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§ 1312.35 Information classified by another agency.

When a request is received for information that was classified by another agency, the Associate Director (or Assistant Director) for Administration will forward the request, along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made if appropriate. The requester will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

§ 1312.36 Appeal procedure.

Appeals received as a result of a denial, see § 1312.34, will be routed to the Deputy Director who will take action as necessary to determine whether any part of the information may be declassified. If so, he will notify the requester of his determination and make that information available that is declassified and otherwise releasable. If continued classification is required, the requestor shall be notified by the Deputy Director of the reasons thereafter. Determinations on appeals will normally be made within 60 working days following receipt. If additional time is needed, the requestor will be notified and this reason given for the extension. The agency's decision can be appealed to the Interagency Security Classification Appeals Panel.

§ 1312.37 Fees.

There will normally be no fees charged for the mandatory review of classified material for declassification under this section.

PART 1315—PROMPT PAYMENT

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

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

SOURCE: 64 FR 52586, Sept. 29, 1999, unless otherwise noted.

§ 1315.1 Application.

(a) *Procurement contracts.* This part applies to contracts for the procurement of goods or services awarded by:

(1) All Executive branch agencies except:

(i) The Tennessee Valley Authority, which is subject to the Prompt Payment Act (31 U.S.C. chapter 39), but is not covered by this part; and

(ii) Agencies specifically exempted under 5 U.S.C. 551(1); and

(2) *The United States Postal Service.* The Postmaster General is responsible for issuing implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service.

(b) *Vendor payments.* All Executive branch vendor payments and payments to those defined as contractors or vendors (see § 1315.2(hh)) are subject to the Prompt Payment Act with the following exceptions:

(1) Contract Financing Payments, as defined in § 1315.2(h); and

(2) Payments related to emergencies (as defined in the Disaster Relief Act of 1974, Public Law 93-288, as amended (42 U.S.C. 5121 *et seq.*)); military contingency operations (as defined in 10 U.S.C. 101 (a)(13)); and the release or threatened release of hazardous substances (as defined in 4 U.S.C. 9606, Section 106).

(c) *Utility payments.* All utility payments, including payments for telephone service, are subject to the Act except those under paragraph (b)(2) of

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this section. Where state, local or foreign authorities impose generally-applicable late payment rates for utility payments, those rates shall take precedence. In the absence of such rates, this part will apply.

(d) *Commodity Credit Corporation payments*. Payments made pursuant to Section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)) (“CCC Charter Act”) relating to the procurement of property and services, and payments to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) are subject to this part.

§ 1315.2 Definitions.

(a) *Accelerated payment* means a payment made prior to the due date (see discussion in § 1315.5).

(b) *Acceptance* means an acknowledgment by an authorized Government official that goods received and services rendered conform with the contract requirements. Acceptance also applies to partial deliveries.

(c) *Agency* includes, as defined in 5 U.S.C. 551(1), each authority of the United States Government, whether or not it is within or subject to review by another agency, excluding the Congress, the United States courts, governments of territories or possessions, the District of Columbia government, courts martial, military commissions, and military authority exercised in the field in time of war or in occupied territory. *Agency* also includes any entity that is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and that is so identified for this purpose by the head of such agency. The term *agency* includes military post and base exchanges and commissaries.

(d) *Applicable interest rate* means the interest rate established by the Secretary of the Treasury for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) which is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., utility tariffs). The rate established under the Contract Disputes Act is referred to as the

“Renegotiation Board Interest Rate,” the “Contract Disputes Act Interest Rate,” and the “Prompt Payment Act Interest Rate,” and is published semi-annually by the Fiscal Service, Department of Treasury, in the FEDERAL REGISTER on or about January 1 and July 1.

(e) *Automated Clearing House (ACH)* means a network that performs inter-bank clearing of electronic debit and credit entries for participating financial institutions.

(f) *Banking information* means information necessary to facilitate an EFT payment, including the vendor’s bank account number, and the vendor financial institution’s routing number.

(g) *Contract* means any enforceable agreement, including rental and lease agreements, purchase orders, delivery orders (including obligations under Federal Supply Schedule contracts), requirements-type (open-ended) service contracts, and blanket purchases agreements between an agency and a vendor for the acquisition of goods or services and agreements entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*). Contracts must meet the requirements of § 1315.9(a).

(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)).

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(i) *Contracting office* means any entity issuing a contract or purchase order or issuing a contract modification or termination.

(j) *Contractor* (see *Vendor*).

(k) *Day* means a calendar day including weekend and holiday, unless otherwise indicated.

(l) *Delivery ticket* means a vendor document supplied at the time of delivery which indicates the items delivered, can serve as a proper invoice based on contractual agreement.

(m) *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices. This office can be contractually designated as the receiving entity. This office may be different from the office issuing the payment.

(n) *Discount* means an invoice payment reduction offered by the vendor for early payment.

(o) *Discount date* means the date by which a specified invoice payment reduction, or a discount, can be taken.

(p) *Due date* means the date on which Federal payment should be made. Determination of such dates is discussed in § 1315.4(g).

