OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1315

RIN 0348–AB47

Prompt Payment

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

ACTION: Final rule on, and codification of, Prompt Payment Act regulations.

SUMMARY: OMB is issuing final revisions to its rules on the Prompt Payment Act, which have been found in Circular A–125. The revisions address the increased use of electronic commercial financial systems; promote the use of government credit cards and accelerated payment methods; reflect new requirements of the Debt Collection Improvement Act of 1996 and the recent repeal of the annual agency Prompt Payment reporting requirement; clarify and simplify language; and announce a toll-free number and internet website for Prompt Payment Act information. Finally, in addition to revising the Prompt Payment rules, OMB is also adopting them as codified regulations in the Code of Federal Regulations. OMB's issuance of codified regulations has the effect of superceding and rescinding Circular A–125 (''Prompt Payment'').

DATES: *Effective Date:* The regulations are effective October 29, 1999.

ADDRESSES: Copies of the regulation and other information are available from the Prompt Payment web site at http://www.fms.treas.gov/prompt/index.html. Copies are also available from the Financial Management Service, Cash Management Policy and Planning Division, 401 14th Street, SW., Washington, DC 20227.

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

SUPPLEMENTARY INFORMATION:

I. Background

In 1982, Congress enacted the Prompt Payment Act (''Act''; Pub. L. 97–177) to require Federal agencies to pay their bills on a timely basis, to pay interest penalties when payments are made late, and to take discounts only when payments are made by the discount date. The Act, as amended, is found at 31 U.S.C. Chapter 39.

To implement the Act, and pursuant to 31 U.S.C. 3903(a), OMB issued Circular A–125 (''Prompt Payment'') in August 1982 (47 FR 37321, August 25, 1982). In response to changes to the Act that Congress made in the Prompt Payment Act Amendments of 1988 (Pub. L. 100–496), OMB revised Circular A–125 in December 1989 (54 FR 52700, December 21, 1989).

On June 17, 1998, OMB requested public comment on proposed revisions to Circular A–125 (63 FR 33000). As the preamble to that document explained (at 33000), the Circular is being updated to reflect the increased use of electronic commerce in the Federal government and in the private sector, including electronic financial systems and electronic funds transfer. The value of electronic commerce as a means of streamlining government and saving taxpayer dollars was emphasized by President Clinton in his memorandum to agencies of October 26, 1993, and by the National Performance Review, headed by Vice President Al Gore, in its call for an ''all electronic Treasury.'' In addition, the document explained (at 33001) that revisions to the Circular were being proposed to reflect the Debt Collection Improvement Act of 1996 (''DCIA''; Pub. L. 104–134). Finally, the document indicated (at 33003) that, upon the issuance of final revisions, the Circular's provisions would be codified in the Code of Federal Regulations.

The current rule responds to the comments that were received on the proposed revisions, issues final revisions to OMB's Prompt Payment regulations, and codifies these regulations at a new part 1315 of title 5 of the Code of Federal Regulations. With the incorporation of the Prompt Payment rules into 5 CFR part 1315, OMB is rescinding Circular A–125.

As the next part of this preamble explains, OMB has made a number of changes to the Prompt Payment rules in response to public and agency comments on the proposal. In addition, one change has been made in response to subsequent legislative action—the elimination of the requirement for agencies to report annually on their Prompt Payment activities. This requirement (found in Section 14 of the Circular) had implemented the statutory reporting requirement in Section 3906 of the Prompt Payment Act, but Congress repealed Section 3906 last fall, in Section 1301(c) of the Federal Reports Elimination Act of 1998 (Pub. L. 105–362). As a result, agencies are no longer required to submit any Prompt Payment statistics to the Financial Management Service.

Finally, in an effort to further reduce any delays relating to payment, the Department of Treasury is establishing an interagency group, including the Department of Defense and other agencies, to examine any ongoing problems. The group will explore causes of any identified delay and develop options for corrective action as necessary.

As codified at Part 1315, the Prompt Payment rules generally follow the organization of the proposal. However, the section on ''Definitions'' has been moved from near the end of the proposal (Section 18) to near the beginning of the final rule (Section 1315.2). Also, as noted above, the ''Reporting Requirements'' section (Section 16 of the proposal) has been deleted.

II. Comments on, and Changes to, the Proposed Rule

Comments were received from 21 entities: 15 Federal agencies, 5 vendors and organizations representing vendors, and one university. Most of the comments addressed particular provisions in the proposed Prompt Payment rules. These are discussed below on a section-by-section basis, along with the changes that have been made to the proposed rule. Other, more general, comments on the proposal are discussed at the end of this part of the preamble.

A. Section 1315.1—Application (Proposed Section 1)

The Commodity Credit Corporation (CCC) commented that CCC payments made to farm producers are not considered to be procurement payments and as such CCC payments should not be covered in proposed Section 1.a., ''Application.'' A separate paragraph at final § 1315.1(d) has been added to indicate the scope of the coverage of the Prompt Payment Act with respect to CCC payments (CCC payments are also addressed in § 1315.13).

In proposed Section 1.c, ''Utility payments,'' an agency commented that the section should be revised to clarify that the referenced ''tariffs,'' which may override the Prompt Payment interest, are utility tariffs only. This was the intent of the proposed section, as with Section 2.b of the Circular, because the section addresses only utility services. The section has been revised to make this point clearer.

