

Request for Information on Electromagnetic Fields, RF Radiation, and Wireless Exposure

Docket: HHS-OASH-2026-0397

I. PURPOSE

Commenter submits this response to clarify the legal scope of the Department's voluntary request for information (RFI), identify an apparent error in the notice's regulatory hyperlink, and preserve objections to any later attempt to use this RFI as a substitute for statutory authority or procedures governing binding agency action. This comment addresses legal authority, notice clarity, and record methodology; it does not ask HHS to adopt a predetermined scientific conclusion.

The RFI expressly describes itself as voluntary and not a policy, states that HHS has no obligation to support ideas submitted, and says responses may be reflected in future solicitations or policies. 91 Fed. Reg. 59792, 59793. Given those statements, Commenter does not contend that the act of soliciting voluntary information is, by itself, necessarily ultra vires or reviewable final agency action. HHS has substantial authority to conduct public-health research and solicit information. See 42 U.S.C. § 241(a); 21 U.S.C. §§ 360ii, 360jj.

The legal limits arise if the Department (a) treats the 2021 D.C. Circuit judgment as a mandate to HHS or as a scientific finding; (b) relies on the RFI itself as authority for binding exposure limits, product requirements, ambient standards, disclosure mandates, or facility-siting rules; or c) later takes action without identifying and complying with the statute and procedures that authorize that action.

II. ENVIRONMENTAL HEALTH TRUST V. FCC IS A LIMITED REMAND TO THE FCC

In *Environmental Health Trust v. FCC*, 9 F.4th 893 (D.C. Cir. 2021), the court reviewed the FCC's 2019 order terminating a notice of inquiry into whether the Commission should initiate rulemaking concerning its RF exposure guidelines. The court remanded that order for a reasoned explanation of the FCC's determination that its guidelines adequately protect against harmful effects unrelated to cancer. It identified three subjects for explanation: (1) the decision to retain portable-device testing procedures; (2) children, long-term exposure, the ubiquity of wireless devices, and technological developments since the guidelines were last updated; and (3) environmental effects. *Id.* at 903–10, 914.

The panel expressly took “no position in the scientific debate” about RF health and environmental effects. *Id.* at 914. It recognized that there may be good reasons the cited studies do not warrant changing the guidelines. The court did not determine that RF exposure below FCC limits causes injury, adopt any particular study, order the FCC to change its limits, or vacate the 2019 order. The existing FCC rules therefore remained in effect after the remand.

The opinion also rejected the challenges to the FCC's treatment of cancer-related evidence and rejected the claim that termination of the FCC inquiry itself required a new NEPA assessment; it declined to reach additional legal arguments that were not properly preserved. *Id.* at 907–13. These holdings should not be expanded beyond the issues actually decided.

The FCC's September 2026 notice in ET Docket No. 13-84 likewise describes its task as addressing the remanded issues and expressly excludes other aspects of the 2019 order that were upheld and record portions not properly before the court. 91 Fed. Reg. 60128, 60129–31. That limitation defines the FCC's response to its judicial mandate; it does not, by itself, legally limit HHS's separate research

authority. Conversely, neither the judgment nor the FCC notice requires HHS to conduct this RFI, delegates authority to HHS, or establishes health-related facts that HHS may treat as judicially found.

Accordingly, HHS should not describe the RFI as required by the court's remand, and should not treat Environmental Health Trust as a judicial finding of harm or as an independent source of HHS regulatory authority. If HHS relies on the decision as policy context, it should state accurately that the court required a reasoned FCC explanation, not a particular scientific or regulatory result.

III. THE AUTHORITY CITATION AND HYPERLINK SHOULD BE CORRECTED

The notice states: "HHS is conducting this request for information under 21 CFR subpart J." 91 Fed. Reg. 59792, 59792. The hyperlink attached to that phrase resolves to 21 C.F.R. Chapter I, Subchapter A, Part 1, Subpart J, "Establishment, Maintenance, and Availability of Records," a food-recordkeeping regime. It does not resolve to the radiological-health regulations. The relevant radiological-health grouping is 21 C.F.R. Chapter I, Subchapter J.

