

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted “section 7109(a)(1) and (b) of title 41” for “section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611)”.

1998—Subsec. (b). Pub. L. 105-362 substituted “The” for “Except as provided in section 3906 of this title, the”.

1988—Subsec. (a). Pub. L. 100-496, § 3(a)(1), substituted “The interest shall be computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty” for “The interest shall be computed at the rate the Secretary of the Treasury establishes for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary shall publish each rate in the Federal Register”.

Subsec. (b). Pub. L. 100-496, § 3(a)(2), struck out second sentence which read as follows: “However, a penalty may not be paid if payment for the item is made—

“(1) when the item is a meat or meat food product described in section 3903(2) of this title, before the 4th day after the required payment date;

“(2) when the item is an agricultural commodity described in section 3903(3) of this title, before the 6th day after the required payment date; or

“(3) when the item is not an item referred to in clauses (1) and (2) of this subsection, before the 16th day after the required payment date.”

Subsecs. (c) to (g). Pub. L. 100-496, § 3(b), added subsecs. (c) and (d) and redesignated former subsecs. (c) to (e) as (e) to (g), respectively.

Subsec. (h). Pub. L. 100-496, § 3(c), added subsec. (h).

1984—Subsec. (b). Pub. L. 98-216 substituted “3903(2)” for “3903(2)(A)” in par. (1) and “3903(3)” for “3903(2)(B)” in par. (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 14(a)–(c) of Pub. L. 100-496 provided that:

“(a) The amendments made by sections 2(a), 2(b), 3(a), 4 through 9, 12, and 13 of this Act [enacting section 3905 of this title, amending this section, sections 3901, 3903, and 3904 of this title and section 644 of Title 15, Commerce and Trade, renumbering sections 3905 and 3906 of this title as sections 3906 and 3907, respectively, and repealing provisions set out as a note under section 3903 of this title] shall apply to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after the date of the enactment of this Act [Oct. 17, 1988].

“(b) The requirements of section 3902(c)(2) of title 31, United States Code, as added by section 3(b) of this Act, shall apply to payments under contracts awarded on or after October 1, 1989.

“(c) The amendments made by sections 2(c) and 3(c) of this Act [amending this section, section 3901 of this title, and section 410 of Title 39, Postal Service] shall be applicable with respect to all obligations incurred on or after January 1, 1989.”

PAYMENT OF INTEREST PENALTIES BY DEPARTMENT OF DEFENSE

Pub. L. 107-117, div. A, title VIII, § 8084, Jan. 10, 2002, 115 Stat. 2266, provided that: “Notwithstanding 31 U.S.C. 3902, during the current fiscal year and hereafter, interest penalties may be paid by the Department of Defense from funds financing the operation of the military department or defense agency with which the invoice or contract payment is associated.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-259, title VIII, § 8083, Aug. 9, 2000, 114 Stat. 692.

Pub. L. 106-79, title VIII, § 8088, Oct. 25, 1999, 113 Stat. 1252.

Pub. L. 105-262, title VIII, § 8092, Oct. 17, 1998, 112 Stat. 2319.

Pub. L. 105-56, title VIII, § 8103, Oct. 8, 1997, 111 Stat. 1243.

INTEREST PENALTIES FOR LATE PAYMENT OF INTERIM PAYMENTS DUE UNDER GOVERNMENT SERVICE CONTRACTS

Pub. L. 106-398, § 1 [[div. A], title X, § 1010], Oct. 30, 2000, 114 Stat. 1654, 1654A-251, as amended by Pub. L. 107-107, div. A, title X, § 1007, Dec. 28, 2001, 115 Stat. 1204, provided that:

“(a) PROMPT PAYMENT REQUIREMENT FOR INTERIM PAYMENTS.—Under regulations prescribed under subsection (c), the head of an agency acquiring services from a business concern under a cost reimbursement contract requiring interim payments who does not pay the concern a required interim payment by the date that is 30 days after the date of the receipt of a proper invoice shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed as provided in section 3902(a) of title 31, United States Code.

“(b) REGULATIONS.—The Director of the Office of Management and Budget shall prescribe regulations to carry out this section. Such regulations shall be prescribed as part of the regulations prescribed under section 3903 of title 31, United States Code.

“(c) INCORPORATION OF CERTAIN PROVISIONS OF LAW.—The provisions of chapter 39 of title 31, United States Code, shall apply to this section in the same manner as if this section were enacted as part of such chapter.

“(d) EFFECTIVE DATE.—Subsection (a) shall take effect on December 15, 2000, and shall apply with respect to interim payments that are due on or after such date under contracts entered into before, on, or after that date. No interest shall accrue by reason of that subsection for any period before that date.”