One agency, with worldwide operations, recommended that proposed Section 1.c (''Utility payments'') should be amended to provide that, when late payment rates for utility services are established by foreign governments,

such rates (in addition to the late payment rates established by state or local governments) will take precedence over the rates that would otherwise apply under this part. OMB agrees that foreign late payment rates for utility services should be treated comparably to state or local rates. In both situations, the Federal government should pay the local rate that is generally charged to utility customers, rather than the Prompt Payment Act rate. Final § 1315.1(c) has been revised accordingly.

Finally, the paragraph at final § 1315.1(b)(2) has been amended to include the word ''contingency'' when describing payments made during military operations. This parallels the language in the referenced provision at 10 U.S.C. 101(a)(13).

B. Section 1315.2—Definitions (Proposed Section 18)

An agency suggested that the definition of ''Acceptance'' be revised to clarify that only an authorized government official may accept goods or services. OMB agrees and has made the change at § 1315.2(b).

The definition of ''Applicable interest rate,'' at § 1315.2(d) has been revised to reflect the change in the ''Utility Payments'' in § 1315.1(c), which clarifies that utility tariffs take precedence over the Prompt Payment interest rate when governmental authorities (including foreign governments) regulate late payment rates.

Based on a comment from an agency, OMB has made a clarifying revision to the definition of ''Banking information'' at § 1315.2(f), so that it refers to ''vendor financial institution's'' rather than ''their bank's'' in connection with the routing number of the vendor's financial institution.

Several comments were received from agencies and from organizations representing Federal vendors regarding the definition of ''Contract financing payments,'' which in the final rule is found at § 1315.2(h). One commenter expressed the view that OMB should revise the rules to expand the application of Prompt Payment Act interest penalties to include contract financing payments. Contract financing payments were not subject to interest penalties under the Circular and the final rule retains this position. Under Circular A–125, the obligation to pay interest penalties for late payments has been conditioned upon the agency's acceptance of the supplies or services. Contract financing payments, by contrast, are the ''authorized disbursement of monies prior to acceptance of supplies or services.'' Circular A–125, section 1.f (54 FR 52707); *see* 54 FR 52701 (discussion of contract financing payments). As part of its activities to examine potential ongoing problems with payment delays, the Treasury Department's interagency workgroup (discussed above) will assess the agencies' practices with respect to contract financing payments.

The definition of ''Designated Agency Office'' at § 1315.2(m) has been revised, based on a comment, to make clear that the office first designated to ''receive'' an invoice must also ''review'' it to determine if it is proper.

An agency suggested that the definition of ''Electronic Funds Transfer'' (EFT) include electronic transmission of payment data. In light of the DCIA and requirement that federal payments be made electronically, the definition of EFT at § 1315.2(s) has been modified to more closely reflect the definition found at 31 CFR part 208, Managing Federal Agency Disbursements. An agency responsible for cleaning hazardous waste sites commented that the definition for ''Emergency Payment'' should be modified to include the release or threatened release of hazardous substances as defined in Section 106 of the Comprehensive Environmental Response Compensation and Liability Act of 1980. OMB has made this change at § 1315.2(t).

OMB has changed the FAR subpart reference in the definition of ''Fast Payment'' at § 1315.2(v) to reflect new FAR numbering.

The term ''Government Credit Card'' has been changed to ''Governmentwide Commercial Purchase Cards,'' and the definition at § 1315.2(x) have been revised to reflect changes (that are discussed below) to § 1315.12, ''Payments to Governmentwide Commercial Purchase Card Issuers.'' The definition was also revised to remove the reference to the current simplified acquisition threshold of $100,000 (because the threshold may change periodically), and to describe the types of payments for which the card may be used.

Several agencies requested definitions for ''rebate'' and ''settlement date.'' Definitions for these terms have been added, at § 1315.2(aa), (ee).

An agency suggested that the phrase ''contractual or noncontractual'' in the definition of ''Utilities and Telephones'' be removed since the Prompt Payment Act only applies to payments made as the result of a contract. OMB agrees, and the phrase has been removed from the definition at § 1315.2(gg).

C. Section 1315.3—Responsibilities (Proposed Section 2)

The discussion on ''Internal control systems'' (§ 1315.3(b)) has been modified to clarify that an agency's Quality Control program must include Quality Control validation at least once annually.

D. Section 1315.4—Prompt Payment Standards and Required Notices to Vendors (Proposed Section 3)

We received several comments concerning the use of non-paper documentation. An agency requested that OMB revise the ''Required documentation'' subsection to state that documentation stored in an imaged format is an example of the electronic documentation that is required. In the same vein, an agency commented that facsimiles should be included among the ''computer-related media'' that, under the ''Receipt of invoice'' subsection, may be used in lieu of ''written'' or ''original'' paper documents. Finally, an agency, which said it has experienced problems with non-paper media, recommended that OMB delete the provision that allows computer-related media to be used.

OMB agrees that an imaged format would be acceptable for electronic documentation purposes. Similarly, facsimiles are one example of an acceptable substitute for paper documents. OMB, though, does not believe that it is necessary (or advisable, given the evolving nature of electronic technology) for the rule to offer specific examples of acceptable formats for electronic documentation. Any legible electronic format may be used in lieu of paper documentation (to clarify this point, the reference to ''computer-related media'' in the proposal has been changed to ''any media'' in the final rule). OMB does not agree with the recommendation to delete the provision on computer-related media. In order to prevent delays in payment and subsequent late payment interest penalties, this provision strongly encourages agencies to use non-paper documentation with adequate internal controls to prevent duplicate payments. Agencies not having internal controls which are adequate for preventing duplication of payments are strongly encouraged to adopt such controls and to use non-paper documentation once those controls are in place.

