

**§ 7107. Judicial review of agency board decisions**

(a) REVIEW.—

(1) IN GENERAL.—The decision of an agency board is final, except that—

(A) a contractor may appeal the decision to the United States Court of Appeals for the Federal Circuit within 120 days from the date the contractor receives a copy of the decision; or

(B) if an agency head determines that an appeal should be taken, the agency head, with the prior approval of the Attorney General, may transmit the decision to the United States Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within 120 days from the date the agency receives a copy of the decision.

(2) TENNESSEE VALLEY AUTHORITY.—Notwithstanding paragraph (1), a decision of the board of contract appeals of the Tennessee Valley Authority is final, except that—

(A) a contractor may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date the contractor receives a copy of the decision; or

(B) the Tennessee Valley Authority may appeal the decision to a United States district court pursuant to section 1337 of title 28, within 120 days from the date of the decision.

(3) REVIEW OF ARBITRATION.—An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 to 13 of title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

(b) FINALITY OF AGENCY BOARD DECISIONS ON QUESTIONS OF LAW AND FACT.—Notwithstanding any contract provision, regulation, or rule of law to the contrary, in an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a)—

(1) the decision of the agency board on a question of law is not final or conclusive; but

(2) the decision of the agency board on a question of fact is final and conclusive and may not be set aside unless the decision is—

(A) fraudulent, arbitrary, or capricious;

(B) so grossly erroneous as to necessarily imply bad faith; or

(C) not supported by substantial evidence.

(c) REMAND.—In an appeal by a contractor or the Federal Government from the decision of an agency board pursuant to subsection (a), the court may render an opinion and judgment and remand the case for further action by the agency board or by the executive agency as appropriate, with direction the court considers just and proper.

(d) CONSOLIDATION.—If 2 or more actions arising from one contract are filed in the United States Court of Federal Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the United States Court of Federal Claims may order the consolidation of the actions in that court or transfer any actions to or among the agency boards involved.

(e) JUDGMENTS AS TO FEWER THAN ALL CLAIMS OR PARTIES.—In an action filed pursuant to this chapter involving 2 or more claims, counter-claims, cross-claims, or third-party claims, and where a portion of one of the claims can be divided for purposes of decision or judgment, and in any action where multiple parties are involved, the court, whenever appropriate, may enter a judgment as to one or more but fewer than all of the claims or portions of claims or parties.

(f) ADVISORY OPINIONS.—

(1) IN GENERAL.—Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request an agency board to provide the court with an advisory opinion on the matters of contract interpretation under consideration.

(2) APPLICABLE ISSUE.—An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this chapter.

(3) REFERRAL TO AGENCY BOARD WITH JURISDICTION.—A district court shall direct a request under paragraph (1) to the agency board having jurisdiction under this chapter to adjudicate appeals of contract claims under the contract being interpreted by the court.

(4) TIMELY RESPONSE.—After receiving a request for an advisory opinion under paragraph (1), an agency board shall provide the advisory opinion in a timely manner to the district court making the request.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3824.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
7107(a) .....	41:607(g).	Pub. L. 95-563, §8(g), Nov. 1, 1978, 92 Stat. 2387; Pub. L. 97-164, title I, §156, Apr. 2, 1982, 96 Stat. 47; Pub. L. 101-552, §6(b), Nov. 15, 1990, 104 Stat. 2746.
7107(b) .....	41:609(b).	Pub. L. 95-563, §10(b), (e), Nov. 1, 1978, 92 Stat. 2388.
7107(c) .....	41:609(c).	Pub. L. 95-563, §10(c), Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97-164, title I, §157, Apr. 2, 1982, 96 Stat. 47.
7107(d) .....	41:609(d).	Pub. L. 95-563, §10(d), Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97-164, title I, §160(a)(15), Apr. 2, 1982, 96 Stat. 48.
7107(e) .....	41:609(e).	Pub. L. 95-563, §10(f), as added Pub. L. 103-355, title II, §2354, Oct. 13, 1994, 108 Stat. 3323.
7107(f) .....	41:609(f).	

