

**REGULATORY PROVISIONS FOR THE QUALIFICATION OF INFORMATION DERIVED FROM
LEGAL COUNSEL PROVIDED TO ECONOMIC AGENTS**

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CURRENT TEXT

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**Chapter I
General Provisions**

Article 1. For purposes of these Regulatory Provisions, in addition to the definitions established in the Law and in the Statute, it is understood as:

- I. **Qualifying Committee:** body in charge of the analysis and resolution of a Qualification Request of the information susceptible to be protected, in the terms stated in articles 2 and 3 of these Regulatory Provisions.
- II. **Extraction Procedure:** procedure through which the digital file is extracted or physical information is returned once the Qualifying Committee qualifies it as protected in the terms of these Regulatory Provisions.
- III. **Qualifying Procedure:** procedure through which the Qualifying Committee analyzes and resolves the Qualification Request presented by the Requesting Party.
- IV. **Requesting Party:** any person who submits a Qualification Request regarding information s/he owns, in terms of these Regulatory Provisions.
- V. **Qualification Request:** written request by which the Requesting Party states that the information provided or obtained by the Commission in an investigative procedure or derived therefrom is susceptible to be protected in terms of these Regulatory Provisions.

In that which is not stipulated by these Regulatory Provisions, the Law and the Regulatory Provisions of the Federal Economic Competition Law shall apply.

The procedures established in this ordinance may be processed electronically, as applicable.

Last and second to last paragraph added DOF-24-08-2021

Article 2. In the procedures set forth in these Regulatory Provisions, the Commission will not consider or grant evidential value to information that contains communications between the Requesting Parties and their attorneys, when it is proved that said communications have as a purpose obtaining legal counsel. The Requesting Parties may expressly authorize the Commission the use of the referred information, which must be stated in writing.

Article 3. If within a same document there is information referred to in the preceding article along with information that is not related to legal counsel to the Requesting Party, only that which is protected under the terms of these Regulatory Provisions will be extracted, complying at all times with the transparency and access to information obligations, referred to in articles 124 and 125 of the Law.

Chapter II Qualification Request

Article 4. The Qualification Request must be addressed to the General Directorate in charge of the procedure in which it is acted upon and must be presented before the Filing Office of the Commission. The Qualification Request must contain:

- I. Name, registered name or corporate name of the Requesting Party;
- II. Name of the legal representative and, if it is the case, suitable document through which it certifies its personality or indication of the action in which its personality was certificated in the main casefile;

Reformed section DOF-24-08-2021

ORIGINAL SECTION PUBLISHED ON 30-09-2019

II. Name of the legal representative and, if applicable, the document that accredits his or her personality;

- III. An address in Mexico City to hear and receive notifications, and authorized persons;
- IV. The express mention that it is a Qualification Request under the terms of these Regulatory Provisions, the identification data of the investigation casefile number in which the information susceptible to be protected by the present Regulatory Provisions is located, as well as the act or proceeding through which the information was obtained or provided to the Commission.

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IV. The express mention that it is a Qualification Request under the terms of these Regulatory Provisions, the identification data of the investigation casefile number, as well as the act or proceeding through which the information was obtained or provided to the Commission.

- V. A clear and precise description of each document and of the information it contains that, according to the Requesting Party, that is within the assumptions of protection established in these Regulatory Provisions;

- a) in the case of an electronic file, data must be provided regarding the means of digital storage that contains it, the path, extension, name, format and other data and information that facilitate its location and safeguarding by means of technological and/or forensic tools. Additionally, a description of the type and content of the electronic file must be provided (whether it is a contract, letter, e-mail, memorandum, report, among others), name of the author, name of the addressee, date of the file, subject of the file and its description, as well as any other additional data and or element that allow for its location. In no case shall the aforementioned description imply the disclosure of communications intended to obtain legal counsel.

Section V and subsection a) reformed DOF-24-08-2021

ORIGINAL SECTION V AND SUBSECTION A) PUBLISHED ON 30-09-2019

V. Clear and precise description of the information that, according the Requesting Party, is within the assumptions of protection established in these Regulatory Provisions:

- a) When it involves an electronic file, the file-path must be provided, its extension, file name, format of the file and any additional information that facilitate its location and safeguarding; as well as the type of file (contract, letter, e-mail, memorandum, report, others), name of the author, name of the recipient, date of the file; subject of the file and its description.

- b) When it involves a physical document, the type of document (contract, letter, e-mail, memorandum, report, among others) must be provided, as well as the name of the author, name of the recipient, date of the document, title of the document; subject of the file and its description; as well as any other elements that allow for association of the document to its content.

