COMMENT OF AN INDIVIDUAL MEMBER OF THE PUBLIC

The Electronic Product Radiation Control Program as Applied to Radiofrequency Energy

Request for Information on Electromagnetic Field Emissions and Exposure

Docket No. HHS-OASH-2026-0397 – FR Doc. 2026-19252

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RESPONDENT IDENTIFICATION

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Capacity: Submitted in an individual capacity. I am an Environmental Scientist, Integrative Nutrition Health Coach, and Certified Holistic Nutrition Coach. I am submitting in an individual capacity as a member of the public.

Basis of interest: The submitter has no interest beyond that of a member of the public exposed to the emissions this notice concerns.

Financial interest: NONE

What this comment is and is not. It is a comment on the statutory requirements of the electronic product radiation control program as those requirements apply to radiofrequency energy. It is not a submission on the radiofrequency science. It takes no position on whether radiofrequency exposure at or below any presently applicable limit causes harm, and it asks the Department to decide no question of that kind in order to act on anything requested here. Every factual statement in it is drawn from a published federal document, a published judicial decision, or correspondence of a federal agency, and each is identified where it is used.

The submitter is not that organization, speaks only for the submitter, and makes no representation on its behalf. Where this comment relies on a document that comment also relies on, the document itself is cited rather than the other comment.

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I. SUMMARY OF POSITION

Nine propositions, each established in the Part or subsection named after it. None of them requires the Department to reach any conclusion about the radiofrequency science.

1. Radiofrequency energy emitted by an electronic product as a result of the operation of an electronic circuit in that product is electronic product radiation within 21 U.S.C. § 360hh(1)(A). Part II.B.

2. The Secretary is therefore directed by 21 U.S.C. § 360ii(a) to establish and carry out an electronic product radiation control program as to it, and the six paragraphs of that subsection state what the program consists of. Part II.A.

3. The agency that administers the radiofrequency rules most members of the public encounter states on its own public page that it does not regulate exposure to emissions from certain consumer products, that protecting the public from those emissions is the responsibility of the Food and Drug Administration, and that inquiries should be directed to the Center for Devices and Radiological Health. Part II.C.

4. One performance standard for a radiofrequency emitting product has ever been prescribed under this authority. It governs microwave ovens and it dates from the early 1970s. The same public page states that the Center has not adopted performance standards for other products that emit radiofrequency energy. Part II.D.

5. The Center's own account of its radiofrequency activity, given in correspondence of May 23, 2019, is that its staff monitor developments in the scientific literature, an activity it dates to about a decade before that letter. This comment sets that account beside the four verbs of § 360ii(a)(2) and invites the comparison rather than characterizing it. Part II.E.

6. The Foundation's research, and the submitter's own search, have identified one documented instance in the history of the program of this Department consulting another federal agency about the health effects of an electronic product radiation. It is a letter of April 24, 2019 and its subject is radiofrequency energy. Part II.I.

7. In the half of that letter addressed to a frequency range for which no exposure limit existed, the Center recommended that limits be set, explained the physical basis for the recommendation, named two consensus standards as adequate models, and specified four means of reducing the emission. It is the clearest demonstration in the record that the Center is able to do what § 360ii directs. It did it once, in a letter, on request. Part II.J.

8. No standard may be prescribed under § 360kk for any radiofrequency emitting product without first consulting the statutory advisory committee, and that committee has not been reported to meet since 2016. Part II.L.

9. The agency that relied on this Department's 2019 assessment has had the order resting on it remanded by a federal court of appeals, and has a proceeding open now in which it invites federal health and safety agencies to participate and states how it will weigh what they file. Part III.

II. THE REQUIREMENTS OF 21 U.S.C. § 360ii AS APPLIED TO RADIOFREQUENCY ENERGY

A. The statutory framework and the implementing regulations

Subchapter C of chapter V of the Federal Food, Drug, and Cosmetic Act, at 21 U.S.C. §§ 360hh to 360ss, establishes the electronic product radiation control program. Section 360ii(a) directs the Secretary to establish and carry out it, and then states what it consists of:

> The Secretary shall establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic product radiation. As a part of such program, he shall—

Six paragraphs follow. Paragraph (a)(1) directs the development and administration of performance standards. Paragraph (a)(2) directs the Secretary to plan, conduct, coordinate and support research, development, training and operational activities to minimize the emissions of and the exposure of people to unnecessary electronic product radiation. Paragraph (a)(3) directs the maintenance of liaison with, and receipt of information from, other departments and agencies, professional organizations, industry, industry and labor associations and others. Paragraph (a)(4) directs the study and evaluation of emissions of, and conditions of exposure to, electronic product radiation. Paragraph (a)(5) directs the development, testing and evaluation of the effectiveness of procedures and techniques for minimizing exposure. Paragraph (a)(6) directs consultation and the maintenance of liaison with named federal departments and agencies on two subjects.

