

TITLE 31 - MONEY AND FINANCE
SUBTITLE III - FINANCIAL MANAGEMENT
CHAPTER 39 - PROMPT PAYMENT

§ 3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. 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.

(b) The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(c) (1) A business concern shall be entitled to an interest penalty of \$1.00 or more which is owed such business concern under this section, and such penalty shall be paid without regard to whether the business concern has requested payment of such penalty.

(2) Each payment subject to this chapter for which a late payment interest penalty is required to be paid shall be accompanied by a notice stating the amount of the interest penalty included in such payment and the rate by which, and period for which, such penalty was computed.

(3) If a business concern—

(A) is owed an interest penalty by an agency;

(B) is not paid the interest penalty in a payment made to the business concern by the agency on or after the date on which the interest penalty becomes due;

(C) is not paid the interest penalty by the agency within 10 days after the date on which such payment is made; and

(D) makes a written demand, not later than 40 days after the date on which such payment is made, that the agency pay such a penalty,

such business concern shall be entitled to an amount equal to the sum of the late payment interest penalty to which the contractor is entitled and an additional penalty equal to a percentage of such late payment interest penalty specified by regulation by the Director of the Office of Management and Budget, subject to such maximum as may be specified in such regulations.

(d) The temporary unavailability of funds to make a timely payment due for property or services does not relieve the head of an agency from the obligation to pay interest penalties under this section.

(e) An amount of an interest penalty unpaid after any 30-day period shall be added to the principal amount of the debt, and a penalty accrues thereafter on the added amount.

(f) This section does not authorize the appropriation of additional amounts to pay an interest penalty. The head of an agency shall pay a penalty under this section out of amounts made available to carry out the program for which the penalty is incurred.

(g) A recipient of a grant from the head of an agency may provide in a contract for the acquisition of property or service from a business concern that, consistent with the usual business practices of the recipient and applicable State and local law, the recipient will pay an interest penalty on amounts overdue under the contract under conditions agreed to by the recipient and the concern. The recipient may not pay the penalty from amounts received from an agency. Amounts expended for the penalty may not be counted toward a matching requirement applicable to the grant. An obligation to pay the penalty is not an obligation of the United States Government.

(h) (1) This section shall apply to contracts for the procurement of property or services entered into pursuant to section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b (h)).

- (2) (A) In the case of a payment to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), 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—
- (i) on the amount of payment or loan due; and
 - (ii) 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.
- (B) As used in this subsection, the “required payment or loan closing date” means—
- (i) for a purchase agreement, the 30th day after delivery of the warehouse receipt for the commodity subject to the purchase agreement;
 - (ii) for a loan agreement, the 30th day beginning after the date of receipt of an application with all requisite documentation and signatures, unless the applicant requests that the disbursement be deferred;
 - (iii) for refund of amounts received greater than the amount required to repay a commodity loan, the first business day after the Commodity Credit Corporation receives payment for such loan;
 - (iv) for land diversion payments (other than advance payments), the 30th day beginning after the date of completion of the production adjustment contract by the producer;
 - (v) for an advance land diversion payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer;
 - (vi) for a deficiency payment (other than advance payments) based upon a 12-month or 5-month period, 91 days after the end of such period; or
 - (vii) for an advance deficiency payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer.
- (3) Payment of the interest penalty under this subsection shall be made out of funds available under section 8 of the Act of June 29, 1948 (15 U.S.C. 714f).
- (4) Section 3907 of this title shall not apply to interest penalty payments made under this subsection.

(Added Pub. L. 97–452, § 1(18)(A), Jan. 12, 1983, 96 Stat. 2475; amended Pub. L. 98–216, § 1(6), Feb. 14, 1984, 98 Stat. 4; Pub. L. 100–496, § 3, Oct. 17, 1988, 102 Stat. 2456; Pub. L. 105–362, title XIII, § 1301(c)(2)(B), Nov. 10, 1998, 112 Stat. 3293.)

Historical and Revision Notes

1982 Act

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|--|
| 3902(a) | 31 App.:1801(a)(1), (b)(1) (2d, last sentences). | May 21, 1982, Pub. L. 97–177, § 2(a)(1), (b)–(d), 96 Stat. 85. |
| 3902(b) | 31 App.:1801(b)(1) (1st sentence). | |
| 3902(c) | 31 App.:1801(b)(2). | |
| 3902(d) | 31 App.:1801(c). | |
| 3902(e) | 31 App.:1801(d). | |

In subsection (a), the words “under section 3903 of this title” are substituted for “by the Director of the Office of Management and Budget” because of the restatement. The words “in accordance with this section” are omitted as surplus.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscp.html>).

In subsection (b), before clause (1), the words “on amounts due to a business concern under this chapter . . . to the business concern”, “of the amount due”, and “complete delivered . . . of property or service concerned” are omitted as surplus.

In subsection (c), the words “which remains” are omitted as surplus.

In subsection (e), the words “terms and” and “non-Federal” are omitted as surplus. The word “Government” is added for consistency in the revised title and with other titles of the United States Code.

1984 Act

This is necessary to correct cross-references in section 3902 (b).

References in Text

The Agricultural Act of 1949, referred to in subsec. (h)(2)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

Amendments

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.”