(q) *Electronic commerce* means the end to end electronic exchange of business information using electronic data interchange, electronic mail, electronic bulletin boards, electronic funds transfer (EFT) and similar technologies.

(r) *Electronic data interchange* means the computer to computer exchange of routine business information in a standard format. The standard formats are developed and maintained by the Accredited Standards Committee of the American National Standards Institute, 11 West 42d Street, New York, NY 10036.

(s) *Electronic Funds Transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Automated Clearing House and Fedwire transfers.

(t) *Emergency payment* means a payment made under an emergency defined as a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mud slide, snowstorm, drought, fire, explosion, or other catastrophe which requires Federal emergency assistance to supplement State and local efforts to save lives and property, and ensure public health and safety; and the release or threatened release of hazardous substances.

(u) *Evaluated receipts* means contractually designated use of the acceptance document and the contract as the basis for payment without requiring a separate invoice.

(v) *Fast payment* means a payment procedure under the Federal Acquisition Regulation at Part 13.4 which allows payment under limited conditions to a vendor prior to the Government's verification that supplies have been received and accepted.

(w) *Federal Acquisition Regulation (FAR)* means the regulation (48 CFR chapter 1) that governs most Federal acquisition and related payment issues. Agencies may also have supplements prescribing unique agency policies.

(x) *Governmentwide commercial purchase cards* means internationally-accepted purchase cards available to all Federal agencies under a General Services Administration contract for the purpose of making simplified acquisitions of up to the threshold set by the Federal Acquisition Regulation or for travel expenses or payment, for purchases of fuel, or other purposes as authorized by the contract.

(y) *Invoice* means a bill, written document or electronic transmission, provided by a vendor requesting payment for property received or services rendered. A proper invoice must meet the requirements of § 1315.9(b). The term invoice can include receiving reports and delivery tickets when contractually designated as invoices.

(z) *Payment date* means the date on which a check for payment is dated or the date of an electronic fund transfer (EFT) payment (settlement date).

(aa) *Rebate* means a monetary incentive offered to the Government by Governmentwide commercial purchase

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card issuers to pay purchase card invoices early.

(bb) *Receiving office* means the entity which physically receives the goods or services, and may be separate from the accepting entity.

(cc) *Receiving report* means written or electronic evidence of receipt of goods or services by a Government official. Receiving reports must meet the requirements of § 1315.9(c).

(dd) *Recurring payments* means payments for services of a recurring nature, such as rents, building maintenance, transportation services, parking, leases, and maintenance for equipment, pagers and cellular phones, etc., which are performed under agency-vendor agreements providing for payments of definite amounts at fixed periodic intervals.

(ee) *Settlement date* means the date on which an EFT payment is credited to the vendor's financial institution.

(ff) *Taxpayer Identifying Number (TIN)* means the nine digit Employer Identifying Number or Social Security Number as defined in Section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

(gg) *Utilities and telephones* means electricity, water, sewage services, telephone services, and natural gas. Utilities can be regulated, unregulated, or under contract.

(hh) *Vendor* means any person, organization, or business concern engaged in a profession, trade, or business and any not-for-profit entity operating as a vendor (including State and local governments and foreign entities and foreign governments, but excluding Federal entities).

[64 FR 52586, Sept. 29, 1999, as amended at 65 FR 78404, Dec. 15, 2000]

§ 1315.3 Responsibilities.

Each agency head is responsible for the following:

(a) *Issuing internal procedures.* Ensuring that internal procedures will include provisions for monitoring the causes of late payments and any interest penalties incurred, taking necessary corrective action, and handling inquiries.

(b) *Internal control systems.* Ensuring that effective internal control systems are established and maintained as re-

quired by OMB Circular A-123, "Management Accountability and Control."¹ Administrative activities required for payments to vendors under this part are subject to periodic quality control validation to be conducted no less frequently than once annually. Quality control processes will be used to confirm that controls are effective and that processes are efficient. Each agency head is responsible for establishing a quality control program in order to quantify payment performance and qualify corrective actions, aid cash management decision making, and estimate payment performance if actual data is unavailable.

(c) *Financial management systems.* Ensuring that financial management systems comply with OMB Circular A-127, "Financial Management Systems."² Agency financial systems shall provide standardized information and electronic data exchange to the central management agency. Systems shall provide complete, timely, reliable, useful and consistent financial management information. Payment capabilities should provide accurate and useful management reports on payments.

(d) *Reviews.* Ensuring that Inspectors General and internal auditors review payments performance and systems accuracy, consistent with the Chief Financial Officers (CFO) Act requirements.

(e) *Timely payments and interest penalties.* Ensuring timely payments and payment of interest penalties where required.

§ 1315.4 Prompt payment standards and required notices to vendors.

Agency business practices shall conform to the following standards:

(a) *Required documentation.* Agencies will maintain paper or electronic documentation as required in § 1315.9.

(b) *Receipt of invoice.* For the purposes of determining a payment due date and the date on which interest will begin to accrue if a payment is late, an invoice shall be deemed to be received:

(1) On the later of:

¹For availability of OMB circulars, see 5 CFR 1310.3.

