Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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: Proposed rule.

SUMMARY: This document requests comment on proposed regulations which will revise and replace Office of Management and Budget (OMB) Circular No. A–125, ''Prompt Payment.'' This proposal is being made to reflect requirements of the Debt Collection Improvement Act of 1996 as well as an increasingly electronic commercial financial systems environment; to promote the use of government credit cards and accelerated payment methods; to clarify and simplify current language; and to announce a new toll-free number and internet website for Prompt Payment Act information. The prompt payment implementing regulations are provided in a uncodified format for comment purposes. These regulations will be codified at the final rule stage in 5 CFR Part 1315, unless pending legislation transfers the authority for issuing these regulations to the Department of the Treasury. In that case, they will be codified in Title 31 of the Code of Federal Regulations.

DATES: Comments must be received by August 17, 1998. The prompt payment regulations are proposed to be effective 30 days after final publication of the final rule. For payments under contracts or purchase orders solicited on or after July 26, 1996, the requirement to collect banking information, for purposes of making an EFT payment pursuant to 31 U.S.C. 3332, as amended, is proposed to be effective 30 days after publication of the final rule. For payments under contracts or purchase orders solicited before July 26, 1996, the requirement to collect banking information is proposed to be effective January 2, 1999.

ADDRESSES: All comments should be addressed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street S.W., Washington, D.C. 20227.

Copies of the current and proposed circulars and other information are available from the Prompt Pay website at http://www.fms.treas.gov/prompt/index.html or from the Treasury Department, Financial Management Service website at the following address: http://www.fms.treas.gov/. Copies of the current and proposed circulars are also available from the Executive Office of the President's Publications Office, Room 2200 New Executive Office Building, 725 17th Street NW, Washington, D.C. 20503, phone (202) 395–7332, and via fax-on-demand at (202) 395–9068.

FOR FURTHER INFORMATION CONTACT: Martha Thomas-Mitchell, Financial Program Specialist on (202) 874–6757; Diana Shevlin, Financial Program Specialist on (202) 874–7032; Sally Phillips, Senior Financial Program Specialist on (202) 874–6749; or, Cynthia Johnson, Director, Cash Management Policy and Planning Division on (202) 874–6657.

SUPPLEMENTARY INFORMATION:

I. Introduction

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).

The increased use of electronic commerce, in the Federal government and in the private sector, including electronic financial systems and electronic funds transfer, require that Circular A–125 be updated in light of current practices. The use of electronic commerce is a priority in the current administration. In a memorandum to agencies dated October 26, 1993, President Clinton emphasized the need for and importance of electronic commerce as a means for streamlining government and saving taxpayer dollars. 3 CFR 791 (1993 Comp.). The National Performance Review (NPR), headed by Vice President Al Gore, recommended examining government practices to streamline regulations and processes and, in particular, called for an ''all electronic Treasury.'' The president's directive and the NPR recommendations resulted in the establishment of an inter-agency workgroup to revise the current circular to reflect the changing commercial environment while streamlining the Federal payment function through the increased use of electronic commerce. The Department of Treasury's Financial Management Service (''FMS'') led the revision effort on behalf of the Office of Management and Budget. (Under proposed legislation pending in Congress, responsibility for regulations and reporting under the Act would be transferred from OMB to the Treasury Department.)

II. Proposed Revisions to Circular A–125

In this proposed revision to the circular, its provisions have been reorganized. For example, in most cases the requirements for certain types of payment have been consolidated in the section on that payment. Thus, whereas determining the payment due date for discounts and determining whether to take a discount are discussed separately in the current circular (see Sections 4.i. and 4.m.), they are found together in the proposed circular in Section 6 entitled ''Discounts.'' In addition, several provisions have been added to the revised circular. For example, the revised circular is expanded (see Section 5) to include options for making payments before 30 days if doing so is in the best interests of the government and promotes electronic payments. The circular has also been revised to clarify and simplify current language. Finally, the circular announces a new toll-free number, 1–800–266–9667, for questions about Prompt Pay policy, reporting requirements and previous and current Prompt Pay interest rates. The circular

also announces a Prompt Pay website at http://www.fms.treas.gov/prompt/index.html. The website will contain, among other things, rate information, frequently asked questions, copies of current circulars and links to other related websites. The website may also be accessed through FMS' website at http://www.fms.treas.gov/.

The following describes how the Circular has been reorganized, and it explains the more significant changes and clarifications.