Several agencies were critical of the proposed subsections on ''Receipt of invoice'' and ''Starting the payment period,'' which were significantly revised versions of the Circular's provisions on those subjects (Sections

1.n and 4.d of the Circular). The agencies stated that the proposed revisions did not provide useful clarification to the discussion of when an invoice is received for purposes of starting the payment period in accordance with the Prompt Payment Act (31 U.S.C. 3901(a)(4)). Based on these comments, the final rule makes only minor revisions to the Circular's provisions on ''Receipt of invoice'' and ''Starting the payment period''; the final rule's provisions are found at § 1315.4(b), (f). In response to an agency comment, the final rule clarifies that an electronically-received invoice is deemed to be received on the date the invoice is received unless it is received after normal working hours, in which case the invoice is deemed to be received the next business day.

OMB received a number of comments on the proposed subsection on ''Review of invoice.'' With respect to the requirement in Section 3.c(1) of the proposal for the agency to review the invoice to determine if it is improper, an agency commented that the phrase ''appropriate office'' did not correctly capture the intention of the 1988 amendments to the Act that the office first designated to receive an invoice must review it to determine if it is proper. In the final rule, at § 1315.4(c)(1), OMB has replaced the term ''appropriate office'' with the term ''designated agency office'' and (as discussed above) has revised the definition of that term in § 1315.2(m) to reflect the fact that this office is expected to review invoices.

A trade organization commented that the maximum time allowed an agency to review an invoice and return an invoice as improper should be reduced from seven days to three days. The seven-day period is established by the Prompt Payment Act, which provides that (except in the case of certain specified types of contracts, for which a different maximum period is set) ''each invoice be reviewed as soon as practicable after receipt'' and ''any invoice determined not to be such a proper invoice suitable for payment shall be returned as soon as practicable, but not later than 7 days, after receipt, specifying the reasons that the invoice is not a proper invoice.'' 31 U.S.C. 3903(a)(7)(A), (B). The Circular has reiterated the Act's requirement, by stating in Section 4.b(2), (3) that an invoice ''will be reviewed as soon as practicable after receipt'' and, if determined to be improper, ''shall be returned as soon as practicable, but not later than seven days'' after receipt. The proposed rule at Section 3.c(1), (2) also stated that the invoice shall be reviewed and, if determined to be improper, be returned within seven days after receipt. However, as another trade organization noted, the proposal failed to specify that the invoice shall be reviewed and (if determined to be improper) returned ''as soon as practicable'' after receipt.

In accordance with the Act, and the pre-existing Circular, the final rule states in § 1315.4(c)(1), (2) that an agency shall review the invoice ''as soon as practicable after receipt'' and shall return an improper invoice ''as soon as practicable after receipt, but no later than 7 days after receipt.'' In addition, as did the proposal, the final rule provides that the agency ''will identify all defects that prevent payment and specify all reasons why the invoice is not proper and why is it being returned.'' As a result, if it is ''practicable'' for an agency to review and return an improper invoice in three days, then—under the Act and the final rule—the agency is required to return the invoice in three days. However, if it is not ''practicable'' for an agency to review and return an improper invoice in three days, then the Act and the final rule provide that the agency has additional time (up to seven days) in which to do so. Given the statutory standard, we do not believe it would be appropriate for the final rule to require an agency to return an improper invoice in less than seven days where it would not be ''practicable'' for the agency to do so.

An agency commented that the proposed provision at Section 3.c(2), regarding the notification requirement when returning an improper invoice, should be consistent with proposed Section 13.a.(3) which stated that, for construction contracts, an agency need not return an improper invoice if the agency notifies the vendor electronically that the invoice is improper. Another agency, however, noted that the Prompt Payment Act, at 31 U.S.C. 3903(a)(7)(B), provides that improper invoices ''shall be returned.'' In the final rule, at § 1315.14(a)(3), OMB has dropped the language concerning electronic notification of improper invoices for construction contracts. As a result, that provision is consistent with the invoice-return requirement at § 1315.4(c)(2).

A trade organization commented that additional language should be added which says that the number of days available to an agency to make the payment is reduced by the number of days by which an agency exceeds the time period during which it is required to return the improper invoice. OMB does not believe that additional language is necessary. The Circular in Section 4.b(4) has already provided for such a reduction in the payment period. That language was in the proposed rule at Section 3.g(3), and is found in the final rule at § 1315.4(g)(4).

Two agencies commented on the provision on ''Acceptance'' in Section 3.e of the proposal. As has the Circular (at Section 4.c), the proposal required agencies to ensure that acceptance is ''executed as promptly as possible,'' and that commercial items and services ''should not be subject to extended acceptance periods.'' One agency commented that a specific time period should be established (e.g., seven days) within which acceptance is required to occur, unless a longer acceptance period is agreed upon. OMB does not believe that a specific time period should be set for acceptance, but rather that acceptance should occur ''as promptly as possible.'' Therefore, the final rule at § 1315.4(e) retains the language from the Circular and the proposal on this point. Another agency commented that the language in the proposal that acceptance reports should be forwarded to the designated agency office ''by the fifth working day after delivery'' should be amended to say the fifth working day ''after acceptance'' (which would parallel the language in the Circular at Section 4.c). OMB agrees with the comment and has made the change.

