

SUBCHAPTER B—OMB DIRECTIVES

PART 1310—OMB CIRCULARS

Sec.

1310.1 Policy guidelines.

1310.3 Availability of circulars.

1310.5 List of current circulars.

AUTHORITY: 31 U.S.C. 501-06.

SOURCE: 63 FR 70311, Dec. 21, 1998, unless otherwise noted.

§ 1310.1 Policy guidelines.

In carrying out its responsibilities, the Office of Management and Budget issues policy guidelines to Federal agencies to promote efficiency and uniformity in Government activities. These guidelines are normally in the form of circulars.

§ 1310.3 Availability of circulars.

Copies of individual circulars are available at OMB's Internet home page; you may access them at <http://www.whitehouse.gov/WH/EOP/omb>. Copies are also available from the EOP Publications Office, 725 17th Street NW., Room 2200, Washington, DC 20503; (202) 395-7332. Selected circulars are also available through fax-on-demand, by calling (202) 395-9068.

§ 1310.5 List of current circulars.

The following list includes all circulars in effect as of December 1, 1998.

No. and Title

A-1—"System of Circulars and Bulletins to Executive Departments and Establishments"
A-11—"Preparation and Submission of Budget Estimates" (Part 1)
"Preparation and Submission of Strategic Plans and Annual Performance Plans" (Part 2)
"Planning, Budgeting, and Acquisition of Capital Assets" (Part 3)
"Capital Programming Guide" (Supplement to Part 3)
A-16—"Coordination of Surveying, Mapping, and Related Spatial Data Activities"
A-19—"Legislative Coordination and Clearance"
A-21—"Cost Principles for Educational Institutions"
A-25—"User Charges"

A-34—"Instructions on Budget Execution"

A-45—"Rental and Construction of Government Quarters"

A-50—"Audit Followup"

A-76—"Performance of Commercial Activities"

A-87—"Cost Principles for State, Local, and Indian Tribal Governments"

A-89—"Federal Domestic Assistance Program Information"

A-94—"Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs"

A-97—"Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968"

A-102—"Grants and Cooperative Agreements With State and Local Governments"

A-109—"Major System Acquisitions"

A-110—"Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

A-119—"Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"

A-122—"Cost Principles for Non-Profit Organizations"

A-123—"Management Accountability and Control"

A-125—"Prompt Payment"

A-126—"Improving the Management and Use of Government Aircraft"

A-127—"Financial Management Systems"

A-129—"Policies for Federal Credit Programs and Non-Tax Receivables"

A-130—"Management of Federal Information Resources"

A-131—"Value Engineering"

A-133—"Audits of States, Local Governments, and Non-Profit Organizations"

A-134—"Financial Accounting Principles and Standards"

A-135—“Management of Federal Advisory Committees”

PART 1312—CLASSIFICATION, DOWNGRADING, DECLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

Subpart A—Classification and Declassification of National Security Information

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AUTHORITY: Executive Order 12958, April 20, 1995, 3 CFR, 1995 Comp., p. 333.

SOURCE: 62 FR 25426, May 9, 1997, unless otherwise noted.

Subpart A—Classification and Declassification of National Security Information

§ 1312.1 Purpose and authority.

This subpart sets forth the procedures for the classification and declassification of national security information in the possession of the Office of Management and Budget. It is issued under the authority of Executive Order 12958, (60 FR 19825, 3 CFR, 1995 Comp., P.333), as implemented by Information Security Oversight Office Directive No. 1 (32 CFR part 2001), and is applicable to all OMB employees.

§ 1312.2 Responsibilities.

The effectiveness of the classification and declassification program in OMB depends entirely on the amount of attention paid to it by supervisors and their staffs in those offices and divisions that possess or produce classified material. Officials who originate classified information are responsible for proper assignment of a classification to that material and for the decision as to its declassification. Officials who produce documents containing classified information must determine the source of the classification for that information and must ensure that the proper identity of that source is shown on the document. Custodians of classified material are responsible for its safekeeping and for ensuring that such material is adequately marked as to current classification. Custodians are also responsible for the control of and accounting for all classified material within their area of jurisdiction as prescribed in OMB Manual Section 1030.

(a) *EOP Security Officer*. In cooperation with the Associate Director (or Assistant Director) for Administration, the EOP Security Officer supervises the administration of this section and develops programs to assist in the compliance with the Order. Specifically, he:

- (1) Promotes the correct understanding of this section by all employees by providing annual security refresher briefings and ensures that new employees attend initial briefings about overall security procedures and policies.

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(2) Issues and keeps current such classification guides and guidelines for review for declassification as are required by the Order.

(3) Conducts periodic reviews of classified documents produced and provides assistance and guidance where necessary.

(4) Maintains and publishes a current listing of all officials who have been designated in writing to have Top Secret, Secret, and Confidential original classification authority.

(b) *Heads of divisions or offices.* The head of each division or major organizational unit is responsible for the administration of this section within his or her area. Appropriate internal guidance should be issued to cover special or unusual conditions within an office.

§ 1312.3 Classification requirements.

United States citizens must be kept informed about the activities of their Government. However, in the interest of national security, certain official information must be subject to constraints on its dissemination or release. This information is classified in order to provide that protection.

(a) Information shall be considered for classification if it concerns:

(1) Military plans, weapons systems, or operations;

(2) Foreign government information;

(3) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(4) Foreign relations or foreign activities of the United States, including confidential sources;

(5) Scientific, technological, or economic matters relating to the national security;

(6) United States Government programs for safeguarding nuclear materials or facilities; or

(7) Vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

(b) When information is determined to meet one or more of the criteria in paragraph (a) of this section, it shall be classified by an original classification authority when he/she determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

(c) Unauthorized disclosure of foreign government information, including the identity of a confidential foreign source of intelligence sources or methods, is presumed to cause damage to the national security.

(d) Information classified in accordance with this section shall not be declassified automatically as a result of any unofficial or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

§ 1312.4 Classified designations.

(a) Except as provided by the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011) or the National Security Act of 1947, as amended, (50 U.S.C. 401) Executive Order 12958 provides the only basis for classifying information. Information which meets the test for classification may be classified in one of the following three designations:

(1) *Top Secret.* This classification shall be applied only to information the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) *Secret.* This classification shall be applied only to information the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) *Confidential.* This classification shall be applied only to information the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) If there is significant doubt about the need to classify information, it shall not be classified. If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.

§ 1312.5 Authority to classify.

(a) The authority to originally classify information or material under this part shall be limited to those officials

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concerned with matters of national security. The officials listed in this section are granted authority by the Director, OMB, to assign original classifications as indicated to information or material that is originated by OMB staff and relating to the national security of the United States:

(1) Top Secret and below:

(i) Deputy Director.

(ii) Deputy Director for Management.

(iii) Associate Director for National Security and International Affairs.

(iv) Associate Director for Natural Resources, Energy and Science.

(2) Secret and below:

(i) Deputy Associate Director for National Security.

(ii) Deputy Associate Director for International Affairs.

(iii) Deputy Associate Director for Energy and Science.

(b) Classification authority is not delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or from a classification guide.

§ 1312.6 Duration of classification.

(a)(1) When determining the duration of classification for information originally classified under Executive Order 12958, an original classification authority shall follow the following sequence:

(i) He/She shall attempt to determine a date or event that is less than 10 years from the date of original classification, and which coincides with the lapse of the information's national security sensitivity, and shall assign such date or event as the declassification instruction;

(ii) If unable to determine a date or event of less than 10 years, he/she shall ordinarily assign a declassification date that is 10 years from the date of the original classification decision;

(iii) He/She may extend the duration of classification or reclassify specific information for a period not to exceed 10 additional years if such action is consistent with the exemptions as outlined in Section 1.6(d) of the Executive Order. This provision does not apply to information contained in records that are more than 25 years old and have been determined to have permanent

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historical value under Title 44 United States Code.

(iv) He/She may exempt from declassification within 10 years specific information, which is consistent with the exemptions as outlined in Section 1.6(d) of the Executive Order.