Two features of that opening sentence bear on everything below. The duty is the Secretary's: the statute does not name the Food and Drug Administration and does not name the Center for Devices and Radiological Health, and the authority reaches them by delegation within the Department. And the two verbs are establish and carry out, which is a direction to operate a program rather than to create one and leave it.

The implementing regulations are at 21 C.F.R. parts 1000 to 1050, subchapter J of chapter I. Part 1000 contains the general provisions and definitions. Parts 1002 to 1005 contain the records, reports and administrative provisions. The performance standards are in parts 1020 to 1040, and one of those parts is addressed to this comment's subject: part 1030, Performance Standards for Microwave and Radio Frequency Emitting Products.

B. Radiofrequency energy emitted by an electronic product is electronic product radiation

The definition is at 21 U.S.C. § 360hh(1)(A), and electronic product radiation means:

> any ionizing or non-ionizing electromagnetic or particulate radiation

emitted from an electronic product as the result of the operation of an electronic circuit in such product. The regulation repeats the definition in substantially the same words at 21 C.F.R. § 1000.3(k), and defines an electronic product at § 1000.3(j).

Radiofrequency energy is non-ionizing electromagnetic radiation. A transmitter, a wireless access point, a mobile telephone, a wireless power transfer device and a switching power supply are each a manufactured product containing an electronic circuit whose operation produces that radiation. The definition therefore reaches them, and it reaches them without any need to construe it generously: radiofrequency energy sits on the non-ionizing side of the one division the subparagraph makes, and that side is expressly included.

The point requires no argument because the Department has never disputed it. Part 1030 of its own regulations is titled Performance Standards for Microwave and Radio Frequency Emitting Products,

and the standard in it was prescribed under this authority. The question this comment raises is not whether radiofrequency energy is within the program. It is what the program has done about it.

C. The division of responsibility, as the Federal Communications Commission states it

The Office of Engineering and Technology of the Federal Communications Commission publishes a page of answers to questions about radiofrequency safety. It contains this:

> The Commission does not regulate exposure to emissions from these devices. Protecting the public from harmful radiation emissions from these consumer products is the responsibility of the U.S. Food and Drug Administration (FDA). Inquires [sic] should be directed to the FDA's Center for Devices and Radiological Health (CDRH).

The submitter states the limits of that passage before stating its use, because it is easy to overread. The page carries no date of publication or review. The question under which the passage sits has not been recovered, so the class of products to which the words these devices and these consumer products refer is not established from the page alone. The passage is not a rule, binds nobody, and is not an interpretation of § 360ii by the agency that administers it.

What it does establish is narrower and is still worth having. Where that Commission declines to regulate exposure to an emission from a consumer product, it identifies this Department as the agency responsible for protecting the public from that emission, and it refers the inquirer to the Center for Devices and Radiological Health by name. Whatever else is unsettled, the agency the public is most likely to approach about radiofrequency exposure says that this Department holds the responsibility for an important part of it.

What that Commission's rules limit, and what the limits are for

The point of this movement is the purpose of the two rule parts that reach most of the products in question, because purpose determines what a limit protects. A device that generates radiofrequency energy for use within itself and is not intended to emit it is an unintentional radiator within 47 C.F.R. § 15.3(z); the applicable limits are the conducted limits of § 15.107 and the radiated limits of § 15.109. Industrial, scientific and medical equipment, defined at § 18.107(c) as equipment designed to generate and use locally radiofrequency energy for industrial, scientific, medical, domestic or similar purposes, is governed by part 18.

Part 18 states its own purpose. Its rules are promulgated under section 302 of the Communications Act of 1934 in order to prevent harmful interference to authorized radio communication services. Part 15 conditions operation on causing no harmful interference and on accepting interference received. Neither purpose is the protection of a person, and the submitter says so without complaint: the limits do what they were written to do, and the agency that wrote them says on its own page that it does not regulate exposure to emissions from these products.