With respect to the ''Payment date'' provision at Section 3.h of the proposal, an agency commented that there would be no instance where a payment would fall due ''after normal working hours.'' OMB agrees, and the phrase has been deleted in § 1315.4(h). Finally, the text of the provision has been revised for clarity.

E. Section 1315.5—Accelerated Payment Methods (Proposed Section 4)

Two agencies questioned whether the Prompt Payment Act provides the statutory latitude to permit payment by accelerated methods after the matching of documents is completed. OMB believes that accelerated payment methods are consistent with the Prompt Payment Act, and that they further substantial policy interests. The Act, at 31 U.S.C. 3903(a)(8), provides that OMB shall prescribe regulations that ''permit an agency to make payment up to 7 days prior to the required payment, or earlier as determined by the agency to be necessary on a case-by-case basis.'' OMB believes that, as the government moves steadily into the electronic commerce mainstream, agencies are increasingly likely to realize efficiencies and cost savings if agencies are allowed to pay early when it benefits the government to do so. Therefore, agencies may use the accelerated payment methods when they determine that such earlier

payments are necessary (as final § 1315.4(j) provides). When making these decisions, agencies should consider the cost of funds to the government of paying early. Prompt Payment late payment interest penalties apply if the payment is not made by the payment due date.

An agency questioned whether the matching requirements for the accelerated payment methods would apply to payments made by agencies which do not use a 100 percent prepayment examination process but instead rely on statistical sampling in accordance with 31 U.S.C. 3521. This agency was concerned that only those payments chosen for the sample would be eligible for accelerated payments methods. OMB does not intend for the accelerated payment methods to be available only for those payments where 100 percent prepayment examinations are conducted, but may also be used by agencies that rely on statistical sampling, if such sampling reveals no unacceptable levels of problems encountered.

An agency recommended that the proposed provision on ''A single invoice under $2,500'' clarify that payments of credit card invoices under $2,500 may be made without verification that goods have been received (see Treasury Financial Manual 4–4500, Government Purchase Cards). OMB agrees and has made this change.

An agency commented that accelerated payments to small businesses, under the proposed provision on ''Small Disadvantaged Business Concern,'' should be mandated rather than simply authorized. However, under 31 U.S.C. 3903(a)(8), an agency needs to determine that such earlier payments are necessary. Thus, OMB does not agree that the rule should mandate the use of the accelerated payment methods. Another agency commented that accelerated payments should be made to all small businesses rather than (as under the proposal) only to small disadvantaged business concerns ''as defined in the FAR Part 19.001.'' OMB agrees that accelerated payments may be made to any small business (as defined in FAR Part 19.001) if the agency determines that such early payments are necessary. The final rule at Section 1315.b has been revised accordingly.

F. Section 1315.6—Payment Without Evidence That Supplies Have Been Received (Fast Payment) (Proposed Section 5)

Several agencies commented on proposed Section 5, ''Fast Payment'' (the title of this section has been changed in the final rule). Several agencies commented that the FAR citation at Part 13 was no longer subpart 13.3, but is now subpart 13.4. This change has been made. An agency commented that proposed sections 5.b and 5.d (on ''FAR clause 52.213.1'' and ''Obligation documents'') were not within the scope of this regulation and should be deleted. Based on the comments, OMB has decided to retain much of the language from Section 12 of the existing Circular (54 FR 52712). The conditions under which a fast payment procedure is warranted and the requirements of a fast pay contract remain unchanged.

G. Section 1315.7—Discounts (Proposed Section 6)

With respect to proposed Section 6.a (''Economically justified discounts''), an agency commented that its first two sentences should be combined for clarity. In addition, another agency commented that agencies should be encouraged to include discount terms in the contract at the time of award. This would provide agencies the opportunity to include discount terms in their accounting systems, which could then be automatically evaluated to determine if they are economically justified and will give agencies enough time to evaluate and take the discount, when indicated. This agency also commented that the term ''deadline'' in proposed 6.b (''Discounts taken after the deadline'') should be replaced by the term ''discount date'' to more accurately reflect the date by which agencies may take a discount. OMB agrees with these comments and has revised the section accordingly.

H. Section 1315.8—Rebates (Proposed Section 7)

An agency commented that a rebate formula would be useful to agencies in implementing this section. OMB agrees and has included a rebate formulate in the final rule, at § 1315.17 (''Formulas''). The ''Rebates'' section has been revised to clarify that the payment due date may be calculated using the rebate formula provided, unless the payment due date has been determined in the contract.

I. Section 1315.9—Required Documentation (Proposed Section 8)

An agency making payments overseas to foreign landlords said that late payment interest penalties should not be required when routine lease contract renewal payments cannot be made because a foreign landlord no longer lives in the area where the leased property is located. OMB agrees that Prompt Payment interest penalties are not required to be paid if the vendor does not submit a corrected remittance address as required by final § 1315.9(a)(6).

The language in § 1315.9(a)(8), regarding banking information required by the Debt Collection Improvement Act, has been reworded to parallel the language in § 1315.9(a)(7), regarding interest penalties under the Prompt Payment Act. The requirements of these subsections are unchanged.