²See footnote 1 in § 1315.3(b).

(i) For invoices that are mailed, the date a proper invoice is actually received by the designated agency office if the agency annotates the invoice with date of receipt at the time of receipt. For invoices electronically transmitted, the date a readable transmission is received by the designated agency office, or the next business day if received after normal working hours; or

(ii) The seventh day after the date on which the property is actually delivered or performance of the services is actually completed; unless—

(A) The agency has actually accepted the property or services before the seventh day in which case the acceptance date shall substitute for the seventh day after the delivery date; or

(B) A longer acceptance period is specified in the contract, in which case the date of actual acceptance or the date on which such longer acceptance period ends shall substitute for the seventh day after the delivery date;

(2) On the date placed on the invoice by the contractor, when the agency fails to annotate the invoice with date of receipt of the invoice at the time of receipt (such invoice must be a proper invoice); or

(3) On the date of delivery, when the contract specifies that the delivery ticket may serve as an invoice.

(c) *Review of invoice.* Agencies will use the following procedures in reviewing invoices:

(1) Each invoice will be reviewed by the designated agency office as soon as practicable after receipt to determine whether the invoice is a proper invoice as defined in §1315.9(b);

(2) When an invoice is determined to be improper, the agency shall return the invoice to the vendor as soon as practicable after receipt, but no later than 7 days after receipt (refer also to paragraph (g)(4) of this section regarding vendor notification and determining the payment due date.) The agency will identify all defects that prevent payment and specify all reasons why the invoice is not proper and why it is being returned. This notification to the vendor shall include a request for a corrected invoice, to be clearly marked as such;

(3) Any media which produce tangible recordings of information in lieu of “written” or “original” paper document equivalents should be used by agencies to expedite the payment process, rather than delaying the process by requiring “original” paper documents. Agencies should ensure adequate safeguards and controls to ensure the integrity of the data and to prevent duplicate processing.

(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.

(f) *Starting the payment period.* The period available to an agency to make timely payment of an invoice without incurring an interest penalty shall begin on the date of receipt of a proper invoice (see paragraph (b) of this section) except where no invoice is required (e.g., for some recurring payments as defined in §1315.2(dd)).

(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.

(3) *Certain commodity payments.* (i) For meat, meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, any perishable egg product, fresh or frozen fish as defined in the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), payment will be made no later than the seventh day after delivery.

(ii) For perishable agricultural commodities, as defined in Section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499 a(4)), payment will be made no later than the 10th day after delivery, unless another payment date is specified in the contract.

(iii) For dairy products (as defined in Section 111(e) of the Dairy Production Stabilization Act of 1983, 7 U.S.C. 4502(e)), and including, at a minimum, liquid milk, cheese, certain processed cheese products, butter, yogurt, and ice cream, edible fats or oils, and food products prepared from edible fats or oils (including, at a minimum, mayonnaise, salad dressings and other similar products), payment will be made no later than 10 days after the date on which a proper invoice, for the amount due, has been received by the agency acquiring the above listed products. Nothing in the Act permits limitation to refrigerated products. When questions arise about the coverage of a specific product, prevailing industry practices should be followed in specifying a contractual payment due date.

(4) *Mixed invoices for commodities.* When an invoice is received for items with different payment periods, agencies:

(i) May pay the entire invoice on the due date for the commodity with the earliest due date, if it is considered in the best interests of the agency;

(ii) May make split payments by the due date applicable to each category;

(iii) Shall pay in accordance with the contractual payment provisions (which may not exceed the statutory mandated periods specified in paragraph (g)(2) of this section); and

(iv) Shall not require vendors to submit multiple invoices for payment of individual orders by the agency.

(5) *Notification of improper invoice.* When an agency fails to make notification of an improper invoice within seven days according to paragraph (c)(2) of this section (three days for meat and meat food, fish and seafood products; and five days for perishable agricultural commodities, dairy products, edible fats or oils and food products prepared from edible fats or oils), the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the seventh day (or the third or fifth day, as otherwise specified in this paragraph (g)(4)) and the day notification was transmitted to the vendor. Calculation of interest penalties, if any, will be based on an adjusted due date reflecting the reduced number of days allowable for payment;

(h) *Payment date.* Payment will be considered to be made on the settlement date for an electronic funds transfer (EFT) payment or the date of the check for a check payment. Payments falling due on a weekend or federal holiday may be made on the following business day without incurring late payment interest penalties.

(i) *Late payment.* When payments are made after the due date, interest will be paid automatically in accordance with the procedures provided in this part.

(j) *Timely payment.* An agency shall make payments no more than seven days prior to the payment due date, but as close to the due date as possible, unless the agency head or designee has determined, on a case-by-case basis for specific payments, that earlier payment is necessary. This authority must be used cautiously, weighing the benefits of making a payment early against the good stewardship inherent in effective cash management practices. An agency may use the "accelerated payment methods" in §1315.5 when it determines that such earlier payment is necessary.