The Commission will publish on its website a technical manual with the indications, requirements and technical instructions regarding the data and information established in the first paragraph of subsection a).

Added paragraph DOF-24-08-2021

- VI. A detailed description of the legal counsel contained in the communication object of the Qualification Request, the relationship that exists between the Requesting Party and the person who provides the legal counsel or economic agent, as well as the reasons by which the Requesting Party considers that the information is subject to protection in terms of these Regulatory Provisions;

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VI. Brief description of the legal counsel contained in the communication subject to the Qualifying Request, as well as the reasons by which the Requesting Party considers that it is information should subject to protection in terms of these Regulatory Provisions.

- VII. The full name of the person who provides the legal counsel referred to in article 2 of these Regulatory Provisions, and credit that s/he is legally authorized to practice the profession of lawyer or holds a law degree, in the terms of the applicable legislation, at the moment of providing the corresponding legal counsel;

Reformed section DOF 24-08-2021

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VII. Credit that the person who provides the legal advice, pursuant to article 2 of these Regulatory Provisions, is legally authorized to practice the profession of lawyer or holds a law degree, in terms of the applicable legislation; and

- VIII. Manifestation regarding the persons with whom the communication was shared with; and

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VIII. Any other elements the Requesting Party deems relevant.

- IX. Any other elements the Requesting Party deems relevant.

Added section DOF 24-08-2021

The elements indicated in sections V, VI and VIII must be submitted in a sealed envelope.

Reformed paragraph DOF 24-08-2021

ORIGINAL PARAGRAPH PUBLISHED ON 30-09-2019

The elements stated in sections V and VI must be handed over in a closed envelope.

Article 5. When in the handling of the investigation or of a procedure that results from an investigation, a public official comes across information that might be protected in terms of these Regulatory Provisions, s/he must inform it in writing to the Director General in charge of the procedure so that the safeguard and protection measures of the information referred to in article 7 of these Regulatory Provisions are taken.

Within the five days following that in which it was informed, the Director General in charge of the procedure will issue an agreement by which he will inform the owner of the information about this situation so that, within the next ten days starting from the day following to the one in which notification of said agreement comes into effect, s/he attends the Commission headquarters in order to identify such information.

First and second paragraphs reformed DOF 24-08-2021

ORIGINAL FIRST AND SECOND PARAGRAPHS PUBLISHED ON 30-09-2019

Article 5. When in the handling of the investigation or of a procedure that derives from an investigation, a public official comes across information that might be subject to protection in terms of these Regulatory Provisions, it must inform the General Director in charge of the procedure so that the safeguard and protection measures established in article 7 of these Regulatory Provisions can be taken.

Within the five days following the one in which it was informed, the General Director in charge of the procedure will issue an agreement by which it will inform the holder of the information about this situation so that, within ten days starting from the notification of said agreement, the owner may attend the Commission stakeholders in order to review the said information.

Once the information has been made available to the holder, the owner will have ten days to submit the corresponding Qualification Request, which will be processed in accordance to the terms of Chapter IV of these Regulatory Provisions.

Failure to attend the Commission headquarters in order to deem the information as known or failure to submit the Qualification Request within the mentioned timeframe, it will be understood that the holder of the information, authorizes the use of the referred information.

When the case referred to in this article, the public official who had come across with said information cannot disclose it; neither it cannot continue intervening in the substantiation of the respective procedure, until it is resolved that the Qualification Requests is unfounded or the provisions of the preceding paragraph are fulfilled.

Chapter III
On the Integration of the Qualifying Committee

Article 6. There will be two Qualifying Committees, each one integrated by three permanent members, which will be appointed, through an official document, by the Head of the Investigative Authority, when it involves investigation procedures; or by the Technical Secretary, when it involves procedures in charge of the Technical Secretariat derived from an investigation. The members of the Qualifying Committee shall not hierarchically depend on each other and must comply with the following requirements:

- I. To serve as part of the Administrative Unit under which the procedure in question is being conducted;
- II. Not being directly or indirectly subordinated to the Director General in charge of the procedure in which action is being taken;
- III. Hold a hierarchical level of General Coordinator or higher; and
- IV. Have a professional license that accredits that s/he is legally authorized to practice the profession of lawyer, in the terms with the applicable legislation.

The Head of the Investigative Authority and the Technical Secretary will appoint three substitutes in each Committee, as it corresponds.

In accordance with what is established in section II of this article, if any member of the Committee is directly or indirectly subordinated to the Director General in charge of the procedure in which action is being taken, s/he shall be substituted, and in its place, any of the substitutes appointed for each Committee will serve in it, accordingly.

