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

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

<table>
<thead>
<tr>
<th>State citation</th>
<th>Title/subject</th>
<th>State submittal date</th>
<th>EPA approval date</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 115.112</td>
<td>Control Requirements ...</td>
<td>12/15/2016</td>
<td>4/30/2019, [Insert Federal Register citation].</td>
<td></td>
</tr>
<tr>
<td>Section 115.114</td>
<td>Inspection Requirements</td>
<td>12/15/2016</td>
<td>4/30/2019, [Insert Federal Register citation].</td>
<td></td>
</tr>
<tr>
<td>Section 115.118</td>
<td>Recordkeeping Requirements.</td>
<td>12/15/2016</td>
<td>4/30/2019, [Insert Federal Register citation].</td>
<td></td>
</tr>
<tr>
<td>Section 115.119</td>
<td>Compliance Schedules ..</td>
<td>12/15/2016</td>
<td>4/30/2019, [Insert Federal Register citation].</td>
<td></td>
</tr>
</tbody>
</table>

* * * * *

(e) * * *

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

<table>
<thead>
<tr>
<th>Name of SIP provision</th>
<th>Applicable geographic or non-attainment area</th>
<th>State submittal/ effective date</th>
<th>EPA approval date</th>
<th>Comments</th>
</tr>
</thead>
</table>

Vegetable Oil Mfg category, previously sited under negative declarations for HGB area, is added to RACT determinations.

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:
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 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)).” 

**Table 1—Penalty Tiers Under the Enforcement Rule**

<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>$1,500,000</td>
</tr>
<tr>
<td>Reasonable Cause</td>
<td>1,000</td>
<td>50,000</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Willful Neglect—Corrected</td>
<td>10,000</td>
<td>50,000</td>
<td>1,500,000</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>

1 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. . . .”

In October 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. 

The amount described in this subparagraph is $1,500,000 (42 U.S.C. 1320d–5(a)(3)(D)).

• the amount described in this subparagraph is $1,500,000 (42 U.S.C. 1320d–5(a)(3)(D)).
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>
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<th>Annual limit</th>
</tr>
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<tr>
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<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.

BILLING CODE 4153–01–P

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48 CFR Part 204

[DoD Acquisition Regulations (DAR)]

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

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.


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).