One structural feature follows and it is the reason this subsection exists. Every limit in both parts is a maximum. Neither part sets a floor of any kind: a device may emit less than the limit, or nothing at all, and what it may not do is exceed. That is what a limit adopted to protect something other than the exposed person looks like, and it is consistent with everything the Commission says about its own role.

So a product may comply with every applicable federal limit on its radiofrequency emission while the question 21 U.S.C. § 360ii(a)(2) directs this Department to ask has not been asked about it. That question is whether the emission and the exposure of people to it are unnecessary and can be minimized. Compliance with an interference limit is not an answer to it, and no federal instrument the submitter has identified asks it.

Two further statements on the same page are relied on below. That the Center established a performance standard for microwave ovens in 1971. And that the Center has not adopted performance standards for other products that emit radiofrequency energy.

D. § 360ii(a)(1) – Performance standards: one, for microwave ovens

Paragraph (a)(1) directs the Secretary to develop and administer performance standards for electronic products. The standards developed under it are in parts 1020 to 1040 of subchapter J, and they cover diagnostic x-ray systems, television receivers, cold-cathode gas discharge tubes, cabinet and non-cabinet x-ray systems, microwave ovens, laser products, sunlamp products and ultraviolet lamps, and high-intensity mercury vapor discharge lamps.

One of those is a radiofrequency emitting product. The standard for microwave ovens is at 21 C.F.R. § 1030.10. It dates from the first years of the program: the Commission's page gives 1971, and the provision has been amended repeatedly since, most recently at 88 Fed. Reg. 3,654 (Jan. 20, 2023).

Nothing else in part 1030 prescribes an emission limit for any other radiofrequency emitting product. The part is titled for a class and contains a standard for one member of it, and the Commission's own page states the same thing from the other direction: that the Center has not adopted performance standards for other products emitting radiofrequency energy.

The submitter states what follows and what does not. It does not follow that any standard is owed for any particular product, because § 360kk(a)(1) conditions the prescription of a standard on the Secretary determining that it is necessary. What does follow is the shape of the record: in the fifty-five years since the program began, the exposure environment for radiofrequency energy has been transformed by broadcast, cellular, wireless networking, wireless power transfer and a general proliferation of transmitters in the home, and the inventory of standards for radiofrequency emitting products has not changed. It consists of the microwave oven.

E. § 360ii(a)(2) – Research, development, training and operational activities

Paragraph (a)(2) is the paragraph with the widest reach and the one that depends on no determination by anybody. It directs the Secretary to plan, conduct, coordinate and support research, development, training and operational activities to minimize the emissions of and the exposure of people to unnecessary electronic product radiation.

The Department has described what it does under that paragraph, in correspondence about radiofrequency exposure, and the submitter sets out the description rather than characterizing it. On May 23, 2019 the Director of the Center for Devices and Radiological Health replied to a letter of December 9, 2018 from two physicians of an organization called Physicians for Safe Technology. The reply describes the program and then states, of radiofrequency energy specifically, that Center staff began monitoring developments in the scientific literature on the subject about a decade earlier.

The submitter draws no conclusion from that and expressly declines to assert that monitoring the literature fails to satisfy the paragraph. The paragraph is set out above and the description is set out above, and a reader can compare four verbs with one activity without assistance. Two observations are offered that do not require the comparison to come out any particular way.

The first is that monitoring is receptive rather than productive. A program of monitoring generates no measurement, no emission inventory and no exposure characterization of its own, and the paragraph's verbs are plan, conduct, coordinate and support. The second is about the object of the paragraph, which is not safety. It is minimization of emissions and of exposure to unnecessary radiation. An activity directed at establishing whether harm occurs at present limits is addressed to a different question from the one the paragraph names, and the Department may be doing the first thoroughly while doing nothing under the second.

The same letter closes with the references the Center used as benchmarks for its conclusions: twelve items, naming a European scientific committee, Health Canada, a New Zealand interagency committee, the Swedish radiation safety authority, the Health Council of the Netherlands twice, Public Health England, and the National Cancer Institute, among others. The submitter notes the composition of that list without criticizing it. It is a list of other bodies' assessments. It contains no measurement, study or evaluation performed by this Department.

F. § 360ii(a)(3) – Liaison with, and receipt of information from, others

Paragraph (a)(3) directs the Secretary to maintain liaison with and receive information from other federal and state departments and agencies with related interests, professional organizations, industry, industry and labor associations and others. The submitter draws attention to two features of its text.

