

DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
Washington, DC 20314-1000

ER 37-1-21  
Change 2  
15 Dec 86

\* DAEN-RMF-A

Regulation  
No. 37-1-21  
6 September 1983

Financial Administration  
PAYMENT AND REPORTING OF INTEREST PENALTIES  
PROMPT PAYMENT ACT (PL 97-177)

1. Purpose. This regulation provides general guidance in implementing the Prompt Payment Act and in reporting interest penalties on late payments. The main objective is to provide efficient and uniform procedures for the administration, accounting, and reporting of financial statistical data on disbursements and interest penalty payments made for goods and/or services received from vendors.

2. Applicability. This regulation applies to all HQUSACE/OCE elements and all field operating activities (FOA).

3. References:

- a. Public Law 97-177, Prompt Payment Act.
- b. OMB Circular A-125, Prompt Payment.
- c. Assistant Secretary of Defense (Comptroller) Memorandum dated 16 September 1982, Subject: Prompt Payment Act, Public Law 97-177, dated May 21, 1982.
- d. Deputy Under Secretary of Defense (Acquisition Management) Memorandum dated 7 October 1982, Subject: Prompt Payment Act, Public Law 97-177, dated May 21, 1982.

4. General.

a. The Prompt Payment Act (Public Law 97-177) enacted on 21 May 1982, became effective on 1 October 1982. The Act requires the Federal Government to pay interest on overdue payments and for other purposes. The Act requires Government agencies to pay their bills promptly, when due, and to pay interest penalties when payments are made late. The Act also provides that interest penalties will be paid on discounts taken erroneously.

b. The Act applies only to contracts, agreements, or other procurement documents executed on or after 1 October 1982. The Act does not apply to Modifications or Change Orders which are considered to be new procurement modifications executed on or after 1 October 1982 on existing contracts, agreements, or other procurement documents.

ER 37-1-21  
Change 2  
15 Dec 86

c. The Act does not apply to Construction Contracts and Architect/Engineer (A/E) Contracts on which progress payments are made, except as provided below. These type contracts are considered to be for "Contract Financing." The term "Contract Financing" means the Government provides working capital to help contractors perform on large or long-term contracts. Advance payments, cost reimbursement provisions, or any other type payments considered a form of contract financing under the Federal Acquisition Regulation (FAR), do not come under the Prompt Payment Act. Construction contracts which contain the payment clauses in FAR 52.2 represent contract financing provisions. Contract financing payments are made within 5 to 10 days after a proper request is received in the Finance Office, and they are not counted as "early" payments. However, the final payment made on a contract which has financing provisions does come under the Prompt Payment Act. These final payments are scheduled for 30 days after an invoice is received in the proper office or the contract is certified as complete unless there are other specified payment terms in the contract. Final payments are subject to interest penalties if paid late and are counted as early payments if paid 3 or more days before the due date. Progress payments do not include amounts paid contractors for partial delivery of items or partial payments on terminations. Both of these payments are under the Prompt Payment Act.

d. The Act applies to the acquisition of property, goods, or services, including contracts for the lease or rental of real or personal property from a business concern. A business concern means any person or organization engaged in a profession, trade, or business, and non-profit entities (including state and local governments, but excluding federal entities and foreign governments), operating as contractors.

\* e. The Act also applies to Basic Agreements (see DAR 3-410.1) and Basic Ordering Agreements (see DAR 3-410.2) on orders placed on or after 1 October 1982, and to Fast Payment Orders that are issued on or after 1 October 1982, and definite quantity contracts (see DAR 3-409.1), requirements contracts (see DAR 3-409.2), and indefinite quantity contracts (see DAR 3-409.3). \*

f. Other exclusions from the provisions of the Prompt Payment Act are:

(1) Contracts for utilities (Gas, Water, Electricity, etc.) that include provisions for late payment charges established by tariff or state regulatory commissions.

