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ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

DIVISION OF SUSTAINABLE WASTE MANAGEMENT

Electronic Waste Management

Adopted Amendments: N.J.A.C. 7:26-2.8 and 7:26A-1.1 and 1.3

Adopted New Rules: N.J.A.C. 7:26J

Adopted Repeals: N.J.A.C. 7:26A-13

Proposed: May 6, 2024, at 56 N.J.R. 680(a).

Adopted: February 5, 2025, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: February 6, 2025, as R.2025 d.031, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:1D-125 et seq., 13:1E-1 et seq., 13:1E-9, 13:1E-99.94 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11, and 58:10A-1 et seq.

DEP Docket Number: 02-24-04.

Effective Date: March 3, 2025.

Expiration Dates: May 22, 2030, N.J.A.C. 7:26;
September 9, 2029, N.J.A.C. 7:26A;
March 3, 2032, N.J.A.C. 7:26J.

The adopted rules implement amendments to the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq., which requires each manufacturer of covered electronic devices to

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provide for the collection, transportation, and recycling of its market-share-in-weight of all covered electronic devices collected in a program year.

Summary of Hearing Officer's Recommendations and Agency's Response:

The Department of Environmental Protection (Department) held a virtual public hearing on this rulemaking on June 12, 2024, at 1:00 P.M., through its video conferencing software, Microsoft Teams. Dana Lawson, Chief of the Bureau of Recycling and Hazardous Waste Management, served as the hearing officer. Two people provided oral comments at the public hearing.

After reviewing the written and oral comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed rulemaking with the modifications described below in the responses to comments and in the Summary of Agency-Initiated Changes. The Department accepts the hearing officer's recommendation.

A record of the public hearing is available for inspection, in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

This notice of adoption document can also be viewed or downloaded from the Department's website at <https://dep.nj.gov/rules/notice-of-rule-adoptions>.

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Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal through July 5, 2024. The following individuals provided timely written and/or oral comments:

1. Don Hennen, Dynamic Lifecycle Innovations
2. Stephen Larson, IMTT Bayonne
3. Patrick Santelli, Electronic Manufacturers Recycling Management Co., LLC

The number in parentheses after each comment identifies the commenter listed above.

Applicability

1. COMMENT: The rules appear to apply to suppliers, manufacturers, and private consumers of electronic devices. It is unclear if the rules apply to private industries that generate electronic waste. (2)

RESPONSE: As provided at adopted N.J.A.C. 7:26J-1.1, N.J.A.C. 7:26J applies to manufacturers, retailers, and consumers of covered electronic devices. Therefore, the rules apply to a private industry that generates electronic waste; depending on the size of the private industry, it may be required to properly dispose of the electronic waste at its own cost, or it may be able to participate in the collection system paid for by manufacturers.

The definition of “consumer” includes a private industry that generates electronic waste, if the private industry is a small business enterprise that purchases a covered electronic device in a retail sale. The Department is making a few changes to the definition of “consumer” to clarify the Department’s intent.

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The Department proposed to define a “consumer” to include “a person ... that purchases a covered electronic device in a retail sale.” The proposed and adopted definition of “person” includes “an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government department, partnership, limited liability company, or association.” However, the definition of “consumer” excludes “any business [concern] purchasing covered electronic devices.” The definition of “consumer” at proposed N.J.A.C. 7:26J-1.3 inadvertently omitted the word “concern” after “business”; “business concern” is a defined term. The Department is correcting the definition upon adoption to refer to a “business concern.”

Adopted N.J.A.C. 7:26J-1.3 defines “business concern” as “any corporation, association, firm, partnership, sole proprietorship, trust, or other form of commercial organization.” The definition specifically excludes a “small business enterprise,” which is defined as a business with its principal place of business in the State, independently owned and operated, and employing the equivalent of fewer than 50 full-time employees. As a small business enterprise is not a business concern, if the small business enterprise is a “person” as otherwise defined and purchases a covered electronic device in a retail sale, the small business enterprise is a “consumer” to which the rules apply and the business may participate in the collection system paid for by manufacturers. To clarify the definition of “consumer,” the Department is modifying the definition to specifically identify a “small business enterprise” as a consumer. See adopted N.J.A.C. 7:26J-1.3. The definition is also being modified on adoption so that the second sentence in the definition is the same in form as the first sentence. See adopted N.J.A.C. 7:26J-1.3.