The deliberations of the Committee must be voted by of all of its members and will be decided by a majority of votes.

The Committee will be assisted by personnel from the General Directorate of Market Intelligence when technical forensic support is required to locate and, when applicable, exclude the information of the electronic mean in which it is stored, as well as by personnel of the corresponding Administrative Unit, who are not directly or indirectly subordinated to the Director General in charge of the procedure in which it is acted upon, to support in the handling of the procedures established in this ordinance, which will be resolved by the Head in each case through an official document.

Reformed paragraph DOF-24-08-2021

ORIGINAL PARAGRAPH PUBLISHED ON 30-09-2019

The Committee will be assisted by staff from the General Directorate of Market Intelligence when technical forensic support is needed to locate and, when applicable, exclude the information of the electronic mean in which it is stored.

The Committee will be chaired by the member with most seniority in the Commission and, in equal seniority, by the oldest one, who will be authorized to receive all notifications issued to the Committee.

The members of the Qualifying Committees may be revoked, by the Head of the Investigative Authority, or the Technical Secretary, as it corresponds, when any of the requirements indicated in the sections of this article are no longer met or when any other situation impedes their permanence in the Committee.

Last and second to last paragraphs added DOF 24-08-2021

Chapter IV Of the Procedure for handling the Qualification Request

Article 7. Once the Qualification Request has been filed, the necessary measures will be taken to safeguard and protect the information, depending on its characteristics, so that no official of the Commission, outside the Qualifying Committee, can have access to such information until a decision on its nature of protected information under the terms of these Regulatory Provisions has been issued. Among the safeguard measures that may be taken shall be the sealing and/or packaging of the information, its storage in a safe place, and safekeeping by public officials alien to the investigation or applicable procedure, among others.

The submission of the Qualification Request will not suspend the legal timeframes of the investigation or procedures derived from a corresponding investigation.

Article 8. The Qualifying Committee must keep secrecy of all the information that is submitted to its consideration for the purpose of a Qualification Request, in the understanding that said Committee is the only one authorize to analyze the referred information, exclusively with the object of resolving the Qualification Request that it was raised. Failure to comply with this provision will be sanctioned in terms of what is stated in the last paragraph of article 55 of the Statute.

The casefile that the Committee creates as a result for the Qualification Procedure will be considered as Confidential Information, in terms of article 3, section IX, of the Law.

Second paragraph added DOF-24-08-2021

Article 9. The Qualification Procedure must be substantiated according to the following:

- I. Within five days after the reception of the Qualification Request at the Filing Office, the General Director in charge of the procedure will forward the Qualification Request and the accompanying elements to the Head of the Unit in which the involved casefile is located.
The Director General will indicate, when applicable, if the Requesting Party's personality has already been recognized in relation the main casefile and will attach a certified copy of this accreditation.

Added paragraph DOF 24-08-2021

- II. Within five days after the Head of the Investigative Authority or the Technical Secretary receives the Qualification Request and its accompanying elements, s/he must issue an official document in which the Qualification Request is transferred to the corresponding Committee in order to carry out the Qualification Procedure. Said agreement will be notified by official letter to the Committee and personally to the Requesting Party. When the information derived from an on-site inspection has been safeguarded by the General Directorate of Market Intelligence, the Committee will request its remission.

- III. The Committee will order the creation of a casefile in accordance with the official letter by which the Qualification Request and its accompanying evidence are notified. The Committee will analyze the Qualification Request and within the fifteen following days in which it is notified the agreement referred to in the previous section, it must issue an official document that:
- a) Admits the Qualification Request, which will be notified by list to the Requesting Party within the five following days after its issuance; or
 - b) Warns the Requesting Party, on a single occasion, when the writing of the Qualification Request omits any of the requirements set forth in article 4 of these Regulatory Provisions, in order for it to clarify or complete the Request, within a term no longer than five days, which may be extended on a single occasion for an equal term in duly justified cases.

Once the period has elapsed without the prevention being served or without complying with the requirements set forth in article 4 of these Regulatory Provisions, the Qualifying Request will be deemed as not presented, without prejudice that a new Qualifying Request may be submitted for one additional occasion, within the following ten days starting after the day in which the notification of the non-presentation agreement becomes effective.

The official document that deems a Qualification Request as not presented must be notified within the ten days after that in which the timeframe for the processing of the notification has expired.

The notification and no-presentation official documents referred to in this section will be notified personally, within the five days after that in which they were issued.

