

# Rules and Regulations

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## OFFICE OF MANAGEMENT AND BUDGET

### 5 CFR Part 1315

#### Prompt Payment

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Office of Management and Budget (OMB) is issuing an interim final revision to its rules on the Prompt Payment Act (PPA) to implement Section 1010 of the National Defense Authorization Act for Fiscal Year 2001. Section 1010 requires agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice for payment from the contractor.

**DATES:** *Effective Date:* This interim final rule is effective December 15, 2000.

*Applicability Dates:* This interim final rule shall apply to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000. At the discretion of the agency, this interim final rule may be applied to interim payment requests received under cost-reimbursement service contracts awarded before December 15, 2000. However, no interest penalty shall accrue under this rule for any delay in payment that occurs prior to December 15, 2000.

*Comment Date:* Comments must be received by February 13, 2001 and should be directed to the Department of the Treasury at the address identified below.

**ADDRESSES:** All comments should be addressed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial

Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street SW., Washington, DC 20227.

Copies of the current PPA regulation and other information are available from the Prompt Payment web site at <http://www.fms.treas.gov/prompt/index.html>.

**FOR FURTHER INFORMATION CONTACT:**

Sally Phillips, Senior Financial Program Specialist, on (202) 874-7106; Matthew Helfrich, Financial Program Specialist, on (202) 874-6749; Martha Thomas-Mitchell, Financial Program Specialist, on (202) 874-6757; or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, on (202) 874-6590.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Contractors who are awarded cost-reimbursement contracts are generally authorized to seek reimbursement, including reimbursement during the course of the contract ("interim payments"), for the allowable costs they incur in the performance of the contract. In the National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, 114 Stat. 1654, Congress imposed a new statutory requirement on agencies to pay an interest penalty on interim payments that are made late under cost-reimbursement service contracts. This requirement is contained in Section 1010 of the Act—"Interest Penalties for Late Payment of Interim Payments Due Under Government Service Contracts."

Specifically, under Section 1010(a), "an agency acquiring services from a business concern under a cost-reimbursement contract requiring interim payments who does not pay the concern a required interim payment by the date that is 30 days after the date of the receipt of a proper invoice shall pay an interest penalty to the concern on the amount of the payment due." In addition, "[t]he interest shall be computed as provided in section 3902(a) of title 31, United States Code," which is the interest provision of the Prompt Payment Act (PPA, 31 U.S.C. 3901, *et seq.*), and the agencies are to carry out the requirement "[u]nder regulations prescribed" by OMB. In turn, Section 1010(b) directs OMB to "prescribe regulations to carry out this section," which "shall be prescribed as part of" OMB's regulations implementing the PPA. OMB's PPA

regulations are now found at 5 CFR Part 1315 (prior to their 1999 codification, they were contained in OMB Circular A-125). See 64 FR 52580 (September 29, 1999). Section 1010(c) states that "[t]he provisions of chapter 39 of title 31, United States Code [i.e., the PPA], shall apply to this section in the same manner as if this section were enacted as part of such chapter."

Finally, Section 1010(d) states that "Subsection (a) shall take effect on December 15, 2000. No interest shall accrue by reason of that subsection for any period before that date."

This rule implements Section 1010 by making conforming revisions, on an interim final basis, to OMB's PPA regulations. In developing this rule, OMB has consulted with the Departments of Defense and Treasury, the General Services Administration, and other agencies. OMB requests comment on the interim final revisions, and will consider them in our development of the final rule.

*Agency Practices and Policies Regarding Interim Payments*

Until now, interim payments under cost-reimbursement service contracts have not been subject to PPA interest penalties. As a result of Section 1010, interim payments on cost-reimbursement service contracts will be subject to PPA interest penalties when the payment is not made "by the date that is 30 days after the date of the receipt of a proper invoice." However, neither Section 1010 nor this interim final rule is intended to modify current agency practices or policies regarding dates for payment for interim payments on cost-reimbursement service contracts, other than to require—in accordance with Section 1010(a)—that PPA interest penalties be paid on interim payments that are made more than 30 days after the agency receives a proper invoice. In particular, Section 1010 leaves unaffected existing agency policies that call for these interim payments to be made well in advance of 30 days. For example, it is the policy of the Department of Defense to generally pay contractors 14 days or less after being billed for reimbursements on cost-reimbursement contracts. See Subpart 232.906 of the Department of Defense Supplement to the Federal Acquisition Regulation (DFARS), 48 CFR Chapter 2.

### Implementation

Newly added Section 1315.20 of the PPA regulation makes clear that the requirements of Section 1010 are to be implemented on an accelerated basis. Section 1315.20 requires agencies to immediately apply the revisions made by this interim final rule to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000. This accelerated implementation schedule is intended to reinforce agency efforts to pay their bills in a timely manner. Prompt payment facilitates the government's ability to attract high quality contractors, and can reduce contractors' costs of doing business with the government, which can translate into lower prices for the products and services agencies acquire to meet their mission needs. For this reason, the rule also authorizes agencies, at their discretion, to apply the revisions to interim payment requests received under cost-reimbursement service contracts awarded prior to December 15, 2000. Agencies are authorized to issue modifications to contracts, as necessary, to conform them to the revisions made by this interim final rule. However, as required by Section 1010(d), no interest penalty shall accrue under this rule for any delay in payment that occurs prior to December 15, 2000.