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(k) *Payments for partial deliveries.* Agencies shall pay for partial delivery of supplies or partial performance of services after acceptance, unless specifically prohibited by the contract. Payment is contingent upon submission of a proper invoice if required by the contract.

[64 FR 52586, Sept. 29, 1999, as amended at 65 FR 78405, Dec. 15, 2000]

§ 1315.5 Accelerated payment methods.

(a) *A single invoice under \$2,500.* Payments may be made as soon as the contract, proper invoice, receipt and acceptance documents are matched except where statutory authority prescribes otherwise and except where otherwise contractually stipulated (e.g., governmentwide commercial purchase card.) Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

(b) *Small business (as defined in FAR 19.001 (48 CFR 19.001)).* Agencies may pay a small business as quickly as possible, when all proper documentation, including acceptance, is received in the payment office and before the payment due date. Such payments are not subject to payment restrictions stated elsewhere in this part. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

(c) *Emergency payments.* Payments related to emergencies and disasters (as defined in the Robert T. Stafford Disaster Relief Act and Emergency Assistance, Pub. L. 93-288, as amended (42 U.S.C. 5 121 *et seq.*); payments related to the release or threatened release of hazardous substances (as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, Pub. L. 96-510, 42 U.S.C. 9606); and payments made under a military contingency (as defined in 10 U.S.C. 101(a)(13)) may be made as soon as the contract, proper invoice, receipt and acceptance documents or any other agreement are matched. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

(d) *Interim payments under cost-reimbursement contracts for services.* For interim payments under cost-reimburse-

ment service contracts, agency heads may make payments earlier than seven days prior to the payment due date in accordance with agency regulations or policies.

[64 FR 52586, Sept. 29, 1999, as amended at 65 FR 78405, Dec. 15, 2000]

§ 1315.6 Payment without evidence that supplies have been received (fast payment).

(a) In limited situations, payment may be made without evidence that supplies have been received. Instead, a contractor certification that supplies have been shipped may be used as the basis for authorizing payment. Payment may be made within 15 days after the date of receipt of the invoice. This payment procedure may be employed only when all of the following conditions are present:

(1) Individual orders do not exceed \$25,000 (except where agency heads permits a higher amount on a case-by-case basis);

(2) Deliveries of supplies are to occur where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that make it impracticable to make timely payments based on evidence of Federal acceptance;

(3) Title to supplies will vest in the Government upon delivery to a post office or common carrier for mailing or shipment to destination or upon receipt by the Government if the shipment is by means other than the Postal Service or a common carrier; and

(4) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(b) Agencies shall promptly inspect and accept supplies acquired under these procedures and shall ensure that receiving reports and payment documents are matched and steps are taken to correct discrepancies.

(c) Agencies shall ensure that specific internal controls are in place to assure that supplies paid for are received.

(d) As authorized by the 1988 Amendment to the Prompt Payment Act (Section 11(b)(1)(C)), a contract clause at 48

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CFR 52.213-1 is provided in the Federal Acquisition Regulations (FAR) at 48 CFR part 13, subpart 13.4 “Fast Payment Procedure,” for use when using this fast payment procedure.

§ 1315.7 Discounts.

Agencies shall follow these procedures in taking discounts and determining the payment due dates when discounts are taken:

(a) *Economically justified discounts.* If an agency is offered a discount by a vendor, whether stipulated in the contract or offered on an invoice, an agency may take the discount if economically justified (see discount formula in Treasury Financial Manual (TFM) 6-8040.40)³ but only after acceptance has occurred. Agencies are encouraged to include discount terms in a contract to give agencies adequate time to take the discount if it is determined to be economically justified.

(b) *Discounts taken after the discount date.* If an agency takes the discount after the deadline, the agency shall pay an interest penalty on any amount remaining unpaid as prescribed in § 1315.10(a)(6).

(c) *Payment date.* When a discount is taken, payment will be made as close as possible to, but no later than, the discount date.

(d) *Start date.* The period for taking the discount is calculated from the date placed on the proper invoice by the vendor. If there is no invoice date on the invoice by the vendor, the discount period will begin on the date a proper invoice is actually received and date stamped or otherwise annotated by the designated agency office.

§ 1315.8 Rebates.

Agencies shall determine governmentwide commercial purchase card payment dates based on an analysis of the total costs and total benefits to the Federal government as a whole, unless specified in a contract. When calculating costs and benefits, agencies are expected to include the cost to the gov-

³The Treasury Financial Manual is available by calling the Prompt Payment Hotline at 800-266-9667 or the Prompt Payment web site at <http://www.fms.treas.gov/prompt/index.html>.

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ernment of paying early. This cost is the interest the government would have earned, at the Current Value of Funds rate, for each day that payment was not made. Agencies may factor in benefits gained from paying early due to, for example, streamlining the payment process or other efficiencies. A rebate formula is provided in § 1315.17 and at the Prompt Payment website at www.fms.treas.gov/prompt/index.html.

§ 1315.9 Required documentation.