Section III reformed DOF 24-08-2021

ORIGINAL SECTION PUBLISHED ON 30-09-2019

III. The Committee will analyze the Qualification Request and within ten days following the one in which it is notified the agreement referred to in the previous section, which may be extended for an equal term when there are duly justified causes to do it, it will issue an agreement that:

- a) Admits the Qualification Request and indicates the date and time for the session of the Qualifying Committee to be held in which it will be determined whether the Qualification Request is grounded or not; or
- b) Caution the Requesting Party on a single occasion, when the writing of the Qualification Request omits any of the requirements set forth in article 4 of these Regulatory Provisions, in order for it to clarify or complete the Request within a period no greater than five days, which may be extended only once for one equal term in duly justified cases.

Once the period has elapsed without the prevention been carried out or without complying with the requirements set forth in article 4 of these Regulatory Provisions for the Qualifying Request , it will be deemed as not submitted, without prejudice that a new Qualification Request may be submitted for a single occasion.

The agreements mentioned in this section will be notified personally.

IV. Within the twenty days following the one in which the notification of the admission agreement becomes effective, the Qualifying Committee will deliberate in a collegiate manner and decide by majority of votes if said request is grounded or ungrounded for each file or document that is analyzed:

- a) In case that the Qualifying Committee resolves that the information is subject to protection under the terms of these Regulatory Provisions, the corresponding safeguarding measures and actions in the Extraction Procedure referred to in Chapter VI of these Regulatory Provisions shall be ordered;

Section IV and subsection a) reformed DOF 24-08-2021

ORIGINAL SECTION IV AND SUBSECTION A) PUBLISHED ON 30-09-2019

IV. Once the Qualification Request has been analyzed, the Qualifying Committee will deliberate in a collegiate manner and decide whether the request is grounded or ungrounded for each file or document analyzed, as follows:

- a) In case that the Qualifying Committee resolves that the information is subject to protection under the terms of these Regulatory Provisions, the corresponding safeguard measures and the actions established in the Exclusion Procedure referred to in Chapter VI of these Regulatory Provisions shall be ordered;

- b) In case that the Qualifying Committee resolves that the information is not under the assumptions of protection established in these Regulatory Provisions, it will be ordered its referral to the General Directorate in charge of the procedure so that it can utilize it, without prejudice that the Commission applies the corresponding measures and carries out the necessary proceedings to determine if, when making the qualification request, the Requesting Party incurred in false declarations, in terms of article 127, section III, of the Law.

The timeframe referred to in this section may be extended for an equal term, when duly justified, which will be notified by list.

Added paragraph DOF 24-08.2021

- V. The determination issued by the Qualifying Committee will be personally notified to the Requesting Party and notified through an official letter to the General Directorate and to the Head of the corresponding Unit, within the ten days following that in which the agreement was issued, for the applicable effects.

When the resolution is, the notification to the General Directorate and the Head of the corresponding Unit, will only contain the determination of the decision.

Section V reformed and its last paragraph added DOF 24-08-2021

ORIGINAL SECTION PUBLISHED ON 30-09-2019

V. The determination that is issued by the Qualifying Committee will be personally notified to the Requesting Party within the ten days following the corresponding session.

Until the Qualification Request is not resolved in the sense that the corresponding information is not under the assumptions of protection established in these Regulatory Provisions, the Director General in charge of the procedure, as well as the officials ascribed to said General Directorate, will not have access to the information indicated by the Requesting Party.

Article 10. The determination referred to in section V of article 9 of these Regulatory Provisions must contain at least:

- a. Name, registered name or corporate name of the Requesting Party;
- b. Time, day, month and year of the date in which it was issued;
- c. Identification data of the investigation casefile number in which is located the information susceptible to be protected by the present Regulatory Provisions; as well from the act or proceeding by which the Commission obtained the information;
- d. Name and position of the public officials that were part of the Qualifying Committee.

Subsections b, c and d reformed DOF 24-08-2021

ORIGINAL SUBSECTIONS b, c and d PUBLISHED ON 30-09-2019

- b. Time, day, month and year of the session of the Qualifying Committee;
 - c. Identification data of the investigation casefile number in which it is acted upon, as well as the act or proceeding through which the Commission obtained the information;
 - d. Name and identification information of the public officials who were part of the Qualifying Committee;
- e. The analysis of the Qualification Request and its corresponding decision; and
- f. The safeguarding measures and initiation of the Extraction Procedure, or when applicable, the transfer of the information to the Director General in charge of the procedure.

Chapter V
Of the procedure during on-site inspections

Article 11. During on-site inspections referred to in article 75 of the Law, the inspected party who wishes to submit for the qualification of information is subject to what it is established in section V of said article, in accordance with the following:

- I. During the practice of an on-site inspection, the inspected Economic Agent or the person with whom the proceeding is conducted, may request the protection of information for each file or document obtained by this Commission under the terms of these Regulatory Provisions, whose manifestation will be recorded in the minute. In this case, the public officials authorized to conduct the proceeding will take the necessary safeguard and packaging measures, in the presence of the inspected Economic Agent or the person with whom the proceeding is conducted, establishing such situation in the minute.