(2) Extending Duration of Classification. Extensions of classification are not automatic. If an original classification authority with jurisdiction over the information does not extend the date or event for declassification, the information is automatically declassified upon the occurrence of the date or event. If an original classification authority has assigned a date or event for declassification that is 10 years or less from the date of classification, an original classification authority with jurisdiction over the information may extend the classification duration of such information for additional periods not to exceed 10 years at a time. Records determined to be of historical value may not exceed the duration of 25 years.

(b) When extending the duration of classification, the original classification authority must:

(1) Be an original classification authority with jurisdiction over the information.

(2) Ensure that the information continues to meet the standards for classification under the Executive Order.

(3) Make reasonable attempts to notify all known holders of the information. Information classified under prior orders marked with a specific date or event for declassification is automatically declassified upon that date or event. Information classified under prior orders marked with Originating Agency's Determination Required (OADR) shall:

(i) Be declassified by a declassification authority as defined in Section 3.1 of the Executive Order.

(ii) Be re-marked by an authorized original classification authority with jurisdiction over the information to establish a duration of classification consistent with the Executive Order.

(iii) Be subject to Section 3.4 of the Executive Order if the records are determined to be of historical value and are to remain classified for 25 years

from the date of its original classification.

§ 1312.7 Derivative classification.

A *derivative classification* means that the information is in substance the same information that is currently classified, usually by another agency or classification authority. The application of derivative classification markings is the responsibility of the person who incorporates, restates, paraphrases, or generates in new form information that is already classified, or one who applies such classification markings in accordance with instructions from an authorized classifier or classification guide. Extreme care must be taken to continue classification and declassification markings when such information is incorporated into OMB documents. The duplication or reproduction of existing classified information is not derivative classification. Persons who use derivative classification need not possess original classification authority.

§ 1312.8 Standard identification and markings.

(a) *Original classification.* At the time classified material is produced, the classifier shall apply the following markings on the face of each originally classified document, including electronic media:

(1) *Classification authority.* The name/personal identifier, and position title of the original classifier shall appear on the "Classified By" line.

(2) *Agency and office of origin.* If not otherwise evident, the agency and office of origin shall be identified and placed below the name on the "Classified By" line.

(3) *Reasons for classification.* Identify the reason(s) to classify. The classifier shall include, at a minimum, a brief reference to the pertinent classification category(ies), or the number 1.5 plus the letter(s) that corresponds to that classification category in Section 1.5 of the Executive Order.

(4) *Declassification instructions.* These instructions shall indicate the following:

(i) The duration of the original classification decision shall be placed on the "Declassify On" line.

(ii) The date or event for declassification that corresponds to the lapse of the information's national security sensitivity, which may not exceed 10 years from the date of the original decision.

(iii) When a specific date or event within 10 years cannot be established, the classifier will apply the date that is 10 years from the date of the original decision.

(iv) The exemption category from declassification. Upon determination that the information must remain classified beyond 10 years, the classifier will apply the letter "X" plus a brief recitation of the exemption category(ies), or the letter "X" plus the number that corresponds to the exemption category(ies) in Section 1.6(d) of the Executive Order.

(v) An original classification authority may extend the duration of classification for successive periods not to exceed 10 years at a time. The "Declassify On" line shall be revised to include the new declassification instructions and shall include the identity of the person authorizing the extension and the date of the action.

(vi) Information exempted from automatic declassification at 25 years should on the "Declassify On" line be revised to include the symbol "25X" plus a brief reference to the pertinent exemption categories/numbers of the Executive Order.

(5) The overall classification of the document is the highest level of information in the document and will be conspicuously placed stamped at the top and bottom of the outside front and back cover, on the title page, and on the first page.

(6) The highest classification of individual pages will be stamped at the top and bottom of each page, to include "unclassified" when it is applicable.

(7) The classification of individual portions of the document, (ordinarily a paragraph, but including subjects, titles, graphics) shall be marked by using the abbreviations (TS), (S), (C), or (U), will be typed or marked at the beginning or end of each paragraph or section of the document. If all portions of the document are classified at the same level, this may be indicated by a statement to that effect.

(b) *Derivative classification.* Information classified derivatively on the basis of source documents shall carry the following markings on those documents:

(1) The derivative classifier shall concisely identify the source document(s) or the classification guide on the “Derived From” line, including the agency and where available the office of origin and the date of the source or guide. When a document is classified derivatively on the basis of more than one source document or classification guide, the “Derived From” line shall appear as “Derived From: Multiple Sources”.

(2) The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. Where practicable the copies of the document should also have this list attached.

(3) A document derivatively classified on the basis of a source document that is itself marked “Multiple Sources” shall cite the source document on its “Derived From” line rather than the term “Multiple Sources”.

(4) The reason for the original classification decision, as reflected in the source document, is not required to be transferred in a derivative classification action.

(5) Declassification instructions shall carry forward the instructions on the “Declassify On” line from the source document to the derivation document or the duration instruction from the classification guide. Where there are multiple sources, the longest duration of any of its sources shall be used.

(6) When a source document or classification guide contains the declassification instruction “Originating Agency’s Determination Required” (OADR) the derivative document shall carry forward the fact that the source document(s) were so marked and the date of origin of the most recent source document (s).

(7) The derivatively classified document shall be conspicuously marked with the highest level of classification of information.

(8) Each portion of a derivatively classified document shall be marked in accordance with its source.

(9) Each office shall, consistent with Section 3.8 of the Executive Order, establish and maintain a database of information that has been declassified.

(c) *Additional Requirements.* (1) Markings other than “Top Secret”, “Secret”, and “Confidential” shall not be used to identify classified national security information.

(2) Transmittal documents will be stamped to indicate the highest classification of the information transmitted, and shall indicate conspicuously on its face the following or something similar “Unclassified When Classified Enclosure Removed” to indicate the classification of the transmittal document standing alone.

(3) The classification data for material other than documents will be affixed by tagging, stamping, recording, or other means to insure that recipients are aware of the requirements for the protection of the material.

(4) Documents containing foreign government information shall include the markings “This Document Contains (country of origin) Information”. If the identity of the specific government must be concealed, the document shall be marked “This Document Contains Foreign Government Information,” and pertinent portions marked “FGI” together with the classification level, e.g., “(FGI-C)”. In such cases, separate document identifying the government shall be maintained in order to facilitate future declassification actions.

(5) Documents, regardless of medium, which are expected to be revised prior to the preparation of a finished product—working papers—shall be dated when created, marked with highest classification, protected at that level, and destroyed when no longer needed. When any of the following conditions exist, the working papers shall be controlled and marked in the same manner as prescribed for a finished classified document:

- (i) Released by the originator outside the originating activity;
- (ii) Retained more than 180 days from the date of origin;
- (iii) Filed permanently.

(6) Information contained in unmarked records, or Presidential or related materials, and which pertain to

the national defense or foreign relations of the U.S. and has been maintained and protected as classified information under prior orders shall continue to be treated as classified information under the Executive Order and is subject to its provisions regarding declassification.

§ 1312.9 Downgrading and declassification.

Classified information originated by OMB offices will be downgraded or declassified as soon as it no longer qualifies for continued protection under the provisions of the classification guides. Authority to downgrade or declassify OMB-originated information is granted to those authorized to classify (See § 1312.5). Additionally, the Associate Director (or Assistant Director) for Administration is authorized to exercise downgrading and declassification actions up to and including the Top Secret level.

(a) *Transferred material.* Information which was originated by an agency that no longer exists, or that was received by OMB in conjunction with a transfer of functions, is deemed to be OMB-originated material. Information which has been transferred to another agency for storage purposes remains the responsibility of OMB.

(b) *Periodic review of classified material.* Each office possessing classified material will review that material on an annual basis or in conjunction with the transfer of files to non-current record storage and take action to downgrade or declassify all material no longer qualifying for continued protection at that level. All material transferred to non-current record storage must be properly marked with correct downgrade and declassification instructions.

§ 1312.10 Systematic review guidelines.