§ 3903. Regulations

(a) The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title. The regulations shall—

(1) provide that the required payment date is—

(A) the date payment is due under the contract for the item of property or service provided; or

(B) 30 days after a proper invoice for the amount due is received if a specific payment date is not established by contract;

(2) for the acquisition of meat or a meat food product (as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3))), including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, or of fresh or frozen fish (as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3))), provide a required payment date of not later than 7 days after the meat, meat food product, or fish is delivered; and

(3) for the acquisition of a perishable agricultural commodity (as defined in section 1(4)¹ of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4))), provide a required payment date consistent with that Act;

(4) for the acquisition of dairy products (as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e))), the acquisition of edible fats or oils, and the acquisition of food products prepared from edi-

¹ See References in Text note below.

ble fats or oils, provide a required payment date of not later than 10 days after the date on which a proper invoice for the amount due has been received by the agency acquiring such dairy products, fats, oils, or food products;

(5) require periodic payments, in the case of a property or service contract which does not prohibit periodic payments for partial deliveries or other contract performance during the contract period, upon—

(A) submission of an invoice for property delivered or services performed during the contract period, if an invoice is required by the contract; and

(B) either—

(i) acceptance of the property or services by an employee of an agency authorized to accept the property or services; or

(ii) the making of a determination by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract;

(6) in the case of a construction contract, provide for the payment of interest on—

(A) a progress payment (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 subsection (b) of this section and remains unpaid for—

(i) a period of more than 14 days after receipt of the payment request by the place or person designated by the agency to first receive such requests; or

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

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

(7) require that—

(A) each invoice be reviewed as soon as practicable after receipt for the purpose of determining that such an invoice is a proper invoice within the meaning of section 3901(a)(3) of this title;

(B) 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; and

(C) the number of days available to an agency to make a timely payment of an invoice without incurring an interest penalty shall be reduced by the number of days by which an agency exceeds the requirements of subparagraph (B) of this paragraph;

(8) permit an agency to make payment up to 7 days prior to the required payment date, or

earlier as determined by the agency to be necessary on a case-by-case basis; and

(9) prescribe the methods for computing interest under section 3903(c)¹ of this title.

(b)(1) A payment request may not be approved under subsection (a)(6)(A) of this section unless the application for such payment includes—

(A) substantiation of the amounts requested; and

(B) a certification by the prime contractor, to the best of the contractor'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 this chapter; and

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

(2) The agency shall return any such payment request which is defective to the contractor within 7 days after receipt, with a statement identifying the defect.

(c) A contract for the procurement of subsistence items that is entered into under the prime vendor program of the Defense Logistics Agency may specify for the purposes of section 3902 of this title a single required payment date that is to be applicable to an invoice for subsistence items furnished under the contract when more than one payment due date would otherwise be applicable to the invoice under the regulations prescribed under paragraphs (2), (3), and (4) of subsection (a) or under any other provisions of law. The required payment date specified in the contract shall be consistent with prevailing industry practices for the subsistence items, but may not be more than 10 days after the date of receipt of the invoice or the certified date of receipt of the items. The Director of the Office of Management and Budget shall provide in the regulations under subsection (a) that when a required payment date is so specified for an invoice, no other payment due date applies to the invoice.

(d)(1) The contracting officer shall—

(A) compute the interest which a contractor shall be obligated to pay under sections 3905(a)(2) and 3905(e)(6) of this title 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 contractor received the unearned amount; and

(B) deduct the interest amount determined under subparagraph (A) of this paragraph from the next available payment to the contractor.

(2) Amounts deducted from payments to contractors under paragraph (1)(B) shall revert to the Treasury.

(Added Pub. L. 97-452, §1(18)(A), Jan. 12, 1983, 96 Stat. 2476; amended Pub. L. 100-496, §§4-7, 13(a),

Oct. 17, 1988, 102 Stat. 2457-2459, 2465; Pub. L. 102-190, div. A, title VIII, §842, Dec. 5, 1991, 105 Stat. 1449; Pub. L. 106-65, div. A, title X, §1009, Oct. 5, 1999, 113 Stat. 738.)

IMPLEMENTATION THROUGH FEDERAL ACQUISITION
REGULATION

Pub. L. 100-496, §11, Oct. 17, 1988, 102 Stat. 2463, provided that:

“(a) The Federal Acquisition Regulation shall be modified to provide appropriate solicitation provisions and contract clauses that implement chapter 39 of title 31, United States Code, as amended by this Act [see Short Title of 1988 Amendment note set out under section 3901 of this title], and the regulations prescribed under section 3903 of such title (as amended).

