

Gas Industry, EPA-453/B-16-001” at the end of the table.

The revisions and addition read as follows:

**§ 52.2270 Identification of plan.**  
\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* Section 115.112 .....	* Control Requirements ....	* 12/15/2016	* 4/30/2019, [Insert Federal Register citation].	* *
* Section 115.114 .....	* Inspection Requirements	* 12/15/2016	* 4/30/2019, [Insert Federal Register citation].	* *
* Section 115.118 .....	* Recordkeeping Requirements.	* 12/15/2016	* 4/30/2019, [Insert Federal Register citation].	* *
* Section 115.119 .....	* Compliance Schedules ..	* 12/15/2016	* 4/30/2019, [Insert Federal Register citation].	* *

\* \* \* \* \* (e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
* HGB VOC and NO <sub>x</sub> RACT Finding, except for the 2016 EPA-issued CTG for the Oil and Natural Gas Industry, EPA-453/B-16-001.	* HGB 2008 Ozone NAAQS non-attainment area.	* 12/29/2016	* 4/30/2019, [Insert FR page number where document begins].	* Vegetable Oil Mfg category, previously sited under negative declarations for HGB area, is added to RACT determinations.

\* \* \* \* \*  
[FR Doc. 2019-08710 Filed 4-29-19; 8:45 am]  
BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Part 160**

**Notification of Enforcement Discretion Regarding HIPAA Civil Money Penalties**

**AGENCY:** Office of the Secretary, HHS.  
**ACTION:** Enforcement Discretion.

**SUMMARY:** This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies HHS regulations concerning the assessment of Civil Money Penalties (CMPs) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as such provision was amended by the

Health Information Technology for Economic and Clinical Health (HITECH) Act. Current HHS regulations apply the same cumulative annual CMP limit across four categories of violations based on the level of culpability. As a matter of enforcement discretion, and pending further rulemaking, HHS will apply a different cumulative annual CMP limit for each of the four penalties tiers in the HITECH Act.

**DATES:** This exercise of enforcement discretion is effective indefinitely.  
**FOR FURTHER INFORMATION CONTACT:** Rachel Seeger at (202) 619-0403 or (800) 537-7697 (TDD).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

When enacting the HIPAA administrative simplification provisions, Congress authorized HHS to impose a maximum CMP of \$100 for each violation, subject to a calendar year cap of \$25,000 for all violations of an

identical requirement or prohibition. Public Law 104-191, section 262(a), 110 Stat. 1936, 2028 (Aug. 21, 1996) (adding Social Security Act section 1176(a)(1), 42 U.S.C. 1320d-5(a)(1)).

HHS issued an interim final rule (IFR) on April 17, 2003, setting forth the procedural requirements that the Department would follow in enforcing HIPAA and its regulations, including procedures for providing notice, managing hearings, and issuing administrative subpoenas. HHS issued a proposed rule on the substantive enforcement provisions on April 18, 2005. HIPAA Administrative Simplification: Enforcement; Proposed Rule, 70 FR 20224 (April 18, 2005). HHS issued a HIPAA enforcement final rule on February 16, 2006, which, among other things, incorporated penalties consistent with the \$100 per violation cap and \$25,000 annual cap in HIPAA. HIPAA Administrative Simplification:

Enforcement; Final Rule, 71 FR 8390 (Feb. 16, 2006).

In February 2009, Congress enacted the HITECH Act (as part of the American Recovery and Reinvestment Act of 2009) that, among other things, strengthened HIPAA enforcement by increasing minimum and maximum potential CMPs for HIPAA violations. Public Law 111–5, section 13410, 123 Stat. 115, 271 (Feb. 17, 2009) (amending Social Security Act section 1176(a)(1), 42 U.S.C. 1320d–5(a)(1)). Section 13410(d) of the HITECH Act established four categories for HIPAA violations, with increasing penalty tiers based on the level of culpability associated with the violation: (1) The person did not know (and, by exercising reasonable diligence, would not have known) that the person violated the provision; (2) the violation was due to reasonable cause, and not willful neglect; (3) the violation was due to willful neglect that is timely corrected; and (4) the violation was due to willful neglect that is not timely corrected. Thus, if a covered entity did not know that it violated HIPAA, and, through due care, would not have known, the Secretary shall<sup>1</sup> impose “a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D)[.]” 42 U.S.C. 1320d–5(a)(1)(A). Where the violation was due to reasonable cause, and not willful neglect, the Secretary shall impose “a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D)[.]” *Id.* at section 1320d–5(a)(1)(B). If the violation were due to willful neglect, but was corrected in a timely manner, the Secretary shall impose “a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D)[.]” *Id.* at section 1320d–5(a)(1)(C)(i). And, finally, if the violation were due to willful neglect, but was not timely corrected, the Secretary shall impose “a penalty in an

amount that is at least the amount described in paragraph (3)(D).” *Id.* at section 1320d–5(a)(1)(C)(ii).

The penalty amounts corresponding to each culpability level or violation type were set forth by the HITECH Act as follows:

*Tiers of penalties described.*

- The amount described in this subparagraph is \$100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000 (42 U.S.C. 1320d–5(a)(3)(A));
- the amount described in this subparagraph is \$1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$100,000 (42 U.S.C. 1320d–5(a)(3)(B));
- the amount described in this subparagraph is \$10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$250,000 (42 U.S.C. 1320d–5(a)(3)(C));
- the amount described in this subparagraph is \$50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000 (42 U.S.C. 1320d–5(a)(3)(D)).