Agencies are required to ensure the following payment documentation is established to support payment of invoices and interest penalties:

(a) The following information from the contract is required as payment documentation:

(1) Payment due date(s) as defined in § 1315.4(g);

(2) A notation in the contract that partial payments are prohibited, if applicable;

(3) For construction contracts, specific payment due dates for approved progress payments or milestone payments for completed phases, increments, or segments of the project;

(4) If applicable, a statement that the special payment provisions of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), or the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), or Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)) shall apply;

(5) Where considered appropriate by the agency head, the specified acceptance period following delivery to inspect and/or test goods furnished or to evaluate services performed is stated;

(6) Name (where practicable), title, telephone number, and complete mailing address of officials of the Government’s designated agency office, and of the vendor receiving the payments;

(7) Reference to requirements under the Prompt Payment Act, including the payment of interest penalties on late invoice payments (including progress payments under construction contracts);

(8) Reference to requirements under the Debt Collection Improvement Act (Pub. L. 104-134, 110 Stat. 1321), including the requirement that payments must be made electronically except in

situations where the EFT requirement is waived under 31 CFR 208.4. Where electronic payment is required, the contract will stipulate that banking information must be submitted no later than the first request for payment;

(9) If using Fast Payment, the proper FAR clause stipulating Fast Payment is required.

(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:

- (i) Name of vendor;
- (ii) Invoice date;
- (iii) Government contract number, or other authorization for delivery of goods or services;
- (iv) Vendor invoice number, account number, and/or any other identifying number agreed to by contract;
- (v) Description (including, for example, contract line/subline number), price, and quantity of goods and services rendered;
- (vi) Shipping and payment terms (unless mutually agreed that this information is only required in the contract);
- (vii) Taxpayer Identifying Number (TIN), unless agency procedures provide otherwise;
- (viii) Banking information, unless agency procedures provide otherwise, or except in situations where the EFT requirement is waived under 31 CFR 208.4;
- (ix) Contact name (where practicable), title and telephone number;
- (x) Other substantiating documentation or information required by the contract.

(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:

- (1) Name of vendor;

(2) Contract or other authorization number;

(3) Description of goods or services;

(4) Quantities received, if applicable;

(5) Date(s) goods were delivered or services were provided;

(6) Date(s) goods or services were accepted;

(7) Signature (or electronic alternative when supported by appropriate internal controls), printed name, telephone number, mailing address of the receiving official, and any additional information required by the agency.

(d) When a delivery ticket is used as an invoice, it must contain information required by agency procedures. The requirements in paragraph (b) of this section do not apply except as provided by agency procedures.

[64 FR 52586, Sept. 29, 1999, as amended at 65 FR 78405, Dec. 15, 2000]

§ 1315.10 Late payment interest penalties.

(a) *Application and calculation.* Agencies will use the following procedures in calculating interest due on late payments:

(1) Interest will be calculated from the day after the payment due date through the payment date at the interest rate in effect on the day after the payment due date;

(2) Adjustments will be made for errors in calculating interest;

(3) For up to one year, interest penalties remaining unpaid at the end of any 30 day period will be added to the principal and subsequent interest penalties will accrue on that amount until paid;

(4) When an interest penalty is owed and not paid, interest will accrue on the unpaid amount until paid, except as described in paragraph (a)(5) of this section;

(5) Interest penalties under the Prompt Payment Act will not continue to accrue:

(i) After the filing of a claim for such penalties under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*); or

(ii) For more than one year;

(6) When an agency takes a discount after the discount date, interest will be paid on the amount of the discount taken. Interest will be calculated for the period beginning the day after the

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specified discount date through the date of payment of the discount erroneously taken;

(7) Interest penalties of less than one dollar need not be paid;

(8) If the banking information supplied by the vendor is incorrect, interest under this regulation will not accrue until seven days after such correct information is received (provided that the vendor has been given notice of the incorrect banking information within seven days after the agency is notified that the information is incorrect);

(9) Interest calculations are to be based on a 360 day year; and

(10) The applicable interest rate may be obtained by calling the Department of Treasury's Financial Management Service (FMS) Prompt Payment help line at 1-800-266-9667.

(b) *Payment.* Agencies will meet the following requirements in paying interest penalties:

(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;

(2) Late payment interest penalties shall be paid without regard to whether the vendor has requested payment of such penalty, and shall be accompanied by a notice stating the amount of the interest penalty, the number of days late and the rate used;

(3) The invoice number or other agreed upon transaction reference number assigned by the vendor should be included in the notice to assist the vendor in reconciling the payment. Additionally, it is optional as to whether or not an agency includes the contract number in the notice to the vendor;

(4) The temporary unavailability of funds does not relieve an agency from the obligation to pay these interest penalties or the additional penalties required under § 1315.11; and

(5) Agencies shall pay any late payment interest penalties (including any additional penalties required under § 1315.11) under this part from the funds available for the administration of the program for which the penalty was in-

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curred. The Prompt Payment Act does not authorize the appropriation of additional amounts to pay penalties.