(2) Informal contracts for the purchase of utilities under a tariff when such tariff provides for a later payment charge.

\*

g. As required by the Act, payment of bills will be made to coincide with the due dates specified in the contract, agreement, or other procurement document. Payments will be made as close as administratively possible to, but not later than, the due date for payment.

h. Payment due dates are as follows:

- (1) The payment date specified in the contract.

(2) If no date is specified in the contract, 30 calendar days after receipt of a proper invoice or 30 calendar days from acceptance of the goods or service, whichever is later.

(3) If a discount is offered and is cost effective, the last day of the discount period. (Note: When the last day of the discount period falls on a Saturday, payment will be made on the preceding workday. When the last day of the discount period falls on a Sunday or holiday, the following business day is considered as being within the discount period.)

(4) If meat or meat food products are purchased, the 7th calendar day after the date of delivery.

(5) If perishable agricultural commodities are purchased, the 10th calendar day after the date of delivery.

5. Funding.

a. The Prompt Payment Act prohibits budgeting for interest penalty payments, but requires that such interest payments be absorbed within existing appropriations available for the administration or operation of the program for which the penalty was incurred. Interest penalty payments will be paid without regard as to who or what caused the late payments to be made.

b. Interest penalty payments incurred on Military and Civil transactions will be accounted for as indicated below:

(1) Military Appropriations.

(a) If the appropriation cited on the document is Research, Development, Test and Evaluation Army (RDTE), payment will be made from the disbursing activities RDTE funds.

(b) If the appropriation cited on the document is Military Construction, Army (MCA), Military Construction, Army Reserve (MCAR), Operation and Maintenance, Army (OMA), Other Procurement, Army (OPA), Operation and Maintenance, Army Reserve (OMAR), Air Force or any other Military Appropriation, except Foreign Military Sales/Foreign Military Construction Sales (FMS/FMCS), payment will be made from the disbursing activities OMA funds.

(c) Interest penalty payments incurred on Reimbursable Orders transactions will be paid from the disbursing activities OMA funds.

(d) Interest penalty payments applicable to FMS/FMCS Direct Cite (DC) cases with exemptions from the FMS Contract Administration Surcharge (CAS) will be paid from the disbursing activities OMA funds. In order to reimburse the OMA appropriation, an automatic reimbursable order will be established with the corresponding FMS Case/Line as the source of reimbursement from the FMS Trust Fund 97-11X8242. Source code reporting will be per the Integrated Command Accounting and Reporting (ICAR) and Data Element Management/Accounting

ER 37-1-21  
6 Sep 83

and Reporting (DELMAR) source code reporting requirements. All active Corps FMS cases are exempt from the GAS with the exception of the Air Force Case SR-SFA-SFH (SR-HOW). Interest penalty payments incurred on FMS Case SR-SFA(HDW) or on any case not exempt from CAS will be charged to and paid from the disbursing activities OMA funds with ultimate reimbursement from the GAS account at the Security Assistance Accounting Center (SAAC), Denver, Colorado. An SF 1080 billing on the GAS account to SAAC will be issued through DAEN-RMF-AF. The SF 1080 bill must cite the country, case, contract number and the reason for late payment.

(2) Civil Appropriations, including Revolving Fund. Interest penalty payments incurred on all transactions, including reimbursable orders, will be charged to the applicable activities VW6020 or VW4420 account.

6. Control of Documents. The following procedures for control of supporting documentation should be followed.

a. All copies of documents will immediately be date stamped upon arrival in the Finance and Accounting Office. This requirement includes vendor\*s invoices, receiving reports, and other documentation that will support the payment of funds.

b. Where the contract, agreement, or other procurement document specifies the mailing or delivery of the vendor\*s invoice and documentation to other than the Finance and Accounting (Disbursing/Paying) Office, documents must be date stamped by the receiving activity and processed immediately to the Finance and Accounting Office for further processing prior to payment to vendors by the due date or discount date. (Note: New procurement actions should stipulate that the mailing address of invoices must be to the Finance and Accounting Office responsible for paying the invoice.)