On October 30, 2009, HHS issued an IFR to implement the enhanced penalty provisions of the HITECH Act. The Department’s view at the time was that the HITECH Act’s penalty provisions were “conflicting” because they allegedly referenced two levels of penalties for three of the four violation types. *See* HIPAA Administrative Simplification: Enforcement, 74 FR 56123, 56127 (Oct. 30, 2009). Although the HITECH Act provided four different annual penalty caps, the IFR concluded that “the most logical reading” of the law was to apply the highest annual cap of \$1.5 million to all violation types, and that this was “consistent with Congress’ intent to strengthen enforcement.” *Id.*

On January 25, 2013, HHS adopted the text of the IFR as a final rule (Enforcement Rule) without change to

the penalty tiers and annual limits. HHS noted in the preamble that, “[i]n adopting the HITECH Act’s penalty scheme, the Department recognized that section 13410(d) contained apparently inconsistent language (*i.e.*, its reference to two penalty tiers ‘for each violation,’ each of which provided a penalty amount ‘for all such violations’ of an identical requirement or prohibition in a calendar year). To resolve this inconsistency, with the exception of violations due to willful neglect that are not timely corrected, the IFR adopted a range of penalty amounts between the minimum given in one tier and the maximum given in the second tier for each violation and adopted the amount of \$1.5 million as the limit for all violations of an identical provision of the HIPAA rules in a calendar year.” *See* Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the HITECH Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, 78 FR 5566, 5582 (Jan. 25, 2013). The 2013 Enforcement Rule identified that some commenters expressed concern about the rule imposing a \$1.5 million cap for every penalty tier. Such commenters argued that “the IFR’s penalty scheme is inconsistent with the HITECH Act’s establishment of different tiers based on culpability because the outside limits were the same for all culpability categories and this ignored the outside limits set forth by the HITECH Act within the lower penalty tiers, rendering those limits meaningless.” 78 FR at 5583. In response, HHS stated that it continued to believe “that the penalty amounts are appropriate and reflect the most logical reading of the HITECH Act, which provides the Secretary with discretion to impose penalties for each category of culpability up to the maximum amount described in the highest penalty tier.” *Id.*

As a result, the Enforcement Rule applies an annual upper limit of \$1.5 million for each of the four culpability tiers, as shown below in Table 1.

TABLE 1—PENALTY TIERS UNDER THE ENFORCEMENT RULE

Culpability	Minimum penalty/ violation	Maximum penalty/ violation	Annual limit
No Knowledge .....	\$100	\$50,000	\$1,500,000
Reasonable Cause .....	1,000	50,000	1,500,000
Willful Neglect—Corrected .....	10,000	50,000	1,500,000
Willful Neglect—Not Corrected .....	50,000	50,000	1,500,000

<sup>1</sup> 42 U.S.C. 1320d–5(a)(1) provides that “[e]xcept as provided in subsection (b) of this section, the

Secretary shall impose on any person who violates a provision of this part . . . .”

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 2—PENALTY TIERS UNDER NOTIFICATION OF ENFORCEMENT DISCRETION

Culpability	Minimum penalty/ violation	Maximum penalty/ violation	Annual limit
No Knowledge .....	\$100	\$50,000	\$25,000
Reasonable Cause .....	1,000	50,000	100,000
Willful Neglect—Corrected .....	10,000	50,000	250,000
Willful Neglect—Not Corrected .....	50,000	50,000	1,500,000

HHS will use this penalty tier structure, as adjusted for inflation,<sup>2</sup> 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.*).

Dated: April 23, 2019.

#### Roger T. Severino,

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

[FR Doc. 2019–08530 Filed 4–26–19; 4:15 pm]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 204

[Docket DARS–2018–0029]

RIN 0750–AJ76

#### Defense Federal Acquisition Regulation Supplement: Contract Closeout Authority (DFARS Case 2018–D012)

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

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 and 2018 to permit expedited closeout of certain contracts entered into on a date that is at least 17 fiscal years before the current fiscal year.

**DATES:** Effective April 30, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly Bass, telephone 571–372–6174.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD published a proposed rule in the *Federal Register* at 83 FR 24897 on May 30, 2018, 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), which authorizes the Secretary of Defense to close out certain contracts or groups of contracts through modification of such contracts without completing a reconciliation audit or other corrective action. The authority provided by sections 824 and 836 applies to contracts entered into on a

date that is at least 17 fiscal years before the current fiscal year, that have no further supplies or services due, and for which a determination has been made that the contract records are not otherwise reconcilable, because—

- The contract or related payment records have been destroyed or lost; or
- Although contracts 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.

To accomplish closeout of such contracts, sections 824 and 836 further authorize—

- A contract or groups of contracts covered by these sections to be closed out through a negotiated settlement with the contractor; and
- The remaining contract balances to be offset with balances within the contract or on other contracts regardless of the year or type of appropriation obligated to fund each contract or contract line item, and regardless of whether the appropriation has closed.

When using this authority, the closeout procedures require the contracting officer to issue a modification of the affected contract, which must be signed by both the contractor and the Government. When closing out a group of contracts, the contracting officer must issue a modification of at least one of the affected contracts that reflects the negotiated settlement for the group of contracts and this modification must be signed by both the contractor and the Government. The remaining contracts in the group may be modified without obtaining the contractor’s signature.

In accordance with section 836(d)(1) of the NDAA for FY 2017, the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) is authorized to waive any additional provision of law or regulation in order to carry out the closeout procedures as authorized in section 836(a)–(c).

<sup>2</sup> HHS is required to annually adjust its CMPs for inflation pursuant to the cost-of-living formula set forth in the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, section 701, 129 Stat. 599 (Nov. 2, 2015).