A. Proposed Revisions Implementing the Debt Collection Improvement Act

On April 26, 1996, the president signed into law the Debt Collection Improvement Act of 1996 (''DCIA''; Pub. L. 104–134) requiring that, in the first phase, all new Federal payments, including vendor payments, be made electronically on or after July 26, 1996. Treasury Department regulations implementing this phase of the DCIA (31 CFR 208, Management of Federal Agency Disbursements, Interim Rule) define a new Federal vendor payment as one which must be paid by EFT if ''the payment is made under a contract or purchase order resulting from a solicitation issued on or after July 26, 1996.'' All vendor payments must be made electronically after January 1, 1999. Treasury Department regulations implementing this phase of the DCIA are scheduled to be published in the summer of 1998.

The revised circular (Section 8.b(8)) requires the collection of banking information in order to make an EFT payment as required by the DCIA unless the payment is waived under 31 C.F.R. Part 208. The circular (Section 8.b.(7)) also requires the collection of the Taxpayer Identifying Number (TIN). The TIN is required under DCIA 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.

B. Other Proposed Revisions

1. The ''Definitions'' section (Section 1 of the current circular) has been moved to the end of the regulation (Section 18). In addition, the term ''contractor'' has been replaced with the term ''vendor,'' and the terms ''paying office'' and ''billing office'' have been changed to ''designated agency office.''

2. The ''Application'' section (Section 2 of the current circular) has been redesignated Section 1. The section includes one additional exception to the Prompt Payment Act requirements. This exception is for payments related to certain specified emergencies and military operations (Section 1.b(2)).

3. The ''Responsibilities'' section (Section 3 of the current circular) has been redesignated Section 2. Specific guidance on establishing a quality control program (Section 3.e. of the current circular) has been replaced with general guidance on implementing a quality control process (Section 2.b.). Quality Control (QC) systems are required by OMB Circular A–123, ''Management Accountability and Control.''

In addition, Section 2.c of the revised circular provides standards for agencies' financial management systems to ensure that they are in compliance with OMB Circular A–127, ''Financial Management Systems.''

4. The ''Standards for Prompt Payment'' section (Section 4 of the current circular) has been redesignated Section 3 and retitled ''Prompt Payment Standards and Required Notice to Vendors.'' Several changes have been made to this section.

The revised circular (Section 3.b) clarifies when an invoice is deemed to be received for invoices that are mailed or received electronically, or when a delivery ticket serves as the invoice.

The revised circular (Section 3.c(3)) provides that agencies may use computer-related media in place of paper documents to expedite payment transactions, as long as there are adequate safeguards and controls to ensure the integrity of the data.

''Starting the Payment Period'' (Section 3.f.) has been reorganized to include all discussion related to calculating the start of the payment period. Section 3.f. combines the discussions found in the current circular ''Receipt of invoice'' (Section 1.n.) and ''Starting the Payment Period'' (Section 4.d.). This provision also includes the addition of an acceptance document or delivery ticket as the basis for starting the payment period.

''Determining the payment due date'' (Section 3.g(1)) has been expanded to include payments due when discounts are taken and when accelerated payment methods are used.

''Mixed invoices for commodities'' (Section 3.g(2)D) now includes the provision that the entire invoice may be paid on the due date for the commodity with the earliest due date, if it is considered in the best interests of the agency.

Guidance on notification for an improper invoice (Section 4.b(3) of the current circular) has been moved to the section on ''Review of Invoice'' (Section 3.c(2)).

5. Section 4 of the proposed regulation, ''Accelerated Payment Methods,'' has been added. It includes a provision which allows agencies to make payments for invoices under $2,500 after matching documents. This section also provides for early payment for small, disadvantaged businesses, and for payments related to emergencies and disasters, as well as for military deployments.

6. Section 5 of the proposed regulation, ''Fast Payment,'' replaces Section 12 of the current circular. The section on ''Fast Payment'' requires that payment be made within 15 days of receipt of a proper invoice without evidence that goods or services have been received. References to Federal Acquisition Regulation (FAR) clauses for Fast Payment are included.

7. Section 6 of the proposed regulation, ''Discounts,'' has been added and consolidates the requirements related to discounts. The reference to the discount formula found in the Treasury Financial Manual has been updated.

8. Section 7 of the proposed regulation, ''Rebates,'' has been added to the circular. The section instructs agencies to determine credit card payment dates based on an analysis of the total costs and total benefits to the Federal government as a whole. 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 also factor in the benefits, from streamlining or other efficiencies, to the agency of paying early. Treasury will publish a rebate formula in the Treasury Financial Manual (TFM) which can be used to determine when a credit card invoice should be paid. The Current Value of Funds rate is available by the toll-free number and internet website listed above.

9. The ''Required Documentation'' section (Section 5 of the current circular) has been redesignated Section 8.

Agencies are required (Section 8.a.(8)) to stipulate that banking information must be submitted no later than the first request for payment in order to make payments electronically as required by the Debt Collection Improvement Act of 1996, except in situations addressed in the waiver provisions for 31 CFR Part 208. Agencies will use the appropriate

Federal Acquisition Regulation electronic funds transfer contract clause.