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A business that does not meet the definition of a consumer must pay for proper disposal itself. No entity, including a private industry, may dispose of a covered electronic device or any of its components as solid waste. See adopted N.J.A.C. 7:26J-5.1(h).

Bulky Covered Electronic Devices

2. COMMENT: The term “bulky covered electronic device” is proposed to be defined as a covered electronic device that weighs 50 pounds or more, with a viewing screen of 40 inches or more, or any other covered electronic device that cannot be readily transported. The basis for this definition is unclear. Most flat screen televisions being sold weigh less than 50 pounds, but likely have a viewing screen that is more than 40 inches. The increased cost of picking up these televisions from residences will be significant. (3)

RESPONSE: The definition of “bulky covered electronic device” at adopted N.J.A.C. 7:26J-1.3 is based on former N.J.A.C. 7:26A-13.6(a)1vi. Former N.J.A.C. 7:26A-13.6(a) sets forth the required contents of a collection plan. Among other things, the collection plan was required to include a “description of the collection methods to be employed for heavy (50 pounds in weight or heavier) or unwieldy covered electronic devices, including, but not limited to, flat screen televisions with screens greater than 40 inches measured diagonally and projection televisions.” See former N.J.A.C. 7:26A-13.6(a)1vi. The collection plan was also required to include a certification that there would be no fee or cost charged to a consumer for the collection, transportation, or recycling of any covered electronic device other than a fee for a premium service provided for in an approved collection plan. See former N.J.A.C. 7:26A-13.6(a)1viii.

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The Department utilized the characteristics, including weight and length, set forth at former N.J.A.C. 7:26A-13.6(a)1vi for the definition of a “bulky covered electronic device” at adopted N.J.A.C. 7:26J-1.3. Thus, the adopted rules continue a manufacturer’s obligation to provide methods to collect bulky covered electronic devices at no cost to the consumer.

Authorized Recycler Requirements

3. COMMENT: The Department should not require an authorized recycler to keep records after the point when the material is a commodity-ready feedstock. Vendors used by authorized recyclers in their downstream network hesitate to disclose their buyers of commodity-ready feedstock, so it can be difficult for an authorized recycler to obtain this information. Therefore, the Department should revise the recordkeeping requirements for an authorized recycler to delete the requirement that an authorized recycler shall keep a “record of each end-user or other recipient of recycled covered electronic devices or components recovered from recycled covered electronic devices,” as proposed at N.J.A.C. 7:26J-7.3(a)2. Alternatively, the Department should treat information submitted by an authorized recycler as confidential and not subject to public release without written consent of the authorized recycler. (1)

RESPONSE: Pursuant to adopted N.J.A.C. 7:26J-7.3(a)2, an authorized recycler is required to retain end-user contracts or agreements, and if these are not available, letters of interest, as evidence of their ability to sell the materials. As explained in the notice of proposal Summary, this information will allow the Department “to better understand market dynamics for the recycling of covered electronic devices and, through this understanding, increase the efficiency

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of its electronic waste program.” 56 N.J.R. at 688. The information will also help the Department ensure that the material is actually recycled and not illegally disposed of.

The adopted rules include confidentiality provisions for a manufacturer asserting confidentiality of information submitted as part of its collection plan. See adopted N.J.A.C. 7:26J-3.2(f) and (g). A person, including an authorized recycler, may be required to submit to the Department a semiannual report that includes confidential information that is not subject to release pursuant to the Open Public Records Act or entitled to other confidential treatment. The Department is, therefore, modifying the semiannual report provisions upon adoption to extend the same confidentiality provisions that pertain to a manufacturer’s collection plan to a person required to submit a semiannual report and to specify how the report and certification are to be submitted. See adopted N.J.A.C. 7:26J-4.2. Specifically, the person is required to submit a confidential and non-confidential copy of the report to the Department at the email address provided, or as otherwise instructed. As a person is required to include a certification with its reports, the Department is modifying N.J.A.C. 7:26J-1.4(c) upon adoption to add a cross-reference to N.J.A.C. 7:26J-4.2.

The Department is also modifying the collection plan submission requirements to clarify the procedure for submission of a collection plan if there is a claim of confidentiality. Rather than stating, as proposed at N.J.A.C. 7:26J-3.1(l), that a manufacturer filing a claim of confidentiality must follow N.J.A.C. 7:26J-3.2(g), the Department is modifying N.J.A.C. 7:26J-3.1(a) upon adoption to specify that a manufacturer must submit a collection plan online if it is making no claim of confidentiality. If there is a confidentiality claim, the manufacturer must

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submit its plan pursuant to N.J.A.C. 7:26J-3.2(g). The Department is not adopting N.J.A.C.