Two agencies commented that proposed Section 8.a(8), requiring that banking information be submitted no later than the first request for payment, is inconsistent with the proposed Federal Acquisition Regulation (FAR Case 91–118) which required the submission of banking information no later than 15 days before the submission of the first request for payment. One of the agencies commented that coordination on this point was required to ensure consistency. This issue has been resolved by the publication of the final FAR rule on March 4, 1999 (64 FR 10530, 10538). Unlike the proposed FAR rule, the final FAR rule does not require receipt of EFT information 15 days prior to the invoice.

An agency requested clarification on whether purchase orders used as invoices would be in compliance with proposed Section 8.b(4) if an invoice number was not provided on the purchase order. An agency commenting on proposed Section 8.b(6) stated that the rule should not require payment and shipping terms on an invoice, but rather these terms should be specified either by agency policy or on individual orders or contracts. The requirements of this section are intended to allow an agency to require the information it needs to make a timely payment. The final rule at § 1315.9(b)(4), (6) provides agencies with discretion as to whether to require this information; as these provisions state, the contract may specify which information is required.

Several comments were received concerning the proposed rule's treatment in Section 8.b(7)–(8) of the collection of banking information and Taxpayer Identifying Numbers (TINs). Subsequent to the issuance of the proposal, the Treasury Department issued regulations on the Debt Collection Improvement Act of 1996 (DCIA) that are found in 31 CFR Part 208 (63 FR 51490, September 25, 1998). The DCIA regulations require the collection of banking information in order to make an electronic funds transfer (EFT) payment as required by the DCIA unless the payment is waived under 31 CFR Part 208. The regulations also require the collection of the TIN,

which the DCIA requires for debt collection and under the Internal Revenue Code for vendor income reporting. *See* 31 U.S.C. 7701(c); 26 U.S.C. 6109. The Treasury Department requires each agency to prepare a TIN implementation plan to document agency strategies for achieving compliance with the TIN provisions of the DCIA, and to identify barriers to collecting and providing TINs. *See* Treasury Financial Manual, TFM Bulletin 99–02.

The proposed rule in Section 8.b(7)–(8) required the collection of banking information and TINs on the invoice unless previously collected by the agency. Several agencies interpreted these provisions to mean that an agency could not require that this information be on the invoice if the information had already been provided. These agencies commented that they would need to require the information on the invoice even if it had been previously provided. One agency commented that payment offices are not always notified in a timely manner when financial institutions merge and when vendors change financial institutions. Another agency commented that it requires the flexibility to require TINs on every invoice because many companies have multiple branches or subsidiaries, which often have their own individual TINs. According to the agency, if the vendor is not required to provide the TIN on each invoice, then the agency is forced to make a determination as to which TIN is associated with the invoice. OMB recognizes that some agencies need the flexibility to require banking information and TINs on invoices in addition to collecting the information sooner in the payment process. The final rule has been revised at § 1315.9(b)(7)–(8) to state that banking information and TINs are required on the invoice unless agency procedures provide otherwise.

An agency requested clarification that payments to vendors may be withheld pending submission of a proper invoice that includes banking information. The agency requested the clarification because a June 25, 1998 press release issued by Treasury stated that no payments would be withheld as a result of the DCIA EFT requirement. OMB has been informed by Treasury that the payments referred to in the press release are payments to individuals (such as recipients of Federal salary, wage, benefit or retirement payments), not payments to vendors. The final rule at § 1315.9(b)(8) requires a vendor to provide banking information, as part of a proper invoice, so that an electronic payment can be made. The invoice is not deemed proper unless the banking information is provided to the agency by the time the invoice is submitted. The payment period does not begin, and thus agencies are not required to pay late payment interest penalties, until after the banking information has been received.

Two agencies that make payments overseas commented that proposed Section 8.b(7) should be amended to specifically exclude the requirement that TINs be provided for overseas payments, in the case of overseas vendors who do not have a TIN. The DCIA does not provide agencies the authority to waive the requirements to collect the TIN for purposes of offsetting Federal payments to collect debt owed the government. However, the Treasury Department acknowledges that there are some situations where it may not be possible to collect a TIN. Treasury has proposed a TIN implementation report from each agency to identify those situations where the TIN cannot be collected. (*See* Treasury Financial Manual, TFM Bulletin 99–02.)

One agency suggested that the regulation emphasize that the collection of TINs is required for 1099 tax reporting purposes and that agencies must have systems which can distinguish between payments for services and payment for products because only payments for services are required to be reported to the Internal Revenue Service (IRS). OMB believes this discussion is beyond the scope of the regulation and defers such discussion to IRS regulations.

An agency commented that proposed Sections 8.c.(3), (5), and (6) should include references to services, since receiving reports can apply to services as well as goods. OMB agrees and has made the change at § 1315.9(c)(3), (5), and (6) of the final rule. The same agency commented that proposed language at 8.c.(8) incorrectly referenced Section 8.c(1)–(7) rather than Section 8.b. OMB agrees, and has corrected the reference in § 1315.9(c)(8) so that it refers to § 1315.9(b). Also, this provision has been revised so that the additional information required for a delivery ticket (when it is used as an invoice) will be set forth in agency procedures, which may (but are not required to) include the information in § 1315.9(b).

J. Section 1315.10—Late Payment Interest Penalties (Proposed Section 9)

A trade organization commented that language should be included in this section, which would state that the number of days available to an agency to make a payment is reduced by the number of days that the notification of an improper invoice is late. As explained above, this language is already found in § 1315.4(g)(4) (''Notification of Improper Invoice''), which discusses how to calculate the payment due dates when a notification of an improper invoice is late.

