

PRODUCE

Approves Regulation of the Law on Labeling Manufactured Industrial Products - Law Nº 28405

SUPREME DECREE Nº 020-2005-PRODUCE

CONCORDANCES: CIRCULAR Nº 012-2005 (Establishes instructions on the labeling of merchandise in accordance with the provisions of Law Nº 28405 and its Regulation)

THE PRESIDENT OF THE REPUBLIC

CONSIDERING:

Whereas Article 1 of Law Nº 28405 makes it mandatory to have labeling for all manufactured industrial products for use or final consumption, whether domestic or imported, that are sold within the national territory;

Whereas in accordance with the Law in question the labeling of manufactured industrial products is established for the purpose of protecting human health, the safety of the public and the environment and to ensure the right to information of consumers and users;

Whereas for such purpose it is indispensable to define the scope for the application of the aforesaid law in order for it to be duly complied with;

Whereas the Third Final Provision of Law Nº 28405 empowers the Executive Branch to enact the regulatory measures necessary for the optimum application of the aforesaid Law;

Whereas it is established by Decree Law Nº 25909, for its part, that no entity, with the exception of the Ministry of Economy and Finance, may take upon itself the authority to enact measures intended to restrict or prevent the free flow of commerce through the imposition of procedures, requirements, or measures of any kind that may affect imports and exports;

Whereas in accordance with Legislative Decree Nº 668, external and internal freedom of commerce are guaranteed as a fundamental condition to achieve the development of the country, as well as free access to the acquisition, transformation and sale of goods, having established that the adoption of technical rules and regulation of any kind shall not pose obstacles to the free flow of goods, and that fair treatment shall be accorded to similar products whether they are of domestic origin or originate in any other country;

Whereas, moreover, Article 4 of Decree Law Nº 25629 establishes that the provisions whereby procedures or requirements are established that in some way affect free internal commerce or the export or import of goods or services can only be approved through a Supreme Decree confirmed by the Minister of Economy and Finance and by the Sector in question;

Whereas Supreme Decree Nº 058-2005-EF establishes provisions concerning the competency of the Ministry of the Economy and Finance in relation to the procedures or requirements affecting the internal sale or export or import of goods;

Now therefore in accordance with the 3rd Supplementary Provision of Law N° 28405, Article 4 of Decree Law N° 25629, Legislative Decree N° 668, and Decree Law N° 25909, it is hereby.

DECREED:

Article 1.- Approval

To approve the Regulation of Law N° 28405, a Law for Labeling Manufactured Industrial Products, which consists of eleven (11) Articles, one Supplementary Provision and Two (2) Final Provisions, as well as Two (2) Annexes which have been approved and comprise an integral part of this Supreme Decree.

Article 2.- Confirmation

This Decree shall be confirmed by the President of the Council of Ministers, the Minister of the Economy and Finance, and by the Minister of Production.

Given in Government House, in Lima on May Twenty-Third, Two Thousand and Five.

ALEJANDRO TOLEDO
Constitutional President of the Republic

CARLOS FERRERO
President of the Council of Ministers

PEDRO PABLO KUCZYNSKI
Minister of Economy and Finance

DAVID LEMOR BEZDIN
Minister of Production

REGULATION OF LAW N° 28405

LAW ON LABELING MANUFACTURED INDUSTRIAL PRODUCTS

TITLE I

CHAPTER I

CONTENT AND SCOPE

Article 1.- Content

This Regulation contains the rules and procedures applicable to the labeling of manufactured industrial products for use or final consumption, which are commercialized in the country.

Article 2.- Scope of application

The obligation to label products referred to in Article 1 of this Law, involves the obligation to imprint on manufactured industrial products for use or final consumption that are sold in Peruvian territory the information specified in Article 3 of this Law.

Depending on the type or nature of a product, its composition, material of manufacture, surface, and size, among other characteristics, the label information must appear on the products, containers or packages thereof.

In cases where the label appears on the container or on the package and the display of the product for purposes of sale is carried out without a container or package, the minimum information required on the label is that concerning the product's country of manufacture, which must be appear on the product itself.

The scope for the application of the Law encompasses the products enumerated in Annex N° 1 of this Regulation, which may be subject to modification by a Ministerial Resolution of the Ministry of Economy and Finance, in coordination with the Ministry of Production; without impairment to the prerogatives provided for in Legislative Decree N° 716 and Legislative Decree N° 807 of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPi - *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*).

CHAPTER II

DEFINITIONS

Article 3.- Reference

In this Regulation when mention is made to the word "Law", it is to be understood that reference is being made to Law N° 28405.

Article 4.- Definitions

For the purposes of the application of the Law and this Regulation, the following definitions are established:

* Net Content: This refers to the amount of the product not including the container or any other packaging material accompanying the product . It is expressed in terms of: a) weight or volume for semisolid products; b) in volume for liquid products; c) in weight for solid products. Net content shall only be required when because of the nature of the product the specification of such information is considered indispensable.

* Indelible characters: Those alphabetic, numeric or combined symbols that cannot be removed or effaced except with the aid of physical or chemical products or agents are considered indelible characters. When information concerning country of manufacture and date of expiration (the latter when applicable) appears on printed labels, they must be of such a kind that they cannot be easily removed.

