

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

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                                                                                    |
|------------------------|---------------------------|----------------------------------------------------------------------------------------------------------------------|
| 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.

## (c) TENNESSEE VALLEY AUTHORITY BOARD.—

(1) ESTABLISHMENT.—The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals of the Tennessee Valley Authority of an indeterminate number of members.

(2) APPOINTMENT OF MEMBERS AND COMPENSATION.—The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to the agency board established under paragraph (1), and shall designate a chairman of the agency board. The chairman and other members of the agency board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the agency board.

## (d) POSTAL SERVICE BOARD.—

(1) ESTABLISHMENT.—There is established an agency board of contract appeals known as the Postal Service Board of Contract Appeals.

(2) APPOINTMENT AND SERVICE OF MEMBERS.—The Postal Service Board of Contract Appeals consists of judges appointed by the Postmaster General. The judges shall meet the qualifications of and serve in the same manner as members of the Civilian Board.

(3) APPLICATION.—This chapter applies to contract disputes before the Postal Service Board of Contract Appeals in the same manner as it applies to contract disputes before the Civilian Board.

## (e) JURISDICTION.—

## (1) IN GENERAL.—

(A) ARMED SERVICES BOARD.—The Armed Services Board has jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency.

(B) CIVILIAN BOARD.—The Civilian Board has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency.

(C) POSTAL SERVICE BOARD.—The Postal Service Board of Contract Appeals has jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency.

(D) OTHER AGENCY BOARDS.—Each other agency board has jurisdiction to decide any appeal from a decision of a contracting officer relative to a contract made by its agency.

(2) RELIEF.—In exercising this jurisdiction, an agency board may grant any relief that would be available to a litigant asserting a

contract claim in the United States Court of Federal Claims.

(f) SUBPOENA, DISCOVERY, AND DEPOSITION.—A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General, or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring the person to appear before the agency board or a member of the agency board, to produce evidence or to give testimony, or both. Any failure of the person to obey the order of the court may be punished by the court as contempt of court.

## (g) DECISIONS.—An agency board shall—

(1) to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes;

(2) issue a decision in writing or take other appropriate action on each appeal submitted; and

(3) mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3820; Pub. L. 111-259, title IV, §422, Oct. 7, 2010, 124 Stat. 2727; Pub. L. 111-383, div. A, title X, §1075(o), Jan. 7, 2011, 124 Stat. 4378.)

## AMENDMENTS NOT SHOWN IN TEXT

*Subsecs. (b) and (e)(1)(A), (B), (D) and (2) of this section were derived from sections 438 and 607(d), respectively, of former Title 41, Public Contracts. Sections 438 and 607(d) were amended by Pub. L. 111-383, div. A, title X, §1075(o), Jan. 7, 2011, 124 Stat. 4378, and Pub. L. 111-259, title IV, §422, Oct. 7, 2010, 124 Stat. 2727, respectively, prior to being repealed and reenacted as subsecs. (b) and (e)(1)(A), (B), (D) and (2) of this section by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For applicability of those amendments to this section, see section 6(a) of Pub. L. 111-350, set out as a Transitional and Savings Provisions note preceding section 101 of this title. Section 438 of former Title 41 was amended in subsec. (c)(1) by striking “(41 U.S.C. 607(b))” and inserting “(41 U.S.C. 607(d))” and in subsec. (c)(2)(A) by inserting “of 1978” after “Contract Disputes Act”. Section 607(d) of former Title 41 was amended by adding at the end “Notwithstanding any other provision of this section and any other provision of law, an appeal from a decision of a contracting officer of the Central Intelligence Agency relative to a contract made by that Agency may be filed with whichever of the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals is specified by such contracting officer as the Board to which such an appeal may be made and such*

*Board shall have jurisdiction to decide that appeal.”*

HISTORICAL AND REVISION NOTES

| Revised Section      | Source (U.S. Code)                   | Source (Statutes at Large)                                                                                                                                                                                                        |
|----------------------|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7105(a) .....        | 41:607(a)(1), (b)(1).                | Pub. L. 95-563, §8(a)(1), (b)(1), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 101-509, title V, §529 [title I, §104(d)(4)], Nov. 5, 1990, 104 Stat. 1447; Pub. L. 109-163, div. A, title VIII, §847(d)(3), Jan. 6, 2006, 119 Stat. 3394. |
| 7105(b) .....        | 41:438.                              | Pub. L. 93-400, §42, as added Pub. L. 109-163, div. A, title VIII, §847(a), Jan. 6, 2006, 119 Stat. 3391.                                                                                                                         |
| 7105(c) .....        | 41:607(a)(2), (b)(2).                | Pub. L. 95-563, §8(a)(2), (b)(2), Nov. 1, 1978, 92 Stat. 2385, 2386.                                                                                                                                                              |
| 7105(d) .....        | 41:607(c) (1st, 3d, last sentences). | Pub. L. 95-563, §8(c), Nov. 1, 1978, 92 Stat. 2386; Pub. L. 109-163, div. A, title VIII, §847(d)(2)(B), Jan. 6, 2006, 119 Stat. 3394.                                                                                             |
| 7105(e)(1) (A), (B). | 41:607(d) (1st, 2d sentences).       | Pub. L. 95-563, §8(d), Nov. 1, 1978, 92 Stat. 2386; Pub. L. 97-164, title I, §160(a)(15), Apr. 2, 1982, 96 Stat. 48; Pub. L. 109-163, div. A, title VIII, §847(d)(2)(A), Jan. 6, 2006, 119 Stat. 3393.                            |
| 7105(e)(1)(C)        | 41:607(c) (2d sentence).             |                                                                                                                                                                                                                                   |
| 7105(e)(1)(D)        | 41:607(d) (3d sentence).             |                                                                                                                                                                                                                                   |
| 7105(e)(2) ....      | 41:607(d) (last sentence).           |                                                                                                                                                                                                                                   |
| 7105(f) .....        | 41:610.                              | Pub. L. 95-563, §11, Nov. 1, 1978, 92 Stat. 2388.                                                                                                                                                                                 |
| 7105(g) .....        | 41:607(e).                           | Pub. L. 95-563, §8(e), Nov. 1, 1978, 92 Stat. 2386.                                                                                                                                                                               |

