



October 26, 2026

The Honorable Phil Weiser
Office of the Attorney General
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

RE: The Automated Decision-Making Technology & Conversational Artificial Intelligence Services Rules - October 6, 2026, Interim Draft

Dear Attorney General Weiser,

The Business Software Alliance appreciates the opportunity to provide additional comments on the Department of Law's (the "Department's") Automated Decision-Making Technology & Conversational Artificial Intelligence Services rules. These comments focus on the October 6, 2026, interim draft rules ("Interim Rules") implementing the Automated Decision-Making Technology Act (Senate Bill 26-189) (the "Act"). BSA is the leading advocate for the global software industry, and our members create cutting-edge business-to-business products and services used by companies of all sizes across every sector of the economy.¹

BSA appreciates the Department's careful review of stakeholder comments and the significant improvements reflected in the Interim Rules. The revisions appropriately recognize that obligations should follow the roles of different actors along the AI value chain, adopt the more workable substantial-factor standard for Material Influence, and provide Developers with practical alternatives for protecting trade secrets. Those changes advance the Act's goals while making the rules clearer and more workable in practice.

Several targeted revisions remain necessary to carry those improvements through the rules consistently. BSA recommends that the final rules:

- Apply knowledge, possession, control, and reasonable-reliance principles consistently throughout the rules;
- Further revise Rule 5.2 so Developer disclosures are limited to information that is technically feasible, reasonably available, and within the Developer's role;
- Replace Rule 6's broad rebuttable presumption of Material Influence with an objective, totality-of-the-circumstances test for whether an ADMT output was a substantial factor in a Consequential Decision; and
- Extend Rule 5.3's express protections to intellectual property and other confidential information and address circumstances in which no alternative disclosure can reasonably be provided.

I. The Interim Rules Appropriately Clarify Roles and Responsibilities Along the AI Value Chain and Should Apply Those Principles Consistently.

BSA strongly supports the Act's recognition of the distinct roles of Developers and Deployers. Role-based responsibilities help ensure that obligations are assigned to the companies positioned to carry them out, based on their access to relevant information and control over the activity at issue. The Interim Rules make important progress in implementing that approach.

Revised Rule 4.2 provides substantially clearer treatment of multiparty arrangements. It confirms that a company that integrates an upstream Covered ADMT into its own Covered ADMT is a Developer responsible for its own Covered ADMT. It appropriately requires the integrating Developer to retain documentation that an upstream Developer makes available, rather than requiring the integrating Developer to obtain information another party has not provided. It also requires the integrating Developer to create documentation about its own Covered ADMT and permits a downstream Developer to reasonably rely on upstream information, absent actual knowledge that the information is materially inaccurate or incomplete. These changes closely reflect the role-based approach BSA recommended.

Rule 4.2(D) is another important improvement. It clarifies that a party that creates an AI system that is not Covered ADMT does not become a Developer merely because another party later integrates the system into Covered ADMT without the original party's knowledge and outside the uses for which the system was designed, marketed, intended, documented, advertised, configured, or contracted. The Interim Rules' examples also avoid the confusion created by the initial draft's foundational-model example and more clearly distinguish Covered ADMT from a general-purpose or otherwise non-covered upstream product.

BSA also appreciates new Rule 4.3. Consistent with BSA's recommendation, the Interim Rules do not create a new and potentially overlapping ADMT Vendor role. Instead, it confirms that a Deployer remains responsible when a third party runs Covered ADMT on the Deployer's behalf or at its direction and permits the Deployer to contract with the third party for assistance in satisfying the Deployer's obligations. The accompanying examples provide useful clarity without reallocating the Act's responsibilities.

First, the final rules should apply the knowledge, possession, control, and reasonable-reliance principles throughout the regulatory framework.

Rule 4.2(C) appropriately permits downstream Developers to rely on information supplied by upstream Developers unless they know that information is materially inaccurate or incomplete. The same practical principle applies elsewhere in the AI value chain. A Developer may understand a Covered ADMT's design, intended uses, and known limitations but generally will not know how every Deployer configures the system, what data the Deployer uses, what independent evidence the Deployer considers, or the role an output plays in a particular decision. A Deployer, in turn, may understand its decision-making process but lack direct insight into proprietary details of the Developer's design or training process.