In order for an invoice to be a proper invoice, banking information and TINs are required to be collected on the invoice unless previously collected in another manner (Section 8.b(7)–(8)). This requirement ensures that payment will be made by EFT, unless waived by the Secretary of the Treasury in 31 CFR 208. This requirement also ensures compliance with collecting TINs. This requirement gives agencies flexibility in determining how banking information and TINs will be collected. Agencies are encouraged to collect this information at the earliest possible date, including as a condition of awarding a contract. The Central Contractor Registry (CCR) requires this information as a condition of awarding a contract. The CCR is a mandatory contractor enrollment system for the Department of Defense. Although not mandatory for civilian agencies, some civilian agencies are voluntarily using the CCR.

10. Section 6 of the current circular, ''Required notices to vendors,'' has been removed. The notice of interest penalties is discussed in Section 9, ''Late payment interest penalties.'' The notice of defective invoice is discussed in Section 3.c, ''Review of Invoice.''

11. The ''Late Payment Interest Penalties'' section (Section 7 of the current circular) has been redesignated Section 9. Several changes have been made to this section.

Agencies are exempt from paying late interest penalties if banking information supplied by the vendor is incorrect and/or incomplete (Section 9.a(8)).

In the notice to vendors on late payment interest penalties, the contract number is optional (Section 9.b(3)). However, the invoice number or other agreed upon transaction reference number is required to assist the vendor in reconciling the payment.

Interest penalties are not required 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 (Section 9.c(4)).

12. The ''Additional Penalties'' section (Section 8 of the current circular) has been redesignated Section 10. The maximum allowable additional penalty is $5,000 (Section 10.b).

13. Section 11 of the proposed regulation, ''Payments under Government Credit Card,'' has been added and allows agencies to pay credit card invoices under $2,500 without matching documents and without applying the discount formula in I TFM 6–8040.40. Undisputed items must be paid on time.

14. Section 9 of the current circular, ''Interest Penalties Due Farm Producers,'' has been redesignated Section 12 and retitled ''Payment to Farm Producers.'' The section has been reorganized to follow the same format as other sections. The list of loan and closing dates for payments made under various agricultural programs has been removed because these programs periodically change. Accordingly, Section 12 refers the reader to the current Farm Bill (7 U.S.C. 1421 *et seq.*) which lists loan and closing dates for payments made under current Farm Bill programs.

15. Section 10 of the current circular, ''Interest Penalties under Construction Contracts,'' has been redesignated Section 13 and retitled ''Payments under Construction Contracts.'' The section has been reorganized to follow the same format as other sections. In addition, the discussion in current circular 5.d. related to required documentation for construction contracts is moved to this section.

16. Section 11 of the current circular, ''Grant Recipients,'' has been redesignated Section 14.

17. As noted above, Section 12 of the current circular, ''Payment without evidence that supplies have been received,'' has been replaced by Section 5.

18. The ''Relationship to other laws'' section (Section 13 of the current circular) has been redesignated Section 15.

19. The ''Reporting Requirements'' section (Section 14 of the current circular) has been redesignated Section 16, and its reporting requirements have been reduced. Information concerning the relative frequency and frequency distribution of penalties (see Section 14.b(3)–(4) of the current circular) is no longer required. An ''other'' category has been added to the provision requiring reasons why interest penalties were incurred (Section 16.a(2)E).

20. The ''Inquiries'' section (Section 16 of the current circular) has been redesignated Section 17. As noted above, this section announces a new toll-free number, 1–800–266–9667, for questions about Prompt Pay policy, reporting requirements and previous and current Prompt Pay interest rates. This section also announces a Prompt Pay website at http://www.fms.treas.gov/prompt/index.html. The website will contain, among other things, rate information, frequently asked questions, copies of current circulars and links to other related websites. The website may also be accessed through FMS'' website at http://www.fms.treas.gov/.

21. As noted above, the ''Definitions'' section has been moved from Section 1 of the current circular to Section 18 of the proposed regulation.

22. The ''Effective Dates'' section (Section 15 of the current circular) has been redesignated Section 19. Except as otherwise provided in Section 19, the proposed regulation is effective 30 days after final publication.

Finally, OMB seeks comment on how the Federal government can address the problem of one Federal agency making a late payment to another Federal agency for goods or services. Interagency payments have historically been problematic for the Federal government because some Federal agencies make late payments to other Federal agencies for goods and services, and because there is not one standard method available to make these payments. These late payments sometimes result in costs to agencies in collecting overdue amounts. OMB seeks comment on the nature and magnitude of this problem, and requests recommendations on how the problem could be addressed (e.g., through a provision in the interagency agreements themselves, the application of some existing provision of law, or the enactment of new legal remedies).