The first is that the paragraph contains no form of the word consult. Its verbs are maintain and receive, and what is to be maintained is liaison. A duty to maintain liaison is not discharged by being available to be written to; maintenance is a continuing activity and the paragraph says so.

The second is the breadth of the list. Professional organizations, industry and labor associations are named expressly, which in the radiofrequency field means the standard-setting bodies whose exposure guidance is in general use and the engineering societies whose measurement methods are. The paragraph directs that information be received from them. It does not direct that their conclusions be adopted, and the distinction matters because a program that received information from such bodies and did nothing with it would have performed the receiving without performing paragraphs (a)(2), (a)(4) or (a)(5).

G. § 360ii(a)(4) – Study and evaluation of emissions and conditions of exposure

Paragraph (a)(4) directs the Secretary to study and evaluate emissions of, and conditions of exposure to, electronic product radiation and biological effects of such radiation. It is the paragraph that asks the least, and the submitter relies on it most heavily for that reason. It requires no finding of harm, no determination that a standard is necessary, and no rulemaking. It requires the subject to be studied.

Three objects are named and they are distinct. The emissions: what the product puts out, measured. The conditions of exposure: how, where, for how long and at what distance a person receives it, which is a question about the installed environment rather than about the product on a bench. And the biological effects. A program that attends to the third and not the first two has data about a hazard and none about the exposure, which is the position the submitter asks the Department to examine.

The submitter has identified no publication of this Department reporting a measurement, by this Department, of the radiofrequency emission of any product class, or an inventory of the emissions a person in the United States presently receives, or a characterization of the conditions under which that exposure occurs. That is a statement about what the submitter has been able to find. The Department is in a position to displace it with a citation, and the submitter asks that if such work exists it be identified, because the premise of several requests below would then fall away.

H. § 360ii(a)(5) – Procedures and techniques for minimizing exposure

Paragraph (a)(5) directs the Secretary to develop, test and evaluate the effectiveness of procedures and techniques for minimizing exposure to electronic product radiation. The paragraph is about remedies rather than about hazards, and its verbs are develop, test and evaluate.

The Department has done this once for radiofrequency energy, in the letter of April 24, 2019, and the submitter sets it out at subsection J because it is the strongest thing in this comment. It named

four techniques for reducing exposure from a class of device. It did so in a letter, on request, for one narrow class, and the submitter has identified no instance of the same exercise being performed for any other radiofrequency emitting product.

The techniques available in this field are not obscure and the paragraph does not require their invention. Limits on output power. Automatic reduction or shutdown on detection of a person. Exclusion zones and separation distances. Shielding. Default settings that do not transmit when transmission serves no purpose. Disclosure sufficient to let a purchaser choose a lower-emitting product. Each is a procedure or technique within the meaning of the paragraph, and the paragraph directs that their effectiveness be developed, tested and evaluated. The submitter asks whether that has been done for any of them.

I. § 360ii(a)(6) – Consultation: the one instance of record

Paragraph (a)(6) directs the Secretary to consult and maintain liaison with the Secretary of Commerce, the Secretary of Defense, the Secretary of Labor, the Atomic Energy Commission and other appropriate federal departments and agencies, on two subjects: techniques, equipment and programs for testing and evaluating electronic product radiation, and the development of performance standards pursuant to § 360kk.

Two things about that text are worth stating. It is confined to those two subjects, so it is not a general duty of interagency cooperation. And unlike paragraph (a)(3) it uses the word consult, which is an active verb directed at this Department.

One documented instance of its performance has been identified. On April 24, 2019 Jeffrey Shuren, then Director of the Center for Devices and Radiological Health, wrote to Julius Knapp, then Chief of the Office of Engineering and Technology of the Federal Communications Commission. Its subject is radiofrequency energy.

The letter is a reply, and it is a reply to two requests rather than one. The Commission had written on March 22, 2019 requesting the Center's guidance on standards as new technologies such as 5G were introduced. It had written earlier, on February 4, 2014, requesting guidance on the exposure principles under which it should consider wireless power transfer devices operating at frequencies for which its own rules set no human exposure limit.

The submitter asks the Department to notice the shape of that. The other agency asked twice, five years apart, and the reply of record answers both. So the single documented instance of consultation in the history of the program is not an instance of this Department initiating anything. It is an answer to a sister agency that asked, and had asked before.