The EOP Security Officer will prepare and keep current such guidelines as are required by Executive Order 12958 for the downgrading and declassification of OMB material that is in the custody of the Archivist of the United States.

§ 1312.11 Challenges to classifications.

OMB employees are encouraged to familiarize themselves with the provisions of Executive Order 12958 and with OMB Manual Sections 1010, 1020, and 1030. Employees are also encouraged to question or to challenge those classifications they believe to be improper, unnecessary, or for an inappropriate time. Such questions or challenges may be addressed to the originator of the classification, unless the challenger desires to remain anonymous, in which case the question may be directed to the EOP Security Officer.

§ 1312.12 Security Program Review Committee.

The Associate Director (or Assistant Director) for Administration will chair the OMB Security Program Review Committee, which will act on suggestions and complaints about the OMB security program.

Subpart B—Control and Accountability of Classified Information

§ 1312.21 Purpose and authority.

This subpart sets forth procedures for the receipt, storage, accountability, and transmission of classified information at the Office of Management and Budget. It is issued under the authority of Executive Order 12958, (60 FR 19825, 3 CFR, 1995 Comp., P.333), as implemented by Information Security Oversight Office Directive No 1 (32 CFR part 2001), and is applicable to all OMB employees.

§ 1312.22 Responsibilities.

The effective direction by supervisors and the alert performance of duty by employees will do much to ensure the adequate security of classified information in the possession of OMB offices. Each employee has a responsibility to protect and account for all classified information that he/she knows of within his/her area of responsibility. Such information will be made available only to those persons who have an official need to know and who have been granted the appropriate security clearance. Particular care must be taken not to discuss classified information

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over unprotected communications circuits (to include intercom and closed-circuit TV), at non-official functions, or at any time that it might be revealed to unauthorized persons. Classified information may only be entered into computer systems meeting the appropriate security criteria.

(a) *EOP Security Officer.* In cooperation with the Associate Director (or Assistant Director) for Administration, the EOP Security Officer supervises the administration of this section. Specifically, he/she:

(1) Promotes the correct understanding of this section and insures that initial and annual briefings about security procedures are given to all new employees.

(2) Provides for periodic inspections of office areas and reviews of produced documents to ensure full compliance with OMB regulations and procedures.

(3) Takes prompt action to investigate alleged violations of security, and recommends appropriate administrative action with respect to violators.

(4) Supervises the annual inventories of Top Secret material.

(5) Ensures that containers used to store classified material meet the appropriate security standards and that combinations to security containers are changed as required.

(b) *Heads of Offices.* The head of each division or office is responsible for the administration of this section in his/her area. These responsibilities include:

(1) The appointment of accountability control clerks as prescribed in § 1312.26.

(2) The maintenance of the prescribed control and accountability records for classified information within the office.

(3) Establishing internal procedures to ensure that classified material is properly safeguarded at all times.

§ 1312.23 Access to classified information.

Classified information may be made available to a person only when the possessor of the information establishes that the person has a valid "need to know" and the access is essential to the accomplishment of official govern-

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ment duties. The proposed recipient is eligible to receive classified information only after he/she has been granted a security clearance by the EOP Security Officer. Cover sheets will be used to protect classified documents from inadvertent disclosure while in use. An SF-703 will be used for Top Secret material; an SF-704 for Secret material, and an SF-705 for Confidential material. The cover sheet should be removed prior to placing the document in the files.

§ 1312.24 Access by historical researchers and former Presidential appointees.

(a) The requirements of Section 4.2(a)(3) of Executive Order 12958 may be waived for persons who are engaged in historical research projects, or who previously have occupied policy-making positions to which they were appointed by the President. Waivers may be granted only if the Associate Director (or Assistant Director) for Administration, in cooperation with the EOP Security Officer:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with the order; and

(3) Limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee.

(b) In the instances described in paragraph (a) of this section, the Associate Director (or Assistant Director) for Administration, in cooperation with the EOP Security Officer, will make a determination as to the trustworthiness of the requestor and will obtain written agreement from the requestor to safeguard the information to which access is given. He/She will also obtain written consent to the review by OMB of notes and manuscripts for the purpose of determining that no classified information is contained therein. Upon the completion of these steps, the material to be researched will be reviewed

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by the division/office of primary interest to ensure that access is granted only to material over which OMB has classification jurisdiction.

§ 1312.25 Storage.

All classified material in the possession of OMB will be stored in a GSA-approved container or in vault-type rooms approved for Top Secret storage. Under the direction of the EOP Security Officer, combinations to safes used in the storage of classified material will be changed when the equipment is placed in use, whenever a person knowing the combination no longer requires access to it, whenever the combination has been subjected to possible compromise, whenever the equipment is taken out of service, or at least once a year. Knowledge of combinations will be limited to the minimum number of persons necessary, and records of combinations will be assigned a classification no lower than the highest level of classified information stored in the equipment concerned. An SF-700, Security Container Information, will be used in recording safe combinations. Standard Form-702, Security Container check sheet, will be posted to each safe and will be used to record opening, closing, and checking the container whenever it is used.

§ 1312.26 Control of secret and confidential material.

Classified material will be accounted for by the office having custody of the material. OMB Form 87, Classified Document Control, will be used to establish accountability controls on all Secret material received or produced within OMB offices. No accountability controls are prescribed for Confidential material, but offices desiring to control and account for such material should use the procedures applicable to Secret material. Information classified by another agency shall not be disclosed without that agency's authorization.

(a) *Accountability Control Clerks.* Each division or office head will appoint one person as the Accountability Control Clerk (ACC). The ACC will be the focal point for the receipt, routing, accountability, dispatch, and declassification downgrading or destruction of all clas-

sified material in the possession of the office.

(b) *OMB Form 87.* One copy of OMB Form 87 will be attached to the document, and one copy retained in the accountability control file for each active document within the area of responsibility of the ACC. Downgrading or destruction actions, or other actions removing the document from the responsibility of the ACC will be recorded on the OMB Form 87, and the form filed in an inactive file. Inactive control forms will be cut off annually, held for two additional years, then destroyed.

(c) *Working papers and drafts.* Working papers and drafts of classified documents will be protected according to their security classification, but will not be subject to accountability control unless they are forwarded outside of OMB.

(d) *Typewriter ribbons.* Typewriter ribbons, cassettes, and other devices used in the production of classified material will be removed from the machine after each use and protected as classified material not subject to controls. Destruction of such materials will be as prescribed in § 1312.29.

(e) *Reproduction.* Classified material will be reproduced only as required unless prohibited by the originator for the conduct of business and reproduced copies are subject to the same controls as are the original documents. Top Secret material will be reproduced only with the written permission of the originating agency.

§ 1312.27 Top secret control.

The EOP Security Officer serves as the Top Secret Control Officer (TSCO) for OMB. He will be assisted by the Alternate TSCOs in each division/office Holding Top Secret material. The ATSCOs will be responsible for the accountability and custodianship of Top Secret material within their divisions/offices. The provisions of this section do not apply to special intelligence material, which will be processed as prescribed by the controlling agency.

(a) *Procedures.* All Top Secret material produced or received in OMB will be taken to the appropriate ATSCO for receipting, establishment of custodianship, issuance to the appropriate action

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officer, and, as appropriate, obtaining a receipt. Top Secret material in the custody of the TSCO or ATSCO will normally be segregated from other classified material and will be stored in a safe under his or her control. Such material will be returned to the appropriate ATSCO by action officers as soon as action is completed. OMB Form 87 will be used to establish custody, record distribution, routing, receipting and destruction of Top Secret material. Top Secret Access Record and Cover Sheet (Standard Form 703) will be attached to each Top Secret document while it is in the possession of OMB.

(b) *Inventory.* The Associate Director (or Assistant Director) for Administration will notify each appropriate OMB office to conduct an inventory of its Top Secret material by May 1 each year. The head of each office will notify the EOP Security Officer when the inventory has been satisfactorily completed. Each Top Secret item will be examined to determine whether it can be downgraded or declassified, and the inventory will be adjusted accordingly. Discrepancies in the inventory, indicating loss or possible compromise, will be thoroughly investigated by the EOP Security Officer or by the Federal Bureau of Investigation, as appropriate. Each ATSCO will retain his/her division's inventory in accordance with the security procedures set forth in this regulation.