The Act itself appropriately assigns the relevant disclosure obligation to the actor that possesses the information. Developers provide information about a Covered ADMT to downstream actors, while Deployers provide information about their use of the Covered

ADMT and particular Consequential Decisions to Consumers. The final rules should preserve that allocation. A company should not be required to obtain information from another company, review another company's systems or practices, or make representations about facts it cannot independently verify. Instead, the appropriate company should be responsible for providing the information the Act assigns to it.

Several revisions outside Rule 4 move in this direction. For example, Rules 7 and 8 increasingly distinguish between information known to or controlled by a Deployer and information held by another party. A generally applicable provision would ensure that the same principle is applied consistently and would avoid uncertainty about whether silence in a particular provision imposes a broader obligation.

[Second, the final rules should preserve the intended-use limitation adopted in Rule 4.2\(D\) across all Developer obligations.](#)

The Act applies Developer obligations based on objective indicators that the Developer intended, documented, marketed, advertised, configured, or contracted for a Covered ADMT to be used to make Consequential Decisions, or became aware of a use consistent with the intended and contracted uses. Rule 4.2(D) properly reflects that limitation in the integration context. The final rules should make clear that the same limitation applies whenever a downstream party uses an upstream product in a manner outside the upstream company's knowledge and intended or contracted uses. The final rules should also adopt the actual knowledge standard in Rule 4.2(D), consistent with the actual knowledge standard already used in Rule 4.2(C).

The final rules also should clarify that providing customer-support documentation does not, by itself, establish that a company intended a product to make or Materially Influence Consequential Decisions. A company may provide technical documentation, audit logs, data-export functionality, or explanation tools to promote transparency or help a customer satisfy its own obligations. Treating those features as evidence that the upstream company intended a consequential-decision use would discourage useful transparency and make the scope of the Act turn on steps taken to facilitate compliance.

Additionally, the second example in Rule 4.2(D) would benefit from further clarification. While BSA agrees in principle with the example, the term "third-party non-ADMT AI product" is confusing, particularly because the next section, Rule 4.3, discusses Covered ADMTs run by a third party on behalf of a Deployer. BSA encourages the Department to better specify the types of tools that may be considered a "third-party non-ADMT AI product" rather than relying on such a vague term that may inadvertently create confusion regarding roles and responsibilities under the Interim Rules.

Recommendation: Rules 2 and 4 should be revised to:

- State that a Developer or Deployer is responsible only for information and risks within its knowledge, possession, or control;
- Permit each regulated entity to reasonably rely on information made available by another party absent actual knowledge that the information is materially inaccurate or incomplete;
- Clarify that no regulated entity is required to obtain information from another party where the Act assigns responsibility for providing that information to the other party; and

- Clarify that neither an independent downstream use outside a system's intended and contracted uses nor the provision of customer-support documentation, standing alone, transforms an upstream product into Covered ADMT or its creator into a Developer of Covered ADMT.

II. Rule 5.2 Should Be Further Revised to Reflect Information and Risks Within a Developer's Role.

The Interim Rules make two helpful revisions to Rule 5.2. It generally replaces references to an ADMT with references to a Covered ADMT, aligning the rule with section 6-1-1702 of the Act. It also qualifies portions of Rules 5.2(C)(2) and (3) with the phrase "to the extent possible." BSA appreciates both changes, but they do not fully address the concern that Rule 5.2 may require Developers to create deployment-specific information or capabilities based on facts they do not know or control.

First, Rule 5.2(A) should not require a Developer to identify every circumstance in which a Covered ADMT should not be used.

A Developer can and should disclose known limitations and known harmful or inappropriate uses relevant to a Covered ADMT's intended uses. But whether a system should be used in a particular deployment may depend on the Deployer's data, configuration, modifications, workflow, decision criteria, independent evidence, and degree of human involvement. Requiring the Developer to identify all circumstances in which the system should not be used could require the Developer to evaluate unknown downstream implementations or assume responsibility for choices made by an independent Deployer. The phrase should be removed from Rule 5.2(A), as BSA previously recommended. At minimum, the rule should limit the requirement to known circumstances associated with the Covered ADMT's intended, documented, marketed, advertised, configured, or contracted uses and information within the Developer's knowledge, possession, or control.