J. The two halves of the letter of April 24, 2019

The letter answers two inquiries and its two halves are not alike. The difference is visible on the face of the document and requires no characterization.

The half where a limit already existed

On mobile telephones, the Center reviewed the then recently published rodent study of the National Toxicology Program in the context of all available scientific information, including epidemiological studies, and concluded that no changes to the current standards were warranted at that time, that the experimental findings should not be applied to human cell phone usage, and that the available scientific evidence did not support adverse health effects in humans at or under the current limits. It described this as part of its ongoing monitoring activity.

The half where no limit existed

On wireless power transfer devices operating at frequencies for which the Commission's rules set no human exposure limit, the Center did not confine itself to assessing whether harm had been established. It recommended that limits be set:

> We agree that with the increase in technology that uses frequencies below 300 kHz and even below 100 kHz, setting human exposure limits below 300 kHz and 100 kHz would better ensure the protection of the general public.

It then explained the physical basis for the recommendation: that at the lower end of that range nerve stimulation and induced currents predominate while at the upper end heating does. It drew the regulatory consequence, that the long averaging times associated with thermal limits are not appropriate to a rapid biological response. And it named two existing consensus standards as adequate models for the Commission to adopt.

On interference with implanted and body-worn medical devices it recommended reduction of the emission itself as the remedy:

> Therefore, the most effective mitigation against EMI to active medical devices from the emissions of WPT devices is to reduce the WPT emissions and thus medical device exposure.

And it specified four means:

> The methods to reduce exposure should include limits on the WPT output power, designing the WPT with safety interlocks (i.e., designing the WPT source so that it can detect the presence of humans or animals and shut off or greatly reduce power output), creating exclusion zones, and recommending separation distances between the WPT emitter and any active medical devices.

What the submitter draws from the comparison

In the half where limits already existed, the Center assessed whether the evidence warranted changing them and concluded that it did not. In the half where no limit existed, the Center recommended that limits be set, gave the physical reasoning, identified the frequency boundaries at which the mechanism changes, named two standards that could be adopted, and listed four engineering techniques for reducing the emission.

The second half is paragraph (a)(5) of the statute being performed. It is the development and evaluation of procedures and techniques for minimizing exposure, addressed to a product class, reduced to four specific means, and communicated to the agency able to act on it. The submitter asks the Department to notice three things about it: 1. That the Center was able to do it. 2. That it did it on request rather than on its own initiative. 3. The submitter has identified no second instance of it for any other radiofrequency emitting product in the history of the program.

One further point is recorded because it is adverse to nobody and useful to everybody. The recommendation concerned frequencies below 300 kHz and below 100 kHz, which is a region most discussion of radiofrequency exposure does not reach, and the reason the Center gave is that the biological mechanism there is different in kind from heating. A program that has reasoned that way once is capable of reasoning that way again, and the submitter asks for exactly that rather than for any new science.

K. § 360jj – Studies and reports to Congress

Section 360jj(a) directs the Secretary to conduct studies and to report their results to Congress, on or before a date in 1970 and from time to time thereafter as he may find necessary, together with such recommendations for legislation as he may deem appropriate. Paragraph (a)(2) names one of the studies: a study to determine the necessity for the development of standards for the use of nonmedical electronic products for commercial and industrial purposes.

The studies reported in April 1970 under the predecessor provision were confined on their face to ionizing sources: industrial radiographic and fluoroscopic x-ray units, particle accelerators and analytical x-ray equipment. They did not reach radiofrequency energy, and no report under this section addressing radiofrequency emitting products has been identified.

Two features of the provision bear on that. Its structure is continuing: a report is due on a date certain and from time to time thereafter, which contemplates that the subject matter will change and that the obligation will be revisited when it does. And the separate annual reporting requirement that formerly applied to this program, at § 360qq, was repealed in 1998, while § 360jj was not. The surviving reporting obligation is this one.

The submitter asks for a report under this section addressing radiofrequency emitting products. The request has one feature that distinguishes it from everything else here: it is addressed to Congress rather than to the public, and it requires the Department to state its own position on the record in a document of its own making.

L. § 360kk(f) – The advisory committee, and what cannot happen without it

Section 360kk(f) establishes the Technical Electronic Product Radiation Safety Standards Committee and directs that the Secretary consult it before prescribing any performance standard under that section. The implementing regulations are at 21 C.F.R. part 14, subpart G.