7:26J-3.1(l) as it is unnecessary given the modification at N.J.A.C. 7:26J-3.1(a) on adoption.

The Department is also modifying N.J.A.C. 7:26J-3.2(f) upon adoption to clarify that a confidentiality claim must be submitted by following the procedures at subsection (g), instead of referring to the procedures at N.J.A.C. 7:26-17.3, which could be confusing. The Department is also modifying N.J.A.C. 7:26J-3.2(g) upon adoption by removing the reference to N.J.A.C. 7:26-17.3. As modified, a manufacturer asserting a claim of confidentiality must submit the public copy to the Department online and send the confidential copy to the Department at the email address provided, which is the process that manufacturers have been following. The modifications upon adoption should clarify the process that a manufacturer is required to follow when asserting confidentiality of portions of its collection plan. Finally, the Department proposed, at N.J.A.C. 7:26J-3.2(f)1, a statement that the confidentiality provision is in addition to any confidentiality claims pursuant to the Open Public Records Act or common law. The Department is removing the subcodification of paragraph(f)1 and merging the paragraph into subsection (f).

4. COMMENT: The Department should revise the requirement that an authorized recycler shall retain letters of interest, if end-user contracts or agreements are not available, to allow “other similar documentation” to serve as evidence of the authorized recycler’s ability to sell their products. Such records could include bills of lading or proof of payment, which establish evidence of a commercial relationship and material movement. Records could also include an

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audit protocol approved by the recipient vendor, if the protocol specifies the types of material accepted and what the recipient will do with the material. (1)

RESPONSE: As explained in the Response to Comment 3, the adopted rules require an authorized recycler to retain end-user contracts or agreements, and if these are not available, letters of interest, as evidence of their ability to sell the materials. A letter of interest is allowed in lieu of a contract or agreement because a letter of interest provides similar details about the use of the recycled material. Although a bill of lading or proof of payment does not contain the same level of detail to make either record equivalent to a letter of interest, a similar form of documentation could be a term sheet, which provides terms and conditions agreed upon by the parties. Accordingly, the Department is modifying N.J.A.C. 7:26J-7.3(a)2i on adoption to add term sheets as an acceptable form of written evidence.

Summary of Agency-Initiated Changes Upon Adoption:

The proposed rules required a manufacturer to certify and acknowledge that except for an approved fee for a premium service, no fee shall be charged to such a consumer. See proposed N.J.A.C. 7:26J-3.2(a)5iii(1) and (2). The Department is modifying these provisions upon adoption, so that they use the same language when referring to a consumer who is not able to bring a covered electronic device to a collection site. See adopted N.J.A.C. 7:26J-3.2(a)1vii, (a)3ii(5), (a)5iii(1) and (2), and (d). The Department is also modifying these provisions upon adoption to delete the specific requirement that a consumer be “physically” not able to travel to the collection site “without assistance.” A consumer need not demonstrate a physical inability to travel to a collection site.

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The Department is also correcting the website address at N.J.A.C. 7:26J-3.1. The proposed rule inadvertently omitted “dep” from the website address. Lastly, the Department is correcting the cross-references at N.J.A.C. 7:26J-9.4(e) and (e)4 to refer to the procedures at N.J.A.C. 7:26J-9.4(e), rather than subsection (f).

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include a Federal standards analysis. The adopted repeals, new rules, and amendments are not promulgated pursuant to the authority of or in order to implement, comply with, or participate in any program established pursuant to Federal law, or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., do not require a Federal standards analysis.

Full text of the adopted new rules and amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

7:26J-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

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...

“Consumer” means a person, ***small business enterprise,*** State entity, school district, or local government unit that purchases a covered electronic device in a retail sale. Consumer does not include any business ***[purchasing]* *concern that purchases a*** covered electronic device***[s]***.

...

7:26J-1.4 Signatures and certifications

(a)-(b) (No change from proposal.)

(c) A manufacturer, group plan administrator, authorized recycler, or an operator of a collection site shall sign and submit the following written certification to the Department pursuant to N.J.A.C. 7:26J-2.2(c)4, 2.3(i), 3.1(e)5, 4.1(g), ***4.2,*** 7.3(a)1vi, 8.1(h)6, and 9.8(d)3, as applicable:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for willfully submitting false information, including the possibility of fines and imprisonment.”

