

§ 600.10 No creation of rights.

The regulations in this part are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative.

Dated: June 30, 1999.

Janet Reno,

Attorney General.

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DEPARTMENT OF JUSTICE**48 CFR Part 2832**

[Justice Acquisition Circular 99-1]

RIN 1105-AA68

Amendment to the Justice Acquisition Regulations (JAR) Regarding: Electronic Funds Transfer

AGENCY: Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the Justice Acquisition Regulations (JAR) to provide flexibility to contractors in the timing of receipt of Electronic Funds Transfer (EFT) information from them. The Debt Collection Improvement Act of 1996, Public Law (P.L.) 104-134, mandates payment by EFT in most situations. In order to make the payment by EFT, the Department needs certain information from contractors. This rule gives the Department's contracting officers discretion in determining when contractors must submit the required information. Without the changes made by this rule, contractors would have to submit their EFT information no later than 15 days prior to their first request for payment.

DATES: Effective date: This rule is effective July 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janis A. Spostao, Procurement Executive, Justice Management Division (202) 514-3103.

SUPPLEMENTARY INFORMATION:

Why Is the Department Changing the Justice Acquisition Regulations?

Public Law 104-134 amended 31 U.S.C. section 3332, to require that beginning January 2, 1999, all Federal payments (other than payments under the Internal Revenue Code of 1986) shall be made by EFT. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are

responsibilities for issuing Federal Acquisition Circulars (FACs) and the Federal Acquisition Regulations (FAR) which are binding on other Federal Agencies. On March 4, 1999, these councils published Federal Acquisition Circular (FAC) 97-11, in the **Federal Register** (64 FR 10538-10544) as a final rule with an effective date of May 3, 1999. A portion of this final rule—Item IV—Electronic Funds Transfer—amended the FAR to address the use of EFT for Federal contract payments and to facilitate the implementation of P.L. 104-134.

Who Is Affected by the Changes Made by Item IV—Electronic Funds Transfer?

Before the latest FAR revision, contractors who sell to Federal agencies were required to furnish EFT information no later than 15 days prior to the submission of their first request for payment. Some contractors furnish their EFT information by registering in the Central Contractor Registration database. Agencies use that database to obtain EFT information. Other contractors are not registered in the Central Contractor Registration database, or agencies elect not to use the database. Under those circumstances, agencies collect EFT information directly from contractors.

What Changes Does This Rule Make?

When collecting EFT information directly from contractors, Item IV of FAC 97-11 allows the heads of Federal agencies to issue procedures that allow contracting officers discretion in determining when contractors' EFT information must be submitted in order to comply with P.L. 104-134 and to make timely payments. In the absence of this regulation, contractors of the Department would have to submit EFT information no later than 15 days prior to the submission of the first request for payment. This rule gives the Department's contracting officers discretion in determining when contractors must submit the required information. This flexibility will allow components of the Department to receive the EFT information with the first invoice, rather than 15 days before the first invoice. For those components that adopt such a procedure, contractors will only have to make one submission (the EFT information along with the invoice) rather than two submissions (the EFT information and—at least 15 days later—the invoice.) The flexibility proposed by this rule should be a benefit to contractors.

Regulatory Certifications

Administrative Procedure Act, 5 U.S.C. 553

This rule enhances the ability of Department contracting officers to allow contractors flexibility as to when to submit information required by current statute law and regulations. Further, this rule imposes no new restrictions. Accordingly, the Department of Justice finds good cause for exempting this rule from the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date.

Regulatory Flexibility Act

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published FAC 97-11 on March 4, 1999 at 64 FR 10538. In conjunction with the publication of that final rule, these councils performed a Final Regulatory Flexibility Analysis and submitted a copy to the Chief Counsel for Advocacy of the Small Business Administration.

The Assistant Attorney General for Administration in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because this regulation merely sets forth internal procedures of the Department relating to the timing of receipt of EFT information from contractors.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Janis A. Sposato, Procurement Executive, Justice Management Division (202) 514-3103.

Paperwork Reduction Act

This rule imposes no new information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). All information collection requirements have been submitted to OMB. In those cases where an OMB control number has been assigned, the control number is included in the regulation.

List of Subjects in 48 CFR Part 2832

Government procurement.

Stephen R. Colgate,
Assistant Attorney General for Administration.

Accordingly, 48 CFR part 2832 is amended as follows:

1. The authority citation for 48 CFR part 2832 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2832—CONTRACT FINANCING

2. A new Subpart 2832.11 is added to read as follows:

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

Subpart 2832.11—Electronic Funds Transfer

2832.1110 Solicitation provision and contract clauses.

When the clause at FAR 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, is required the contracting officer may insert in paragraph (b)(1) of the clause a particular time after award, such as a fixed number of days, or an event such as the submission of the first request for payment, to establish the point at which contractors' EFT information must be provided.

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