(c) *Penalties not due.* Interest penalties are not required:

(1) When payment is delayed because of a dispute between a Federal agency and a vendor over the amount of the payment or other issues concerning compliance with the terms of a contract. Claims concerning disputes, and any interest that may be payable with respect to the period, while the dispute is being settled, will be resolved in accordance with the provisions in the Contract Disputes Act of 1978, (41 U.S.C. 601 *et seq.*), except for interest payments required under 31 U.S.C. 3902(h)(2);

(2) When payments are made solely for financing purposes or in advance, except for interest payment required under 31 U.S.C. 3902(h)(2);

(3) For a period when amounts are withheld temporarily in accordance with the contract;

(4) When an EFT payment is not credited to the vendor's account by the payment due date because of the failure of the Federal Reserve or the vendor's bank to do so; or

(5) When the interest penalty is less than \$1.00.

[64 FR 52586, Sept. 29, 1999, as amended at 65 FR 78405, Dec. 15, 2000]

§ 1315.11 Additional penalties.

(a) *Vendor entitlements.* A vendor shall be entitled to an additional penalty payment when the vendor is owed a late payment interest penalty by an agency of \$1.00 or more, if it:

(1) Receives a payment dated after the payment due date which does not include the interest penalty also due to the vendor;

(2) Is not paid the interest penalty by the agency within 10 days after the actual payment date; and

(3) Makes a written request that the agency pay such an additional penalty. Such request must be postmarked, received by facsimile, or by electronic mail, by the 40th day after payment was made. If there is no postmark or if it is illegible, the request will be valid if it is received and annotated with the date of receipt by the agency by the

40th day. The written request must include the following:

(i) Specific assertion that late payment interest is due for a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required; and

(ii) A copy of the invoice on which late payment interest was due but not paid and a statement that the principal has been received, and the date of receipt of the principle.

(b) *Maximum penalty.* The additional penalty shall be equal to one hundred (100) percent of the original late payment interest penalty but must not exceed \$5,000.

(c) *Minimum penalty.* Regardless of the amount of the late payment interest penalty, the additional penalty paid shall not be less than \$25. No additional penalty is owed, however, if the amount of the interest penalty is less than \$1.00.

(d) *Penalty basis.* The penalty is based on individual invoices. Where payments are consolidated for disbursing purposes, the penalty determinations shall be made separately for each invoice therein.

(e) *Utility payments.* The additional penalty does not apply to the payment of utility bills where late payment penalties for these bills are determined through the tariff rate-setting process.

§ 1315.12 Payments to governmentwide commercial purchase card issuers.

Standards for payments to government wide commercial purchase card issuers follow:

(a) *Payment date.* All individual purchase card invoices under \$2,500 may be paid at any time, but not later than 30 days after the receipt of a proper invoice. Matching documents is not required before payment. The payment due date for invoices in the amount of \$2,500 or more shall be determined in accordance with §1315.8. I TFM 4-4535.10⁴ permits payment of the bill in full prior to verification that goods or services were received.

(b) *Disputed line items.* Disputed line items do not render the entire invoice an improper invoice for compliance

with this proposed regulation. Any undisputed items must be paid in accordance with paragraph (a) of this section.

§ 1315.13 Commodity Credit Corporation payments.

As provided in §1315.1(d), the provisions of this part apply to payments relating to the procurement of property and services made by the Commodity Credit Corporation (CCC) pursuant to Section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)) (“CCC Charter Act”) and payments to which producers on a farm are entitled under the terms of an agreement entered into pursuant to the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) (“1949 Act”). Such payments shall be subject to the following provisions:

(a) *Payment standards.* Payments to producers on a farm under agreements entered into under the 1949 Act and payments to vendors providing property and services under the CCC Charter Act, shall be made as close as possible to the required payment date or loan closing date.

(b) *Interest penalties.* An interest penalty shall be paid to vendors or producers if the payment has not been made by the required payment or loan closing date. The interest penalty shall be paid:

(1) On the amount of payment or loan due;

(2) For the period beginning on the first day beginning after the required payment or loan closing date and, except as determined appropriate by the CCC consistent with applicable law, ending on the date the amount is paid or loaned; and

(3) Out of funds available under Section 8 of the CCC Charter Act (15 U.S.C. 714f).

(c) *Contract Disputes Act of 1978.* Insofar as covered CCC payments are concerned, provisions relating to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*) in §1315.10(a)(5)(i) and §1315.6(a) do not apply.

(d) *Extended periods for payment.* Notwithstanding other provisions of this part, the CCC may allow claims for such periods of time as are consistent with authorities applicable to its operations.

⁴ See footnote 3 in §1315.7(a).

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§ 1315.14 Payments under construction contracts.

