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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: Final rule.

SUMMARY: The Office of Management and Budget (OMB) is issuing a 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, as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002. 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. Section 1007 states that the requirements of section 1010 apply to interim payments that are due on or after December 15, 2000 under any cost-reimbursement service contract regardless of when the contract was awarded.

DATES: *Effective Date:* This final rule is effective December 30, 2002. *Applicable Dates:* This final rule shall apply to all interim payment requests that are due on or after December 15, 2000 and received under cost-reimbursement service contracts awarded before, on, or after December 15, 2000. However, no interest penalty shall accrue under this rule for any delay in payment that occurred prior to December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Thomas-Mitchell, Financial Program Specialist, Financial Management Service, Department of the Treasury, on (202) 874-6757; Mathew Blum, Office of Federal Procurement

Policy, OMB, on 202-395-4953; or Dana James, Office of Federal Financial Management, OMB, on 202-395-7480.

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 set forth in section 1010 of the Act—"Interest Penalties for Late Payment of Interim Payments Due Under Government Service Contracts."

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." Interest is to be computed as provided in the Prompt Payment Act (PPA, 31 U.S.C. 3901, 3902(a)). 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 may be found at 5 CFR Part 1315.) 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) provides 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."

On December 15, 2000, OMB published an interim final rule to implement section 1010 (65 FR 78403). The rule 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. The rule mandated application of the requirements of section 1010 to contracts awarded on or after December 15, 2000. The rule authorized agencies, at their discretion, to apply these requirements to interim payment requests received under cost-reimbursement service contracts awarded prior to December 15, 2000.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued an interim rule amending the Federal Acquisition Regulation (FAR) to implement the changes in OMB's PPA regulations. See 66 FR 53485 (October 22, 2001). The FAR amendments add new policy and a contract clause to provide for penalty payments under covered contracts.

Three public comments were received in response to OMB's interim final rule. The comments focused on the rule's applicability. Each of the commenters stated that the rule failed to fully implement section 1010 because it did not require application of its requirements to interim payment requests received under cost-reimbursement service contracts awarded prior to December 15, 2000. The commenters asserted that Congress intended for all cost-reimbursement contracts for services requiring interim payment to be covered by the requirements of section 1010.

Subsequent to receipt of these public comments, Congress took action to clarify the application of section 1010, effectively removing the discretion that OMB afforded in its interim rule regarding application of section 1010 to contracts awarded prior to December 15, 2000. In particular, section 1007 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1012, enacted on December 28, 2001, states that the requirements of section 1010 apply with respect to "interim payment that are due on or after [December 15, 2000] under contracts entered into before, on, or after that date." Accordingly, this final rule amends section 1315.20 of OMB's PPA's regulations, which address the application of section 1010, to incorporate the clarification made by section 1007. With the exception of the amendments made to section 1315.20, this final rule adopts the interim final rule without change.

Agencies are authorized to issue modifications to contracts, as necessary,

to conform them to the revisions made by this final rule. However, as required by Section 1010(d), no interest penalty shall accrue under this rule for any delay in payment that occurred prior to December 15, 2000.

Neither section 1010 nor this 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.

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

This 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, as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002. Section 1010 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 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 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 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.

List of Subjects in 5 CFR Part 1315

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

Mitchell E. Daniels, Jr.,
Director.

Authority and Issuance

For reasons set out in the preamble, the interim rule amending 5 CFR Part 1315 published at 65 FR 78403, December 15, 2000, is adopted as final with the following change:

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; Section 1007 of Public Law 107-107, 115 Stat. 1012.

2. Section 1315.20 is revised 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), as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107, 115 Stat. 1012), 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, as amended, and is applicable in the following manner:

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

(b) No interest penalty shall accrue under this part for any delay in payment that occurred 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, as amended.

[FR Doc. 02-32821 Filed 12-27-02; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket # FV-98-303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on November 19, 2002, (67 FR 69660) final regulations revising the United States Standards for Grades of Apples. In that document, incomplete paragraph references were published. This document corrects those references.

EFFECTIVE DATE: December 30, 2002.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2065 South Building, STOP 0240, Washington, DC 20250; Fax (202) 720-8871.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections contained conforming and editorial changes to the United States Standards for Grades of Apples. The rule was necessary to update and revise the standards to more accurately represent today’s marketing practices.

Need for Correction

As published, the final regulations contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on November 19, 2002 (67 FR 69660), which is the subject of FR Doc. 02-29034, is corrected as follows:

§ 51.316 [Corrected]

1. On page 69666, first column, paragraph (e)(3), the words “paragraphs (1)” are corrected to read “paragraphs (e)(1)”.