

§ 1315.11

5 CFR Ch. III (1–1–23 Edition)

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

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

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

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

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

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

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

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

§ 1315.12 Payments to governmentwide commercial purchase card issuers.

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

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

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

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

§ 1315.13 Commodity Credit Corporation payments.

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

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

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

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

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

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

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

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

⁴See footnote 3 in § 1315.7(a).