The present citation is incomplete because it omits the part or subchapter intended, and the link affirmatively directs readers to an apparently unrelated subpart. This is a concrete notice-drafting defect that should be corrected in the docket. It is not, standing alone, proof that the voluntary RFI is invalid: this notice is not a notice of proposed rulemaking, and the APA's rulemaking-notice requirement, 5 U.S.C. § 553(b)(2), does not automatically govern an informational solicitation in the same way it governs a proposed legislative rule.

HHS should identify the actual statutory and delegated authority for the RFI, rather than rely on an unparticularized CFR reference. Potentially relevant provisions include 42 U.S.C. § 241(a), 21 U.S.C. §§ 360hh, 360ii, and 360jj, and, if a future electronic-product radiation performance standard is contemplated, 21 U.S.C. § 360kk. If HHS intended to cite 21 C.F.R. Chapter I, Subchapter J (Radiological Health), it should say so and explain the connection between that regulatory framework and the distinct subject areas listed in the RFI. The Department should also identify, if material to the action it contemplates, the delegation under which the Office of the Assistant Secretary for Health is issuing the notice.

Commenter requests a corrected notice or docket clarification. If the correction materially changes the asserted legal basis or intended scope, Commenter requests a reasonable supplemental opportunity to respond. This is a request for clarity and fair record development, not an assertion that a voluntary RFI is subject to every procedure applicable to a proposed rule.

IV. RESEARCH AUTHORITY DOES NOT ELIMINATE THE STATUTORY LIMITS ON BINDING STANDARDS

Congress has authorized HHS to conduct and coordinate research relevant to public health. Section 241(a) of Title 42 authorizes research and investigations into causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments. The electronic-product radiation statutes separately authorize a radiation-control program, including research, evaluation of emissions and exposure conditions, development and evaluation of methods to minimize exposure, collection and publication of information, and recommendations. 21 U.S.C. § 360ii(a)–(b). Section 360jj addresses studies concerning control of electronic-product radiation and related participation by other agencies.

Those provisions make a categorical objection to gathering information untenable. But research and recommendation powers are not a free-standing grant to impose any binding RF /EMF requirement the Department may favor. The source of authority must match the legal character of the later action.

If HHS proposes a performance standard for an “electronic product” within 21 U.S.C. § 360hh, § 360kk supplies a specific statutory route. It authorizes standards to control emissions from such products when the Secretary determines they are necessary to protect public health and safety, and it identifies permissible matters such as product testing, measurement, warning signs, labels, and instructions. Any standard under § 360kk must be promulgated by regulation; § 360kk(b) expressly applies the APA’s rulemaking and judicial-review provisions; § 360kk(a) specifies scientific, technical, feasibility, and consultation considerations; and § 360kk(f) requires consultation with the Technical Electronic Product Radiation Safety Standards Committee before a standard is prescribed. Section 360kk(c) addresses effective dates and § 360kk(d) provides a specific route for judicial review.

Accordingly, the RFI cannot itself impose, amend, or waive product-performance obligations, substitute for the procedures in § 360kk, or predetermine a future standard without the statutory findings and procedures applicable to that standard. Nor should the Department assume that authority to study product emissions necessarily authorizes a generally applicable ambient-exposure limit untethered to a defined electronic product, a telecommunications-network operating rule, or a facility-siting restriction. If HHS contemplates such a binding measure outside the product-performance-standard route in § 360kk, it should identify a separate, affirmative source of authority and explain how the proposed measure fits within it.

This comment does not contend that the FCC’s role displaces all HHS authority. The Communications Act gives the FCC responsibilities for radio communications and apparatus, see 47 U.S.C. § 303, while the electronic-product radiation statute contains a noninterference provision preserving other federal agencies’ functions under their own laws. See 21 U.S.C. § 360hh note (Noninterference With Other Federal Agencies; Pub. L. No. 90-602, § 4). The relevant point is narrower: overlapping federal responsibilities do not authorize an agency to exercise powers that Congress did not give it. An RFI may collect evidence and inform recommendations; it does not settle the boundary of any agency’s binding regulatory authority.