* Container: Any closed receptacle used to contain any product intended for consumption, including materials authorized for wrapping which are in direct contact with the product. This term shall not include:

- 1) primary containers that are not intended for individual sale to consumers;
- 2) shipping receptacles or containers used solely for the transport of products, in bulk or in large quantities, to manufacturers, bottlers, processors or for retail or wholesale distributors;
- 3) ancillary receptacles or external wrappings used to deliver containers to retail consumers, if they have no indication printed on them of any product in particular;
- 4) receptacles used to display containers that are sold as retail units, when the receptacle itself is not intended for sale;

5) open receptacles or transparent wrapping that do not have any written, printed graphic content that makes it impossible to see the label information.

* Package: This is the container intended contain the primary containers. Primary container is understood to refer to the container that is in direct contact with the product .

* Nationalized Merchandise: Foreign merchandise with a definitive importation status, which has authorization for removal.

* Country of manufacture: For the purposes of this Law, this is to be understood as the country of origin or the country where the product underwent its last transformation, prior to being routed for consumption or final use. In this sense, activities involving such things as packaging, affixing of stickers, labels or the like are not included.

In cases where a product enters the country accompanied by supplementary products and/or accessories that have different countries of manufacture, for the purposes of this rule, the country of manufacture shall be considered the country that corresponds to the main product.

For assembled products, the country of manufacture shall be considered the one that corresponds to where the assembly was performed.

Commercial trade blocs can be understood as a country of manufacture, as long as the attribution is correct, and the Ministry of Economy and Finance approves the respective supplementary provisions.

* Manufactured Industrial Product for Use or Final Consumption: an industrialized product that has been produced through processes of physical and/or chemical transformation of its materials and components, and which is made available in order for the final consumer to use or enjoy it in the same condition in which he acquired it. In the case of products in bulk, when they are packaged or wrapped for the final stage of their commercialization, they must comply by including the information specified in Article 3.

* Perishable Product: A product which by reason of its composition, physical-chemical and biological characteristics, over the course of time, may undergo a variety of alterations that limit its period of useful life and therefore require special conditions for processing, storage and transportation.

* Prior inspection: Prerogative of the owner, the factor, or his shipping agents to perform in the presence of the depositary, to confirm and verify the status and condition of the merchandise, without the intervention of the customs authority, for its accurate declaration.

TITLE II

CHAPTER I

ENFORCEMENT AND SANCTIONS

Article 5.- Labeling of Domestic Products

The domestic manufacturer of manufactured industrial products for use or final consumption, is responsible for imprinting on the products, containers or packages thereof, the information specified in Article 3 of the Law.

Article 6.- Labeling of Foreign Products

The importer is responsible for the labeling of foreign products. Products that do not have printed on them information indicating the country of manufacture and the date of expiration (the latter when applicable), can be labeled in the storage terminal during the prior inspection or when they are assigned to the regime of customs storage, prior to being assigned definitive import status. .

Article 7.- Supplementary Information on the Labeling of Foreign Products

Except for the information indicated in the previous article, the rest of the information noted in Article 3 of the Law shall be imprinted prior to their sale for final consumption, in private storage facilities, as prescribed in the third paragraph of Article 5 of the Law. The importer is responsible for complying with what is established in this article.

Article 8.- On the Sworn Statement

For purposes of the proper application of Article 4 of the Law, the sworn statement must be submitted in accordance with the format of Annex N° 2 of this Regulation.

Article 9.- Verification by SUNAT

In accordance with the second paragraph of Article 5 of the Law, SUNAT shall solely ascertain with the merchandise selected for physical inspection that the imported products are labeled with the information concerning country of manufacture and, when applicable, date of expiration. For such purpose it shall be guided by the list of products indicated in Annex N° 1 of this Regulation.

If during the physical inspection it is observed that the merchandise items do not have this information, then they cannot be nationalized, and measures must proceed in accordance with the General Customs Law and its Regulatory provisions.

Article 10.- Verification by INDECOPI

Without impairment to the attributions appertaining to it in accordance with what is set forth in Legislative Decree N° 807 and other applicable law, it is incumbent upon INDECOPI to supervise and enforce the provision of the information specified in Article 3 of the Law, as soon as manufactured industrial products for use or final consumption are in the market, ready to be sold to the public.

The supervision and enforcement referred to in Article 3 of the Law shall be carried out with respect to the products indicated in Annex N° 1 of this Regulation.

Article 11.- Application of Administrative Sanctions

The Consumer Protection Commission of INDECOPI, shall impose the appropriate sanctions in the event of non-compliance with Article 3 of the Law. The sanctions to be imposed shall be those established in Article 41 of Legislative Decree N° 716, the Law of Consumer Protection.

SUPPLEMENTARY PROVISION

SOLE PARAGRAPH.- The National Superintendency of Tax Administration (SUNAT - *Superintendencia Nacional de Administración Tributaria*)

SUNAT is authorized to issue any administrative provisions necessary for the optimum fulfillment and application of the Law.

FINAL PROVISIONS

1st - SUNAT shall notify INDECOPI of those products that, subsequent to their physical inspection and authorization of removal are to be found included in Annex N° 1 of this regulation, as a result of the physical chemical analysis carried out on them at the SUNAT laboratory.

2nd – With regard to cigarettes and tobacco derivative products, in tandem with the required compliance with the provisions established by Laws N°. 25357 and 26849 (*) CORRECTED BY A STATEMENT OF ERRORS, there must also be compliance with the requirements established in Article 3 of the Law. To such end, information concerning country of manufacture, health warnings and the amount of nicotine and tar, must be imprinted directly on the package that contains them, and cannot be imprinted on transparent wrappings.