The committee consists of fifteen members: five from government, five from affected industries and five from the general public, with at least one representing organized labor, each technically qualified by training and experience in a field applicable to electronic product radiation safety. Section 14.125(c) fixes the quorum at ten members, of which at least three shall come from each of the three categories. Section 14.125(d) provides that the Chairperson ordinarily reports to the Commissioner within sixty days, so if that office is vacant the consultation cannot be completed as the regulation contemplates.

Two functions of the committee are its own rather than the Commissioner's. Under 21 C.F.R. § 14.122(a)(1) it may propose electronic product radiation safety standards to the Commissioner for consideration. Under § 14.122(a)(3) it may make recommendations to the Commissioner on any other matters it deems necessary or appropriate in fulfilling the purposes of the Act, which is not confined to standards at all. Responsibility for action rests with the Commissioner after receiving the committee's advice, under paragraph (b), so a proposal by the committee binds nobody.

The committee has not been reported to meet since 2016, and in January 2025 nominations were sought for ten of its fifteen seats. A body with ten vacancies cannot meet the quorum the regulation requires. The consequence is the one the submitter asks the Department to notice: while the committee cannot convene, no performance standard can be prescribed under § 360kk for any product, radiofrequency emitting or otherwise, whatever the record before the agency. The committee is a precondition rather than a formality, and filling its seats requires no rulemaking, no new science and no new authority.

M. § 360ll and § 360nn – Authorities that require no standard

Two further provisions of the same part are set out because each operates without a performance standard existing, and because the absence of standards for radiofrequency emitting products is therefore not a complete answer to what the program can do.

Section 360ll concerns notification of defects. Subsection (a)(1) is triggered in the alternative: by a failure to comply with a standard prescribed under § 360kk, or by the discovery of a defect which relates to the safety of use of the product by reason of the emission of electronic product radiation. The second trigger does not depend on a standard existing. Subsection (e) authorizes the Secretary, on determining that a product has such a defect, to direct the manufacturer to furnish notification, and provides that the determination may be reached through testing, inspection, investigation or

research carried out pursuant to this part, or examination of reports submitted pursuant to § 360nn, or otherwise.

Section 360nn authorizes inspection, and directs that manufacturers and dealers establish and maintain such records and make such reports as the Secretary may reasonably require. The submitter draws attention to it for one reason: it is the provision by which the Department may require a manufacturer to tell it what a product emits. The information that paragraph (a)(4) directs be studied is in substantial part information manufacturers already hold, and this provision is the route to it. The submitter has identified no instance of its use as to the radiofrequency emission of any product.

N. What the record establishes, and what it does not

The submitter states the record in six lines, each of them a fact about a document rather than a characterization.

— Radiofrequency energy emitted by an electronic product is within the program. The statutory definition includes it and part 1030 of the Department's own regulations is titled for it.

— One performance standard for a radiofrequency emitting product exists. It governs microwave ovens and dates from the early 1970s.

— The agency administering the radiofrequency rules refers the public to this Department for protection from emissions of certain consumer products, and states that this Department has adopted no standards for radiofrequency emitting products beyond the microwave oven.

— The Department's described activity under paragraph (a)(2) for radiofrequency energy is the monitoring of scientific literature, dated by the Department to about a decade before 2019.

— One documented instance of consultation with another federal agency about the health effects of an electronic product radiation has been identified. It is the letter of April 24, 2019, its subject is radiofrequency energy, and it answered two requests made by the other agency five years apart.

— In that letter, as to the one class for which no exposure limit existed, the Department recommended limits, gave the physical basis, named two consensus standards as models and specified four means of reducing the emission.

What the record does not establish is stated with equal care. It does not establish that radiofrequency exposure at or below any applicable limit causes harm; this comment takes no position on that and asks the Department to decide nothing about it. It does not establish that any particular standard is necessary, which § 360kk(a)(1) commits to the Secretary's determination. It does not establish that the Department has done nothing: the Department says it monitors the literature, and the submitter neither disputes that nor characterizes it as inadequate. And it does not establish that the submitter has found everything there is to find, which is why several requests below ask the Department to identify work the submitter may have missed.

III. THE PROCEEDING NOW OPEN AT THE FEDERAL COMMUNICATIONS COMMISSION

One occasion for the exercise of paragraph (a)(6) is open as this comment is filed, and it will not remain open long. The submitter sets it out because it is the clearest such occasion in the period this comment describes and because it concerns radiofrequency energy specifically.