7. Contract, Receiving Report, Proper Invoice.

a. The Defense Acquisition Regulation requires all contracts, purchase orders, and delivery orders to contain the exact mailing address for submission of invoices. Receiving reports and/or other documents necessary to effect prompt payment are to be forwarded directly to the Finance and Accounting Office.

b. Under PL 97-177, to be considered a proper invoice, the vendor\*s bill, or written request for payment must: be received by the office named in the contract to receive invoices; include all information required by the terms of the contractual document; and be accompanied by substantiating documentation required by the contract.

c. No invoice is required in some cases, e.g., lease agreements. When such agreements provide for payments of fixed amounts at regular intervals without a vendor\*s invoice, an invoice is considered received for payment purposes on the date specified by the agreement for payment.

d. All invoices and other supporting documents should be carefully examined to determine validity with the contract, agreement, or other procurement document.

8. Notice to Vendor.

a. The vendor will be notified of any impropriety in the invoice, e.g. incorrect address, inadequate information or documentation, as required by the contract, etc.

b. The notice of defect will be furnished the vendor within 15 calendar days (3 business days for meat and meat food products, and 5 calendar days for perishable commodities), of date of receipt of improper invoice.

c. The notice to the vendor must be in writing and is considered made on the date mailed.

d. Adequate records must be maintained of the mailing date, since timely notification stops the running of the time period specified for payment before interest would be considered due and payable.

e. If notification of improper invoice is made to the vendor after the required 15 calendar days (3 business days for meat and meat food products and 5 calendar days for perishable commodities), the number of days allowed for payment of the corrected/proper invoice, when received, is reduced by the number of days between the 15th calendar day (3rd business day for meat and meat food products, and 5th calendar day for agricultural commodities), of receipt of improper invoice and the date the business concern was notified of the defect.

9. Follow-up For Required Documents.

a. When receiving reports, copies of contracts, modifications to contracts, and/or other documentation are not in the Finance and Accounting Office, follow-up is required with the contracting/procurement, or receiving activity, requesting documents necessary to complete payment. This follow-up procedure must be made in time to prevent the loss of cost effective discounts and to avoid the payment of late payment interest penalties.

b. When requested supporting documents are not received in the Finance and Accounting Office within a reasonable time, or when follow-up action is habitually required to receive such documentation, the commander, through proper channels, should be apprised of the problem. The letter report to the commander should include a brief statement of the facts, a list of the missing documents, the amounts of cash discounts involved, if any, and possible interest penalties for late payment. The report should detail the actions previously taken to secure the supporting documents. The commander will then initiate required action to ensure compliance.

10. Priority of Payment.

a. Payment Due Date. This is the date by which payment must be made in order to avoid the accrual of interest.

(1) All invoices that offer cash discounts will be paid within the discount period if cost effective.

(2) Payment of invoices will be made as close as administratively possible to the due date allowed by the vendor to take the discount. A discount is not to be taken unless the invoice is paid within the discount period.

(3) Interest penalty is payable on discounts taken after the discount period unless the underpayment is corrected within 15 calendar days (3 business days for meat and meat food products, and 5 calendar days for perishable commodities), of expiration of the discount period.

(4) All invoices should be scheduled for payment which coincide with due dates specified in the contract, agreement, or other procurement document. The time is calculated for payment computations on the latter of the date when the office, named in the contract, agreement, or other procurement document, receives a proper invoice, or on the date when acceptance of the contract item is made.

b. Specific Due Date. If specific payment dates are not included in the contract, agreement, or other procurement document, but has payment terms such as "Promptly" or "Payable upon Receipt", invoices will be paid on the 30th day after receipt of a proper invoice or acceptance of the supplies or services, whichever is later.

