

lated as “this paragraph” in accordance with the probable intent of Congress.

In subsection (f)(5), the words “the commencement of” are omitted as unnecessary. The words “of the appeal or action” are substituted for “in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer” to eliminate unnecessary words.

§ 7104. Contractor’s right of appeal from decision by contracting officer

(a) APPEAL TO AGENCY BOARD.—A contractor, within 90 days from the date of receipt of a contracting officer’s decision under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.

(b) BRINGING AN ACTION DE NOVO IN FEDERAL COURT.—

(1) IN GENERAL.—Except as provided in paragraph (2), and in lieu of appealing the decision of a contracting officer under section 7103 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) TENNESSEE VALLEY AUTHORITY.—In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a district court of the United States pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) TIME FOR FILING.—A contractor shall file any action under paragraph (1) or (2) within 12 months from the date of receipt of a contracting officer’s decision under section 7103 of this title.

(4) DE NOVO.—An action under paragraph (1) or (2) shall proceed de novo in accordance with the rules of the appropriate court.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3820.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
7104(a)	41:606.	Pub. L. 95–563, § 7, Nov. 1, 1978, 92 Stat. 2385.
7104(b)	41:609(a).	Pub. L. 95–563, § 10(a), Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97–164, title I, § 161(10), Apr. 2, 1982, 96 Stat. 49.

In subsection (a), the words “of contract appeals” are omitted as unnecessary because of the definition of “agency board” in section 7101 of the revised title.

In subsection (b)(1), the words “United States Court of Federal Claims” are substituted for “United States Claims Court” because of section 902(b)(1) of the Federal Courts Administration Act of 1992 (Pub. L. 102–572, 106 Stat. 4516, 28 U.S.C. 171 note).

§ 7105. Agency boards

(a) ARMED SERVICES BOARD.—

(1) ESTABLISHMENT.—An Armed Services Board of Contract Appeals may be established within the Department of Defense when the Secretary of Defense, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least 3 members who shall have

no other inconsistent duties. Workload studies will be updated at least once every 3 years and submitted to the Administrator.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Armed Services Board shall be selected and appointed in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years of experience in public contract law. The Secretary of Defense shall designate the chairman and vice chairman of the Armed Services Board from among the appointed members. Compensation for the chairman, vice chairman, and other members shall be determined under section 5372a of title 5.

(b) CIVILIAN BOARD.—

(1) ESTABLISHMENT.—There is established in the General Services Administration the Civilian Board of Contract Appeals.

(2) MEMBERSHIP.—

(A) ELIGIBILITY.—The Civilian Board consists of members appointed by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) from a register of applicants maintained by the Administrator of General Services, in accordance with rules issued by the Administrator of General Services (in consultation with the Administrator for Federal Procurement Policy) for establishing and maintaining a register of eligible applicants and selecting Civilian Board members. The Administrator of General Services shall appoint a member without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of a Civilian Board member.

(B) APPOINTMENT OF MEMBERS AND COMPENSATION.—Members of the Civilian Board shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that members must have had at least 5 years experience in public contract law. Compensation for the members shall be determined under section 5372a of title 5.

(3) REMOVAL.—Members of the Civilian Board are subject to removal in the same manner as administrative law judges, as provided in section 7521 of title 5.

(4) FUNCTIONS.—

(A) IN GENERAL.—The Civilian Board has jurisdiction as provided by subsection (e)(1)(B).

(B) ADDITIONAL JURISDICTION.—With the concurrence of the Federal agencies affected, the Civilian Board may assume—

(i) jurisdiction over any additional category of laws or disputes over which an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act exercised jurisdiction before January 6, 2007; and

(ii) any other function the agency board performed before January 6, 2007, on behalf of those agencies.