

STATE OF OKLAHOMA
OFFICE OF STATE FINANCE

Permanent Amendments To Rules/Regulations

Subject: Prompt payment to vendors and employees of the State of Oklahoma through the payment of interest on late payments.

Legal Reference: Enrolled House Joint Resolution 1010, First Session, 39th Oklahoma Legislature (1983) and Enrolled House Bill 1905, Second Session) 40th, Oklahoma Legislature (1986).

Preamble: The above Resolution and House Bill of the Oklahoma Legislature confirmed that it is the policy of the State of Oklahoma to promptly pay for the goods and services purchased by and delivered to the various agencies, boards, commissions, and institutions of this State, and travel expenses -incurred by employees of this State upon good faith presentation of sufficient claims for the sums due and owing. To this end, the Director of State Finance is directed to establish procedures to expedite payment of proper invoices and travel claims and to provide for the payment of interest on proper invoices and claims for reimbursement for cost of travel incurred by state employees which are not paid by an agency, board, commission, or institution within forty-five (45) days of receipt by the appropriate office of such State entity.

The procedure to expedite payment has been determined by the Director to involve only internal procedures of the Office of State Finance, of the agencies subject to the Resolution, and

under the jurisdiction of the Director of Public Affairs, and thereby not appropriate for rulemaking under Title 75 of the Oklahoma Statutes, Section 301 et seq. Payment of interest to a vendor and employee of the state who is aggrieved by delay in payment beyond the forty-five day limit does affect a private right of citizens of Oklahoma who do business with the State and is quite appropriately the subject of rulemaking.

The amendment to this rule is intended to implement H.B. 1905 and is not intended to alter the procedures as set forth below for payment of interest to vendors as previously provided by the rule. The comments received for the original rules are reprinted.

H.B. 1905 was effective March 27, 1986. Following extensive review of existing payment procedures for employee travel claims, the Director finds that an emergency does now exist in that H.B. 1905 requires that these new procedures be in place by November 1, a time when the Oklahoma Legislature is not scheduled to be in session. Further, as noted above, any delay beyond said date could deprive an aggrieved employee of the State of interest sums due and owing under such procedures. To secure the widest possible discussion of these emergency procedures, the Director of State Finance will distribute copies of this notice and the Emergency Rules/Regulations to every agency and to offices of every agency where employees are headquartered.

The Director of State Finance has also determined that the laws of Oklahoma, at 61 O.S. 1981, Section 101 et seq., the “Public Competitive Bid Act of 1974,” as amended, provide specific legislative direction when interest is appropriate on claims under public construction contracts. The procedures now proposed for rulemaking will not apply to such contracts. Similarly, contracts executed prior to November 1, 1983, may contain express “interest.” provisions which are at variance with the procedures developed pursuant to HJR 1010 (See for example, Attorney General Opinion No. 83-120). Accordingly, only payments under contracts bid and awarded after November 1, 1983, are encompassed by the procedures promulgated under the authority conferred by HJR1010.

Proposed Emergency Rules/Regulations on the subject were first published by the Director on September 15, 1983, in the Oklahoma Register. To secure the widest possible discussion of these proposed emergency procedures, the Director of State Finance and the Director of Public Affairs distributed copies of the Notice and the Emergency Rules/Regulations to every agency and as many vendors as possible.

Written comments were solicited and a public hearing was held on October 3, 1983, to further advise the Director on the proposal to implement H.J.R. 1010. Comments were offered by a variety of respondents, most representing the various agencies, boards, commissions and institutions of the State of Oklahoma. Although these comments prompted only one change in the Rules/Regulations as proposed, the Director will continue to evaluate the procedure established herewith and will consider modifications and amendments, pursuant to 75 O.S. 1981, Section 301 et seq., if experience under the procedure indicates warranted improvements.

Several commenters sought clarification of the definition of “vendor” in Section 1(B) of these Rules. As defined in this promulgation, “vendor” continues to mean “any supplier of goods and services,” including State agencies who provide goods or services to other State agencies; or physicians, hospitals, etc., who provide goods or services to recipients of entitlements or benefit payments under contracts with State agencies. Nothing in H.J.R. 1010 appears to permit the exclusion of physicians, hospitals, etc., from the “vendor” definition. Nothing herein, though, inhibits any agency from further defining a “proper invoice” in contracts with such a provider as containing such documentation or determination of eligibility as may be appropriate for the agency’s program.

Similarly, nothing in H.J.R. 1010 appears to permit the Director to exclude from the definition suppliers who are to be paid partly from State funds and partly from Federal funds. If, otherwise authorized, an agency could, however, under these Rules/Regulations, bid and contract for any payment mechanism necessitated by Federal grant requirements.

