

**APPENDIX M. LATE PAYMENT INTEREST PENALTIES AND ADDITIONAL PENALTIES****M.1 LATE PAYMENT INTEREST PENALTIES.**

- M.1.1 NASA will use the following procedures in calculating interest due on late payments.
- A. Interest will be calculated from the day after the payment due date through the payment date at the interest rate in effect on the day after the payment due date.
  - B. Adjustments will be made for errors in calculating interest.
  - C. For up to one year, interest penalties remaining unpaid at the end of any 30 day period will be added to the principal and subsequent interest penalties will accrue on that amount until paid.
  - D. When an interest penalty is owed and not paid, interest will accrue on the unpaid amount until paid, except as described in E below.
  - E. Interest penalties will not continue to accrue:
    - 1. After the filing of a claim for such penalties under the Contract Disputes Act of 1978 (41 U.S.C. § 601 et seq.).
    - 2. For more than one year.
  - F. When NASA takes a discount after the discount date, interest will be paid on the amount of the discount taken. Interest will be calculated for the period beginning the day after the specified discount date through the date of payment of the discount erroneously taken.
  - G. If the banking information supplied by the vendor is incorrect, interest under this regulation will not accrue until seven days after such correct information is received (provided that the vendor has been given notice of the incorrect banking information within seven days after the agency is notified that the information is incorrect).
  - H. Interest calculations are to be based on a 360 day year.
  - I. Interest may be calculated by using the Simple Daily Interest Calculator or Monthly Compounding Interest Calculator provided by Treasury Financial Management Services.

**M.2 PAYMENT.**

- M.2.1 NASA will meet the following requirements in paying interest penalties.
- A. Interest may be paid only after acceptance has occurred, or when title passes to the government in a fast payment contract when title passing to

the government constitutes acceptance for purposes of when interest may be paid.

- B. 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.
- C. 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. Inclusion of the contract number in the notice to the vendor is optional.
- D. The temporary unavailability of funds does not relieve an activity of the obligation to pay interest penalties or the additional penalties that may be required.
- E. NASA shall pay any late payment interest penalties (including any additional penalties described below) 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.
- F. Interest penalty payments are to be reported to the Internal Revenue Service on IRS Form 1099-INT when payments to any one person, partnership or trust total \$600 or more.
- G. Final payments on cost-type contracts are subject to interest penalties; they are not contract financing payments.
- H. Interim Payments under cost-reimbursement service contracts are treated as invoice payments. Interest penalties will be paid for interim payments under cost-reimbursement service contracts awarded on or after December 15, 2000, that are paid more than 30 days after a proper invoice has been received from the vendor.
- I. Contractors approved by the Defense Contract Audit Agency (DCAA) to have adequate billing system internal controls are authorized to submit interim vouchers (contract financing requests) directly to NASA paying offices. DCAA provisionally approves these interim vouchers submitted by participating contractors for payment, but does so on a blanket basis because the contractors meet the DCAA criteria for authorization. Such authorization does not extend to the first and final voucher. The NASA Agency Office of Procurement periodically provides a master list to Centers of all participating NASA contractors. In cases in which the contract requires the contractor to send invoices to DCAA, the DCAA office or representative specified in the contract would be the "designated agency office..." for purposes of 5 CFR 1315.4 (b) (1) (i). As provided in FAR 32.906 (a), the due date for making contract financing payments is

the 30th day after the designated billing office has received a proper request.

### M.3 PENALTIES NOT DUE.

#### M.3.1 Interest penalties are not required:

- A. 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).
- B. When payments are made solely for financing purposes or in advance, except for interest payment required under 31 U.S.C. § 3902(h)(2).
- C. For a period when amounts are withheld temporarily in accordance with the contract.
- D. 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.
- E. When the interest penalty is less than \$1.00.

### M.4 ADDITIONAL PENALTIES.

#### M.4.1 Vendor Entitlements. A vendor shall be entitled to an additional penalty payment when the vendor is owed a late payment interest penalty by NASA of \$1.00 or more, if the vendor:

- A. Receives a payment issued after the due date and NASA failed to include the late payment interest.
- B. Is not paid the interest penalty payment within 10 days after the actual payment date.
- C. Makes a written request that NASA pay such an additional penalty. Such a request must be postmarked, received by facsimile, or by electronic mail, by the 40th day after payment was made. If there is no postmark or if it is illegible, the request will be valid if it is received and annotated with the date of receipt by NASA by the 40th day. The written request includes the following:
  - 1. 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.

2. 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 of the principal.
- D. 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.
- E. Minimum Penalty. Regardless of the amount of the late payment interest penalty, the additional penalty paid shall not be less than \$25. No additional penalty is owed, however, if the amount of the interest penalty is less than \$1.00.
- F. Penalty Basis. The penalty is based on individual invoices. Where payments are consolidated for disbursing purposes, the penalty determinations shall be made separately for each invoice therein.
- G. 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.