(a) *Payment standards.* Agencies shall follow these standards when making progress payments under construction contracts:

(1) An agency may approve a request for progress payment if the application meets the requirements specified in paragraph (b) of this section;

(2) The certification by the prime vendor as defined in paragraph (b)(2) of this section is not to be construed as final acceptance of the subcontractor's performance;

(3) The agency shall return any such payment request which is defective to the vendor within seven days after receipt, with a statement identifying the defect(s);

(4) A vendor is obligated to pay interest to the Government on unearned amounts in its possession from:

(i) The eighth day after receipt of funds from the agency until the date the vendor notifies the agency that the performance deficiency has been corrected, or the date the vendor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the vendor discovers that all or a portion of a payment received from the agency constitutes a payment for the vendor's performance that fails to conform to the specifications, terms, and conditions of its contract with the agency, under 31 U.S.C. 3905(a); or

(ii) The eighth day after the receipt of funds from the agency until the date the performance deficiency of a subcontractor is corrected, or the date the vendor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the vendor discovers that all or a portion of a payment received from the agency would constitute a payment for the subcontractor's performance that fails to conform to the subcontract agreement and may be withheld, under 31 U.S.C. 3905(e);

(5) Interest payment on unearned amounts to the government under 31 U.S.C. 3905(a)(2) or 3905(e)(6), shall:

(i) Be computed on the basis of the average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the

date the vendor received the unearned amount;

(ii) Be deducted from the next available payment to the vendor; and

(iii) Revert to the Treasury.

(b) *Required documentation.* (1) Substantiation of the amount(s) requested shall include:

(i) An itemization of the amounts requested related to the various elements of work specified in the contract;

(ii) A listing of the amount included for work performed by each subcontractor under the contract;

(iii) A listing of the total amount for each subcontract under the contract;

(iv) A listing of the amounts previously paid to each subcontractor under the contract; and

(v) Additional supporting data and detail in a form required by the contracting officer.

(2) Certification by the prime vendor is required, to the best of the vendor's knowledge and belief, that:

(i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(ii) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of 31 U.S.C. chapter 39; and

(iii) The application does not include any amounts which the prime vendor intends to withhold or retain from a subcontractor or supplier, in accordance with the terms and conditions of their subcontract.

(c) *Interest penalties.* (1) Agencies will pay interest on:

(i) A progress payment request (including a monthly percentage-of-completion progress payment or milestone payments for completed phases, increments, or segments of any project) that is approved as payable by the agency pursuant to paragraph (b) of this section, and remains unpaid for:

(A) A period of more than 14 days after receipt of the payment request by the designated agency office; or

(B) A longer period specified in the solicitation and/or contract if required,

to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the vendor's performance under the contract;

(ii) Any amounts that the agency has retained pursuant to a prime contract clause providing for retaining a percentage of progress payments otherwise due to a vendor and that are approved for release to the vendor, if such retained amounts are not paid to the vendor by a date specified in the contract, or, in the absence of such a specified date, by the 30th day after final acceptance;

(iii) Final payments, based on completion and acceptance of all work (including any retained amounts), and payments for partial performances that have been accepted by the agency, if such payments are made after the later of:

(A) The 30th day after the date on which the designated agency office receives a proper invoice; or

(B) The 30th day after agency acceptance of the completed work or services. Acceptance shall be deemed to have occurred on the effective date of contract settlement on a final invoice where the payment amount is subject to contract settlement actions.

(2) For the purpose of computing interest penalties, acceptance shall be deemed to have occurred on the seventh day after work or services have been completed in accordance with the terms of the contract.

§ 1315.15 Grant recipients.

Recipients of Federal assistance may pay interest penalties if so specified in their contracts with contractors. However, obligations to pay such interest penalties will not be obligations of the United States. Federal funds may not be used for this purpose, nor may interest penalties be used to meet matching requirements of federally assisted programs.

§ 1315.16 Relationship to other laws.

(a) *Contract Disputes Act of 1978 (41 U.S.C. 605)*. (1) A claim for an interest penalty (including the additional penalty for non-payment of interest if the vendor has complied with the requirements of §1315.9) not paid under this

part may be filed under Section 6 of the Contract Disputes Act.

(2) An interest penalty under this part does not continue to accrue after a claim for a penalty is filed under the Contract Disputes Act or for more than one year. Once a claim is filed under the Contract Disputes Act interest penalties under this part will never accrue on the amounts of the claim, for any period after the date the claim was filed. This does not prevent an interest penalty from accruing under Section 13 of the Contract Disputes Act after a penalty stops accruing under this part. Such penalty may accrue on an unpaid contract payment and on the unpaid penalty under this part.

(3) This part does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a vendor over the amount of payment or compliance with the contract. A claim related to such a dispute and interest payable for the period during which the dispute is being resolved is subject to the Contract Disputes Act.

(b) *Small Business Act (15 U.S.C. 644(k))*. This Act has been amended to require that any agency with an Office of Small and Disadvantaged Business Utilization must assist small business concerns to obtain payments, late payment interest penalties, additional penalties, or information due to the concerns.

§ 1315.17 Formulas.

(a) *Rebate formula*. (1) Agencies shall determine credit card payment dates based on an analysis of the total benefits to the Federal government as a whole. Specifically, agencies should compare daily basis points offered by the card issuer with the corresponding daily basis points of the government's Current Value of Funds (CVF) rate. If the basis points offered by the card issuer are greater than the daily basis points of the government's funds, the government will maximize savings by paying on the earliest possible date. If the basis points offered by the card issuer are less than the daily basis points of the government's funds, the government will minimize costs by paying on the Prompt Payment due

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date or the date specified in the contract.