There were questions raised on the issue of vendors who routinely use delivery tickets as their billing mechanism. Section 1 of H.J.R. 1010 specifically allows State agencies to have designated billing offices for receipt of invoices; however, this implies the agency must clearly make this provision on the contract and should keep adequate records in the event a vendor claims interest or there is a disagreement between an agency and a vendor.

There was some misunderstanding on when the “clock” starts and stops. With the exception of using the delivery date of goods or services when that date is later than the “receipt of proper invoice” date, the Rules adopted are consonant with the language of Sections 1, 2, and 3, of H.J.R. 1010. It is common for invoices to arrive before goods are received, especially in situations involving out-of-state vendors who ship merchandise via rail or truck and bill via first class mails. Title 74, of the Oklahoma Statutes, Section 86.1, states that invoices submitted the Director for payment must be approved by the State agency as to delivery and acceptance. This section of law would prohibit a State Agency from legally submitting an invoice for payment until they had actually received the goods or services. This was taken into consideration in the adoption of these Rules.

A suggestion was made to use the warrant issue date as the payment date for determining any interest that may be due a vendor. Current practices and procedures prohibit this possibility since State agencies make final distribution of warrants after they are signed by the State Treasurer and are totally in control of this distribution process. This suggestion could therefore not be considered in the final adoption of these Rules.

Questions were raised about the types of evidence which could be used in the event a grievance was filed and a determination made by the Director under these Rules. Title 75, Oklahoma Statutes, Section 309, et seq., specifically guarantees all parties the opportunity to present evidence and arguments on all issues, and requires that final determination be made based on the evidence submitted. It is not proper for the Director to predetermine in these Rules the types of evidence which would be accepted from either party in the event a hearing would be required.

H.J.R. 1010 does not exempt small purchases from its provisions and the Rules adopted hereby do not include any such exemption, although it was suggested that this should be considered.

Another question was raised in regard to routine overshipments of certain types of commodities such as foodstuffs, printing, etc., which require “change orders,” which are equivalent to contract amendments. The proposed Rules did not address this situation. It was determined that a new Rule V should be inserted to specifically bring items requiring contract amendment within the spirit and coverage of H.J.R. 1010. All succeeding Rules were renumbered accordingly.

Emergency Rules/Regulations were adopted by the Director of State Finance on October 11, 1983. The Director gave notice of his Intent to adopt Rules/Regulations on this subject and held a public hearing on January 24, 1984, to solicit comments and further advise him on the proposed Rules/Regulations. One state agency attended for the purpose of clarification of any differences between the Emergency Rules/Regulations and the proposed Rules/Regulations. The only change is to add Rule IV.D., which requires the vendor to claim interest within ninety days of the late payment.

Hearings were held October 20, 1986, and February 20, 1987, regarding inclusion of interest for late payment of travel recompensation. No testimony was given at this time.

I. Definitions:

A. “Agency” means any department, office, board, commission or institution of the State.

B. “Vendor” means any supplier of goods or services to the State, except:

(1) employees of the State for payroll, travel, or other reimbursement purposes;

- (2) recipients of entitlement or benefit payments;
- (3) recipients of grant funds from agencies who are acting as the administrative vehicle by which the grant funds are passed through to the grantee; and
- (4) vendors providing goods or services in conjunction with public construction contracts are specifically excluded from these procedures.

C. "Employee" means any individual whose reimbursement for travel expense is computed and subject to the State Travel Reimbursement Act, except:

- (1) Those individuals due compensation for travel or other services subject to the Central Purchasing Act.
- (2) Individuals providing services to the state for which compensation is not paid on a payroll including volunteers and/or recipients of public assistance programs.

D. “Proper Invoice” means any invoice which is complete In all requirements for processing for payment In accordance with the terms of appropriate contracts or purchase orders and applicable State or Federal statutes, including but not limited to such documentation as may be required. This definition shall include properly documented, standard, notarized claim forms, commonly known as “Form 3 Claims.

E. “Proper claim” means a notarized claim for reimbursement of incurred expenses for travel supported by all requisite documentation and complete in all respects for processing for payment, in accordance with the State Travel Reimbursement Act, and covers periods of travel beginning November 1, 1986, or later.

F. “Receipt of a proper invoice” means actual receipt of the proper invoice by the payment office designated by the agency in appropriate contracts or purchase orders.

G. “Make payment” means to mail, transmit, or deliver settlement to a vendor.

H. “Director” means the Director of State Finance.

I. “Receipt of a proper claim” means actual receipt of the proper claim by the first office or official in an agency where the employee is required to submit the claim, by agency procedures, to obtain reimbursement for travel expenses.