V. THE INQUIRY SHOULD DISTINGUISH MATERIALLY DIFFERENT EXPOSURES AND LEGAL QUESTIONS

The notice describes “low radiofrequency (RF) associated with power systems and household appliances” and higher RF and microwave exposures associated with wireless communications. 91 Fed. Reg. 59792, 59792. Ordinary 50/60-Hz fields from power systems are generally described as power-frequency or extremely-low-frequency fields, not radiofrequency emissions. HHS should correct or clarify the terminology and avoid aggregating unlike exposures into one category without a stated scientific basis.

At minimum, HHS’s analysis should separately identify: (a) 50/60-Hz electric and magnetic fields; (b) RF from handheld and body-worn consumer devices; (c) RF emitted by fixed wireless transmitters or infrastructure; (d) occupational RF exposure; and (e) electromagnetic compatibility issues involving implanted or other medical devices. For each, the record should distinguish frequency, exposure level, duration, proximity, operating mode, measurement or modeling method, and the regulatory standard relevant to the source.

The wording of Question 6—“What scientific evidence exists about potential adverse health effects caused by current exposure limits?”—is also ambiguous. Exposure limits are regulatory criteria; the likely scientific inquiry concerns potential adverse effects associated with exposure at or below current limits, not effects “caused by” a regulatory limit. HHS should clarify the intended question so that commenters address the same proposition and the resulting record is not mistaken for evidence that the limits themselves cause harm.

Questions about nearby schools, homes, antenna density, cumulative exposure, and new technologies may be legitimate research topics. But proximity or transmitter count is not, without more, a quantitative measure of individual exposure. The analysis should distinguish measured exposure from modeled exposure, source presence from dose, and association from causation. Findings for one frequency band, source type, exposure metric, or population should not be generalized to another without an explained evidentiary bridge.

VI. PUBLIC REPORTS SHOULD BE PRESERVED AS REPORTS, NOT CONVERTED INTO CAUSAL FINDINGS BY AGGREGATION

The RFI invites individuals to report symptoms, timing, medical evaluations, and changes observed after exposure reduction. These accounts may identify topics for investigation. Their voluntary and self-selected nature, however, means that they cannot alone establish causation, incidence, or population-level risk. HHS should distinguish anecdotal reports, clinical diagnoses, biological effects, hazard classifications, and quantified health risks at specified exposure levels.

Any synthesis should describe how HHS assesses exposure ascertainment, dosimetry, calibration, confounding, controls, blinding, sample size, statistical methods, replication, dose-response, study quality, and external validity. Animal, mechanistic, ecological, occupational, and human epidemiological evidence should be identified as such and not treated as interchangeable. Null and conflicting studies, limits of generalizability, and material uncertainty should be reported along with positive findings.

The notice states that submissions will be public and specifically tells respondents not to include personally identifiable, personal health, confidential, or proprietary information. HHS should not imply that commenters must provide identifiable medical records to participate. If individual accounts are included in a report, the report should describe the selection and verification limitations and should not treat the number of submissions as a surrogate for epidemiological evidence.

VII. ANY LATER BINDING ACTION MUST STAND ON ITS OWN LEGAL BASIS AND RECORD

Because the RFI is voluntary, nonbinding, and expressly not a policy, it likely does not itself satisfy the two requirements for “final agency action” under *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997): consummation of decisionmaking and legal consequences. See also *Holistic Candles & Consumers Ass’n v. FDA*, 664 F.3d 940, 944–45 (D.C. Cir. 2012) (FDA warning letters not final agency action on the facts there). Commenter therefore does not request a judicial determination against the present solicitation or assert that the citation error alone makes the RFI presently reviewable.

If HHS later proposes a binding legislative rule, it must provide the notice and opportunity for comment required by the governing statute and the APA, unless a lawful exception applies. In a future final action, the agency must identify its authority, consider relevant factors, address significant contrary evidence, and explain the connection between the record and its conclusions. See 5 U.S.C. § 706(2)(A), (C), (D); *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983); *SEC v. Chenery Corp.*, 318 U.S. 80, 87–88 (1943). Courts independently interpret statutory delegations and police their boundaries. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

Commenter requests that HHS identify the scientific reviews, selection protocols, technical reports, interagency materials, and other sources materially relied upon in any future consequential assessment, to the extent those materials are part of the record for the resulting agency action. This

request does not assert that the present RFI itself triggers all record-disclosure or rulemaking duties applicable to a later action.