§ 1312.28 Transmission of classified material.

Prior to the transmission of classified material to offices outside OMB, such material will be enclosed in opaque inner and outer covers or envelopes. The inner cover will be sealed and marked with the classification, and the address of the sender and of the addressee. The receipt for the document, OMB Form 87, (not required for Confidential material) will be attached to or placed within the inner envelope to be signed by the recipient and returned to the sender. Receipts will identify the sender, the addressee, and the document, and will contain no classified information. The outer cover or envelope will be sealed and addressed with no identification of its contents.

(a) *Transmittal of Top Secret material.* The transmittal of Top Secret material shall be by personnel specifically designated by the EOP Security Officer, or by Department of State diplomatic pouch, by a messenger-courier system specifically created for that purpose. Alternatively, it shall be taken to the White House Situation Room for transmission over secure communications circuits.

(b) *Transmittal of Secret material.* The transmittal of Secret material shall be as follows:

(1) Within and between the fifty States, the District of Columbia, and Puerto Rico: Use one of the authorized means for Top Secret material, or transmit by U.S. Postal Service express or registered mail.

(2) Other Areas. Use the same means authorized for Top Secret, or transmit by U.S. registered mail through Military Postal Service facilities.

(c) *Transmittal of Confidential material.* As identified in paragraphs (a) and (b) of this section, or transmit by U.S. Postal Service Certified, first class, or express mail service within and between the fifty States, the District of Columbia, and Puerto Rico.

(d) *Transmittal between OMB offices and within the EOP complex.* Classified material will normally be hand carried within and between offices in the Executive Office of the President complex by cleared OMB employees. Documents so carried must be protected by the appropriate cover sheet or outer envelope. Top Secret material will always be hand carried in this manner. Secret and Confidential material may be transmitted between offices in the EOP complex by preparing the material as indicated above (double envelope) and forwarding it by special messenger service provided by the messenger center. The messenger shall be advised that the material is classified. Receipts shall be obtained if Top Secret or Secret material is being transmitted outside of OMB. Classified material will never be transmitted in the Standard Messenger Envelope (SF Form 65), or by the Mail Stop system.

§ 1312.29 Destruction.

The destruction of classified material will be accomplished under the direction of the TSCO or the appropriate ATSCO, who will assure that proper accountability records are kept. Classified official record material will be processed to the Information Systems and Technology, Records Management Office, Office of Administration, NEOB Room 5208, in accordance with OMB Manual Section 540. Classified non-record material will be destroyed as soon as it becomes excess to the needs of the office. The following destruction methods are authorized:

(a) *Shredding.* Using the equipment approved for that purpose within OMB offices. Shredders will not accommodate typewriter ribbons or cassettes. Shredding is the only authorized means of Destroying Top Secret material.

(b) *Burn bag.* Classified documents, cassettes, ribbons, and other materials at the Secret level or below, not suitable for shredding, may be destroyed by using burn bags, which can be obtained from the supply store. They will be disposed of as follows:

(1) *OEOB.* Unless on an approved list for pick-up of burn bags, all other burn bags should be delivered to Room 096, OEOB between 8:00 a.m. and 4:30 p.m. Burn bags are not to be left in hallways.

(2) *NEOB.* Hours for delivery of burn bag materials to the NEOB Loading Dock Shredder Room are Monday through Friday from 8:00 a.m. to 9:30 a.m.; 10:00 a.m. to 11:00 a.m.; 11:45 a.m. to 1:30 p.m. and 2:00 p.m. to 3:30 p.m. The phone number of the Shredder Room is 395-1593. In the event the Shredder Room is not manned, do not leave burn bags outside the Shredder Room as the security of that material may be compromised.

(3) Responsibility for the security of the burn bag remains with the OMB office until it is handed over to the authorized representative at the shredder room. Accountability records will be adjusted after the burn bags have been delivered. Destruction actions will be recorded on OMB Form 87 by the division TSCO or by the appropriate ATSCO at the time the destruction is accomplished or at the time the burn bag is delivered to the U.D. Officer.

(c) *Technical guidance.* Technical guidance concerning appropriate methods, equipment, and standards for destruction of electronic classified media, processing equipment components and the like, may be obtained by submitting all pertinent information to NSA/CSS Directorate for Information Systems Security, Ft. Meade, Maryland 20755. Specifications concerning appropriate equipment and standards for destruction of other storage media may be obtained from the General Services Administration.

§ 1312.30 Loss or possible compromise.

Any person who has knowledge of the loss or possible compromise of classified information shall immediately secure the material and then report the circumstances to the EOP Security Officer. The EOP Security Officer will immediately initiate an inquiry to determine the circumstances surrounding the loss or compromise for the purpose of taking corrective measures and/or instituting appropriate administrative, disciplinary, or legal action. The agency originating the information shall be notified of the loss or compromise so that the necessary damage assessment can be made.

§ 1312.31 Security violations.

(a) A security violation notice is issued by the United States Secret Service when an office/division fails to properly secure classified information. Upon discovery of an alleged security violation, the USSS implements their standard procedures which include the following actions:

(1) Preparation of a Record of Security Violation form;

(2) When a document is left on a desk or other unsecured area, the officer will remove the classified document(s) and deliver to the Uniformed Division's Control Center; and

(3) Where the alleged violation involves an open safe, the officer will remove one file bearing the highest classification level, annotate it with his or her name, badge number, date and time, and return the document to the

safe, which will then be secured. A description of the document will be identified in the Record of Security Violations and a copy of the violation will be left in the safe.

(b) *Office of record.* The EOP Security Office shall serve as the primary office of record for OMB security violations. Reports of violations will remain in the responsible individual's security file until one year after the individual departs the Executive Office of the President, at which time all violation reports will be destroyed.

(c) *Compliance.* All Office of Management and Budget employees will comply with this section. Additionally, personnel on detail or temporary duty will comply with this section, however, their parent agencies will be provided with a copy of any security violation incurred during their period of service to OMB.

(d) *Responsibilities for processing security violations—(1) EOP Security Officer.* The EOP Security Officer shall provide OMB with assistance regarding Agency security violations. Upon receipt of a Record of Security Violation alleging a security violation, the EOP Security Officer shall:

(i) Prepare a memorandum to the immediate supervisor of the office/division responsible for the violation requesting that an inquiry be made into the incident. Attached to the memorandum will be a copy of the Record of Security Violation form. The receiving office/division will prepare a written report within five working days of its receipt of the Security Officer's memorandum.

(ii) Provide any assistance needed for the inquiry conducted by the office/division involved in the alleged violation.

(iii) Upon receipt of the report of inquiry from the responsible office/division, the EOP Security Officer will:

(A) Consult with the OMB Associate Director (or Assistant Director) for Administration and the General Counsel;

(B) Determine if a damage assessment report is required. A damage assessment will be made by the agency originating the classified information, and will be prepared after it has been determined that the information was accessed without authorization; and

(C) Forward the report with a recommendation to the OMB General Counsel.

(2) *Immediate supervisors.* Upon receipt of the EOP Security Officer's security violation memorandum, the immediate supervisor will make an inquiry into the alleged incident, and send a written report of inquiry to the EOP Security Officer. The inquiry should determine, and the related report should identify, at a minimum:

(i) Whether an actual security violation occurred;

(ii) The identity of the person(s) responsible; and

(iii) The probability of unauthorized access.

(3) Deputy Associate Directors (or the equivalent) will:

(i) Review and concur or comment on the written report; and

(ii) In conjunction with the immediate supervisor, determine what action will be taken to prevent, within their area of responsibility, a recurrence of the circumstances giving rise to the violation.