Second, "to the extent possible" does not provide a sufficiently clear or workable limitation for Rules 5.2(C)(2) and (3).

Rule 5.2(C)(2) continues to direct Developers to provide instructions for how a Deployer can collect aggregate data for further analysis and analyze or review an output that Materially Influenced a specific Consequential Decision. Appropriate monitoring and analysis will often depend on the Deployer's implementation, including the data used, the configuration selected, the decision workflow, and the other information considered. The Developer may have no access to the Deployer's aggregate data or records concerning individual decisions. A Developer should be responsible for general monitoring information reasonably available for the Covered ADMT's intended uses, not for designing or reconstructing a Deployer's monitoring process.

Rule 5.2(C)(3) similarly continues to contemplate instructions for determining the reasoning and primary factors underlying an output in a specific Consequential Decision and instructions enabling a Deployer to direct, control, modify, and adjust the Covered ADMT. A Developer may be able to describe generally how a system produces outputs, the types of inputs it uses, and known limitations. But decision-specific reasoning may depend on information and

configuration controlled by the Deployer, and some systems do not permit customers to modify or adjust the model. The rule should not require a Developer to create functionality the product does not offer, speculate about a particular deployment, or generate a decision-specific explanation that is not technically feasible.

If the final rules retain the above requirements, the phrase “to the extent possible” in Rule 5.2(C)(2) should apply to the entirety of the required instructions and not only with respect to one part of the obligation, e.g., Rule 5.2(C)(2) should read, ““Include instructions, to the extent possible, specifying methods for the Deployer to monitor...” This would align with the approach taken in Rule 5.2(C)(3).

[Third, the final rules should answer the Developer-obligation questions posed in the Notice of Rulemaking Hearing.](#)

The Interim Rules do not add a separate obligation to disclose raw testing results or prescribe a single channel for providing Developer documentation. That is a positive outcome. Express clarification is still important, however, because the Notice asked whether Developers should be required to provide additional information, including testing results, and whether the rules should prescribe disclosure channels.

Section 6-1-1702 already identifies the categories of information Developers must provide, including intended uses, training-data categories, known limitations and risks, and instructions for appropriate use, monitoring, and Meaningful Human Review where applicable. Raw testing results may involve different versions, configurations, environments, methodologies, and intended uses and may be misleading without extensive context. They may also contain trade secrets, IP, security-sensitive information, or other confidential information. The final rules should confirm that a Developer must disclose known limitations and risks relevant to the intended use but is not required to disclose raw testing results, conduct new testing, or generate information beyond the statutory categories.

Developers also should retain flexibility to provide the required documentation through methods suited to the product and commercial relationship, including technical documentation, model or system cards, secure customer portals, websites, contractual materials, electronic files, or documentation integrated into the product or service. That flexibility supports access controls, version control, confidentiality, and security without diminishing the next downstream actor’s access to required information.

[Fourth, two drafting issues should be addressed in Rule 5.2.](#)

First, Rule 5.2(C) states that Developers “should” provide certain instructions. That phrasing is different than Rule 5.2(B), which states that Developers “must” provide certain information in the statement describing intended uses. It would be helpful to clarify that this difference is intentional, and that Rule 5.2(C) is to be treated as recommend content rather than strict requirements that a Developer “must” provide.

Second, Rule 5.2(E) was revised to refer to maintaining information within a “unified internal documentation system.” That phrase is not repeated elsewhere in the Interim Rules, and more guidance is needed so that companies understand the type of system this rule intends to reference.