The language in final § 1315.10(a)(1) has been revised to clarify that the time period during which interest will accrue begins on the day after the payment due date and ends on the payment date, and interest will accrue at the rate in effect on the day after the payment due date.

An agency commented that proposed Section 9.a.(3) should be amended to say that interest will accrue on the ''unpaid amount'' instead of ''the unpaid principle and accrued interest'' because the latter language assumes that the principal amount has not been paid and such is not necessarily the case. The agency also commented that this paragraph be placed after proposed 9.a.(4). Two agencies commented that the word ''capitalized'' in proposed 9.a.(4) should be replaced with ''compounded'' because compounded is a more easily understood term and reflects the same meaning. OMB agrees with these comments and the changes are made in § 1315.10(a).

Several agencies requested clarification on proposed Section 9.a(6) regarding the date through which interest accrues on discounts improperly taken. The final rule at § 1315.10(a)(6) has been revised to clarify that interest is calculated beginning on the date after the discount date through the date of payment of the discount erroneously taken.

An agency commented that the one dollar threshold in proposed 9.a.(7) should be increased. The one dollar threshold is specified in the Prompt Payment Act, 31 U.S.C. 3902(c)(1), and is therefore retained in the final rule at § 1315.10(a)(7).

Proposed 9.a(8) addressed when interest penalties would begin to accrue when a vendor has supplied the agency with incorrect banking information. Several agencies expressed the concern that an agency would not know that the vendor had supplied incorrect banking information until the agency's payment is rejected. As a result, it would be very difficult and in some cases impossible for the agency to return the invoice as improper (due to the incorrect banking information) within the seven days that is allowed for returning an improper invoice. In response to these comments, the final rule at § 1315.10(a)(8) provides that, if the vendor has supplied incorrect banking information, interest will not accrue until seven days after the agency receives correct information.

This is intended to give agencies adequate time to prepare and initiate a payment using the correct information, and is similar to the provision at Section 7.a(10) of the Circular.

An agency commented that interest should be calculated based on a 365-day year, rather than the 360-day year in proposed Section 9.a(9). The 360-day year, which has been used in Section 7.a(11) of the Circular, is a standard business practice, and it is used in other calculations such as the calculation for the rebate formula and the discount formula used to determine when to take discounts. Accordingly, the final rule at § 1315.10(a)(9) retains the 360-day year.

Two agencies commented that the phrase ''except when title of the goods passes to the government'' in proposed Section 9.b(1) should be deleted because its purpose was unclear. The exception was intended to address the situation where, under the Fast Payment procedure, the passing of title substitutes for acceptance for purposes of determining whether late payment interest penalties may be paid. Language has been added in final § 1315.10(b)(1) to clarify that, in these circumstances, interest may be paid only after the government receives title for goods.

An agency requested clarification on whether the delay of the passage of an appropriations bill is an example of ''the temporary unavailability of funds'' under proposed Section 9.b(4). That is indeed the situation addressed by this provision, which has been found in Section 7.b(3) of the Circular. The provision is taken from the Prompt Payment Act, at 31 U.S.C. 3902(d). Under the Act, the fact that an appropriation has not yet been enacted from which payments to vendors can be made does not relieve the agency of the obligation to pay interest for late payments.

K. Section 1315.11—Additional Penalties (Proposed Section 10)

An agency commented that proposed Section 10.a should be amended to say that a vendor shall be entitled to interest ''of $1.00 or more,'' so as to clarify that interest under $1.00 need not be paid. The agency commented that proposed Section 10.c should be similarly amended by adding that no additional penalty is owed if the amount of the interest penalty is less than $1.00. An agency recommended that proposed Section 10.a(3)B be amended to include the situation where a postmark is illegible (in addition to where there is no postmark), while another agency commented that the proposed language on confirmation of postmark should be moved to the beginning of Section 10.a(3). This agency commented that proposed Section 10.a(3)B should clarify that the ''date of receipt'' refers to receipt of the principal amount. The agency also commented that the proposed Section 10.d was confusing and would be clarified by replacing ''if paid separately'' with language that states that penalty determinations are made separately for each invoice when payments are consolidated. OMB agrees with these comments, and the changes are made in § 1315.11.

L. Section 1315.12—Payments to Governmentwide Commercial Purchase Card Issuers (Proposed Section 11)

Two agencies commented that the requirements of proposed Section 11 (''Payments Under Government Credit Card.'') were inconsistent with the requirements of proposed Section 7 (''Rebates''). OMB agrees that the requirements for determining credit card invoice payment dates in these proposed sections were not consistent. In the final rule, § 1315.12 has been revised to instruct agencies to determine payment due dates in accordance with § 1315.8.

Two agencies commented that this section should reference the rebate formula and should replace the reference to the discount formula. A reference to the rebate formula has been added to this section. Several agencies commented that the terms used in the regulation for the credit card program should be the same as those used in the FAR. OMB has changed the reference to Governmentwide Commercial Purchase Card which is the term used in the FAR and has changed the title of the section to ''Payments to Governmentwide Commercial Purchase Card Issuers'' to reflect the new term and to reflect the new program's use of multiple card issuers.

Two agencies requested clarification on whether the accelerated payment due dates for purchase card invoices under $2500 applied to individual invoices or to consolidated invoices. One of the agencies also requested clarification on whether purchase card invoices referred to invoices from vendors which would be paid by purchase card or invoices from purchase card issuers. A purchase card invoice means a single invoice submitted by a purchase card issuer for reimbursement of funds already paid to the vendor by the card issuer. Any single invoice under $2500 may be paid in accordance with this section, however a consolidated invoice may only be paid in accordance with this section and § 1315.5, ''Accelerated Payment Methods'' if the total amount of the consolidated invoice is under $2500.