Such information will remain under the safeguard of the General Directorate of Market Intelligence, in order to take the measures indicated in article 7 of these Regulatory Provisions.

- II. The inspected party will be informed that it must submit the Qualifying Request within the fifteen days following the date in which the proceeding concludes and the minute of the inspection has been issued, which may be extended on a single occasion for an equal term, if duly justified.

Section II reformed DOF 24-08-2021

ORIGINAL SECTION PUBLISHED ON 30-09-2019

II. The inspected party will be informed that it must submit the Qualification Request within the following twenty days after the date on which proceeding is concluded and the minute of the inspection has been issued, which may be extended on a single occasion for an equal term, in duly justified cases.

If the inspected party has not requested for the protection of information obtained during the on-site inspection, and subsequently considers that there is information that must be protected in terms of these Regulatory Provisions, it must submit a Qualification Request within the period referred to in the previous paragraph. Once the Qualification Request is filed, the procedure referred to in Chapter IV of these Regulatory Provisions will be initiated.

Repealed

Last paragraph of the section repealed DOF 24-08-2021

ORIGINAL PARAGRAPH OF THE SECTION PUBLISHED ON 30-09-2019

In case that the inspected party requires a copy of the digital information obtained during the on-site inspection for the purposes of submitting the Qualification Request, the period referred to in this section will start running after the copy of the information is delivered to the inspected party, which must be requested to the Commission within the five days following the date on which the proceeding concludes and the minute is issued.

- III. When the inspected party requires a copy of the digital information obtained during the on-site inspection for the purposes of submitting the Qualification Request the following shall apply:
- a) The request must be made within five days after the date in which the proceeding concludes and the minute of the on-site inspection has been issued. This request must comply with the provisions of article 77 of the Regulatory Provisions of the Federal Economic Competition Law.
If the request does not comply with the indicated requirements, the economic agent will be notified for a single occasion so that, within a period of five business days, counted from the day after that in which the corresponding agreement becomes effective, it fully complies with the requirements. When this term has elapsed without the request being solved or if the aforementioned requirements not met, the request for copies will be deemed as not submitted and the term for submitting its Qualification Request, referred to in the previous section, will begin to run from the day after that in which the agreement of the request for copies in which was deemed as not be submitted, takes effect.
 - b) When the corresponding copies are issued, they will be made available to the economic agent at the Commission's headquarters, who will have five days, counted from the day after which the notification by list of the corresponding agreement becomes effective, to collect them. In this case,

the deadline for submitting the Qualification Request, referred to in the previous section, will begin to run from the day after the deadline for collecting the copies ends.

- c) If the economic agents only requests a copy of some elements of all of the digital information obtained during the on-site inspection, the deadline to submit the Qualification Request, referred to in the previous section, for those elements of which copies were not requested, will begin to run from the day following the date on which the proceeding concludes and the minute of the on-site inspection has been issued.

Section III added DOF 08-24-2021

Chapter VI Extraction Procedure

Article 12. In case that the Qualifying Committee decides that the Qualification Request is grounded, it will proceed according to the following:

- I. In the case of physical information, its return will be ordered and it will be made available to the Requesting Party, maintaining at all times the corresponding safeguarding measures.
- II. In the case of electronic files obtained through an on-site inspection, the Qualifying Committee will order the extraction of said file.

Sections I and II reformed DOF 24-08-2021

ORIGINAL SECTIONS I AND II PUBLISHED ON 30-09-2019

- I. In the case of physical information, its return will be ordered and it will be made available to the Requesting Party at the Filing Office of the Commission, maintaining the corresponding safeguard measures at all times.
- II. In the case of an electronic file obtained through an on-site search, the Qualifying Committee will order the exclusion of said file, which will be attested in a detailed record.

If it is technically possible, without affecting the integrity of the information obtained in the on-site inspections and/or of the means of storage, as it corresponds, a new mean of storage could be created to extract the information that has been considered susceptible to be protected, in terms of these Regulatory Provisions which will be transferred to the corresponding Director General.

In both cases, the extraction process indicated in this section will be stated in a detailed record.

All information that has been considered susceptible to protection, in terms of these Regulatory Provisions, by the Committee and that has not been made available to the Requesting Party, will remain in custody of the General Directorate of Market Intelligence, until appropriate.

Second, third and fourth paragraph added DOF 24-08-2021