Finally, this filing is directed to HHS docket HHS-OASH-2026-0397 only. It is not a substitute for filing in the FCC's separate ET Docket No. 13-84 and does not purport to satisfy issue-preservation or exhaustion requirements applicable to FCC review, including 47 U.S.C. § 405(a). Any such arguments must be presented separately in the proper forum and docket, subject to applicable deadlines and procedures.

VIII. REQUESTS

For the reasons above, Commenter respectfully requests that HHS:

1. Correct the "21 CFR subpart J" hyperlink and citation, and identify the statutory provisions and any material delegation relied upon for this RFI.
2. Clarify that the present RFI is voluntary and nonbinding, does not itself propose or impose a performance standard or other compulsory requirement, and does not substitute for any rulemaking required for future binding action.
3. Confirm that *Environmental Health Trust v. FCC* is not being treated as a judicial finding of RF-related injury, as a mandate to HHS, or as a source of HHS authority.
4. Clarify Question 6 and distinguish power-frequency fields, consumer-device RF, fixed-infrastructure RF, occupational exposure, and medical-device compatibility in any synthesis or recommendation.
5. Explain how HHS will distinguish individual reports from verified clinical outcomes and causal evidence, and how it will assess study quality, exposure measurement, confounding, replication, and uncertainty.
6. Identify or make accessible the materials materially relied upon in any future consequential assessment, to the extent required for the record of that action.
7. Provide a supplemental comment opportunity if correction of the authority citation or a later statement of contemplated action materially changes the legal basis or scope of the inquiry.

Reservation. Commenter preserves objections under the APA and other applicable law to any future final action that exceeds delegated authority, misconstrues *Environmental Health Trust*, or bypasses required procedures. This reservation does not purport to dispense with any independent requirements for standing, final agency action, timeliness, issue exhaustion, or preservation in a later proceeding.

REFERENCES

Environmental Health Trust v. FCC, 9 F.4th 893 (D.C. Cir. 2021), official D.C. Circuit opinion: <https://media.cadc.uscourts.gov/opinions/docs/2021/08/20-1025-1910111.pdf>

HHS RFI, 91 Fed. Reg. 59792 (Sept. 21, 2026), official GovInfo text: <https://www.govinfo.gov/content/pkg/FR-2026-09-21/html/2026-19252.htm>

FCC, RF Exposure Issues Subject to D.C. Circuit Remand, 91 Fed. Reg. 60128 (Sept. 22, 2026): <https://www.govinfo.gov/content/pkg/FR-2026-09-22/html/2026-19364.htm>

FCC 2019 Order, FCC 19-126, 34 FCC Rcd 11687: https://docs.fcc.gov/public/attachments/FCC-19-126A1_Rcd.pdf

21 U.S.C. § 360hh (definitions): <https://uscode.house.gov/us/usc/119-121/t21/s360hh/>

21 U.S.C. § 360ii (electronic-product radiation-control program): <https://uscode.house.gov/us/usc/119-118/t21/s360ii/>

21 U.S.C. § 360jj (studies by Secretary): <https://uscode.house.gov/us/usc/119-121/t21/s360jj/>

21 U.S.C. § 360kk (performance standards; procedure and review): <https://uscode.house.gov/us/usc/119-121/t21/s360kk/>

21 C.F.R. Chapter I, Subchapter J (Radiological Health): <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-J>

HHS hyperlink destination: 21 C.F.R. Chapter I, Subchapter A, Part 1, Subpart J (food records): <https://www.ecfr.gov/current/title-21/chapter-I/subchapter-A/part-1/subpart-J>

42 U.S.C. § 241(a) (research and investigations): <https://www.law.cornell.edu/uscode/text/42/241>

47 U.S.C. § 303 (FCC powers): <https://www.law.cornell.edu/uscode/text/47/303>

5 U.S.C. §§ 553, 704, 706 (APA): <https://www.law.cornell.edu/uscode/text/5/706>

FCC opposition to mandamus, In re Children’s Health Defense, No. 26-1121, Doc. 2195088 (D.C. Cir. Sept. 25, 2026) (party filing, not a judicial ruling): <https://ehsciences.org/wp-content/uploads/2026/09/26-1121-FCC-Response-Sept-25-2026-to-Writ-if-Mandamus-Documents-1.pdf>