(e) *Staff penalties for OMB security violations.* When assessing penalties in accordance with this section, only those violations occurring within the calendar year (beginning January 1) will be considered. However, reports of all previous violations remain in the security files. These are the standard violation penalties that will be imposed. At the discretion of the Director or his designee, greater or lesser penalties may be imposed based upon the circumstances giving rise to the violation, the immediate supervisor's report of inquiry, and the investigation and findings of the EOP Security Officer and/or the OMB Associate Director (or Assistant Director) for Administration.

(1) First violation:

(i) Written notification of the violation will be filed in the responsible individual's security file; and

(ii) The EOP Security Officer and/or the Associate Director (or Assistant Director) for Administration will consult with the respective immediate supervisor, and the responsible individual will be advised of the penalties that may be applied should a second violation occur.

(2) Second violation:

(i) Written notification of the violation will be filed in the responsible individual's security file;

(ii) The EOP Security Officer and/or the Associate Director (or Assistant Director) for Administration will consult with the respective Deputy Associate Director (or the equivalent) and immediate supervisor and the responsible individual who will be advised of the penalties that may be applied should a third violation occur; and

(iii) A letter of Warning will be placed in the Disciplinary Action file maintained by the Office of Administration, Human Resources Management Division.

(3) Third violation:

(i) Written notification of the violation will be filed in the responsible individual's security file;

(ii) The EOP Security Officer and/or the Associate Director (or Assistant Director) for Administration will consult with the OMB Deputy Director, General Counsel, the respective Deputy Associate Director (or equivalent), and the immediate supervisor and the responsible individual who will be advised of the penalties that may be applied should a fourth violation occur; and

(iii) A Letter of Reprimand will be placed in the Disciplinary Action file maintained by the OA/HRMD.

(4) Fourth violation:

(i) Written notification of the violation will be filed in the responsible individual's security file;

(ii) The EOP Security Officer and/or the Associate Director (or Assistant Director) for Administration will consult with the OMB Director, Deputy Director, General Counsel, the respective Deputy Associate Director (or the equivalent), and immediate supervisor;

(iii) The responsible individual may receive a suspension without pay for a period not to exceed 14 days; and

(iv) The responsible individual will be advised that future violations could result in the denial of access to classified material or other adverse actions as may be appropriate, including dismissal.

Subpart C—Mandatory Declassification Review

§ 1312.32 Purpose and authority.

Other government agencies, and individual members of the public, frequently request that classified information in OMB files be reviewed for possible declassification and release. This subpart prescribes the procedures for such review and subsequent release or denial. It is issued under the authority of Executive Order 12958 (60 FR 19825, 3 CFR, 1995 Comp., p. 333), as implemented by Information Security Oversight Office Directive No. 1 (32 CFR part 2001).

§ 1312.33 Responsibility.

All requests for the mandatory declassification review of classified information in OMB files should be addressed to the Associate Director (or Assistant Director) for Administration, who will acknowledge receipt of the request. When a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken. All requests will receive a response within 180 days of receipt of the request.

§ 1312.34 Information in the custody of OMB.

Information contained in OMB files and under the exclusive declassification jurisdiction of the office will be reviewed by the office of primary interest to determine whether, under the declassification provisions of the Order, the requested information may be declassified. If so, the information will be made available to the requestor unless withholding is otherwise warranted under applicable law. If the information may not be released, in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Deputy Director, OMB, and a notice that such an appeal must be filed within 60 days in order to be considered.

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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

Sec.

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

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

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

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).

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(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-

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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

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-

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

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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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

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-

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

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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

⁴See footnote 3 in §1315.7(a).

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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.

§ 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,

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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

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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

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:

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

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](mailto:FMS@prompt.inquiries@fms.sprint.com), or by completing a Prompt Payment inquiry

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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), 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

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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.

[67 FR 79516, Dec. 30, 2002]

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

Sec.

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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 procedures necessary to exercise the authority provided by this chapter.” It is designed to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.

§ 1320.2 Effect.

(a) Except as provided in paragraph (b) of this section, this part takes effect on October 1, 1995.

(b)(1) In the case of a collection of information for which there is in effect on September 30, 1995, a control number issued by the Office of Management and Budget under 44 U.S.C. Chapter 35, the provisions of this Part shall take effect beginning on the earlier of:

(i) The date of the first extension of approval for or modification of that collection of information after September 30, 1995; or

(ii) The date of the expiration of the OMB control number after September 30, 1995.

(2) Prior to such extension of approval, modification, or expiration, the collection of information shall be subject to 5 CFR part 1320, as in effect on September 30, 1995.

§ 1320.3 Definitions.

For purposes of implementing the Act and this Part, the following terms are defined as follows:

(a) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include:

- (1) The General Accounting Office;
- (2) Federal Election Commission;

(3) The governments of the District of Columbia and the territories and possessions of the United States, and their various subdivisions; or

(4) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b)(1) *Burden* means the total time, effort, or financial resources expended by persons to generate, maintain, re-

tain, or disclose or provide information to or for a Federal agency, including:

- (i) Reviewing instructions;
- (ii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information;
- (iii) Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information;
- (iv) Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information;
- (v) Adjusting the existing ways to comply with any previously applicable instructions and requirements;
- (vi) Training personnel to be able to respond to a collection of information;
- (vii) Searching data sources;
- (viii) Completing and reviewing the collection of information; and
- (ix) Transmitting, or otherwise disclosing the information.

(2) The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

(3) A collection of information conducted or sponsored by a Federal agency that is also conducted or sponsored by a unit of State, local, or tribal government is presumed to impose a Federal burden except to the extent that the agency shows that such State, local, or tribal requirement would be imposed even in the absence of a Federal requirement.

(c) *Collection of information* means, except as provided in §1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. “Collection of information”

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includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, “collection of information” refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

(1) A “collection of information” may be in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements. A “collection of information” may implicitly or explicitly include related collection of information requirements.

(2) Requirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or the public at large, through posting, notification, labeling or similar disclosure requirements constitute the “collection of information” whenever the same requirement to obtain or compile information would be a “collection of information” if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) “Collection of information” includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes, that is, if the results are to be used for

statistical compilations of general public interest, including compilations showing the status or implementation of Federal activities and programs.

(4) As used in paragraph (c) of this section, “ten or more persons” refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, tribal or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition of “ten or more persons,” “persons” does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government (including military reservists and members of the National Guard while on active duty) when acting within the scope of their employment, but it does include retired and other former Federal employees.

(i) Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(ii) Any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

(d) *Conduct or Sponsor.* A Federal agency is considered to “conduct or sponsor” a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency. A collection of information undertaken by a recipient of a Federal grant is considered to be “conducted or sponsored” by an agency only if:

(1) The recipient of a grant is conducting the collection of information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or collection procedures.

(e) *Director* means the Director of OMB, or his or her designee.

(f) *Display* means:

(1) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), to place the currently valid OMB control number on the front page of the collection of information;

(2) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, to place the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(3) In the case of collections of information published in regulations, guidelines, and other issuances in the FEDERAL REGISTER, to publish the currently valid OMB control number in the FEDERAL REGISTER (for example, in the case of a collection of information in a regulation, by publishing the OMB control number in the preamble or the regulatory text for the final rule, in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of the currently valid control number in the Code of Federal Regulations constitutes an alternative means of “display.” In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already “displayed” the OMB control number by publishing it in the FEDERAL REGISTER as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in

a technical amendment to the final rule), the agency also place the currently valid control number in a table or codified section to be included in the Code of Federal Regulations. For placement of OMB control numbers in the Code of Federal Regulations, see 1 CFR 21.35.

(4) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means to inform potential respondents of the OMB control number.

(g) *Independent regulatory agency* means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(h) *Information* means any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media. “Information” does not generally include items in the following categories; however, OMB may determine that any specific item constitutes “information”:

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent’s address, and the nature of the instrument (by contrast, a certification would likely involve the collection of “information” if an agency conducted or sponsored it as a substitute for a

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collection of information to collect evidence of, or to monitor, compliance with regulatory standards, because such a certification would generally entail burden in addition to that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument);

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the FEDERAL REGISTER or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information; and

(10) Like items so designated by OMB.

(i) *OMB* refers to the Office of Management and Budget.