In subsection (a)(1)(B), the words “may transmit” are substituted for “transmits” to correct the grammatical structure of the provision in accordance with the probable intent of Congress. The words “the decision” are substituted for “the decision of the board of contract appeals” and for “the board’s decision” to eliminate unnecessary words and for consistency with 41:607(g)(1)(A).

In subsection (a)(2)(B), the words “in any case” are omitted as unnecessary.

In subsection (d), 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).

In subsection (f)(1), (3), and (4), the words “agency board” are substituted for “board of contract appeals” to eliminate unnecessary words and for consistency

with the definition of “agency board” in section 7101 of the revised title.

In subsection (f)(1), the words “under consideration” are substituted for “at issue” to avoid potential confusion with the words “issue described in paragraph (2)”.

§ 7108. Payment of claims

(a) JUDGMENTS.—Any judgment against the Federal Government on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) MONETARY AWARDS.—Any monetary award to a contractor by an agency board shall be paid promptly in accordance with the procedures contained in subsection (a).

(c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available amounts or by obtaining additional appropriations for purposes of reimbursement.

(d) TENNESSEE VALLEY AUTHORITY.—

(1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c), any monetary award to a contractor by the board of contract appeals of the Tennessee Valley Authority shall be paid in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3825.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 7108: 41:612, Pub. L. 95-563, §13, Nov. 1, 1978, 92 Stat. 2389; Pub. L. 104-106, div. D, title XLIII, §4322(b)(7), Feb. 10, 1996, 110 Stat. 677.

§ 7109. Interest

(a) PERIOD.—

(1) IN GENERAL.—Interest on an amount found due a contractor on a claim shall be paid to the contractor for the period beginning with the date the contracting officer receives the contractor’s claim, pursuant to section 7103(a) of this title, until the date of payment of the claim.

(2) DEFECTIVE CERTIFICATION.—On a claim for which the certification under section 7103(b)(1) of this title is found to be defective, any interest due under this section shall be paid for the period beginning with the date the contracting officer initially receives the contractor’s claim until the date of payment of the claim.

(b) RATE.—Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable for each successive 6-month period. The rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately 5 years.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3825.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows 7109(a)(1), 7109(a)(2), 7109(b).

In subsection (a)(2), the words “on or after the date of the enactment of this Act”, “the later of”, and “or the date of the enactment of this Act” are omitted as obsolete.

Subsection (b) is substituted for “The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board” to eliminate obsolete language and to codify the criteria under which the interest rate is computed. Section 2(a)(3) of the Act of July 1, 1971 (Pub. L. 92-41, 85 Stat. 97), amended section 105(b)(2) of the Renegotiation Act of 1951 (Mar. 23, 1951, ch. 15, 65 Stat. 13) by adding provisions substantially similar to those enacted here. However, the Renegotiation Act of 1951 (Mar. 23, 1951, ch. 15, 65 Stat. 7) was omitted from the Code pursuant to section 102(c)(1) of the Act (65 Stat. 8), amended several times, the last being Public Law 94-185 (89 Stat. 1061), which provided that most provisions of that Act do not apply to receipts and accruals attributable to contract performance after September 30, 1976, and in view of the termination of the Renegotiation Board and the transfer of property and records of the Board to the Administrator of the General Services Administration on March 31, 1979, pursuant to Public Law 95-431 (92 Stat. 1043). Although the Renegotiation Board is no longer in existence, Federal agencies, including the General Services Administration, are required to use interest rates that are computed under the criteria set out in this subsection. See 31:3902(a) and the website of the Bureau of the Public Debt, available at http://www.publicdebt.treas.gov/opd/opdprmt2.htm. For an example of publication of rates under the criteria enacted here, see Federal Register, volume 67, number 247, page 78566, December 24, 2002.

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CHAPTER 81—DRUG-FREE WORKPLACE

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§ 8101. Definitions and construction

(a) DEFINITIONS.—In this chapter:

(1) CONTRACTOR.—The term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract.

(2) CONTROLLED SUBSTANCE.—The term “controlled substance” means a controlled sub-