What happened to the assessment of 2019

The Commission relied on this Department's April 2019 assessment. In its 2019 order declining to revise its radiofrequency exposure limits, it cited that assessment as support for its conclusion. That

order was reviewed. In Environmental Health Trust v. Federal Communications Commission, 9 F.4th 893 (D.C. Cir. Aug. 13, 2021), the Court of Appeals for the District of Columbia Circuit granted the petitions in part and remanded, holding the order arbitrary and capricious in its failure to respond to record evidence and in its failure to respond to comments as to effects other than cancer.

The submitter is careful about what that does and does not mean, because the overstatement available here would be serious. The holding concerned the Commission's obligation to explain its own decision. It was not a holding about this Department's conduct, it was not a finding that the 2019 assessment was wrong, and the submitter does not characterize this Department's conduct in the vocabulary of judicial review anywhere in this comment.

Two narrower propositions survive those limits. The single documented instance of this Department consulting another federal agency about the health effects of an electronic product radiation produced an assurance which the receiving agency relied on and which a court of appeals then held could not carry the decision resting on it. And a federal court of appeals has held that an agency administering an exposure framework for one form of non-ionizing radiation, presented with a record of evidence on health effects, must respond to that evidence and give a reasoned explanation for the conclusion it reaches.

The proceeding, and the invitation in it

On September 17, 2026 the Office of Engineering and Technology of the Federal Communications Commission released Public Notice DA 26-997 in ET Docket No. 13-84, summarized in the Federal Register at 91 Fed. Reg. 60,128 (Sept. 22, 2026), seeking comment on the radiofrequency exposure issues remanded to that Commission in Environmental Health Trust.

The notice contains an invitation:

> the Commission invites the broadest range of commenters to participate, including local, state, federal, and international health and safety agencies, science-based standard-setting organizations that are active in this area, and other interested parties.

That is not an instruction to this Department and the submitter does not read it as one. It is an open invitation from a sister agency, dated, placed on a public record, naming federal health and safety agencies as a category of participant it wishes to hear from, in a docket whose subject is the adequacy of a federal exposure framework for non-ionizing radiation.

The notice also states how what it receives will be weighed:

> Probative value will be accorded to parties who have demonstrated a capacity to interpret the biological research necessary to assess the health impact of RF emissions and determine what exposure levels are considered safe for humans.

On the record set out at Part II.I, the last occasion on which that Commission relied on the expertise of an expert federal agency in this docket was the correspondence of April 24, 2019 from the Director of the Center for Devices and Radiological Health. The Department is, on the face of the statute, a party of exactly the kind the notice describes: § 360ii(a)(4) directs it to study and evaluate the biological effects of electronic product radiation, and the notice asks for parties able to interpret that research.

The submitter asks for no position on the radiofrequency science from this Department in that proceeding, and would not presume to ask for one. The request is that the Department decide whether to participate, and say what it decides. A stated reason is useful to this record whichever way the decision goes.

IV. REQUESTS

Nine requests. None requires the Department to adopt any position on the radiofrequency science, and the first five require the agreement of nobody outside the Department.

1. Confirm that radiofrequency energy emitted by an electronic product as a result of the operation of an electronic circuit in that product is electronic product radiation within 21 U.S.C. § 360hh(1)(A), and that the duties of § 360ii(a) attach to it. This asks the Department to state something already true of its own regulations.

2. Identify the Department's activities under § 360ii(a)(2) and § 360ii(a)(4) as to radiofrequency energy: what research it has planned, conducted, coordinated or supported, and what measurement, emission inventory or exposure characterization it has produced or funded. If the submitter has missed such work, a citation to it answers much of this comment.

3. Identify the procedures and techniques for minimizing radiofrequency exposure that the Department has developed, tested or evaluated under § 360ii(a)(5), beyond the four means named in the letter of April 24, 2019.

4. State whether the Department has communicated with the Federal Communications Commission about radiofrequency exposure since the correspondence of April 24, 2019, and place any such communications on this record.

5. Fill the fifteen seats of the Technical Electronic Product Radiation Safety Standards Committee in the statutory proportions, appoint a Chairperson, and publish the record of the committee's proceedings as § 360kk(f) requires. Until the committee can convene, no standard can be prescribed for any radiofrequency emitting product.