Two agencies sought clarification on whether matching documents was required for purchase card invoice payments under $2500. OMB has added language to clarify that matching documentation under this payment method is not required to be performed before payment.

M. Section 1315.13—Commodity Credit Corporation Payments (Proposed Section 12)

Based on comments from the Commodity Credit Corporation (CCC), proposed Section 12 (''Payments to Farm Producers'') has been modified to clarify payment standards and to include language which insures that the CCC may still exercise or implement, under authorities applicable directly to the Corporation, whatever discretion or obligation it may possess to deal with lawful claims, including, if appropriate, payment of interest penalties beyond the time provided elsewhere in the regulation. The title of the section has been modified to more accurately reflect the scope of CCC payments covered by the Prompt Payment Act.

N. Section 1315.14—Payments Under Construction Contracts (Proposed Section 13)

As discussed above, OMB agrees with the agency comment that the language in proposed Section 13.a.(3), which stated that it is not necessary for an agency to return an improper invoice when it notifies the vendor electronically that the invoice is improper, was inconsistent with the return requirement in proposed Section 3.c(2) and in the Prompt Payment Act at 31 U.S.C. 3903(a)(7)(B). The language has therefore been deleted.

O. Section 1315.15—Grant Recipients (Proposed Section 14)

No comments were received on this section. The final rule contains the proposed text.

P. Section 1315.16—Relationship to Other Laws (Proposed Section 15)

An agency commented that proposed Section 15.a.(2) ''Relationship to Other Laws'' should include language which clarifies that once a claim is filed under the Contract Disputes Act, Prompt Payment interest penalties will never accrue on the disputed amount after the date the claim was filed. OMB agrees and has added clarifying language.

Q. Proposed Section 16—Reporting Requirements

As explained above, Congress in Section 1301(c) of the Federal Reports Elimination Act of 1998 repealed the Prompt Payment Act's reporting requirements at 31 U.S.C. 3906. Accordingly, the final rule does not adopt the reporting requirements in proposed Section 16.

R. Section 1315.17—Formulas

As explained above, an agency suggested that a formula be provided for calculating rebates, and one is provided in this section. An agency also commented that the Prompt Payment internet website should include formulas for computing interest penalties. Formulas for computing monthly compounded interest and daily simple interest have been added to this section and to the website. In addition, the website now includes a spreadsheet which can be used to determine when to pay a purchase card invoice. This section also includes a formula for manually calculating when to pay a credit card invoice so as to either maximize savings or minimize costs.

S. Section 1315.18—Inquiries (Proposed Section 17)

A trade association representing construction subcontractors commented that the Prompt Payment website should include a link to the Prompt Payment Act of 1988 and to the Federal Acquisition Regulation Prompt Payment clause. The Financial Management Service has added both links to the Prompt Payment website. The address for the website is www.fms.treas.gov/prompt/index.html.

T. Section 1315.19—Regulatory References to OMB Circular A–125 (New Section)

This section was added to make clear that regulatory references to OMB Circular A–125 shall be construed as referring to the Part until revised to reflect this codification. This would include references to A–125 contained in the FAR. (During the coming months, additional technical conforming changes will be made to FAR provisions and clauses as necessary.)

U. Interagency Payments

At the end of Part II of the Supplementary Information section of the proposed rule's preamble, OMB sought comment on how the Federal government should address the problem of Federal agencies making late payments to other Federal agencies. Six agencies commented that Treasury's Online Payments and Collections system (OPAC) or Treasury's Electronic Data Interchange Payments and Collections system (EDIPAC) should be required to be used by all Federal agencies for interagency payments. One agency commented that the availability of interagency payment mechanisms such as OPAC/EDIPAC, credit cards and other programs would assist agencies in improving interagency payment efficiency. Another agency commented that Interagency Agreements could include terms which provide for billing in advance. This agency commented further that agencies should have a limit of one year to bill, because some agencies have taken much longer than a year to bill. Two agencies commented that Prompt Payment late payment interest penalties should be applied to interagency payments. Three agencies commented that there should be no application of Prompt Payment penalties for interagency payments. One agency commented that Prompt Payment was not the appropriate context for discussing interagency payments.

The Prompt Payment Act does not provide for the application to interagency payments of the Prompt Payment rules, in particular the interest penalties. However, in light of the electronic fund transfer (EFT) requirements of the Debt Collection Improvement Act and the costs that agencies incur to collect overdue amounts from other agencies, OMB strongly encourages agencies to choose an electronic payment method for making interagency payments. OMB also strongly encourages agencies to include advance billing and other payment terms in Interagency Agreements to facilitate timely payments. Agencies wishing to know more about available electronic payment methods for interagency payments should contact the Department of Treasury, Financial Management Service, Card Technology Division, (202) 874–6550.