Mandatory application of the revised rule to contracts awarded on or after the rule's effective date is consistent with implementation approaches previously taken by OMB in implementing PPA requirements. When OMB originally implemented the PPA in 1982, and when OMB in 1989 implemented the Act's 1988 amendments, new requirements generally applied to contracts that would be executed on or after the statutory effective date. See August 25, 1982 implementation of PPA, at 47 FR 37321, 37322 (preamble discussion) and 37324 (Circular A-125, Section 13—"Interest penalties will apply to payments made under contracts issued on or after October 1, 1982."); December 21, 1989 implementation of 1988 amendments, at 54 FR 52700, 52713 (Circular A-125, Section 15—generally applying new requirements to "payments under contracts awarded, contracts renewed, and contract options exercised on or after" the statutory effective date). OMB believes this same implementation approach is suitable for Section 1010 and will best ensure that the requirements of Section 1010—which was recently enacted on October 30, 2000—are applied by agencies in an orderly and effective manner.

### II. Regulatory Flexibility Act, Unfunded Mandates Reform Act, Congressional Review Act, and Executive Orders 12866 and 12875

This interim final rule will not have a significant economic effect on a substantial number of small entities; the regulations implement Section 1010 of the National Defense Authorization Act for Fiscal Year 2001, which requires Federal agencies to pay an interest penalty whenever they make interim payments on cost-reimbursement service contracts more than 30 days after they receive a proper invoice. For purposes of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), as well as Executive Orders 12866 and 12875, the interim final rule will not significantly or uniquely affect small governments, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more. Finally, the interim final rule is not a "major rule" under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

### III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this interim final rule because the rule's changes do not impose new recordkeeping requirements or collections of information from offerors, contractors, or members of the public that require approval under 44 U.S.C. 3501, *et seq.* The information a contractor must submit in order to receive an interim payment under a cost-reimbursement service contract is addressed at Section 1315.9(b)(2) of the revised PPA regulations. Section 1315.9(b)(2) states that an interim payment request must correctly include all the information required by the contract or by agency procedures.

### IV. Determination To Issue an Interim Final Rule

This rule is being promulgated as an interim final rule in order to carry out Section 1010(a) of Public Law 106-398 on a timely basis. Section 1010(a) requires an agency, under regulations prescribed by the Director of OMB, to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement contract for services that is more than 30 days after the agency receives a proper invoice for payment from the contractor. Section 1010(a) was enacted into law on October 30, 2000, when the President signed into law Public Law 106-398, the National Defense Authorization Act for Fiscal Year 2001. Section 1010(d) states

that Section 1010(a) "shall take effect on December 15, 2000," and Section 1010(b) directs OMB to "prescribe regulations to carry out" Section 1010. There is "good cause" under 5 U.S.C. 553(b) for OMB to issue this rule without prior public comment, because the issuance of a proposed rule to implement Section 1010(a) would have been "impracticable" due to the very short (45-day) period between the enactment and effective dates for Section 1010(a). Although this rule is being issued without prior opportunity for public comment, OMB is requesting comments on the interim final rule and will consider all comments received in our development of the final rule.

### List of Subjects in 5 CFR Part 1315

Administrative practice and procedure, Government contracts, Penalties, Reporting and recordkeeping requirements.

Dated: December 12, 2000.

**Sylvia M. Mathews,**

*Deputy Director.*

For reasons set out in the preamble, 5 CFR chapter III, part 1315 is amended as set forth below:

### Authority and Issuance

#### PART 1315—PROMPT PAYMENT

1. The authority citation for part 1315 is revised to read as follows:

**Authority:** 31 U.S.C. chapter 39; Section 1010 of Public Law 106-398, 114 Stat. 1654.

2. Section 1315.2 is amended by revising paragraph (h) to read as follows:

#### § 1315.2 Definitions.

\* \* \* \* \*

(h) *Contract financing payments* means an authorized disbursement of monies prior to acceptance of goods or services including advance payments, progress payments based on cost, progress payments (other than under construction contracts) based on a percentage or stage of completion, payments on performance-based contracts and interim payments on cost-type contracts (other than under cost-reimbursement contracts for the acquisition of services). Contract financing payments do not include invoice payments, payments for partial deliveries, or lease and rental payments. Contract financing payments also do not include progress payments under construction contracts based on a percentage or stage of completion and interim payments under cost-reimbursement service contracts. For purposes of this part, interim payments

under a cost-reimbursement service contract are treated as invoice payments and subject to the requirements of this part, except as otherwise provided (see, e.g., §§ 1315.4(d) and (e), and 1315.9(b)(1) and (c)).

