry into force of NOM-051, it becomes the most rigorous labeling standard on the continent and, perhaps, one of the most rigorous in the world, responding to a national public health reality (high number diabetes and overweight in the population, for example).

The NOM-051, despite its high standard of rigor, does not impose any type of obligation regarding accessibility for people with disabilities (such as braille labeling or easy reading), so it meets partially the objectives set by the Agenda UN 2030. Consequently, those companies that incorporate accessibility elements for this vulnerable group may find an area of opportunity for the commercialization of their products.

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