Regulatory Flexibility Act, Unfunded Mandates Reform Act, and Executive Orders 12866 and 12875

Pursuant to 31 U.S.C. 3903(a), the provisions of the proposed revision and replacement of Circular A–125 constitute regulations. For purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the proposed regulations 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 No. 12866 and 12875, the proposed regulations 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.

OMB requests comments on the proposed revisions discussed above, as well on all other parts of the revised circular.

List of Subjects in 5 CFR Part 1315

Administrative practice and procedure, Government contracts, Penalties.

Jacob J. Lew,

Acting Director.

OMB proposes that Circular A–125 be revised to read as follows:

Attachment—OMB Circular No. A–125

(Revised)

To: The Heads of Executive Departments and Establishments

Subject: Prompt Payment

Purpose. Circular A–125 (2nd Revision) prescribes policy for the Executive departments and agencies in paying for goods and services pursuant to the Prompt Payment Act of 1982 as amended. It is the intent of this Circular and implementing regulations that the Federal Government pay commercial obligations accurately and timely using financial cash management tools.

Background. The Prompt Payment Act was enacted as P.L. 97–177 on May 21, 1982, and amended on October 17, 1988, as P.L. 100–496. The Prompt Payment Act (the Act), as amended, requires Executive departments and agencies to pay commercial obligations within specific discrete time periods and to pay interest penalties when those time constraints are not met. Circular A–125 also provides policy direction for payment of entitlements due under the current Farm Bill.

Policy. Agencies are to maintain payment practices consistent with this Circular and the implementing procedures attached to the Circular. Agencies must make payments for commercial obligations on properly submitted invoices on payment due dates set by the attached implementing procedures. Unless otherwise specified in this Circular or agency regulations, payments cannot be made until proper invoices have been received for goods or services that have been received and accepted by the agency and contract terms have been satisfactorily performed or fulfilled. Payments under certain accelerated payment methods may be made before the specified due date. Payments made later than the payment due date or later than the discount due date if a discount is taken, may be subject to interest penalties and possibly additional penalties. Valid interest penalties will be paid by the agency automatically and additional penalties will be paid after receiving a written request from the vendor. These penalties will be paid from funds available for the administration of the program for which the penalty was incurred. Agency implementation must be consistent with sound cash management practices, related Treasury regulations (Treasury Financial Manual, I TFM 6–8000, section 8040), and the Federal Acquisition Regulation (48 CFR subpart 32.9 and FAR Clause 52.232) or appropriate agency regulations.

The Debt Collection Improvement Act of 1996 requires all Federal agencies to make payments electronically after January 1, 1999, except for Internal Revenue Service tax refunds and except as waived in 31 CFR Part 208. The Act also requires the collection of the Taxpayer Identifying Number (TIN) for purposes of debt collection. This circular requires that banking information for purposes of making electronic payments and the TIN be on an invoice unless this information has been previously provided to the agency through other procedures.

Requirements and Responsibilities. The specific requirements and responsibilities of Executive departments and agencies are set forth in the implementing regulations.

Inquiries. Questions about this circular and inquiries about payments practices or concerning problems of Executive agencies should be directed to the Financial Management Service, Department of the Treasury, Telephone: 1–800–266–9667. The circular, agency guidance, answers to frequently asked questions and other general information is available on the Internet at http://www.fms.treas.gov/prompt/index.html. It is also available in printed form upon request to the above telephone number.

Effective date. Unless otherwise specified, this circular is effective 30 days after final publication.

Sunset Review Date. Three years from the date of issuance of this circular, there will be an independent policy review to ascertain its effectiveness.

Jacob J. Lew,

Acting Director.

Note: The following prompt payment implementing regulations are provided in a uncodified format for comment purposes. These regulations will be codified at the final rule stage in 5 CFR Part 1315, unless pending legislation transfers the authority for issuing these regulations to the Department of the Treasury. In that case, they will be codified in Title 31 of the Code of Federal Regulations.

