

Contacto CONAMER

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Para: Contacto CONAMER
CC: Alberto Montoya Martin Del Campo; Higgins, Holly - TFAA-FAS, Mexico; Karimiha, Susan - TFAA-FAS, DC
Asunto: COMENTARIOS FINALES REVISION DE NOM 187
Datos adjuntos: Final U.S. Comments on GOM draft NOM 187 revisions_.docx

Dr. Alberto Montoya Martín del Campo, Comisionado Nacional
Secretaría de Economía – Comisión Nacional de Mejora Regulatoria

Ciudad de México a 14 de julio de 2023

Estimado Dr. Alberto Montoya,

Le proporcionamos los comentarios adjuntos en referencia a la NORMA OFICIAL MEXICANA NOM-187-SSA1/SE-2023, PRODUCTOS DE MAÍZ NIXTAMALIZADO – MASA, HARINA, TORTILLAS, TOSTADAS Y OTROS PRODUCTOS DERIVADOS DE MASA - ESPECIFICACIONES Y DISPOSICIONES SANITARIAS. DENOMINACIONES E INFORMACIÓN SANITARIA Y COMERCIAL. (CANCELA A LA NORMA OFICIAL MEXICANA NOM-187-SSA1/SCFI-2002, PRODUCTOS Y SERVICIOS. MASA, TORTILLAS, TOSTADAS Y HARINAS PREPARADAS PARA SU ELABORACIÓN Y ESTABLECIMIENTOS DONDE SE PROCESAN. ESPECIFICACIONES SANITARIAS. INFORMACIÓN COMERCIAL. MÉTODOS DE PRUEBA).

Agradeciendo su atenta consideración, quedamos de usted.

Atentamente,

United States Department of Agriculture Foreign Agricultural Service



United States
Department of
Agriculture

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U.S. Comments on the Government of Mexico's Draft Official Mexican Standard NOM-187-SSA1/SE-2023, Nixtamalized Corn Products-Dough, Flour, Tortillas, Tostadas and Other Products Derived from Masa – Specifications and Sanitary Provisions

The United States recognizes Mexico previously notified the WTO of the draft Mexican Official Standard PROY-NOM-187-SSA1/SE-2021 on February 17, 2022, for a 60-day public comment period. However, several provisions of the draft Official Mexican Standard NOM-187-SSA1/SE-2023 are substantial revisions to that 2022 draft measure, and the United States therefore requests that Mexico notify draft Official Mexican Standard NOM-187-SSA1/SE-2023 to the WTO for a 60-day public comment period.

The United States notes the following significant revisions from the 2022 draft measure in addition to Article 7.1.1:

- **Article 7.2.4.1** sets the maximum levels for aflatoxins in corn products.
Draft Mexican Official Standard PROY-NOM-187-SSA1/SE-2021 includes aflatoxin specifications for both corn and wheat flour tortillas.
- **Article 1** applies only to products made from nixtamalized corn – masa, flour, tortillas, tostadas and other products derived from the dough, except for snack products.
Draft Mexican Official Standard PROY-NOM-187-SSA1/SE-2021 applies to the labels of products derived from corn and wheat.
- **Article 5** classifies products derived from nixtamalized corn.
Draft Mexican Official Standard PROY-NOM-187-SSA1/SE-2021 includes both products derived from corn and wheat, respectively.

The United States reminds Mexico of its obligation under USMCA Article 9.13.4 to notify a proposed sanitary or phytosanitary (SPS) measure that may have an effect on the trade of another Party, including any that conforms to international standards, guidelines, or recommendations, by using the WTO SPS notification submission system as a means of notifying the other Parties.

The United States also reminds Mexico of its obligation under USMCA Article 9.13.5 to normally allow at least 60 days for the other Parties or persons of the Parties to provide written comments on the proposed measure, after it makes the notification under Article 9.13.4, unless urgent problems of human, animal, or plant life or health protection arise or threaten to arise requiring the adoption of an emergency measure, or the measure is of a trade-facilitating nature.

The United States requests Mexico's written response to the following comments:

Article 6 appears to refer to the management of the supplier of raw materials, and facilities processing and producing food products.

Would Mexico please clarify whether this Article applies to: the establishment in which the foods are processed; growers of agricultural products; or entities outside of Mexico.

Article 7.1.1 elaborates that the use of genetically modified corn as raw material is no longer allowed.

The United States is concerned that this measure is not based on science and threatens to disrupt trade. Mexico asserts in Article 11 of the draft Official Mexican Standard NOM-187-SSA1/SE-2023 that this draft NOM does not conform to an international standard because none exists. As such, the United States reminds Mexico of its obligation under USMCA Article 9.6.3 that, if relevant international standards, guidelines, or recommendations do not exist, the Party shall ensure that its SPS measure is based on an assessment, as appropriate to the circumstances, of the risk to human, animal, or plant life or health. The United States requests the relevant documentation and scientific evidence, such as Mexico's risk assessment.

The United States also reminds Mexico of its obligations under:

USMCA Article 9.6.7 to conduct its risk assessment and risk management with respect to a sanitary or phytosanitary regulation in a manner that is documented and provides the other Parties and persons of the Parties an opportunity to comment, in a manner to be determined by that Party.

USMCA Article 9.13.7 to provide to another Party, on request, the relevant documentation that Mexico considered in developing the proposed measure, including documented and objective scientific evidence related to the measure, such as risk assessments, relevant studies, and expert opinions.

USMCA Article 9.13.8 to discuss with another Party, on request and when appropriate during its regulatory process, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the Party's appropriate level of protection.

Article 11 explains NOM-187-SSA1/SE-2023 is not equivalent to any international standard because none exists at the time of issuance of this Official Mexican Standard.

The United States again reminds Mexico of its obligation under USMCA Article 9.6.3 that if relevant international standards, guidelines, or recommendations do not exist, the Party shall ensure that its SPS measure is based on an assessment, as appropriate to the circumstances, of the risk to human, animal, or plant life or health. The United States welcomes Mexico providing the relevant documentation considered in developing the proposed measure including its assessment of the risk to human, animal, or plant life or health.

First Transitory identifies a 60-day implementation period after its publication in the Official Gazette for the draft measure to enter into force.

We ask Mexico to delay finalization and implementation of NOM-187-SSA1/SE-2023 until trading partners have been duly notified and given a reasonable period of time to review and submit written comments through the WTO SPS notification system. USMCA Article 9.13.3

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obliges Parties to take into account the relevant guidance of the WTO SPS Committee, and with respect to transparency, the SPS Committee recommends that Members provide a reasonable interval normally consisting of at least six months following the date of adoption and/or publication.