\* \* \* \* \*

3. Section 1315.4 is amended by revising paragraphs (d) and (e), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(4) as paragraphs (g)(3) through (g)(5), respectively, and adding a new paragraph (g)(2) to read as follows:

**§ 1315.4 Prompt payment standards and required notices to vendors.**

\* \* \* \* \*

(d) *Receipt of goods and services.* Agencies will ensure that receipt is properly recorded at the time of delivery of goods or completion of services. This requirement does not apply to interim payments on cost-reimbursement service contracts except as otherwise required by agency regulations.

(e) *Acceptance.* Agencies will ensure that acceptance is executed as promptly as possible. Commercial items and services should not be subject to extended acceptance periods. Acceptance reports will be forwarded to the designated agency office by the fifth working day after acceptance. Unless other arrangements are made, acceptance reports will be stamped or otherwise annotated with the receipt date in the designated agency office. This requirement does not apply to interim payments on cost-reimbursement service contracts except as otherwise required by agency regulations.

\* \* \* \* \*

(g) *Determining the payment due date.* (1) Except as provided in paragraphs (g)(2) through (5) of this section, the payment is due either:

(i) On the date(s) specified in the contract;

(ii) In accordance with discount terms when discounts are offered and taken (see § 1315.7);

(iii) In accordance with Accelerated Payment Methods (see § 1315.5); or

(iv) 30 days after the start of the payment period as specified in paragraph (f) of this section, if not specified in the contract, if discounts are not taken, and if accelerated payment methods are not used.

(2) *Interim payments under cost-reimbursement contracts for services.* The payment due date for interim payments under cost-reimbursement service contracts shall be 30 days after the date of receipt of a proper invoice.

\* \* \* \* \*

4. Section 1315.5 is amended by adding a new paragraph (d) to read as follows:

**§ 1315.5 Accelerated payment methods.**

\* \* \* \* \*

(d) *Interim payments under cost-reimbursement contracts for services.* For interim payments under cost-reimbursement service contracts, agency heads may make payments earlier than seven days prior to the payment due date in accordance with agency regulations or policies.

5. Section 1315.9 is amended by redesignating paragraphs (b) introductory text and (b)(1) through (b)(10) as paragraphs (b)(1) introductory text and (b)(1)(i) through (b)(1)(x), respectively, revising newly redesignated paragraph (b)(1) introductory text, adding a new paragraph (b)(2), and revising the introductory text of paragraph (c) to read as follows:

**§ 1315.9 Required documentation.**

\* \* \* \* \*

(b)(1) Except for interim payment requests under cost-reimbursement service contracts, which are covered by paragraph (b)(2) of this section, the following correct information constitutes a proper invoice and is required as payment documentation:

\* \* \* \* \*

(2) An interim payment request under a cost-reimbursement service contract constitutes a proper invoice for purposes of this part if it correctly includes all the information required by the contract or by agency procedures.

(c) Except for interim payment requests under cost-reimbursement service contracts, the following information from receiving reports, delivery tickets, and evaluated receipts is required as payment documentation:

\* \* \* \* \*

6. Section 1315.10 is amended by revising paragraph (b)(1) to read as follows:

**§ 1315.10 Late payment interest penalties.**

\* \* \* \* \*

(b) \* \* \*

(1) Interest may be paid only after acceptance has occurred; when title passes to the government in a fast payment contract when title passing to the government constitutes acceptance for purposes of determining when interest may be paid; or when the payment is an interim payment under a cost-reimbursement service contract;

\* \* \* \* \*

7. Add § 1315.20 to read as follows:

**§ 1315.20 Application of Section 1010 of the National Defense Authorization Act for Fiscal Year 2001.**

Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398, 114 Stat. 1654) requires an agency to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement contract for services more than 30 days after the date the agency receives a proper invoice for payment from the contractor. This part implements Section 1010 and is applicable in the following manner:

(a) This part shall apply to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000.

(b) This part may be applied, at the discretion of the agency, to interim payment requests received under cost-reimbursement service contracts awarded before December 15, 2000. However, no interest penalty shall accrue under this part for any delay in payment that occurs prior to December 15, 2000.

(c) Agencies are authorized to issue modifications to contracts, as necessary, to conform them to the provisions in this part implementing Section 1010.

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**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**7 CFR Part 723**

**Commodity Credit Corporation**

**7 CFR Part 1464**

**RIN 0560-AF85**

**2000 Marketing Quota and Price Support for Burley Tobacco**

**AGENCIES:** Farm Service Agency and Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 2000 crop of burley tobacco. In accordance with the Agricultural Adjustment Act of 1938, as amended (1938 Act), the Secretary determined the 2000 marketing quota for burley tobacco to be 247.4 million pounds. In accordance with the Agricultural Act of 1949, as amended (1949 Act), the Secretary determined the 2000 price support level to be 180.5 cents per pound. A number of related