(2) Agencies may use a rebate spreadsheet which automatically calculates the net savings to the government and whether the agency should pay early or late. The only variables required for input to this spreadsheet are the CVF rate, the Maximum Discount Rate, that is, the rate from which daily basis points offered by the card issuer are derived, and the amount of debt. This spreadsheet is available for use on the prompt payment website at www.fms.treas.gov/prompt/index/.html.

(3) If agencies chose not to use the spreadsheet, the following may be used to determine whether to pay early or late. To calculate whether to pay early or late, agencies must first determine the respective basis points. To obtain Daily Basis Points offered by card issuer, refer to the agency's contract with the card issuer. Use the following formula to calculate the average daily basis points of the CVF rate:

(CVF/360) * 100

(4) For example: The daily basis points offered to agency X by card issuer Y are 1.5 basis points. That is, for every day the agency delays paying the card issuer the agency loses 1.5 basis points in savings. At a CVF of 5 percent, the daily basis points of the Current Value of Funds Rate are 1.4 basis points. That is, every day the agency delays paying, the government earns 1.4 basis points. The basis points were calculated using the formula:

(CVF/360) * 100
(5/360) * 100 = 1.4

(5) Because 1.5 is greater than 1.4, the agency should pay as early as possible. If the basis points offered by the card issuer are less than the daily basis points of the government's funds (if for instance the rebate equaled 1.3 basis points and the CVF was still 1.4 basis points or if the rebate equaled 1.5 but the CVF equaled 1.6), the government will minimize costs by paying as late as possible, but by the payment due date.

(b) *Daily simple interest formula.* (1) To calculate daily simple interest the following formula may be used:

P(r/360*d)

Where:

P is the amount of principle or invoice amount;

r equals the Prompt Payment interest rate; and

d equals the numbers of days for which interest is being calculated.

(2) For example, if a payment is due on April 1 and the payment is not made until April 11, a simple interest calculation will determine the amount of interest owed the vendor for the late payment. Using the formula above, at an invoice amount of \$1,500 paid 10 days late and an interest rate of 6.5%, the amount of interest owed is calculated as follows:

\$1,500 (.065/360*10) = \$2.71

(c) *Monthly compounding interest formula.* (1) To calculate interest as required in §1315.10(a)(3), the following formula may be used:

P(1+r/12) ***(1+(r/360*d)) - P

Where:

P equals the principle or invoice amount;

r equals the interest rate;

n equals the number of months; and

d equals the number of days for which interest is being calculated.

(2) The first part of the equation calculates compounded monthly interest. The second part of the equation calculates simple interest on any additional days beyond a monthly increment.

(3) For example, if the amount owed is \$1,500, the payment due date is April 1, the agency does not pay until June 15 and the applicable interest rate is 6 percent, interest is calculated as follows:

\$ 1,500(1+.06/12)² *(1+(0.06/360*15)) - \$1,500 = \$18.83

§ 1315.18 Inquiries.

(a) *Regulation.* Inquiries concerning this part may be directed in writing to the Department of the Treasury, Financial Management Service (FMS), Cash Management Policy and Planning Division, 401 14th Street, SW. Washington, DC 20227, (202) 874-6590, or by calling the Prompt Payment help line at 1-800-266-9667, by emailing questions to FMS at prompt.inquiries@fms.sprint.com, or by completing a Prompt Payment inquiry

form available at www.fms.treas.gov/prompt/inquiries.html.

(b) *Applicable interest rate.* The rate is published by the Fiscal Service, Department of the Treasury, semiannually in the FEDERAL REGISTER on or about January 1 and July 1. The rate also may be obtained from the Department of Treasury's Financial Management Service (FMS) at 1-800-266-9667. This information is also available at the FMS Prompt Payment Web Site at <http://www.fms.treas.gov/prompt/index.html>.

(c) *Agency payments.* Questions concerning delinquent payments should be directed to the designated agency office, or the office responsible for issuing the payment if different from the designated agency office. Questions about disagreements over payment amount or timing should be directed to the contracting officer for resolution. Small business concerns may obtain additional assistance on payment issues by contacting the agency's Office of Small and Disadvantaged Business Utilization.

§ 1315.19 Regulatory references to OMB Circular A-125.

This part supercedes OMB Circular A-125 ("Prompt Payment"). Until revised to reflect the codification in this part, regulatory references to Circular A-125 shall be construed as referring to this part.

§ 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.

[65 FR 78405, Dec. 15, 2000]

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

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- 1320.2 Effect.
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- 1320.7 Agency head and Senior Official responsibilities.
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APPENDIX A TO PART 1320—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY

AUTHORITY: 31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

SOURCE: 60 FR 44984, Aug. 29, 1995, unless otherwise noted.

§ 1320.1 Purpose.

The purpose of this part is to implement the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35)(the Act) concerning collections of information. It is issued under the authority of section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or