“(b) The solicitation provisions and contract clauses required by subsection (a) of this section shall include (but not be limited to) the following matters:

“(1) Authority for a contracting officer to specify for a contract or class of contracts a specific payment period, which—

“(A) in the case of payments for commercial items or services, is similar to the payment period or periods permitted in prevailing private industry contracting practices;

“(B) in the case of payments for noncommercial items and services, does not exceed 30 days unless the circumstances of the procurement action is determined to require a longer period for payment and such determination is approved above the level of the contracting officer;

“(C) in the case of payments for items of property or services in an amount less than the amount specified as a small purchase in section 303(g)(2) of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253(g)(2)) [now 41 U.S.C. 3305(b)], does not exceed 15 days after the date of receipt of the invoice, if—

“(i) the contract provides for such ‘fast payment’ terms;

“(ii) title to any property will vest in the Government upon delivery (including delivery to a common carrier); and

“(iii) the business concern offers appropriate warranties to furnish property or services conforming to the requirements of the contract or purchase order, if payment will be due prior to acceptance of the items or services; and

“(D) in the case of progress payments under construction contracts, does not exceed 14 days, unless the solicitation specifies a longer period which the contracting officer has determined is required to afford the Government a practicable opportunity to adequately inspect the work and to evaluate the adequacy of the contractor’s performance under the contract.

“(2) Requirements to make periodic payments, in the case of a property or service contract which does not prohibit periodic payments for partial deliveries or other contract performance during the contract period, upon—

“(A) submission of an invoice for property delivered or services performed during the contract period, if an invoice is required by the contract; and

“(B) either—

“(i) acceptance of the property or services by an employee of the contracting agency authorized to accept the property or services; or

“(ii) the making of a determination by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract.

“(3) A conclusive presumption, exclusively for the purposes of determining when an agency becomes obligated to pay a late payment interest penalty (other than under construction contracts), that the Federal Government has accepted property or services by the 7th day after the date on which, in accordance with the terms and conditions of the contract, the property is delivered or final performance of the services is completed, unless the solicitation specifies a longer period which is determined by the contracting officer to be required to afford the agency a prac-

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3903	31 App.:1801(a)(2).	May 21, 1982, Pub. L. 97-177, §2(a)(2), 96 Stat. 85.

In the section, before clause (1), the words “The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title” are added because of the restatement. In clause (1)(A), the words “the terms of” are omitted as surplus. In clause (1)(B), the words “of the payment” are omitted as surplus.

REFERENCES IN TEXT

The Perishable Agricultural Commodities Act, 1930, referred to in subsec. (a)(3), is act June 10, 1930, ch. 436, 46 Stat. 531, as amended, which is classified generally to chapter 20A (§499a et seq.) of Title 7, Agriculture. Section 1(4) of the Act was redesignated section 1(b)(4) by Pub. L. 102-237, title X, §1011(1)(A), Dec. 13, 1991, 105 Stat. 1898, and is classified to section 499a(b)(4) of Title 7. For complete classification of this Act to the Code, see section 499r of Title 7 and Tables.

Section 3903(c) of this title, referred to in subsec. (a)(9), was redesignated section 3903(d) by Pub. L. 106-65, div. A, title X, §1009(1), Oct. 5, 1999, 113 Stat. 738.

AMENDMENTS

1999—Subsecs. (c), (d). Pub. L. 106-65 added subsec. (c) and redesignated former subsec. (c) as (d).

1991—Subsec. (a)(2). Pub. L. 102-190 inserted provisions relating to fresh or frozen fish as defined in 16 U.S.C. 4003(3) and substituted “meat, meat food product, or fish” for “meat or meat food product”.

1988—Subsec. (a). Pub. L. 100-496, §6(1), designated existing provisions as subsec. (a).

Subsec. (a)(2). Pub. L. 100-496, §13(a), included any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product.

Subsec. (a)(4). Pub. L. 100-496, §4, amended par. (4) generally. Prior to amendment, par. (4) read as follows: “provide separate required payment dates for a contract under which property or service is provided in a series of partial executions or deliveries to the extent the contract provides for separate payments for partial execution or delivery; and”.

Subsec. (a)(5). Pub. L. 100-496, §5(2), added par. (5). Former par. (5) redesignated (7).

Subsec. (a)(6). Pub. L. 100-496, §6(2), added par. (6).

Subsec. (a)(7). Pub. L. 100-496, §7, added par. (7) and struck out former par. (7), which read as follows: “require that, within 15 days after an invoice is received, the head of an agency notify the business concern of a defect or impropriety in the invoice that would prevent the running of the time period specified in clause (1)(B) of this section.”