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

This final rule will not have a significant economic effect on a substantial number of small entities; the regulations implement the Prompt Payment Act, which requires Federal agencies to pay their bills on a timely basis, to pay interest penalties when payments are made late, and to take discounts only when payments are made by the discount date. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Orders 12866 and 12875, the final rule will not significantly or uniquely affect small governments, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Finally, the final rule is not a ''major rule'' under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

IV. Paperwork Reduction Act

The collections of information necessary for carrying out the Prompt Pay Act have previously been reviewed and approved by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) as follows: The collection of banking information required to make payments electronically has been approved by OMB under Control Number 1510–0066. The collection of Taxpayer Identification Numbers (TINs) for contracts governed by the Federal Acquisition Regulation for commercial and non-commercial contracts has been approved by OMB under Control Numbers 9000–0097 and 9000–0136, respectively. Collections covered under these three control numbers are part of the implementation of the Debt Collection Improvement Act of 1996 (the DCIA). The DCIA requires that all Federal payments be made electronically after January 1, 1999 and that TINs be collected for the purposes of collecting debt owed the Federal government. Collections in this rule relating to the submission and payment of invoices are approved under OMB Control Numbers 9000–0070 and 0102, which govern the submission of adequate documentation to support contractor requests for payment.

List of Subjects in 5 CFR Part 1315

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

Dated: September 15, 1999.

Jacob J. Lew,

Director.

Authority and Issuance

For reasons set out in the preamble, OMB adds part 1315 to 5 CFR chapter III to read as follows:

PART 1315—PROMPT PAYMENT

Sec.

1315.1 Application.
1315.2 Definitions.
1315.3 Responsibilities.
1315.4 Prompt payment standards and required notices to vendors.
1315.5 Accelerated payment methods.

1315.6 Payment without evidence that supplies have been received (Fast Payment).
1315.7 Discounts.
1315.8 Rebates.
1315.9 Required documentation.
1315.10 Late payment interest penalties.
1315.11 Additional penalties.
1315.12 Payments to governmentwide commercial purchase card issuers.
1315.13 Commodity Credit Corporation payments.
1315.14 Payments under construction contracts.
1315.15 Grant recipients.
1315.16 Relationship to other laws.
1315.17 Formulas.
1315.18 Inquiries.
1315.19 Regulatory references to OMB Circular A–125.

Authority: 31 U.S.C. chapter 39.

§ 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 semiannually 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 interbank 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. Contract financing payments do not include invoice payments, payments for partial deliveries, or lease and rental payments.

(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).

§ 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 required 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:

(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

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

[2] See footnote 1 in § 1315.3(b).

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.

(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.

(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) Unless otherwise specified, 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) *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.

(3) *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.

(4) *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.

(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.

§ 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.

§ 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 government 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

[3] The 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.

invoice payments (including progress payments under construction contracts);

(8) Reference to requirements under the Debt Collection Improvement Act (Pub. L. 104–134, 110 Stat. 1321), including the requirement that payments must be made electronically except in situations where the EFT requirement is waived under 31 CFR 208.4. Where electronic payment is required, the contract will stipulate that banking information must be submitted no later than the first request for payment;

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

(b) The following correct information constitutes a proper invoice and is required as payment documentation:

(1) Name of vendor;

(2) Invoice date;

(3) Government contract number, or other authorization for delivery of goods or services;

(4) Vendor invoice number, account number, and/or any other identifying number agreed to by contract;

(5) Description (including, for example, contract line/subline number), price, and quantity of goods and services rendered;

(6) Shipping and payment terms (unless mutually agreed that this information is only required in the contract);

(7) Taxpayer Identifying Number (TIN), unless agency procedures provide otherwise;

(8) Banking information, unless agency procedures provide otherwise, or except in situations where the EFT requirement is waived under 31 CFR 208.4;

(9) Contact name (where practicable), title and telephone number;

(10) Other substantiating documentation or information required by the contract.

(c) 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.

§ 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 or 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;

(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 incurred. 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.

§ 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 4–4535.10[4] permits payment of the bill in full prior to verification that goods or services were received.

(b) *Disputed line items.* Disputed line items do not render the entire invoice an improper invoice for compliance with this proposed regulation. Any undisputed items must be paid in accordance with paragraph (a) of this section.

§ 1315.13 Commodity Credit Corporation payments.

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

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

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

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

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

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

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

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

[4] See footnote 3 in § 1315.7(a).

§ 1315.14 Payments under construction contracts.

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

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

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

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

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

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

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

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

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

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

(iii) Revert to the Treasury.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) A longer period specified in the solicitation and/or contract if required, to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the vendor's performance under the contract;

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

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

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

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

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

§ 1315.15 Grant recipients.

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

§ 1315.16 Relationship to other laws.

(a) *Contract Disputes Act of 1978 (41 U.S.C. 605).* (1) A claim for an interest penalty (including the additional penalty for non-payment of interest if the vendor has complied with the requirements of § 1315.9) not paid under this part may be filed under Section 6 of the Contract Disputes Act.

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

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

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

§ 1315.17 Formulas.

(a) *Rebate formula.* (1) Agencies shall determine credit card payment dates based on an analysis of the total benefits to the Federal government as a whole. Specifically, agencies should compare daily basis points offered by the card issuer with the corresponding daily basis points of the government's Current Value of Funds (CVF) rate. If the basis points offered by the card issuer are greater than the daily basis points of the government'' 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'' 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'' 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, S.W. Washington, D.C. 20227, (202) 874–6590, or by calling the Prompt Payment help line at 1–800–266–9667, by emailing questions to FMS at *prompt.inquiries@fms.sprint.com*, or by completing a Prompt Payment inquiry form available at www.fms.treas.gov/prompt/inquiries.html.

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

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

§ 1315.19 Regulatory references to OMB Circular A–125.

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

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