In subsection (a)(2), the words “administrative law judges” are substituted for “hearing examiners” because of section 3 of Public Law 95-251 (5 U.S.C. 3105 note). The words “Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified” are omitted as obsolete.

In subsection (b), the text of 41 U.S.C. 438 (b)(1)(C) is omitted as obsolete.

In subsection (e)(1)(B) and (C), the words “Postal Regulatory Commission” are substituted for “Postal Rate Commission” because of section 604(f) of the Postal Accountability and Enhancement Act (Public Law 109-435, 120 Stat. 3242, 39 U.S.C. 404 note).

REFERENCES IN TEXT

Section 8 of the Contract Disputes Act, referred to in subsec. (b)(4)(B)(i), probably means section 8 of Pub. L. 95-563, the Contract Disputes Act of 1978, which was classified to former section 607 of this title prior to being repealed and reenacted as subsecs. (a), (c) to (e), and (g) of this section by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

**§ 7106. Agency board procedures for accelerated and small claims**

(a) ACCELERATED PROCEDURE WHERE \$100,000 OR LESS IN DISPUTE.—The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is \$100,000 or less. The accelerated procedure is applicable at the sole election of the contractor. An appeal under the accelerated procedure shall be resolved, whenever possible, within 180 days from the date the contractor elects to use the procedure.

(b) SMALL CLAIMS PROCEDURE.—

(1) IN GENERAL.—The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in

dispute is \$50,000 or less, or in the case of a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and regulations under that Act), \$150,000 or less. The small claims procedure is applicable at the sole election of the contractor.

(2) SIMPLIFIED RULES OF PROCEDURE.—The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. An appeal under the small claims procedure may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(3) TIME OF DECISION.—An appeal under the small claims procedure shall be resolved, whenever possible, within 120 days from the date the contractor elects to use the procedure.

(4) FINALITY OF DECISION.—A decision against the Federal Government or against the contractor reached under the small claims procedure is final and conclusive and may not be set aside except in cases of fraud.

(5) NO PRECEDENT.—Administrative determinations and final decisions under this subsection have no value as precedent for future cases under this chapter.

(6) REVIEW OF REQUISITE AMOUNTS IN CONTROVERSY.—The Administrator, from time to time, may review the dollar amounts specified in paragraph (1) and adjust the amounts in accordance with economic indexes selected by the Administrator.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3823.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large)                                                                                                                                                                     |
|-----------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7106(a) .....   | 41:607(f).         | Pub. L. 95-563, §8(f), Nov. 1, 1978, 92 Stat. 2386; Pub. L. 103-355, title II, §2351(c), Oct. 13, 1994, 108 Stat. 3322.                                                                        |
| 7106(b) .....   | 41:608.            | Pub. L. 95-563, §9, Nov. 1, 1978, 92 Stat. 2387; Pub. L. 103-355, title II, §2351(d), Oct. 13, 1994, 108 Stat. 3322; Pub. L. 109-364, div. A, title VIII, §857, Oct. 17, 2006, 120 Stat. 2349. |

In subsection (a), the word “only” is omitted for consistency with a similar provision in 41:608(a) and because the word “only” is redundant with the word “sole”.

In subsection (b)(6), the words “from time to time, may review” are substituted for “is authorized to review at least every three years” because the source law, while effectively granting the Administrator authority to conduct the reviews, does not require the Administrator to conduct any reviews, and does not restrict the number of reviews the Administrator may conduct during any time period. The words “beginning with the third year after November 1, 1978” are omitted as obsolete. The words “the dollar amount specified in paragraph (1)” are substituted for “the dollar amount defined in subsection (a) of this section as a small claim” to eliminate unnecessary words and because 41:608(a), restated as paragraph (1), does not explicitly provide a definition for the term “small claim”.

SENATE REVISION AMENDMENT

In subsec. (b)(6), “AMOUNTS” substituted for “AMOUNT” in heading and “amounts” substituted for “amount” in two places in text by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18683 (2010).