(j) *Penalty* includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(k) *Person* means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(l) *Practical utility* means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of recordkeeping requirements or general purpose statistics (see §1320.3(c)(3)), "practical utility" means that actual uses can be demonstrated.

(m) *Recordkeeping requirement* means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to:

(1) Retain such records;

(2) Notify third parties, the Federal government, or the public of the existence of such records;

(3) Disclose such records to third parties, the Federal government, or the public; or

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(4) Report to third parties, the Federal government, or the public regarding such records.

§ 1320.4 Coverage.

(a) The requirements of this part apply to all agencies as defined in § 1320.3(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.3 (c) and (d), wherever conducted or sponsored, but, except as provided in paragraph (b) of this section, shall not apply to collections of information:

(1) During the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(2) During the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities;

(3) By compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(4) During the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

(b) The requirements of this Part apply to the collection of information during the conduct of general investigations or audits (other than information collected in an antitrust investigation to the extent provided in paragraph (a)(3) of this section) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(c) The exception in paragraph (a)(2) of this section applies during the entire course of the investigation, audit, or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or equivalent is opened with respect to a particular party. In accordance with paragraph (b) of this section, collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees

or an industry, do not fall within this exception.

§ 1320.5 General requirements.

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information—

(1) The agency has—

(i) Conducted the review required in § 1320.8;

(ii) Evaluated the public comments received under § 1320.8(d) and § 1320.11;

(iii) Submitted to the Director, in accordance with such procedures and in such form as OMB may specify,

(A) The certification required under § 1320.9,

(B) The proposed collection of information in accordance with § 1320.10, § 1320.11, or § 1320.12, as appropriate,

(C) An explanation for the decision that it would not be appropriate, under § 1320.8(b)(1), for a proposed collection of information to display an expiration date;

(D) An explanation for a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees;

(E) A statement indicating whether (and if so, to what extent) the proposed collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) A summary of the public comments received under § 1320.8(d), including actions taken by the agency in response to the comments, and the date and page of the publication in the FEDERAL REGISTER of the notice therefor; and

(G) Copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) Published, except as provided in § 1320.13(d), a notice in the FEDERAL REGISTER—

(A) Stating that the agency has made such submission; and

(B) Setting forth—

(I) A title for the collection of information;

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(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

(6) Notice that comments may be submitted to OMB; and

(7) The time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under § 1320.10, § 1320.11 or § 1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under § 1320.13; and

(2) OMB has approved the proposed collection of information, OMB's approval has been inferred under § 1320.10(c), § 1320.11(i), or § 1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under § 1320.15; and

(3) The agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:

(1) The collection of information displays a currently valid OMB control number; and

(2)(i) The agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(ii) An agency shall provide the information described in paragraph (b)(2)(i) of this section in a manner that is reasonably calculated to inform the public.

(A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents

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(other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.

(B) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.

(C) In the case of collections of information published in regulations, guidelines, and other issuances in the FEDERAL REGISTER, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency publishes such information in the FEDERAL REGISTER (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it "in a manner that is reasonably calculated to inform the public." In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided such information "in a manner that is reasonably calculated to inform the public" by publishing it in the FEDERAL REGISTER as a separate notice or in the preamble for the final rule (rather than in the regulatory text for

the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see § 1320.3(f)(3)).

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the FEDERAL REGISTER or in current regulations that were published as final rules in the FEDERAL REGISTER, in accordance with the requirements in § 1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of § 1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the requirements in § 1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the FEDERAL REGISTER in accordance with the requirements in § 1320.12.

(4) Special rules for emergency processing of collections of information are set forth in § 1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) Is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) Is not duplicative of information otherwise accessible to the agency; and

(iii) Has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) Requiring respondents to report information to the agency more often than quarterly;

(ii) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) Requiring respondents to submit more than an original and two copies of any document;

(iv) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of

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this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under §1320.11 or §1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in §1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).

§ 1320.6 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this part if:

(1) The collection of information does not display, in accordance with §1320.3(f) and §1320.5(b)(1), a currently valid OMB control number assigned by

the Director in accordance with the Act; or

(2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with §1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

(b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto.

(c) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, as prescribed in §1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under §1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under §1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any

other person through administrative or judicial process.

(e) The protection provided by paragraph (a) of this section does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute—e.g., 26 U.S.C. §6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. §6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).

§ 1320.7 Agency head and Senior Official responsibilities.

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act and this part. The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this part.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) The Senior Official shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under the Act, including the reduction of information collection burdens on the public.

(d) With respect to the collection of information and the control of paperwork, the Senior Official shall establish a process within such office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this Part.

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under §1320.9, may be made only by the agen-

cy head or the Senior Official, or their designee.

§ 1320.8 Agency collection of information responsibilities.

The office established under §1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(1) An evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) A functional description of the information to be collected;

(3) A plan for the collection of information;

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(6) A test of the collection of information through a pilot program, if appropriate; and

(7) A plan for the efficient and effective management and use of the information to be collected, including necessary resources.

(b) Such office shall ensure that each collection of information:

(1) Is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date;

(2) Is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. §3507; and

(3) Informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of—

(i) The reasons the information is planned to be and/or has been collected;

(ii) The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

(iii) An estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

(iv) Whether responses to the collection of information are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority);

(v) The nature and extent of confidentiality to be provided, if any (citing authority); and

(vi) The fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c)(1) An agency shall provide the information described in paragraphs (b)(3)(i) through (v) of this section as follows:

(i) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (except in an electronic format), such information can be included either on the form, questionnaire or other collection of information, as part of the instructions for such collection, or in a cover letter or memorandum that accompanies the collection of information.

(ii) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, such information can be included either in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent;

(iii) In the case of collections of information published in regulations, guidelines, and other issuances in the FEDERAL REGISTER, such information can be published in the FEDERAL REGISTER (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text to the final rule, or in a technical amendment to the final rule, or in a separate notice announcing OMB approval of the collection of information).

(iv) In other cases, and where OMB determines in advance in writing that special circumstances exist, agencies may use other means to inform potential respondents.

(2) An agency shall provide the information described in paragraph (b)(3)(vi) of this section in a manner that is reasonably calculated to inform the public (see §1320.5(b)(2)(ii)).

(d)(1) Before an agency submits a collection of information to OMB for approval, and except as provided in paragraphs (d)(3) and (d)(4) of this section, the agency shall provide 60-day notice in the FEDERAL REGISTER, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(2) If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the FEDERAL REGISTER notice, the agency should—

(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

(3) The agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under §1320.11, if the agency provides notice and comment through the notice of proposed rulemaking for the proposed rule and such notice specifically includes the solicitation of comments for the same purposes as are listed under paragraph (d)(1) of this section.

(4) The agency need not seek or may shorten the time allowed for such public comment if OMB grants an exemption from such requirement for emergency processing under §1320.13.

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) Is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) Reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) An exemption from coverage of the collection of information, or any part thereof;

(d) Is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) Is to be implemented in ways consistent and compatible, to the maximum

extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) Indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) Informs potential respondents of the information called for under §1320.8(b)(3);

(h) Has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

§ 1320.10 Clearance of collections of information, other than those contained in proposed rules or in current rules.

Agencies shall submit all collections of information, other than those contained either in proposed rules published for public comment in the FEDERAL REGISTER (which are submitted under §1320.11) or in current rules that were published as final rules in the FEDERAL REGISTER (which are submitted under §1320.12), in accordance with the following requirements:

(a) On or before the date of submission to OMB, the agency shall, in accordance with the requirements in §1320.5(a)(1)(iv), forward a notice to the FEDERAL REGISTER stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed collection of information and supporting documentation, to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A

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copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days after receipt of the proposed collection of information or publication of the notice under paragraph (a) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under §1320.13. Upon approval of a collection of information, OMB shall assign an OMB control number and, if appropriate, an expiration date. OMB shall not approve any collection of information for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(d) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(e)(1) In the case of a collection of information not contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(i) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of in-

formation, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

(f) Prior to the expiration of OMB's approval of a collection of information, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this part.