Recommendation: Rule 5.2 should be revised to:

- Remove “circumstances under which the Covered ADMT should not be used” from Rule 5.2(A), or limit the phrase to known circumstances associated with intended and contracted uses and information within the Developer’s knowledge, possession, or control;
- Replace “to the extent possible” in Rules 5.2(C)(2) and (3) with “to the extent technically feasible and reasonably available, based on information within the Developer’s knowledge, possession, or control”;
- Clarify that Rules 5.2(C)(2) and (3) do not require a Developer to obtain Deployer data, reconstruct a particular Consequential Decision, create new testing or technical capabilities, or provide instructions for functionality the Covered ADMT does not offer;
- Confirm that section 6-1-1702 identifies the categories of information Developers must provide and does not require disclosure of raw testing results or performance of new testing; and
- Permit Developers to provide required information through any channel reasonably designed to make it accessible to the relevant downstream actor, including secure and access-controlled channels.
- Clarify that Rule 5.2(C) is not intended to identify recommended actions rather than requirements, consistent with its formulation as items that Developers “should” include rather than “must” include.
- Provide additional guidance on what constitutes a “unified internal documentation system” under new Rule 5.2(E).

III. The Interim Rules Appropriately Adopts Standard 2 in the Rulemaking Hearing Notice for the Definition of Material Influence and Should Replace the Broad Material Influence Presumption.

BSA appreciates the Department’s decision to adopt the core of Standard 2 in the Rulemaking Hearing Notice for the definition of Material Influence. The Interim Rules define a De Minimis Factor as one that is not a substantial factor in the Consequential Decision and recognize that an output may be De Minimis when independent, relevant information played a significantly larger role. That approach gives meaning to the statutory term “Materially Influence” by distinguishing meaningful reliance on an ADMT output from incidental or minor consideration of an output.

The listed considerations also appropriately focus on the output’s actual role in the decision-making process, including whether the decision-maker independently reviewed primary evidence, had the expertise and authority to make the decision, and was instructed to treat the output as authoritative. Rule 6.1(B) further adopts BSA’s recommendation that a Deployer be permitted to show that an output was not consulted, considered, or incorporated into the decision. Rules 6.1(C) and (D) also make important progress by limiting Other Inferences to opinions, characterizations, and non-objective conclusions and recognizing that administrative tools do not Materially Influence Consequential Decisions merely by organizing or presenting information.

We have several recommendations for further improving how the Interim Rules function in practice.

First, the presumption in Rule 6.1(A) remains too broad.

Rule 6.1(A) sets a standard for presuming when an output Materially Influences a Consequential Decision. Under the Interim Rules, Material Influence is presumed when an output:

- constrains an option set, sets a threshold, or produces a rank, score, classification, recommendation, prediction, or other inference that:
 - (a) pertains to the individual about whom the decision is being made,
 - (b) is reviewed by the decision-maker, or is used to screen data made available to the decision-maker, before or during the decision-making process, and
 - (c) is consistent with the Consequential Decision.

This approach leans too heavily on outputs reviewed by a decision maker — regardless of how much weight the decision-maker gave to them. A decision-maker may view an output but reach an independent judgment based on primary evidence. An output may also be consistent with the final decision even when it played no role in reaching that decision. The examples in Rule 6.2 illustrate the problem: a hiring manager who independently reviews the underlying records, conducts interviews, and merely sees a score begins under a presumption that the score materially influenced the decision. That approach effectively shifts the threshold inquiry away from whether the output actually affected the decision and toward whether a company can disprove influence after the fact.

As a result, the Interim Rules adopt a presumption that substantially reduces the work performed by the separate statutory requirement that the output be a non-De Minimis factor that affects the decision.

Second, replacing the presumption of Material Influence with a nonexclusive, totality-of-the-circumstances test would provide an effective alternative.

The Department's October 6 cover page asks how parties could determine whether an output was a De Minimis Factor without relying solely on a Deployer's assertion. The answer is to apply the objective considerations already included in the definition of De Minimis Factor, together with evidence concerning the output's actual use and weight, without attaching a presumption to the form of the output. The relevant inquiry should be whether, considering the totality of the circumstances, the output was a substantial factor that meaningfully affected the Consequential Decision.

Objective evidence may include system configurations; decision protocols and consistently applied thresholds; the timing of the output and decision; access or workflow records showing whether the output was made available or viewed; contemporaneous decision notes; the relative weight assigned to the output; the nature and amount of independent information considered; and policies, contracts, or training materials describing how the output should be used. These types of evidence allow the Department, a Deployer, and other parties to assess the output's actual role without treating the Deployer's characterization as conclusive. The rule should make clear that these are examples of relevant evidence, not new documentation or record-retention mandates.

