

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7102(d)	41:603.	

In subsection (c), the words “an agency head” are substituted for “the head of the agency” for consistency with the defined term “agency head” in section 7101 of the revised title.

In subsection (d), the words “chapter 309 or 311 of title 46” are substituted for “the Act of March 9, 1920, as amended (41 Stat. 525, as amended; 46 U.S.C. 741-752) or the Act of March 3, 1925, as amended (43 Stat. 1112, as amended; 46 U.S.C. 781-790)” in section 4 of the Contract Disputes Act of 1978 (Public Law 95-563, 92 Stat. 2384) because of section 18(c) of Public Law 109-304 (46 U.S.C. note prec. 101).

§ 7103. Decision by contracting officer**(a) CLAIMS GENERALLY.—**

(1) **SUBMISSION OF CONTRACTOR’S CLAIMS TO CONTRACTING OFFICER.**—Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) **CONTRACTOR’S CLAIMS IN WRITING.**—Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

(3) **CONTRACTING OFFICER TO DECIDE FEDERAL GOVERNMENT’S CLAIMS.**—Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.

(4) TIME FOR SUBMITTING CLAIMS.—

(A) **IN GENERAL.**—Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

(B) **EXCEPTION.**—Subparagraph (A) of this paragraph does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(5) **APPLICABILITY.**—The authority of this subsection and subsections (c)(1), (d), and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

(b) CERTIFICATION OF CLAIMS.—

(1) **REQUIREMENT GENERALLY.**—For claims of more than \$100,000 made by a contractor, the contractor shall certify that—

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor’s knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

(2) **WHO MAY EXECUTE CERTIFICATION.**—The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

(3) **FAILURE TO CERTIFY OR DEFECTIVE CERTIFICATION.**—A contracting officer is not obligated to render a final decision on a claim of more than \$100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

(c) FRAUDULENT CLAIMS.—

(1) **NO AUTHORITY TO SETTLE.**—This section does not authorize an agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(2) **LIABILITY OF CONTRACTOR.**—If a contractor is unable to support any part of the contractor’s claim and it is determined that the inability is attributable to a misrepresentation of fact or fraud by the contractor, then the contractor is liable to the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government’s costs attributable to reviewing the unsupported part of the claim. Liability under this paragraph shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(d) **ISSUANCE OF DECISION.**—The contracting officer shall issue a decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor.

(e) **CONTENTS OF DECISION.**—The contracting officer’s decision shall state the reasons for the decision reached and shall inform the contractor of the contractor’s rights as provided in this chapter. Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.

(f) TIME FOR ISSUANCE OF DECISION.—

(1) **CLAIM OF \$100,000 OR LESS.**—A contracting officer shall issue a decision on any submitted claim of \$100,000 or less within 60 days from the contracting officer’s receipt of a written request from the contractor that a decision be rendered within that period.

(2) **CLAIM OF MORE THAN \$100,000.**—A contracting officer shall, within 60 days of receipt of a submitted certified claim over \$100,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) **GENERAL REQUIREMENT OF REASONABLENESS.**—The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations prescribed by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor.

(4) **REQUESTING TRIBUNAL TO DIRECT ISSUANCE WITHIN SPECIFIED TIME PERIOD.**—A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the

tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) **FAILURE TO ISSUE DECISION WITHIN REQUIRED TIME PERIOD.**—Failure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim as otherwise provided in this chapter. However, the tribunal concerned may, at its option, stay the proceedings of the appeal or action to obtain a decision by the contracting officer.

(g) **FINALITY OF DECISION UNLESS APPEALED.**—The contracting officer's decision on a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by this chapter. This chapter does not prohibit an executive agency from including a clause in a Federal Government contract requiring that, pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(h) **ALTERNATIVE MEANS OF DISPUTE RESOLUTION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. All provisions of subchapter IV of chapter 5 of title 5 apply to alternative means of dispute resolution under this subsection.