(g) For good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule; in such case, the agency shall cease conducting or sponsoring such collection of information while the submission is pending, and shall publish a notice in the FEDERAL REGISTER to that effect.

§ 1320.11 Clearance of collections of information in proposed rules.

Agencies shall submit collections of information contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the following requirements:

(a) The agency shall include, in accordance with the requirements in §1320.5(a)(1)(iv) and §1320.8(d)(1) and (3), in the preamble to the Notice of Proposed Rulemaking a statement that the collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the Act. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the FEDERAL

REGISTER, in such form and in accordance with such procedures as OMB may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, but subject to paragraph (e) of this section, OMB may file public comments on collection of information provisions. The OMB comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may, subject to paragraph (e) of this section, disapprove the collection of information in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information subject to this section, OMB may, subject to paragraph (e) of this section, disapprove it at any time.

(e) OMB shall provide at least 30 days after receipt of the proposed collection of information before submitting its comments or making its decision, except as provided under §1320.13.

(f) When the final rule is published in the FEDERAL REGISTER, the agency shall explain how any collection of information contained in the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(g) If OMB has not filed public comments under paragraph (c) of this section, or has approved without conditions the collection of information contained in a rule before the final rule is published in the FEDERAL REGISTER, OMB may assign an OMB control number prior to publication of the final rule.

(h) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved under paragraph (g) of this section (and not substantively or materially modified by the agency after approval). Not later than 60 days

after publication, but subject to paragraph (e) of this section, OMB shall approve, instruct the agency to make a substantive or material change to, or disapprove, the collection of information contained in the final rule. Any such instruction to change or disapprove may be based on one or more of the following reasons, as determined by OMB:

(1) The agency has failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information contained in the final rule from that contained in the proposed rule without providing OMB with notice of the change and sufficient information to make a determination concerning the modified collection of information at least 60 days before publication of the final rule; or

(3) In cases in which OMB had filed public comments under paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(i) After making such decision to approve, to instruct the agency to make a substantive or material change to, or disapprove, the collection of information, OMB shall so notify the agency. If OMB approves the collection of information or if it has not acted upon the submission within the time limits of this section, the agency may request, and OMB shall assign an OMB control number. If OMB disapproves or instructs the agency to make substantive or material change to the collection of information, it shall make the reasons for its decision publicly available.

(j) OMB shall not approve any collection of information under this section for a period longer than three years. Approval of such collection of information will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(k) After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the FEDERAL REGISTER to inform the public of OMB's decision.

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(1) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

§ 1320.12 Clearance of collections of information in current rules.

Agencies shall submit collections of information contained in current rules that were published as final rules in the FEDERAL REGISTER in accordance with the following procedures:

(a) In the case of a collection of information contained in a published current rule which has been approved by OMB and has a currently valid OMB control number, the agency shall:

(1) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(2) After having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the OMB control number for the currently approved collection of information, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(b)(1) In the case of a collection of information contained in a published current rule that was not required to be submitted for OMB review under the Paperwork Reduction Act at the time the collection of information was made part of the rule, but which collection of information is now subject to the Act and this part, the agency shall:

(i) Conduct the review established under §1320.8, including the seeking of public comment under §1320.8(d); and

(ii) After having made a reasonable effort to seek public comment, submit the collection of information for review and approval under this part, which shall include an explanation of how the agency has used the information that it has collected.

(2) The agency may continue to conduct or sponsor the collection of infor-

mation while the submission is pending at OMB. In the case of a collection of information not previously approved, approval shall be granted for such period, which shall not exceed 60 days, unless extended by the Director for an additional 60 days, and an OMB control number assigned. Upon assignment of the OMB control number, and in accordance with §1320.3(f) and §1320.5(b), the agency shall display the number and inform the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(c) On or before the day of submission to OMB under paragraphs (a) or (b) of this section, the agency shall, in accordance with the requirements set forth in §1320.5(a)(1)(iv), forward a notice to the FEDERAL REGISTER stating that OMB review is being sought. The notice shall direct requests for copies of the collection of information and supporting documentation to the agency, and shall request that comments be submitted to OMB within 30 days of the notice's publication. The notice shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(d) Within 60 days after receipt of the collection of information or publication of the notice under paragraph (c) of this section, whichever is later, OMB shall notify the agency involved of its decision to approve, to instruct the agency to make a substantive or material change to, or to disapprove, the collection of information, and shall make such decision publicly available. OMB shall provide at least 30 days for public comment after receipt of the proposed collection of information before making its decision, except as provided under §1320.13.

(e)(1) Upon approval of a collection of information, OMB shall assign an OMB control number and an expiration date. OMB shall not approve any collection of information for a period longer than three years. Approval of any collection

of information submitted under this section will be for the full three-year period, unless OMB determines that there are special circumstances requiring approval for a shorter period.

(2) If OMB fails to notify the agency of its approval, instruction to make substantive or material change, or disapproval within the 60-day period, the agency may request, and OMB shall assign without further delay, an OMB control number that shall be valid for not more than one year.

(3) As provided in §1320.5(b) and §1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

(f)(1) If OMB disapproves a collection of information contained in an existing rule, or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, OMB shall:

(i) Publish an explanation thereof in the FEDERAL REGISTER; and

(ii) Instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under §1320.10 or §1320.11, as appropriate; and

(iii) Extend the existing approval of the collection of information (including an interim approval granted under paragraph (b) of this section) for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under §1320.10 or §1320.11, as appropriate.

(2) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the

FEDERAL REGISTER. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, change, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of the above in the FEDERAL REGISTER and submission to OMB shall initiate OMB clearance procedures under section 3507(d) of the Act and §1320.11. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(g) OMB may disapprove, in whole or in part, any collection of information subject to the procedures of this section, if the agency:

(1) Has refused within a reasonable time to comply with an OMB instruction to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule continuing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(h)(1) Upon disapproval by OMB of a collection of information subject to this section, except as provided in paragraph (f)(1)(iii) of this section, the OMB control number assigned to such collection of information shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting information collection instruments directed at the same collection of information and therefore constituting essentially the same collection of information.

(2) The failure to display a currently valid OMB control number for a collection of information contained in a current rule, or the failure to inform the potential persons who are to respond to the collection of information that such

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persons are not required to respond to the collection of information unless it displays a currently valid OMB control number, does not, as a legal matter, rescind or amend the rule; however, such absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information has been disapproved, and that therefore the portion of the rule containing the collection of information has no legal force and effect and the public protection provisions of 44 U.S.C. 3512 apply.

(i) Prior to the expiration of OMB's approval of a collection of information in a current rule, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this Part.

§ 1320.13 Emergency processing.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a stat-

utory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) The agency shall set forth in the FEDERAL REGISTER notice prescribed by § 1320.5(a)(1)(iv), unless waived or modified under this section, a statement that it is requesting emergency processing, and the time period stated under paragraph (b) of this section.

(e) OMB shall approve or disapprove each such submission within the time period stated under paragraph (b) of this section, provided that such time period is consistent with the purposes of this Act.

(f) If OMB approves the collection of information, it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

§ 1320.14 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this Part, and to the extent permitted by law, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that such public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate State or Federal law; or substantially interfere with an agency's ability to perform its statutory obligations.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) Any person may request OMB to review any collection of information

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conducted by or for an agency to determine, if, under this Act and this part, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, OMB shall, in coordination with the agency responsible for the collection of information:

(1) Respond to the request within 60 days after receiving the request, unless such period is extended by OMB to a specified date and the person making the request is given notice of such extension; and

(2) Take appropriate remedial action, if necessary.

§ 1320.15 Independent regulatory agency override authority.

(a) An independent regulatory agency which is administered by two or more members of a commission, board, or similar body, may by majority vote void:

(1) Any disapproval, instruction to such agency to make material or substantive change to, or stay of the effectiveness of OMB approval of, any collection of information of such agency; or

(2) An exercise of authority under § 1320.10(g) concerning such agency.