Prompt Payment Implementing Regulations

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1. Application

a. Procurement contracts. This regulation applies to contracts for the procurement of goods or services awarded by:

(1) All Executive branch agencies except:

A. The Tennessee Valley Authority, which is subject to the Prompt Payment Act, but is not covered by this regulation, and

B. Agencies specifically exempted under 5 U.S.C. 551(1).

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

(3) The Commodity Credit Corporation pursuant to:

A. Section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)) relating to the procurement of property and services, and

B. Payments to producers on a farm under the current Farm Bill (7 U.S.C. 1421 *et seq.*).

b. Vendor payments. All Executive branch vendor payments and payments to those defined as contractors or vendors (see section 18.j.) are subject to the Prompt Payment Act with the following exceptions:

(1) Contract Financing Payments, as defined in section 18.h.; and

(2) Payments related to emergencies (as defined in the Disaster Relief Act of 1974, P.L. 93–288, as amended (42 U.S.C. 5121 *et seq.*)) and military operations (as defined in 10 U.S.C. 101(a)(13)).

c. Utility payments. All utility payments, including payments for telephone service, are subject to the Act except those under 1.b.(2). Where state or local authorities regulate late payment rates, those rates (e.g., tariffs) shall take precedence; however, any interest paid is reportable. In the absence of state or local prescribed late charges or terms, agencies will apply this regulation.

2. Responsibilities

Each agency head is responsible for the following:

a. Issuing internal procedures. Issuing procedures will include provisions for monitoring the causes of late payments and any interest penalties incurred, taking necessary corrective action, reporting in accordance with section 16, 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.'' Administrative activities required for payments to vendors under this regulation are subject to Quality Control (QC) validation. QC processes will be used to confirm that controls are effective and that processes are efficient. Each agency head is responsible for establishing a QC 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.'' 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, and produce accurate and timely reports as required by the Prompt Payment Act.

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.

3. 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 section 8.

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

(1) For invoices that are mailed, on:

A. The date a proper invoice is actually received and annotated by the contractually designated office, or;

B. The date placed on the invoice by the vendor, when the agency fails to annotate the invoice with a receipt date at the time of receipt (such invoice must be a proper invoice);

(2) For invoices electronically transmitted, at the time the transmission is received by the designated agency office; and,

(3) On the date of delivery, when contractually stipulated 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 appropriate office within 7 days after receipt to determine whether the invoice is a proper invoice as defined in section 8.b. of this regulation;

(2) When an invoice is determined improper, the agency shall return the invoice to the vendor within 7 days of receipt (refer also 3.g.(3) 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) Computer-related media which produce tangible recordings of information in lieu of ''written'' or ''original'' paper document equivalents should be used by agencies to expedite payment transactions, as long as there are adequate safeguards and controls to ensure the integrity of the data, rather than delaying processes by requiring ''original'' paper documents.

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 delivery. 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 later of:

(1) Date of receipt (as defined in 3.b.(1)) of a proper invoice (as defined in section 8.b.), except where no invoice is required (e.g. recurring payments (see definition at section 18.cc.); or,

(2) Date of receipt and acceptance of goods or services. In this case, the payment period starts when either:

A. The agency has actually accepted the goods or services but no later than the seventh day after the receipt of goods or services, or;

B. When a longer acceptance period is contractually stipulated, the agency has actually accepted the goods or services but no later than the last day of the extended acceptance period;

(3) Date of delivery where an agency has contractually designated the use of the acceptance document or delivery ticket as the basis for payment.

g. Determining the payment due date.

(1) Unless otherwise specified, the payment is due either:

A. 30 days after the start of the payment period as specified in section 3.f.;

B. On the date(s) specified in the contract;

C. In accordance with discount terms when discounts are offered and taken (see section 6), or;

D. In accordance with Accelerated Payment Methods (see section 4).

(2) Certain commodity payments.

A. 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.

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

C. 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.

D. 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. That payment is to be considered as on time for reporting purposes;

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

iii. Should pay in accordance with the contractual payment provisions (which may not exceed the statutory mandated periods specified in section 3.g.(2), and;

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

(3) Notification of Improper Invoice.

When an agency fails to make notification of an improper invoice within seven days according to 3.c.(2) of these guidelines (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 as specified above in this paragraph, 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. On a weekend, federal holiday, or after normal working hours, payments falling due 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 in sections 9 through 13 of this regulation.

j. Timely payment. Unless using an accelerated payment method (see section 4), 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.

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.

4. 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 notwithstanding statutory authority to do otherwise. These payments are to be considered on time for Prompt Pay reporting purposes. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

b. Small Disadvantaged Business Concern (as defined in the FAR subpart 19.001). Agencies may pay small, disadvantaged business concerns 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 to be considered on time for Prompt Pay reporting purposes, and are not subject to payment restrictions stated elsewhere in this regulation. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

c. Payments related to emergencies and disasters (as defined in the Robert T. Stafford Disaster Relief Act and Emergency Assistance, P.L. 93–288, as amended (42 U.S.C. 5 121 et seq.)) and military deployment. Payments may be made as soon as the contract, proper invoice, receipt and acceptance documents or any other agreement are matched. These payments are to be considered on time for Prompt Pay reporting purposes. Vendors shall be entitled to interest penalties if invoice payments are made after the payment due date.