SUBCHAPTER 3. COLLECTION PLAN

7:26J-3.1 Collection plan

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(a) Within 60 days of receiving an estimated-market-share-in-weight notice, a manufacturer, either individually, or as part of a group of manufacturers, shall submit a collection plan to the Department at [*\[https://www.nj.gov\]*](https://www.nj.gov) [*https://www.nj.gov/dep*](https://www.nj.gov/dep) or <http://njdeponline.com>, ***if there is no claim of confidentiality pursuant to N.J.A.C. 7:26J-3.2(f). If there is a claim of confidentiality, the manufacturer shall submit their collection plan in accordance with N.J.A.C. 7:26J-3.2(g)*.** A manufacturer receiving a program-year-market-share of .01 percent or less in the previous program year is not required to submit a collection plan in the following program year.

(b) - (k) (No change from proposal.)

[(l) A manufacturer or group of manufacturers filing a claim of confidentiality regarding its collection plan shall submit that collection plan in accordance with N.J.A.C. 7:26J-3.2(g).]

7:26J-3.2 Required contents of a collection plan; confidentiality

(a) A collection plan submitted in accordance with N.J.A.C. 7:26J-3.1 shall include the following:

1. The methods and services that will be used to collect covered electronic devices in the State, including, but not limited to:

i.- vi. (No change from proposal.)

vii. A description of the collection methods that may be used by consumers who are not ***[physically]*** able to ***[travel]*** ***bring a covered electronic device*** to a collection site ***[without assistance]***;

ix. – xi. (No change from proposal.)

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2. (No change from proposal.)

3. A description of the means that will be used to publicize the collection services, including:

i. (No change from proposal.)

ii. A reference link on the manufacturer's webpage that is entitled "How to Recycle Electronic Devices in New Jersey," which shall include, but not be limited to, the following information:

(1) - (4) (No change from proposal.)

(5) The services available for the collection, transportation*,* and recycling of covered electronic devices from consumers *[physically unable]* ***who are not able*** to *[visit]* ***bring a covered electronic device to*** a collection site;

4. (No change from proposal.)

5. The following written certifications, which shall be signed in conformity with N.J.A.C. 7:26J-1.4:

i.-ii. (No change from proposal.)

iii. "I certify:

(1) Except for a fee for a premium service approved by the Department in this collection plan, no fee shall be charged to a consumer, including a consumer who is *[unable]* ***not able*** to *[travel]* ***bring a covered electronic device*** to a collection site *[without assistance]*, or to a municipality or county that collects covered electronic devices from consumers, for the collection, transportation*,* or recycling of any covered electronic device, including a 'bulky covered electronic device' as defined in the Electronic Waste

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Management Rules at N.J.A.C. 7:26J-1.3, dropped off at any of the collection sites listed in this collection plan; and

(2) Except for a fee for a premium service approved by the Department in this collection plan, all agreements between the undersigned company and any party participating in this collection plan, including without limitation, the operator of a collection site, a transporter, an authorized recycler and a group plan administrator, all agreements between any of the foregoing parties and a subcontractor, and all third-party agreements, expressly prohibit charging a fee to a consumer, including a consumer who is ***[unable]* *not able*** to ***[travel]* *bring a covered electronic device*** to a collection site ***[without assistance]***, or to a municipality or county that collects covered electronic devices from consumers, for the cost of collecting, transporting*,* or recycling a covered electronic device, including a ‘bulky covered electronic device’ as defined in the Electronic Waste Management Rules at N.J.A.C. 7:26J-1.3”;

iv.-vi. (No change from proposal.)

(b)-(c) (No change from proposal.)

(d) A manufacturer or group of manufacturers may include in its proposed collection plan a fee to a consumer -- other than one ***[that is elderly or physically or mentally disabled]* *who is not able to bring a covered electronic device to a collection site*** -- for a premium service.

(e) (No change from proposal.)

(f) The Department will hold confidential any information obtained in connection with a collection plan submitted pursuant to (a) above if the manufacturer asserts a claim of confidentiality and the Department determines, based upon a showing by the manufacturer, that

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the information, if made public, would divulge competitive business information, methods, or processes entitled to protection as trade secrets of the registered manufacturer. A manufacturer asserting confidentiality shall submit its claim by following the procedures at *[N.J.A.C. 7:26-17.3]* ***(g) below***. *[1.]* This provision is in addition to, and shall not be deemed to limit, any claims of confidentiality pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or common law.