11. Date of Payment. Payment of invoices is considered made on the date the check is dated. Checks will be delivered or mailed the same day they are dated. If payment due date falls on a Saturday, payment will be made the preceding workday. If payment due date falls on a Sunday or legal holiday, payment will be made the next business day.

12. Grace Period. If no specific due date is provided:

a. Invoices for meat and/or meat food products will be paid by the 7th calendar day after delivery, with a 3 calendar day grace period.

b. Invoices for perishable agricultural commodities will be paid by the 10th calendar day after delivery with a 5 calendar day grace period.

c. Invoices for all other contracted items will be paid no later than the 30th calendar day after the latter of the date of receipt of a proper invoice or the date on which acceptance of the contract items is made by the Government with a 15-day grace period. If payment is made by the 45th day, no interest payment is incurred, however, if payment is made on the 46th day, interest penalty is incurred and must be paid.

13. Payment Procedure. The Corps of Engineers policy is not to compromise prescribed payment procedures, controls or standards to avoid the payment of interest.

a. Interest penalties will be paid without need for request by business concerns.

b. Interest will be computed and annotated on the invoice, and will be shown as a separate item on the voucher.

c. Interest penalties, amounting to less than \$1.00 per invoice, need not be paid. However, if vendor\*s invoices are grouped and the total aggregate amount of interest is over \$1.00, interest penalty will be paid.

14. Dissatisfied Contractors. Contractors who are dissatisfied with payments made under the provisions of the Act, should be advised that, in the absence of specific or prompt payment terms in their contract, their only recourse is to file a claim under the Contract Disputes Act of 1978.

15. Requirements for Payment of Interest Penalty.

a. The Prompt Payment Act requires federal agencies to pay interest penalties to business concerns when payments are late or when discounts are erroneously taken.

b. Interest penalties under the Act do not continue to accrue after filing of a claim under the Contract Disputes Act of 1978, or for more than 1 year.

16. Conditions when Interest Penalty is not Payable. Interest penalty is not payable when the following conditions exist:

a. Payment complies with payment terms specified in the contract, agreement, or other procurement document, or when payment is made within the grace periods.

b. If payment terms are not specified in the contract, agreement, or other procurement document, but payment is made within the grace periods after payment due date.

c. If a business concern has been properly notified of any defect or impropriety in the invoice within 15 calendar days (3 business days for meat and meat products and 5 calendar days for perishable commodities), of receipt of invoice, and the vendor fails to submit the proper invoice and/or required documentation on a timely basis.

d. If payment was not made because of dispute over the amount of the payment or other allegations concerning compliance with a contract, agreement, or other procurement document. (Claims concerning any such disputes, and any interest which may be payable during the period while the dispute is being resolved, shall be subject to the Contract Disputes Act of 1978.)



- e. When payments are made solely for financing purposes.
- f. On advance payments.
- g. On amounts withheld in accordance with the terms of the contract, agreement, or other procurement document.

17. Computation of Interest Penalties.

a. Interest on late payments is computed beginning on the day after the required payment due date (without regard to the 3, 5, or 15 day grace period) through (including) the day the payment is made.

b. Interest penalty, on the amount of discount taken erroneously is computed beginning on the day after the end of the specific discount period through (including) the date payment is made.

c. Interest penalties remaining unpaid for a 30-day period will be added to the principal amount owed to the business concern, and additional interest penalties will be computed on the total debt, including previously unpaid accrued interest. Interest will continue to be accrued and added to the principal amount each 30-day period: until the debt and interest is paid; until the vendor files a claim under the Contract Disputes Act; or until one year has elapsed.

d. The interest rate established by the Treasury Department under Section 12 of the Contract Disputes Act of 1978 will be used in computing interest penalties.

(1) Separate rates are prescribed for the periods 1 January through 30 June, and 1 July through 31 December. The rate to be used is the rate in effect on the date payment is made.

(2) Interest will be computed based on 365 calendar days in a year. The number of days payment is late is based on calendar days, with the exception for meat, meat food products, and perishable commodities.