5. Fast Payment

Payment shall be made within 15 days of receipt of a proper invoice without evidence that goods or services have been received. The following standards shall be followed:

a. Criteria. The criteria in using this procedure are defined in Federal Acquisition Regulations (FAR) Part 13, Subpart 13.3 ''Fast Payment Procedure'' and in the 1988 Amendment to the Prompt Pay Act, Section 11(b)(1);

b. FAR clause 52.213.1. Payments must be supported by valid contracts having proper FAR clause 52.213.1, Fast Payment Procedure;

c. Invoice requirements. Invoices paid under ''Fast Payment'' procedures must meet the requirements of an invoice as outlined in section 8.b. of this regulation, and be properly identified on the invoices and in the agency financial system for subsequent statistical sampling to ensure that goods are received;

d. Obligating documents. Invoices must be properly matched with the obligating documents prior to authorizing the payment;

e. Certification. A vendor's certification that goods have been shipped may be used as a basis for authorizing the payment;

f. Internal controls. Agencies must establish a system to ensure internal controls are in place to validate that goods are received and accepted;

g. Receiving reports. Unless otherwise specified in agency procedures, the contracting office shall ensure that receiving reports and payment documents are matched and that steps are taken to correct discrepancies and collect any amounts owed for non-performance, and;

h. Inspection and Acceptance. Unless otherwise specified in agency procedures, the receiving entity shall promptly inspect and accept goods acquired under these procedures and notify the purchasing office of the acceptance as quickly as possible.

6. Discounts

Agencies shall follow these guidelines 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 payment is made within the specified discount period. Discounts will be taken whenever economically justified (see I TFM 6–8040.40) but only after acceptance has occurred. These payments will be considered on time for reporting purposes.

b. Discounts taken after the deadline. If an agency takes the discount after the deadline and does not repay it before the payment due date, the agency shall pay an interest penalty on any amount remaining unpaid as prescribed in section 9.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.

7. Rebates

Agencies shall determine credit card payment dates based on an analysis of the total costs and total benefits to the Federal government as a whole. 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 also factor in the benefits, from streamlining or other efficiencies, to the agency of paying early.

8. Required Documentation

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

a. For a contract:

(1) Payment due date(s) as defined in 3.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 per formed is stated;

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

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

(8) Stipulation that banking information must be submitted no later than the first request for payment as required by the Debt Collection Improvement Act of 1996, except in situations addressed in the waiver provisions for 31 CFR Part 208. Agencies will use the appropriate Federal Acquisition Regulation contract clause;

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

b. For a proper invoice:

(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;

(5) Description, 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 Identification Number (TIN), unless otherwise previously provided to the agency in accordance with agency procedures;

(8) Banking Information, unless otherwise previously provided to the agency in accordance with agency procedures, or except in situations addressed in waiver provisions included in 31 CFR Part 208;

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

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

c. For receiving reports, delivery tickets, and evaluated receipts:

(1) Name of vendor;

(2) Contract or other authorization number;

(3) Description of goods;

(4) Quantities received, if applicable;

(5) Date(s) goods were delivered;

(6) Date(s) goods 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, and;

(8) All requirements under section 8.c. (1)–(7), when a delivery ticket is used as an invoice.

9. 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 and will accrue daily from the day after the payment due date at the interest rate applicable on the day after the due date (refer also to 3.g. Determining the payment due date);

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

(3) When an interest penalty is owed and not paid, interest will accrue on the unpaid principal and accrued interest until paid, except as described in paragraph (5) below;

(4) For up to one year, interest penalties remaining unpaid at the end of any 30 day period will be capitalized (i.e., added to the principal), and subsequent interest penalty amounts will be computed and accrue on the total of principal plus capitalized interest until paid;

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

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

B. For more than one year.

(6) When an agency takes a discount after the discount date and does not repay it before the payment due date, the interest payment will be calculated on the amount of the discount taken, for the period beginning the day after the prompt payment due date through the payment date;

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

(8) If the banking information supplied by the vendor is incorrect and/or incomplete, the invoice received will be returned as an improper invoice and the agency is exempt from the accrual of interest as defined in section 3.c (2) until such information is received or until a proper invoice is submitted;

(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) voice information system 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 except when title of the goods passes to the government;

(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. Agencies should pay interest together with the underlying principal payment;

(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 section 10, and;

(5) Agencies shall pay any late payment interest penalties (including any additional penalties required under section 10) under this regulation 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.