(g) If a manufacturer asserts a claim of confidentiality *[pursuant to N.J.A.C. 7:26-17.3]* for any part of a collection plan, it must submit two copies of its collection plan - one with the information required for the collection plan, except the information for which a claim of confidentiality is being made, and a second that includes the required information, including the information for which a claim of confidentiality is being made. The manufacturer shall include the certification found at (a)5i above on both copies. ***The manufacturer shall submit the public copy to the Department at <https://www.nj.gov/dep> or <http://njdeponline.com> and the confidential copy to ecycle@dep.nj.gov.***

SUBCHAPTER 4. SEMIANNUAL REPORTS

***7:26J-4.2 Confidentiality**

(a) The Department will hold confidential any information obtained in connection with a semiannual report submitted pursuant to N.J.A.C. 7:26J-4.1, if the person submitting the information asserts a claim of confidentiality and the Department determines, based upon a showing by the person, that the information, if made public, would divulge competitive business information, methods, or processes entitled to protection as trade secrets of the

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person. A person asserting confidentiality shall submit its claim by following the procedures at (b) below. This provision is in addition to, and shall not be deemed to limit, any claims of confidentiality pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or common law.

(b) If a person asserts a claim of confidentiality for any part of a semiannual report, the person must submit two copies of the report — one with the information required for the report, except the information for which a claim of confidentiality is being made, and a second that includes the required information, including the information for which a claim of confidentiality is being made — to the Department at ecycle@dep.nj.gov or as otherwise instructed. The person shall include the certification at N.J.A.C. 7:26J-1.4(c) on both copies.*

SUBCHAPTER 7. REQUIREMENTS FOR OPERATORS OF COLLECTION SITES,

AUTHORIZED RECYCLERS, AND GROUP PLAN ADMINISTRATORS

7:26J-7.3 Recordkeeping requirements for authorized recyclers and operators of collection sites

(a) An authorized recycler shall maintain the following records:

1. (No change from proposal.)
2. A record of each end-user or other recipient of recycled covered electronic devices or components recovered from recycled covered electronic devices, including the name and street address of the end-user or recipient, the name, mailing address, email address, and telephone number of the end-user or recipient's designated contact person, the type and weight, expressed in pounds, of the covered electronic devices or components shipped to the end-user or recipient,

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the date of the shipment, and a copy of all invoices or other documentation concerning the shipment.

i. An authorized recycler shall retain end-user contracts or agreements, or where contracts or agreements are not available, letters of interest ***or term sheets***, as evidence of the authorized recycler's ability to sell the products resulting from the recycling of covered electronic devices. Letters of interest ***or term sheets*** may be based on information provided by the authorized recycler to prospective end-users, such as a description of the equipment to be used by the authorized recycler and the specifications of the products resulting from the recycling of covered electronic devices.

ii (No change from proposal.)

(b) - (d) (No change from proposal.)

SUBCHAPTER 9. CIVIL ADMINISTRATIVE PENALTIES AND NONCOMPLIANCE FEES

7:16J-9.4 Civil administrative penalties

(a)-(d) (No change from proposal.)

(e) The Department shall determine the amount of a civil administrative penalty for each violation at (f) below according to the procedure at ***[(f)1]* *(e)1*** through 5 below. For a violation of a requirement or condition of an administrative order, the Department may, in its sole discretion, identify the corresponding requirement of any rule listed in the table at (f) below and, using the procedure at ***[(f)1]* *(e)1*** through 5 below, determine the amount of the civil administrative penalty based on the rule provision violated:

1.-3. (No change from proposal).

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4. To obtain the civil administrative penalty, add the severity penalty components calculated pursuant to ~~[(f)3]~~ **(e)3** above to the base penalty. If the sum exceeds \$1,000, or, where applicable, \$25,000, the civil administrative penalty shall be \$1,000 or \$25,000; and

Example:

Base penalty for violation of rule listed in

table set forth at N.J.A.C. 7:26J-9.4(f)2	=	\$5,000
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Subparagraph (e)3iii applies: $0.50 \times \$5,000$	=	\$2,500
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Subparagraph (e)3iv applies: $0.25 \times \$5,000$	=	<u>\$1,250</u>
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Civil administrative penalty		\$8,750
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5. (No change from proposal.)