II. These Rules are not intended to supercede or replace other Federal or State statutes regarding interest, nor statutes prohibiting interest on late payments, nor judgments or settlements that provide for payment of interest.

III. The Director, in concert with the State Treasurer and Director of Public Affairs, shall make continuing studies of policies and procedures of these central offices, make changes when necessary to modernize systems with emphasis on expediting procurement, claim settlement, and warrant issuing, and, when appropriate, recommend changes to existing laws or proper new laws to accomplish this end.

IV. Agencies shall implement internal procedures to insure that they will make payment to vendors or employees within forty-five days of receipt of a proper invoice or proper claim. If an agency fails to make payment within the forty-five (45) days, the vendor or employee shall be entitled to claim interest as follows:

A. The clock shall begin to run thirty (30) days after the later of the date of the proper invoice, the receipt of a proper invoice by the agency, or the receipt of the goods or services in an acceptable condition specified by the contract or purchase order, or in the case of employee travel claims, the clock shall begin to run thirty (30) days after the date of receipt of a proper claim by the authorized office or official of the agency.

B. The clock shall end when the agency makes payment.

C. The rate of interest shall be 6.70% per annum, computed on a 360-day calendar, or \$0.02 per \$100 per day, until July 1, 1987. The rate of interest may change on July 1st of each year depending on the average interest rate for thirty day time deposits of State funds during the last calendar quarter of the last preceding fiscal year. The State Treasurer shall report to the Director on July 1st of each year what the average interest rate was for the previous calendar quarter. The Director shall notify all agencies and vendors who are in the Office of Public Affairs bidder file as to what the interest rate shall be for the next fiscal year beginning July 1st.

D. A vendor or employee shall claim interest within ninety (90) days of receiving a late payment by transmitting a proper invoice to the agency which shall itemize all calculations for interest claimed. The agency shall make payment to the vendor or employee within forty-five (45) days.

E. The number of days vendor claims are held by the Director in conjunction with attachment orders issued by the Oklahoma Tax Commission shall be excluded from any delinquency periods or interest calculations.

V. Amendments to purchase contracts, commonly known as change orders, for overshipments of goods accepted by an agency, shall be considered independent the original contract for purposes of interest entitlement as provided by these Rules except that the clock shall begin with the date the amendment (change order) is approved for that portion of the contract only. This Rule does not preclude a vendor from submitting a proper invoice for goods

and services provided In conjunction with the terms of the original contract. It also does not preclude an agency from “marking down” an otherwise proper invoice which includes such overshment to the amount specified in the original contract, in order to expedite payment to the vendor for the original contract quantity.

VI. An agency shall have ten (10) working days to notify or return to a vendor or employee an improper invoice or improper claim; otherwise, the clock will start to run as provided in Rule IV(A) of these rules, as if the agency had received a proper invoice or proper claim. This Rule also applies to invoices for interest claimed by a vendor or employee as provided in Rule IV(D) of these rules.

VII. If an agency and a vendor or employee are in disagreement over interest claimed by the vendor or employee, the vendor or employee may file a grievance as follows:

A. A statement of the grievance along with a copy of the invoice for interest claimed that was submitted to the agency shall be transmitted to the Office of the Governor, P. O. Box 53311, Oklahoma City, Oklahoma 73152.

- B. The Office of the Governor shall transmit the grievance to the Director.
- C. The Director shall have fifteen (15) days from his receipt of the grievance to notify the aggrieved vendor or employee and the agency and to conduct a hearing in accordance with Title 75, Section 309 of the Oklahoma Statutes.
- D. The Director may appoint a hearing officer to conduct the hearing. The hearing officer shall make a recommendation to the Director on or before the 12th day after receipt of the grievance. The Director, after review of the record, shall issue an order on or before the 15th day and notify the parties.
- E. If the Director finds in favor of the vendor or employee, the agency shall prepare and submit a claim within 24 hours to be processed for payment. If the Director finds in favor of the agency, no claim need be processed.
- F. A copy of the final order will be transmitted to the vendor or employee, the agency, and the Office of the Governor.

NOW THEREFORE, under the authority vested in the Director of State Finance by law, these Rules/Regulations are hereby adopted and filed with the Secretary of State on this, the 20th day of February, 1987, effective March 12, 1987. Copies hereof are ordered filed this date with the President Pro Tempore of the Oklahoma Senate and the Speaker of the Oklahoma House of Representatives, and published in the Oklahoma Register, all as provided by law.

Approved:

ALEXANDER B. HOLMES

Director of State Finance