Replacing the presumption of Material Influence with a factor-based test would also better account for the wide variety of decision-making processes covered by the Act. No single fact should be dispositive. Evidence that a score was viewed or that an output was consistent with the outcome may be relevant, but it should be considered together with evidence of independent review, relative weight, decision-making authority, and whether the outcome would reasonably have differed without the output.

Third, if the Department retains a presumption of Material Influence, it should be limited to circumstances demonstrating actual and meaningful reliance.

A presumption of Material Influence may be appropriate where the ADMT output automatically eliminates available outcomes, establishes a binding threshold, or receives a predetermined weight sufficient to affect the decision. In those circumstances, the structure of the decision process supplies objective evidence that the output was a substantial factor. By contrast, an output should not trigger the presumption merely because it was generated, displayed, reviewed, stored, or consistent with a result independently supported by other information.

The final rule also should retain the existing rebuttal pathways and confirm that the inquiry considers the totality of the circumstances. Rule 6.1(B) appropriately recognizes evidence that the output was not consulted or incorporated, that the decision rested on a consistently applied cutoff, that an authorized decision-maker independently reviewed substantial other information, or that contemporaneous evidence demonstrates independent judgment. Those provisions are important safeguards and should not be narrowed.

In addition, Rule 6.1(D) should expressly cover the full range of routine administrative functions identified in BSA's initial comments. In addition to summarizing, organizing, translating, drafting, routing, and presenting information, the rule should address extraction, transfer, formatting, transmission, storage, retrieval, completeness checking, and objective calculations that do not evaluate an individual's access to, eligibility for, or compensation related to a covered service or opportunity. These activities should not constitute Material Influence unless the tool produces an evaluation or non-objective conclusion that meaningfully affects the substantive outcome. We also recommend the final rules clearly address a common example: software that allows a Deployer to configure it in certain ways – including allowing the Deployer to set a threshold or objective criteria when operating the ADMT. The final rules should state how any presumption of Material Influence applies in this scenario, when a threshold or criteria is set by the Deployer rather than by the ADMT.

Finally, Rules 6.2(C)(2)(a) and 6.2(C)(3)(a) refer to "Material Impact" rather than "Material Influence." This appears to be inadvertent and should be revised to Material Influence.

Recommendation: Rule 6 should be revised to:

- Replace Rule 6.1(A)'s rebuttable presumption with a nonexclusive, totality-of-the-circumstances test focused on whether the output was a substantial factor that meaningfully affected the Consequential Decision;
- Identify objective evidence relevant to that inquiry, while clarifying that the examples do not create new documentation or record-retention requirements;
- If a presumption is retained, limit it to circumstances in which the output was actually incorporated into the decision and automatically eliminated an outcome, established a binding threshold, or received a predetermined weight sufficient to affect the decision;
- Retain the rebuttal pathways in Rule 6.1(B) and state expressly that no single factor is dispositive; and

- Expand Rule 6.1(D) to clarify that routine administrative processing and objective calculations do not Materially Influence a Consequential Decision unless they meaningfully affect the substantive outcome.
- Revise references to Material Impact in Rules 6.2(C)(2)(a) and 6.2(C)(3)(a) to refer instead to Material Influence.

IV. The Interim Rules Improve Trade Secret Protections but Should Expressly Protect Intellectual Property and Other Confidential Information.

BSA appreciates the Department's revisions to Rule 5.3(C). The Interim Rules now expressly recognize that a Developer may protect trade secrets by providing a summary, categorical description, or other generalized information that is reasonably sufficient to support the next downstream actor's appropriate use of the Covered ADMT. That change substantially implements one of BSA's recommendations and provides a practical mechanism for reconciling the Act's disclosure requirements with the need to protect sensitive information.

[First, Rule 5.3\(A\) should expressly extend the same protection to intellectual property and other confidential information.](#)

Rule 5.3(A) continues to refer expressly only to statutory Trade Secrets and information protected from disclosure by state or federal law or other legal authority. Developer disclosures may implicate a broader range of valuable and sensitive information, including intellectual property, security-sensitive information, confidential methodologies, product roadmaps, proprietary technical documentation, and information protected by contractual confidentiality terms. Not every item of such information will clearly satisfy the statutory definition of a Trade Secret, and requiring a Developer to establish separate legal authority for withholding each item creates uncertainty that may chill useful disclosures or compromise legitimate protections.