(3) An illustration of interest computation is provided below:

Amount of Bill	\$1,050.00
Interest Rate	11.25%
(\$1,050.00 x .1125 =	\$ 118.13 (Int. for 1 Yr.)
Rate per day (\$118.13 ÷ 365) =	.32364 (Int. per day)
Number of days payment is late	12
Interest Payable (.32364 x 12) =	\$ 3.88

In order to ensure that the correct computation of interest was made, verification should be performed by another employee.

18. Delayed Payments. When payments are delayed because of the need for requests for Advance Decisions from General Accounting Office (GAO), or for

other similar reasons, the vendor must be notified of the delay, by a letter mailed within the 3, 5, or 15 days, as applicable, of receipt of invoice. The letter should include the reason for the delay and that interest will not accrue until resolution. Any delay in making payment of invoices should be avoided, except where absolutely necessary. Difficulties in preventing payment by due date must be resolved as quickly as possible.

19. Partial Deliveries. Unless the contract, agreement, or other procurement document requires complete delivery as a condition for payment, payment for partial deliveries will be made upon receipt of a proper invoice. Final payment is to be based on date of final delivery, or date of receipt of the new, proper invoice. Each invoice submitted for a partial delivery must be supported by a receiving report before payment can be made.

20. Management of Accounts Payable.

a. All accounts payable must be managed carefully to assure that payments will be made as close as possible to, but not later than, the due date. Any differences between the Finance and Accounting records and vendor\*s invoices should be resolved promptly to avoid the accrual of interest. It will be necessary for all functional elements involved in contracting, procurement, and receiving activity to work closely with the Finance and Accounting office to avoid the use of Government funds to pay interest penalties.

b. The Finance and Accounting Officer will not compromise established controls on standards to avoid the payment of interest penalties, but must put forth additional effort and work closer with vendors than ever before.

c. If invoices are improper, the vendor must be notified promptly by letter, providing specific information for what must be corrected.

d. If the proper number of invoice copies were not submitted, do not return the invoice to vendor. Additional copies can be reproduced locally, however, vendor should be notified of the deficiency.

e. If delivery is incomplete (items billed but not delivered), disputed amount, etc., the vendor must be notified, by letter, of what must be done before payment can be made.

\* 21. Prompt Payment Act Report (RCS: DAEN-RMF-28(R1)).

a. Data Accumulation. Accumulation of data will be accomplished by the best means available to the Finance and Accounting Officer.

b. Submission Requirements.

\* (1) At Appendix A is revised ENG Form 4812-R, and instructions for use as reference in completing reporting requirements for Civil Appropriations, including Revolving Fund.

ER 37-1-21  
Change 2  
15 Dec 86

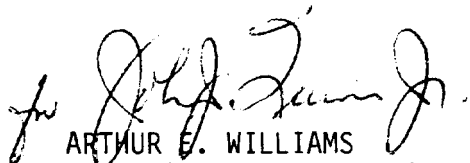
(2) ENG Form 4812-R will be prepared quarterly and will contain cumulative fiscal year-to-date data.

\* (3) Each report will be submitted to the CDR, USACE (DAEN-RMF-A), WASH, D.C. 20314-1000, by the 15th calendar day of the month following the report period. The due dates must be complied with in order to allow sufficient time for review and preparation of the consolidated report to the Assistant Secretary of the Army (CW) and Assistant Comptroller of the Army for Finance and Accounting (DACA-FAD-B) for further consolidation to the Office of Management and Budget (OMB). \*

(4) ICAR reporting on Military Funds will be per specific instructions and procedures provided by Department of the Army, USAFAC, in AR 37-108 and by supplemental instructions by DAEN-RMF.

FOR THE COMMANDER:

1 Appendix  
APP A - Prompt Payment Act  
Report (ENG Form 4812-R)

  
ARTHUR E. WILLIAMS  
Colonel, Corps of Engineers  
Chief of Staff