Pub. L. 100-496, §5(1), redesignated par. (5) as (7).

Subsec. (a)(8), (9). Pub. L. 100-496, §7, added pars. (8) and (9).

Subsecs. (b), (c). Pub. L. 100-496, §6(3), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-496 applicable to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100-496, set out as a note under section 3902 of this title.

licable opportunity to inspect and test the property furnished or evaluate the services performed.

“(4) The limitation that the Federal Government may take a discount offered by a contractor for early payment by the Federal Government only in accordance with the time limits specified by the contractor, determined in accordance with the second sentence of section 3904 of title 31, United States Code.

“(5) The requirements of section 3902(c) of title 31, United States Code.

“(6) The requirements of section 3903(a)(6) of title 31, United States Code.

“(7) The requirements of section 3905 of title 31, United States Code.

“(c) The regulations required by subsection (a) of this section shall be published as proposed regulations for public comment as provided in section 22 of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 418b) [now 41 U.S.C. 1707] within 120 days after the date of the enactment of this Act [Oct. 17, 1988].”

EDIBLE FRESH OR FROZEN POULTRY MEAT, PERISHABLE POULTRY MEAT FOOD PRODUCTS, FRESH EGGS, AND PERISHABLE EGG PRODUCTS

Pub. L. 98-181, title II, §2002, Nov. 30, 1983, 97 Stat. 1297, to the extent that it provided that the terms “meat” and “meat food products” as used in 31 U.S.C. 3903(2) also included edible fresh or frozen poultry meat, perishable poultry meat food products, fresh eggs and perishable egg products, was stricken by Pub. L. 100-496, §13(b), Oct. 17, 1988, 102 Stat. 2465, applicable to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988.

§ 3904. Limitations on discount payments

The head of an agency offered a discount by a business concern from an amount due under a contract for property or service in exchange for payment within a specified time may pay the discounted amount only if payment is made within the specified time. For the purpose of the preceding sentence, the specified time shall be determined from the date of the invoice. The head of the agency shall pay an interest penalty on an amount remaining unpaid in violation of this section. The penalty accrues as provided under sections 3902 and 3903 of this title, except that the required payment date for the unpaid amount is the last day specified in the contract that the discounted amount may be paid.

(Added Pub. L. 97-452, §1(18)(A), Jan. 12, 1983, 96 Stat. 2476; amended Pub. L. 100-496, §8, Oct. 17, 1988, 102 Stat. 2460.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3904	31 App.:1802.	May 21, 1982, Pub. L. 97-177, §3, 96 Stat. 86.

The word “otherwise” is omitted as surplus. The words “may pay the discounted amount” are substituted for “may make payment in an amount equal to the discounted price” to eliminate unnecessary words. The words “on such unpaid amount” and “the regulations prescribed pursuant to” are omitted as surplus. The words “specified in the contract that the discounted amount may be paid” are substituted for “of the specified period of time described in subsection (a)” for clarity.

AMENDMENTS

1988—Pub. L. 100-496 inserted after first sentence “For the purpose of the preceding sentence, the speci-

fied time shall be determined from the date of the invoice.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-496 applicable to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100-496, set out as a note under section 3902 of this title.

§ 3905. Payment provisions relating to construction contracts

(a) In the event that a contractor, after making a certified payment request to an agency pursuant to section 3903(b) of this title, discovers that a portion or all of such payment request constitutes a payment for performance by such contractor that fails to conform to the specifications, terms, and conditions of its contract (hereafter in this subsection referred to as the “unearned amount”), then the contractor shall—

(1) notify the agency of such performance deficiency; and

(2) be obligated to pay the Government an amount equal to interest on the unearned amount (computed in the manner provided in section 3903(c) of this title), from the date of the contractor’s receipt of such unearned amount until—

(A) the date the contractor notifies the agency that the performance deficiency has been corrected; or

(B) the date the contractor reduces the amount of any subsequent certified application for payment to such agency by an amount equal to the unearned amount.

(b) Each construction contract awarded by an agency shall include a clause that requires the prime contractor to include in each subcontract for property or services entered into by the prime contractor and a subcontractor (including a material supplier) for the purpose of performing such construction contract—

(1) a payment clause which obligates the prime contractor to pay the subcontractor for satisfactory performance under its subcontract within 7 days out of such amounts as are paid to the prime contractor by the agency under such contract; and

(2) an interest penalty clause which obligates the prime contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (1) of this subsection—

(A) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) computed at the rate specified by section 3902(a) of this title.

(c) The construction contract awarded by the agency shall further require the prime contractor to include in each of its subcontracts (for the purpose of performance of such construction contract) a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of