Express protection would not permit a Developer to withhold information merely because it is inconvenient to disclose. The Developer would remain responsible for supplying information reasonably sufficient to support appropriate use of the Covered ADMT. The clarification would instead establish a workable boundary for the level of detail required and ensure that the rules do not compel disclosure of commercially sensitive information beyond what downstream compliance requires.

[Second, Rule 5.3\(C\) should address circumstances in which no alternative disclosure can reasonably be provided.](#)

The revised rule directs a Developer to provide "as much information as possible" without revealing trade secrets. That formulation may imply an absolute obligation to continue disaggregating or reformulating information even where doing so would reveal the protected substance or produce information that is misleading or unusable without the omitted context. The more appropriate standard is whether the alternative information is reasonably sufficient, considering the nature and sensitivity of the protected information, the information reasonably available to the Developer, and what the next downstream actor needs to use the Covered ADMT appropriately.

The rule should also recognize that an adequate substitute may not exist in every circumstance. Where a summary, categorical description, or generalized disclosure cannot reasonably be

provided without revealing protected information, the Developer should be permitted to withhold that information consistent with Rule 5.3(A). Without that clarification, a Developer may face the same dilemma identified in BSA's initial comments: reveal the information the rule is intended to protect or risk a later determination that the alternative disclosure was insufficient.

Recommendation: Rule 5.3 should be revised to:

- Revise Rule 5.3(A)(1) to provide: "Is a Trade Secret as defined by section 7-74-102(4), C.R.S., intellectual property, security-sensitive information, or other confidential information";
- Replace "as much information as possible" in Rule 5.3(C) with a reasonableness standard that accounts for the nature and sensitivity of the protected information, the information reasonably available to the Developer, and the information the next downstream actor needs for appropriate use; and
- Clarify that, if no summary, categorical description, or generalized disclosure can reasonably be provided without revealing protected information, the Developer may withhold the information consistent with Rule 5.3(A).

V. The Interim Rules Should Further Clarify Aspects of the Act and Address Drafting Issues

We also recommend revising several aspects of the Interim Rules to ensure they provide clear guidance on key topics. These include:

Consumers. The Act's definition of "consumer" contains an explicit that a "job applicant" be a resident of Colorado but it does not contain the same requirement for an "employee." As a result, the scope of consumers defined in Sec. 6-1-1701(4)(a)-(b) is unclear.

- **Recommendation:** The Rules should clarify the Act by stating whether the residency requirement is intended to apply to both job applicants and employees, or if the intent is to treat them separately.

Opportunity or Service. Obligations to make adverse outcome disclosures are tied to the Act's definition of "adverse outcome," which relates to "an opportunity or service." We recommend the rules clarify the scope of an "opportunity or service." For example, it is not clear if this phrase encompasses a specific set of opportunities or services, such as the covered domains in "consequential decision," or a different defined category. This is particularly relevant in the employment context where adverse outcome disclosures may be very different in different scenarios. For example, it may be feasible to provide adverse outcome disclosures for employees who are terminated, but providing notices to unsuccessful job candidates in high-volume recruitment contexts may extend those obligations much farther.

- **Recommendation:** The Rules should clarify the Act by defining an "opportunity or service" to encompass a specific set of opportunities or service, aligned with consequential decisions.

Drafting Issues. We also recommend the Rules clarify several drafting issues that appear inadvertent. These include:

- Rule 5.2(B): items are numbered 3 and 4 when they should be 1 and 2.
- Rule 7.5.(B)(1) references to Rules 6.3 and 6.4 are outdated.

- Rule 8.7(D)(2)(a) references Rule 6 rather than Rule 5 (Developer obligations).

* * *

Thank you for allowing us to provide feedback on behalf of the enterprise software sector and for your consideration of our views. We welcome the opportunity to further engage with you or a member of your staff on these important issues.

Sincerely,

Meghan Pensyl
Director, Policy