

# COFECE issues new Guidelines for the Immunity and Penalty Reduction Program

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On Tuesday, January 26, 2021, the Federal Economic Competition Commission ("COFECE") published in the Federal Official Gazette the Guidelines for the Immunity and Penalty Reduction Program ("Guidelines"), which replace Guidelines-003/2015: Guidelines for the Immunity and Penalty Reduction Program (the "Previous Guidelines"). The Guidelines do not interpret or replace the regulations for the immunity and penalty reduction program ("Program") set forth in the Federal Economic Competition Law and the Regulatory Provisions for the Program, but rather are intended to serve as a tool for economic agents that are interested in receiving the benefits of the Program.

In this regard, the most relevant amendments included in the Guidelines in comparison with the Previous Guidelines, are the following:

SECTION	RELEVANT CHANGES	PREVIOUS GUIDELINES
<b>Program Benefits</b>	Among the benefits of the Program for individuals, the Guidelines provide for an exemption from penalties imposing ineligibility to act as director/legal representative of entities.	This was not contemplated.
<b>Phase 1: Request to enter the Program</b>	The Guidelines specifically state that the request can be submitted prior to an investigation.	While they indicated that the request could be presented "at any time", this particular possibility was not specified.
<b>A. Who can request entry into the Program?</b>	Regarding the possibility of an economic group requesting immunity:	The Previous Guidelines did not require the applicant to submit information demonstrating that the other companies were part of its EIG.

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	<p>At the time of an application, the applicant must submit information and evidence showing that the rest of the entities also belong to its economic interest group ("EIG").</p> <p>The request can also be made by business associations or chambers, but the benefit cannot be extended to their members.</p> <p>In above cases a common representative and address must be given.</p>	<p>While the Previous Guidelines did not prohibit business associations or chambers from applying for the Program, it did not expressly state that these agents could request this or specify the treatment that would be given to their affiliates.</p> <p>The Previous Guidelines did not mention the need to designate a common representative or address.</p>
<p><b>B. What information should the application contain?</b></p>	<p>The Guidelines state that it is important to give a valid email address since this will be used to provide a password to be used for remaining communications.</p>	<p>Stating an email address was optional, since a telephone number was sufficient.</p>
<p><b>C. How is an application processed?</b></p>	<p>The Marker is assigned for the market, that is to say by the market in the application or by the one previously defined for the investigated market, and not by conduct.</p> <p>In other words, a single marker will be assigned to different conduct in the same market.</p>	<p>The Previous Guidelines did not specify anything regarding the criteria for assigning a Marker.</p>

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	<p>The applicant may request, one time only, a rescheduling of the meeting at least three days before the date indicated for it to be held as set out in the email assigning the password.</p> <p>In the event that the applicant does not appear at the meeting, the IA will cancel the application on the following day.</p>	<p>The possibility of rescheduling the meeting was not contemplated. Likewise, they did not specify when the application would be canceled in the event of not appearing at the meeting.</p>
<p><b>c.1 What information must be submitted at the meeting?</b></p>	<p>During the investigation, with prior authorization from the Investigative Authority, instead of presenting documentation, the applicant may make oral statements consisting of a detailed description of the circumstances of time when, manner by which, and place where the Absolute Monopolistic Practices (“AMPs”) occurred.</p>	<p>The possibility of making oral statements was not contemplated.</p>
<p><b>D. The information submitted by the applicant to obtain a conditional immunity agreement is reviewed and evaluated</b></p>	<p>If the information provided is for a market different from the one investigated, the applicant may apply, through a new application, for the program for this new market. This is provided that the conduct had not started after the first application.</p>	<p>Nothing was mentioned about this.</p>

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	<p>It is expressly stated that in the event a password and application cancellation order is made, the position of the rest of the applicants will be adjusted.</p>	<p>Although this process was already carried out in practice, the Previous Guidelines did not mention it.</p>
<p><b>Phase 2: During the Investigation</b></p>	<p>Regarding the obligation of the applicant to fully and continuously cooperate, the Guidelines add the following:</p> <ul style="list-style-type: none"> <li>a. The applicant must acknowledge participation in the AMPs;</li> <li>b. The IA may require the applicant to not immediately terminate participation in the AMP in order to obtain additional information. In such case an official communication will be issued stating this;</li> <li>c. Report all possible AMPs in which it has participated or is participating in the investigated market or in the market that is the subject of the application.</li> </ul>	<p>These obligations were not contemplated in the Previous Guidelines.</p>
<p><b>Phase 3: Trial proceedings</b></p>	<p>In the event the Technical Secretary becomes aware of acts or omissions by the applicant that could be a</p>	<p>The period to cure the breach was not contemplated.</p>

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	<p>breach of the cooperation requirements, the Technical Secretary will issue an official communication informing the applicant of this situation in order for the applicant to cure the breach within a period of 10 business days.</p> <p>In the event the breach is not cured, the Plenum may revoke the benefit given to the relevant economic agent.</p>	
<b>Decision</b>	<p>In the event of a revocation of benefits, subsequent applicants will remain in the positions they originally held. That is, positions will not be adjusted.</p>	<p>No mention was made of this matter.</p>
<b>Confidentiality</b>	<p>The applicant may request the Commission to make public it's obtaining the benefit if this does not hinder the exercise of the powers of the Commission.</p>	<p>This possibility was not contemplated.</p>

For any additional information, do not hesitate to contact our expert team, who can be of assistance.

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