(b) The agency shall certify each vote to void such OMB action to OMB, and explain the reasons for such vote. OMB shall without further delay assign an OMB control number to such collection of information, valid for the length of time requested by the agency, up to three years, to any collection of information as to which this vote is exercised. No override shall become effective until the independent regulatory agency, as provided in § 1320.5(b) and § 1320.6(2), has displayed the OMB control number and informed the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

§ 1320.16 Delegation of approval authority.

(a) OMB may, after complying with the notice and comment procedures of the Administrative Procedure Act, delegate OMB review of some or all of an

agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he or she has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegate:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved;

(2) Has sufficient resources to carry out this responsibility effectively; and

(3) Has established an agency review process that demonstrates the prompt, efficient, and effective performance of collection of information review responsibilities.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, conducted or sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accordance with the terms and conditions of each delegation as specified in appendix A to this part, OMB delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System; and

(2) Managing Director of the Federal Communications Commission.

§ 1320.17 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form, at such time, and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted in the succeeding twelve months. For good cause, OMB may exempt any agency from this requirement.

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§ 1320.18 Other authority.

(a) OMB shall determine whether any collection of information or other matter is within the scope of the Act, or this Part.

(b) In appropriate cases, after consultation with the agency, OMB may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with the informal rulemaking procedures of the Administrative Procedure Act.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by OMB under this Act.

(d) To the extent permitted by law, OMB may waive any requirements contained in this part.

(e) Nothing in this part shall be interpreted to limit the authority of OMB under this Act, or any other law. Nothing in this part or this Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

APPENDIX A TO PART 1320—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY

1. The Board of Governors of the Federal Reserve System

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program, provided that such objection is certified to OMB by the head of

the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the FEDERAL REGISTER notices specified in paragraph (1)(3)(i) of this section 1.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance set by the Board and OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the FEDERAL REGISTER informing the public of the proposed collection of information, announcing the beginning of a 60-day public comment period, and the availability of copies of the "clearance package," to provide the public with the opportunity to comment. Such FEDERAL REGISTER notices shall also advise the public that they may also send a copy of their comments to the Federal Reserve Board and to the OMB/OIRA Desk Officer.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may temporarily approve of the collection of information for a period not to exceed 90 days without providing opportunity for public comment.

(B) At the earliest practical date after approving the temporary extension to the collection of information, the Board will publish a FEDERAL REGISTER notice informing the public of its approval of the collection of information and indicating why immediate action was necessary. In such cases, the Board will conduct a normal delegated review and publish a notice in the FEDERAL REGISTER soliciting public comment on the intention to extend the collection of information for a period not to exceed three years.

(ii) Provide the OMB/OIRA Desk Officer for the Federal Reserve Board with a copy of the Board's FEDERAL REGISTER notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where

the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to conduct the review established under 5 CFR 1320.8, including the seeking of public comment under 5 CFR 1320.8(d). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.5(d)(2), unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v)(A) Assure that each approved collection of information displays, as required by 5 CFR 1320.6, a currently valid OMB control number and the fact that a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

(B) Assure that all collections of information, except those contained in regulations, display the expiration date of the approval, or, in case the expiration date has been omitted, explain the decision that it would not be appropriate, under 5 CFR 1320.5(a)(1)(iii)(C), for a proposed collection of information to display an expiration date.

(C) Assure that each collection of information, as required by 5 CFR 1320.8(b)(3), informs and provides fair notice to the potential respondents of why the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required to obtain or retain a benefit, or mandatory; the confidentiality to be provided; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(vi) Assure that each approved collection of information, together with a completed form OMB 83-I, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's FEDERAL REGISTER notice or a summary of these comments, the certification required by 5 CFR 1320.9, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may

be instituted until the Board has delivered this transmittal to OMB.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that the Board approvals of collections of information that have been received by OMB and incorporated into OMB's public docket files and an inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this Appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.16(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.10(f) and 1320.10(g), prior to the expiration of the time period set for public comment in the Board's FEDERAL REGISTER notices and generally only if:

(1) Prior to the commencement of a Board review (e.g., during the review for the Information Collection Budget). OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed. When OMB exercises this authority it will consider that the period of its review began the date that OMB received the FEDERAL REGISTER notice provided for in section 1(a)(3)(i) of this Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.13 continue to apply.

2. The Managing Director of the Federal Communications Commission

(a) Authority to review and approve currently valid (OMB-approved) collections of

information, including collections of information contained in existing rules, that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent is delegated to the Managing Director of the Federal Communications Commission.

(1) This delegation does not include review and approval authority over any new collection of information, any collections whose approval has lapsed, any substantive or material modification to existing collections, any reauthorization of information collections employing statistical methods, or any information collections that exceed a total annual burden of 5,000 hours or an estimated burden of 500 hours per respondent.

(2) The Managing Director may ask that OMB review and approve collections of information covered by the delegation.

(3) In exercising delegated authority, the Managing Director will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action on reauthorizing an existing collection. Reasonable opportunity for public comment will include publishing a notice in the FEDERAL REGISTER and an FCC Public Notice informing the public that a collection of information is being extended and announcing the beginning of a 60-day comment period, notifying the public of the “intent to extend an information collection,” and providing the public with the opportunity to comment on the need for the information, its practicality, the accuracy of the agency’s burden estimate, and on ways to minimize burden, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Such notices shall advise the public that they may also send a copy of their comments to the OMB/Office of Information and Regulatory Affairs desk officer for the Commission.

(A) Should the Managing Director determine that a collection of information that falls within the scope of this delegation must be reauthorized quickly and that public participation in the reauthorization process interferes with the Commission’s ability to perform its statutory obligation, the Managing Director may temporarily reauthorize the extension of an information collection, for a period not to exceed 90 days, without providing opportunity for public comment.

(B) At the earliest practical date after granting this temporary extension to an information collection, the Managing Director will conduct a normal delegated review and publish a FEDERAL REGISTER notice soliciting public comment on its intention to extend the collection of information for a period not to exceed three years.

(ii) Assure that approved collections of information are reviewed not less frequently than once every three years and that such reviews are conducted before the expiration date of the prior approval. When the review is not completed prior to the expiration date, the Managing Director will submit the lapsed information collection to OMB for review and reauthorization.

(iii) Assure that each reauthorized collection of information displays an OMB control number and, except for those contained in regulations or specifically designated by OMB, displays the expiration date of the approval.

(iv) Inform and provide fair notice to the potential respondents, as required by 5 CFR 1320.8(b)(3), of why the information is being collected; the way in which such information is to be used; the estimated burden; whether responses are voluntary, required, required to obtain or retain a benefit, or mandatory; the confidentiality to be provided; and the fact that an agency may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(v) Transmit to OMB for incorporation into OMB’s public docket files, a report of delegated approval certifying that the Managing Director has reauthorized each collection of information in accordance with the provisions of this delegation. The Managing Director shall also make the certification required by 5 CFR 1320.9, e.g., that the approved collection of information reduces to the extent practicable and appropriate, the burden on respondents, including, for small business, local government, and other small entities, the use of the techniques outlined in the Regulatory Flexibility Act. Such transmittals shall be made no later than 15 days after the Managing Director has taken final action reauthorizing the extension of an information collection.

(vi) Ensure that the personnel in the Commission’s functional bureaus and offices responsible for managing information collections receive periodic training on procedures related to meeting the requirements of this part and the Act.

(b) OMB will:

(1) Provide notice to the Commission acknowledging receipt of the report of delegated approval and its incorporation into OMB’s public docket files and inventory of currently approved collections of information.

(2) Act upon any request by the Commission to review a collection of information referred by the Commission in accordance with the provisions of section 2(a)(2) of this appendix.

(3) Periodically assess, at its discretion, the Commission’s paperwork review process as administered under the delegation. The

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Managing Director will cooperate in carrying out such an assessment. The Managing Director will respond to any recommendations resulting from such a review and, if it finds the recommendations to be appropriate, will either accept the recommenda-

tion or propose an alternative approach to achieve the intended purpose.

(c) This delegation may, as provided by 5 CFR 1320.16(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances.