Upon further review of the statute by the HHS Office of the General Counsel, HHS has determined that the better reading of the HITECH Act is to apply annual limits as represented in Table 2 below: $25,000 for no knowledge, $100,000 for reasonable cause, $250,000 for corrected willful neglect, and $1,500,000 for uncorrected willful neglect. In light of this determination, and as a matter of enforcement discretion, HHS is notifying the public that all HIPAA enforcement actions will be governed by the following interim penalty tiers:

<table>
<thead>
<tr>
<th>Culpability</th>
<th>Minimum penalty/ violation</th>
<th>Maximum penalty/ violation</th>
<th>Annual limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Knowledge</td>
<td>$100</td>
<td>$50,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>Reasonable Cause</td>
<td>1,000</td>
<td>50,000</td>
<td>100,000</td>
</tr>
<tr>
<td>Willful Neglect—Corrected</td>
<td>10,000</td>
<td>50,000</td>
<td>250,000</td>
</tr>
<tr>
<td>Willful Neglect—Not Corrected</td>
<td>50,000</td>
<td>50,000</td>
<td>1,500,000</td>
</tr>
</tbody>
</table>

HHS will use this penalty tier structure, as adjusted for inflation, until further notice. See, e.g., Heckler v. Chaney, 470 U.S. 821, 831 (1985) (“This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”).

HHS expects to engage in future rulemaking to revise the penalty tiers in the current regulation to better reflect the text of the HITECH Act.

III. Collection of Information Requirements

This notification of enforcement discretion creates no legal obligations and no legal rights. Because this notification imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Roger T. Severino,
Director, Office for Civil Rights, Department of Health and Human Services.

[FR Doc. 2019–06530 Filed 4–26–19; 4:15 pm]
BILLING CODE 4153–01–P

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One respondent submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the change made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule in Response to Public Comments

1. DFARS 204.804(3)(i)(C) is revised to replace “individual” with “contracting official” to ensure the required determination would be made by a contracting official.

Response: The respondent recommended restating required contract closeout actions specified in FAR 4.804–5(b) in DFARS 204.804.

Comment: The FAR requirements at 4.804–5(b) are applicable to DoD, as stated in the FAR. Restating the FAR text in the DFARS would be duplicative and is unnecessary.

2. DFARS 204.804(3)(iv) is added to implement the authority provided in section 836 to waive provisions of acquisition law or regulation in order to close out contracts in accordance with section 836.

B. Analysis of Public Comments

1. Establishment of the Term “Contracting Official” Versus “Individual”

Comment: The respondent recommended adding a provision to create a template and implement a reporting requirement.

Response: Creation of a solicitation provision is not necessary to implement the requirement for the Secretary of Defense to notify the Congressional defense committees within 10 days of exercising the authority at section 836(d) to waive any provision of acquisition law or regulation in order to closeout contracts under the section 836 authority. Rather, a new paragraph (3)(iv) is added at DFARS 204.804 regarding the authority, which has been delegated to USD(A&S), to waive any provision of acquisition law or regulation to close out contracts as authorized by section 836 and implemented at DFARS 204.804(3)(i). A reference to internal operating procedures at DFARS Procedures, Guidance, and Information 204.804(3)(iv) is also provided, which direct departments and agencies to forward requests to waive provisions of acquisition law or regulation to the Principal Director, Defense Pricing and Contracting, who will forward the request to USD(A&S), as appropriate.

4. Waiver Authority for Acquisition Laws or Regulations Necessary for Closeout of Contracts

Comment: The respondent had concerns over the waiver authority for acquisition laws or regulations necessary for closeout of contracts under section 836(a).

Response: Waiver of acquisition laws and regulations necessary to close contracts must be, under statute, within the parameters of the congressionally granted authority. In accordance with section 836(d)(1) of the NDAA for FY 2017, the USD(A&S) is authorized to waive any provision of law or regulation in order to carry out the closeout procedures as authorized in section 836(a)(c).


Response: This rule is implementing in the DFARS sections 836 of the NDAA for FY 2017, as modified by section 824 of the NDAA for FY 2018, to permit closeout of certain contracts or groups of contracts. Updating the DoD 7000.14–R is beyond the scope of this rule.

6. Restate FAR 4.804–5(b) Requirements for Contract Closeout Actions in DFARS

Comment: The respondent had concerns over the waiver authority for acquisition laws or regulations necessary for closeout of contracts under section 836(a).

Response: Waiver of acquisition laws and regulations necessary to close contracts must be, under statute, within the parameters of the congressionally granted authority. In accordance with section 836(d)(1) of the NDAA for FY 2017, the USD(A&S) is authorized to waive any provision of law or regulation in order to carry out the closeout procedures as authorized in section 836(a)(c).

2. Establish a Measure To Define Disproportionality

Comment: The respondent recommended revisions to DFARS 204.804(3)(i)(C) to establish a measure to define “disproportionate” and to revise the text to reflect a “general rule” of 20 percent to determine “disproportionately excessive”.

Response: The text at DFARS 204.804(3)(i)(C) includes the term “disproportionate” to establish that DoD’s estimate of time and effort are determined to be greater than the amount owed to a level of imbalance. DoD has concerns that the use of a general measure may become an implied rule. It is not the intent of the DoD to identify a threshold, but to leave the determination of disproportion to the contracting officer’s discretion.

3. Include a Provision To Implement Reporting Requirement

Comment: The respondent recommended adding a provision to create a template and implement a reporting requirement.

Response: Creation of a solicitation provision is not necessary to implement the requirement for the Secretary of Defense to notify the Congressional defense committees within 10 days of exercising the authority at section 836(d) to waive any provision of acquisition law or regulation in order to closeout contracts under the section 836 authority. Rather, a new paragraph (3)(iv) is added at DFARS 204.804 regarding the authority, which has been delegated to USD(A&S), to waive any provision of acquisition law or regulation to close out contracts as authorized by section 836 and implemented at DFARS 204.804(3)(i). A reference to internal operating procedures at DFARS Procedures, Guidance, and Information 204.804(3)(iv) is also provided, which direct departments and agencies to forward requests to waive provisions of acquisition law or regulation to the Principal Director, Defense Pricing and Contracting, who will forward the request to USD(A&S), as appropriate.

4. Waiver Authority for Acquisition Laws or Regulations Necessary for Closeout of Contracts

Comment: The respondent had concerns over the waiver authority for acquisition laws or regulations necessary for closeout of contracts under section 836(a).

Response: Waiver of acquisition laws and regulations necessary to close contracts must be, under statute, within the parameters of the congressionally granted authority. In accordance with section 836(d)(1) of the NDAA for FY 2017, the USD(A&S) is authorized to waive any provision of law or regulation in order to carry out the closeout procedures as authorized in section 836(a)(c).


Response: This rule is implementing in the DFARS sections 836 of the NDAA for FY 2017, as modified by section 824 of the NDAA for FY 2018, to permit closeout of certain contracts or groups of contracts. Updating the DoD 7000.14–R is beyond the scope of this rule.

6. Restate FAR 4.804–5(b) Requirements for Contract Closeout Actions in DFARS

Comment: The respondent recommended restating required contract closeout actions specified in FAR 4.804–5(b) in DFARS 204.804.

Response: The FAR requirements at 4.804–5(b) are applicable to DoD, as stated in the FAR. Restating the FAR text in the DFARS would be duplicative and is unnecessary.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This final rule is necessary to implement section 836 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328), as modified by section 824 of the NDAA for FY 2018 (Pub. L. 115–91). The objective of this rule is to permit expedited closeout of certain contracts entered into on a date that is at least 17 fiscal years before the current fiscal year.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.
This rule will apply to small entities. Using estimates from department and agency subject matter experts, approximately 11,300 contracts subject to this rule need to be closed out by the Government. Of these contracts, the Government estimates that 50 percent, or 5,650, of the awards were made to small businesses.

This rule does not include any new reporting, recordkeeping, or other compliance requirements on any small entities.

DoD has not identified any alternatives that would meet the requirements of the applicable statute.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 204

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is amended as follows:

PART 204—ADMINISTRATIVE MATTERS

1. The authority citation for part 204 continues to read as follows:


2. Amend section 204.804 by—

a. In paragraph (1), removing “Contracting officers” and adding “Except as provided in paragraph (3) of this section, contracting officers” in its place;

b. In paragraph (2) removing “must” and adding “shall” in its place, and

c. Adding paragraph (3). The addition reads as follows:

204.804 Closeout of contract files.

(3)(i) In accordance with section 836 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328) and section 824 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), contracting officers may close out contracts or groups of contracts through issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action in accordance with FAR 4.804–5(a)(3) through (15), as appropriate, if each contract—

(A) Was entered into on a date that is at least 17 fiscal years before the current fiscal year;

(B) Has no further supplies or services due under the terms of the contract; and

(C) Has been determined by a contracting official, at least one level above the contracting officer, to be not otherwise reconcilable, because—

(1) The contract or related payment records have been destroyed or lost; or

(2) Although contract or related payment records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

(ii) Any contract or group of contracts meeting the requirements of paragraph (3)(i) of this section may be closed out through a negotiated settlement with the contractor. Except as provided in paragraph (3)(iii)(B) of this section, the contract closeout process shall include a bilateral modification of the affected contract, including those contracts that are closed out in accordance with a negotiated settlement.

(A) For a contract or groups of contracts, the contracting officer shall prepare a negotiation settlement memorandum that describes how the requirements of paragraph (3)(i) of this section have been met.

(B) For a group of contracts, a bilateral modification of at least one contract shall be made to reflect the negotiated settlement for a group of contracts, and unilateral modifications may be made, as appropriate, to other contracts in the group to reflect the negotiated settlement.

(iii) For contract closeout actions under paragraph (3) of this section, remaining contract balances—

(A) May be offset with balances in other contract line items within the same contract, regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation obligated to fund such contract line item has closed; and

(B) May be offset with balances on other contracts, regardless of the year or type of appropriations obligated to fund each contract and regardless of whether such appropriations have closed.

(iv) USD(A&S) is authorized to waive any provision of acquisition law or regulation in order to carry out the closeout procedures authorized in paragraph (3)(i) of this section (see procedures at PGI 204.804(3)(iv)).

[FR Doc. 2019–08482 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 209

[Docket DARS–2019–0001]

Defence Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to update the list of debarring and suspending officials.

DATES: Effective April 30, 2019.


SUPPLEMENTARY INFORMATION: This final rule amends DFARS 209.403 to add the officials who have been delegated the authority to serve as the debarring and suspending official for their respective agencies. The Staff Judge Advocate has been delegated authority to serve as the debarring and suspending official for the United States Cyber Command. The General Counsel has been delegated authority to serve as the debarring and suspending official for the Defense Health Agency.

List of Subjects in 48 CFR Part 209

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209 is amended as follows:

1. The authority citations for 48 CFR part 209 continue to read as follows:


2. In section 209.403, revise paragraph (1) of the definition of “debarring and suspending official” to read as follows:

209.403 Definitions.

Debarring and suspending official. (1) For DoD, the designees are—

Army—Director, Soldier & Family Legal Services