6. Refer radiofrequency energy to that committee under 21 C.F.R. § 14.122(a)(3), which permits it to make recommendations on any matter it deems necessary or appropriate and does not require a proposed standard to exist. A referral commits the Department to no position.

7. Conduct the study directed by 21 U.S.C. § 360jj as to radiofrequency emitting products and report the result to Congress, no such report having been identified.

8. Determine whether to participate in ET Docket No. 13-84 at the Federal Communications Commission, and state what is decided and on what ground.

9. Establish a route by which a member of the public may report an adverse reaction attributed to radiofrequency exposure, and state what such a route has received. The Department wrote on May 23, 2019 that a dedicated reporting system is not required because the Center already has a means for consumers to submit reports; the submitter asks that the existing means be identified in terms a member of the public can find, and that what it has received be stated.

The submitter asks for none of the following and says so expressly: a finding that radiofrequency exposure causes harm, a particular exposure limit, the revision of any other agency's rules, or a finding that any duty has been breached. What this comment asks for is that the program the statute directs be carried out as to the part of the spectrum this notice is principally about, and that the Department say what it has done.

V. DOCUMENTS RELIED ON

Each document relied on in this comment, with what it is relied on for. The submitter has not independently verified every item and identifies below which rest on a secondary description.

— Statute. 21 U.S.C. §§ 360hh, 360ii, 360jj, 360kk, 360ll, 360nn. Relied on for the definitions and the duties, quoted above where quoted.

— Regulations. 21 C.F.R. part 1000 (§§ 1000.3(j) and (k), definitions); part 1002 (records and reports); part 1030 (§ 1030.10, microwave ovens); part 14, subpart G (§§ 14.120, 14.122, 14.125, 14.130, the advisory committee).

— Federal Communications Commission, Office of Engineering and Technology, radiofrequency safety questions and answers. Relied on for the division of responsibility, for the 1971 date of the microwave oven standard and for the statement that no standards have been adopted for other radiofrequency emitting products. The page is undated.

— 47 C.F.R. part 15 (§§ 15.3(z), 15.107, 15.109, unintentional radiators) and part 18 (§ 18.107(c), industrial, scientific and medical equipment). Relied on for the proposition that the limits in both parts are interference limits adopted under section 302 of the Communications Act of 1934 to prevent harmful interference to authorized radio services, and that every limit in both is a maximum with no floor of any kind.

— Letter of April 24, 2019, Jeffrey Shuren, Director, Center for Devices and Radiological Health, to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission. Relied on for the consultation, for the two halves of the letter and for the four quoted passages.

— Letters of the Federal Communications Commission to the Center of March 22, 2019 and February 4, 2014. Relied on for the fact and dates of the two requests, as described in the letter of April 24, 2019.

— Letter of May 23, 2019, Director, Center for Devices and Radiological Health, to two physicians of Physicians for Safe Technology, answering a letter of December 9, 2018. Relied on for the Department's description of its own radiofrequency activity, for the statement that a dedicated adverse reporting system is not required, and for the list of twelve benchmark references.

— Environmental Health Trust v. Federal Communications Commission, 9 F.4th 893 (D.C. Cir. Aug. 13, 2021). Relied on for the remand and for the holding quoted.

— Federal Communications Commission, Public Notice DA 26-997, ET Docket No. 13-84 (Sept. 17, 2026), summarized at 91 Fed. Reg. 60,128 (Sept. 22, 2026). Relied on for the proceeding, the invitation and the probative-value passage.

— Bureau of Radiological Health, Division of Electronic Products, report of April 1970 under the predecessor of § 360jj. Relied on for the subject matter of the studies then reported, which was confined to ionizing sources.

— Pub. L. 105-362, title VI, § 601(a)(2)(A) (Nov. 10, 1998). Relied on for the repeal of § 360qq and for the survival of § 360jj.

— Notice seeking nominations to the Technical Electronic Product Radiation Safety Standards Committee, January 2025. Relied on for the number of vacant seats. This item rests on a secondary description and the submitter has not read the notice.

— 88 Fed. Reg. 3,654 (Jan. 20, 2023). Relied on for the most recent amendment of 21 C.F.R. § 1030.10.

Two items are identified as resting on secondary description rather than on the primary document: the January 2025 nominations notice, and the account of the Bureau of Radiological Health report of April 1970. The submitter states that rather than presenting either as verified.