10. 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, 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, no later than 40 days after the payment date, that the agency pay such an additional penalty. The vendor request must include the following:

A. 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;

B. 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. No additional data are required;

Confirmation that the request is postmarked. To be valid the request must be postmarked, received by facsimile, or by electronic mail, by the 40th day after payment was made. If there is no postmark, the request will be valid if it is received and annotated with the date of receipt by the agency by the 40th day.

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.

d. Penalty basis. The penalty is based on individual invoices if paid separately.

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.

11. Payments Under Government Credit Card

Payment standards under government credit cards:

a. Payment date. All credit 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. The payment due date for invoices over $2,500 shall be 30 days after receipt of a proper invoice or the date specified in the contract unless it benefits the agency and the government (applying discount formula in I TFM 6–8040.40) to take a rebate offered for early payment. I TFM 4–4535.10 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 circular. Any undisputed items must be paid in accordance with section 11.a.

12. Payments to Farm Producers

In case of a payment to which producers on a farm are entitled under the terms of an agreement entered into under the current Farm Bill (7 U.S.C. 1421 *et seq.*):

a. Payment Standards. Payments to farm producers under such agreements shall be made as close as possible to the required payment or loan closing date.

b. Interest penalties. An interest penalty shall be paid to the 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 ending on the date the amount is paid or loaned, and;

(3) Out of funds available under section 8 of the Act of June 29, 1948 (15 U.S.C. 714f).

c. Contract Disputes Act of 1978. Provisions relating to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*) in section 9.a.(5)A and section 16a. do not apply.

13. 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 the section b below;

(2) The certification by the prime vendor as defined in section 13.b.(2) 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), or if the notification is done electronically, it is not necessary to return the improper invoice;

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

A. 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;

B. 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:

A. 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;

B. Be deducted from the next available payment to the vendor, and;

C. Revert to the Treasury.

b. Required Documentation:

(1) Substantiation of the amount(s) requested shall include:

A. An itemization of the amounts requested related to the various elements of work specified in the contract;

B. A listing of the amount included for work performed by each subcontractor under the contract;

C. A listing of the total amount for each subcontract under the contract;

D. A listing of the amounts previously paid to each subcontractor under the contract, and;

E. 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:

A. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

B. 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 Chapter 39, title 31, U.S.C., and;

C. 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. Agencies will pay interest on:

(1) 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 section b. above, 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.

(2) 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;

(3) 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. 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.

14. 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.

15. 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 section 9 of this regulation) not paid under this regulation may be filed under section 6 of the Contract Disputes Act.

(2) An interest penalty under this regulation does not continue to accrue after a claim for a penalty is filed under the Contract Disputes Act or for more than one year. This does not prevent an interest penalty from accruing under section 13 of the Contract Disputes Act after a penalty stops accruing under this regulation. Such penalty may accrue on an unpaid contract payment and on the unpaid penalty under this regulation.

(3) This regulation 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.

16. Reporting Requirements

a. Content. Agency reports shall contain the following information for the prior fiscal year:

(1) Invoices subject to the Prompt Payment Act:

A. Dollar amount of invoices

B. Number of invoices

(2) Invoices paid after due date:

A. Dollar amount of invoices

B. Number of invoices

C. Percent of Invoices paid late. The percentage of invoices paid late is computed in the following manner: [(2)B/(1)B]

D. Dollar amount of late payment interest and other penalties paid

E. Reasons why interest or other late payment penalties were incurred. Rank from highest to lowest, according to frequency of occurrence.

i. Delay in agency's receipt of:

a. Receiving report

b. Purchase order or contract

c. Other

ii. Delay or error by designated agency office in:

a. Taking discount

b. Notifying vendor of improper invoice

c. Computer or other system processing

d. Other

F. Interest and other late payment penalties which were due but not paid:

i. Interest amount

ii. Number

(3) Invoices paid eight days or more before due date, except where cash discounts were taken, an accelerated

payment method was used, or payments were made early to earn rebates; or invoices where early payment is determined on a case-by-case basis to be necessary:

A. Dollar amount of invoices

B. Number of invoices

C. Percent of early payments made [(3)B/(1)B]

(4) Progress Made. Describe specific achievements and problems during the fiscal year in implementing the provisions of the Prompt Payment Act and OMB Circular A–125. Include a description of any agency experience in determining the most appropriate timing for release of payment authorization so that invoices are paid as close as possible to the due date without exceeding it.

b. Certification. Agency annual reports to FMS must be certified by the agency Chief Financial Officer (or equivalent).

c. Submission. Federal agencies subject to the Chief Financial Officers Act of 1990 and the United States Information Agency are required to submit an annual Prompt Payment Report to the Commissioner, Financial Management Service (FMS), Department of the Treasury, by the 60th day after the end of each fiscal year.

