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.

1981 ACT

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

Editorial Notes
REFERENCES IN TEXT
The Agricultural Act of 1949, referred to in subsec. (b)(2)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, 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 3909(a)(1) and (b) of title 41.”


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 described in section 3906 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;”.

Subsec. (c) to (g), Pub. L. 100–496, §3(b), added subsec. (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).


Statutory Notes and Related Subsidiaries
EFFECTIVE DATE OF 1988 AMENDMENT
Pub. L. 100–496, §14(a)–(c), Oct. 17, 1988, 102 Stat. 2465, 2466, provided that:

“(a) The provisions made by sections 2(a), 2(b), 3(a), 4 through 9, 12, and 13 of this Act [enacting sections 3905 of this title, amending this section, sections 3901, 3903, and 3904 of this title and section 614 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, §8041, 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:


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

“(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) except as provided in paragraphs (10) and (11), 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) 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 1963 (7 U.S.C. 4522(e)), the acquisition of edible fats or oils, and the acquisition of food products prepared from edible 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;

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

(10) for a prime contractor (as defined in section 8701(5) of title 41) that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), to the fullest extent permitted by law, require that the head of an agency establish an accelerated payment date with a goal of 15 days after a proper invoice for the amount due is received if a specific payment date is not established by contract; and

(11) for a prime contractor (as defined in section 8701(5) of title 41) that subcontracts with a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), to the fullest extent permitted by law, require that the head of an agency establish an accelerated payment date with a goal of 15 days after a proper invoice for the amount due is received if—

(A) a specific payment date is not established by contract; and

(B) such prime contractor agrees to make payments to such subcontractor in accordance with such accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to such subcontractor.

(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 certifi-
cation, 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 subcontract 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(c)(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.


HISTORICAL AND REVISION NOTES

§ 3903

1988 Amendment—Pub. L. 100–496, § 4–7, added par. (5) generally. Prior to amendment, par. (5) 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".

1991 Amendment—Pub. L. 102–190 redesignated former subsec. (c) as (d).


AMENDMENTS


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


Statutory Notes and Related Subsidiaries

**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.

**Implementation Through Federal Acquisition Regulation**

Pub. L. 100–496, § 11, Oct. 17, 1988, 102 Stat. 2483, 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:
§ 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.


### Historical and Revision Notes

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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.

### Editorial Notes

#### Amendments

1988—Pub. L. 100–496 inserted after first sentence “For the purpose of the preceding sentence, the specified time shall be determined from the date of the invoice.”

#### Statutory Notes and Related Subsidaries

**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.