17. Inquiries

a. Regulation. Inquiries concerning this regulation may be directed in writing to the Department of the Treasury, Financial Management Service (FMS), Cash Management Directorate, 401 14th Street, S.W. Washington, D.C. 20227, or by calling 1–800–266–9667.

b. Applicable interest rate. The rate is published 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 Pay 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. 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.

18. Definitions

For the purposes of this regulation, the following definitions apply:

a. Accelerated Payment—a payment made prior to the due date and considered on time for prompt payment reporting purposes (see discussion in section 4).

b. Acceptance—an acknowledgment by the Government that goods received and services rendered conform with the contract requirements. Acceptance also applies to partial deliveries.

c. Agency—as defined in Section 551(1) of Title 5, United States Code, includes 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 (1) that is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and (2) 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—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., 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 in the **Federal Register** on or about January 1 and July 1.

e. Automated Clearing House (ACH)—a network that performs interbank clearing of electronic debit and credit entries for participating financial institutions.

f. Banking Information—information necessary to facilitate an EFT payment, including the vendor's bank account number, and their bank's routing number.

g. Contract—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 Section 8.a. of this regulation.

h. Contract Financing Payments—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—any entity issuing a contract or purchase order or issuing a contract modification or termination.

j. Contractor (see Vendor).

k. Day—a calendar day including weekend and holiday, unless otherwise indicated.

l. Delivery Ticket—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—the office designated by the purchase order, agreement, or contract to first receive invoices. This office can be contractually designated as the receiving entity. This office may be different from the office actually issuing the payment.

n. Discount—an invoice payment reduction offered by the vendor for early payment.

o. Discount date—the date by which a specified invoice payment reduction, or a discount, can be taken.

p. Due date—the date on which Federal payment should be made. Determination of such dates is discussed in Section 3.g. of this regulation.

q. Electronic Commerce (EC)—the end to end electronic exchange of business information using electronic data interchange (EDI), electronic mail, electronic bulletin boards, electronic funds transfer (EFT) and similar technologies.

r. Electronic Data Interchange (EDI)—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 (ASC) of the American National Standards Institute.

s. Electronic Funds Transfer—A system using electronic means to transfer payment data and funds from an originator to a recipient's account at a receiving financial institution.

t. Emergency Payment—emergency includes 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.

u. Evaluated Receipts—contractually designated use of the acceptance document and the contract as the basis for payment without requiring a separate invoice.

v. Fast Payment—under the Federal Acquisition Regulation (FAR) 13.3, the Fast Payment procedure 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)—the regulation that governs most Federal acquisition and related payment issues. Agencies may also have supplements prescribing unique agency policies.

x. Government Credit Card—internationally accepted credit card available to all Federal agencies under a General Services Administration contract for the purpose of making simplified acquisitions of up to $100,000.

y. Invoice—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 section 8.b of this regulation. The term invoice can include receiving reports and delivery tickets contractually designated as invoices.

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

aa. Receiving Office—the entity which physically receives the goods or services, may be separate from the accepting entity.

bb. Receiving Report—written or electronic evidence of receipt of goods or services by a Government official. Receiving reports must meet the requirements of section 5.g. of this regulation.

cc. Recurring Payments—Fixed Amounts—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.

dd. Taxpayer Identification Number (TIN)—nine digit Employer Identification Number or Social Security Number as defined in section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

ee. Utilities and Telephones—contractual or non-contractual purchase of electricity, water, sewage services, telephone services, and natural gas. Utilities can be regulated, unregulated, or under contract.

ff. Vendor—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).

19. Effective Dates

This regulation will be effective 30 days after final publication. For payments under contracts or purchase orders solicited on or after July 26, 1996, the requirement to collect banking information, for purposes of making an EFT payment pursuant to 31 U.S.C. 3332, as amended, will be effective 30 days after final publication. For payments under contracts or purchase orders solicited before July 26, 1996, the requirement to collect banking information is effective January 2, 1999.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV98–981–1 PR]

Almonds Grown in California; Revision of Requirements Regarding Quality Control Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on a revision to the administrative rules and regulations of the California almond marketing order (order) pertaining to the quality control program. The order regulates the handling of almonds grown in California, and is administered locally by the Almond Board of California (Board). Under the terms of the order, handlers are required to obtain inspection on almonds received from growers to determine the percent of inedible almonds in each lot of any variety. Handlers are then required to dispose of a quantity of almonds in excess of 1 percent of the weight of almonds reported as inedible to accepted users of such product. Accepted users are approved annually by the Board. This rule would clarify conditions upon which accepted users' status may be denied or revoked by the Board. This rule would help to ensure that inedible almonds are removed from human consumption channels, thereby maintaining the integrity of the quality control provisions of the order.

DATES: Comments must be received by July 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to