(2) **CERTIFICATION OF CLAIM.**—The contractor shall certify the claim when required to do so under subsection (b)(1) or other law.

(3) **REJECTING REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION.**—

(A) **CONTRACTING OFFICER.**—A contracting officer who rejects a contractor's request for alternative dispute resolution proceedings shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or other specific reasons that alternative dispute resolution procedures are inappropriate.

(B) **CONTRACTOR.**—A contractor that rejects an agency's request for alternative dispute resolution proceedings shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3817.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7103(a)(1)	41:605(a) (1st sentence related to submission).	Pub. L. 95-563, §§ 5, 6(a) (1st, 2d, 5th-last sentences), (b), (c)(3), (5), Nov. 1, 1978, 92 Stat. 2384, 2385.
7103(a)(2)	41:605(a) (1st sentence related to writing requirement).	
7103(a)(3)	41:605(a) (2d sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7103(a)(4)(A)	41:605(a) (3d sentence).	Pub. L. 95-563, § 6(a) (3d, 4th sentences), Nov. 1, 1978, as added Pub. L. 103-355, title II, § 2351(a)(1), Oct. 13, 1994, 108 Stat. 3322, amended Pub. L. 104-106, div. D, title XLIII, § 4321(a)(6), Feb. 10, 1996, 110 Stat. 671.
7103(a)(4)(B)	41:605(a) (4th sentence).	
7103(a)(5)	41:605(a) (8th sentence).	
7103(b)(1)	41:605(c)(1) (last sentence).	Pub. L. 95-563, § 6(c)(1) (last sentence), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 102-572, title IX, § 907(a)(1)(A), Oct. 29, 1992, 106 Stat. 4518; Pub. L. 103-355, title II, § 2351(b), Oct. 13, 1994, 108 Stat. 3322.
7103(b)(2)	41:605(c)(7).	Pub. L. 95-563, § 6(c)(6), (7), as added Pub. L. 102-572, title IX, § 907(a)(1)(B), Oct. 29, 1992, 106 Stat. 4518.
7103(b)(3)	41:605(c)(6).	
7103(c)(1)	41:605(a) (last sentence).	
7103(c)(2)	41:604.	
7103(d)	41:605(a) (5th sentence).	
7103(e)	41:605(a) (6th, 7th sentences).	
7103(f)(1)	41:605(c)(1) (1st sentence).	Pub. L. 95-563, § 6(c)(1) (1st sentence), (2), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 103-355, title II, § 2351(b), Oct. 13, 1994, 108 Stat. 3322.
7103(f)(2)	41:605(c)(2).	
7103(f)(3)	41:605(c)(3).	
7103(f)(4)	41:605(c)(4).	Pub. L. 95-563, § 6(c)(4), Nov. 1, 1978, 92 Stat. 2385; Pub. L. 103-355, title II, § 2351(e), Oct. 13, 1994, 108 Stat. 3322.
7103(f)(5)	41:605(c)(5).	
7103(g)	41:605(b).	
7103(h)(1)	41:605(d) (1st, last sentences).	Pub. L. 95-563, § 6(d) (1st, last sentences), as added Pub. L. 101-552, § 6(a), Nov. 15, 1990, 104 Stat. 2745, 2746; Pub. L. 104-106, div. D, title XLIII, § 4322(b)(6), Feb. 10, 1996, 110 Stat. 677; Pub. L. 105-85, div. A, title X, § 1073(g)(3), Nov. 18, 1997, 111 Stat. 1906.
7103(h)(2)	41:605(d) (2d sentence).	Pub. L. 95-563, § 6(d) (2d sentence), as added Pub. L. 101-552, § 6(a), Nov. 15, 1990, 104 Stat. 2745; Pub. L. 104-320, § 6(1), Oct. 19, 1996, 110 Stat. 3871.
7103(h)(3)(A)	41:605(e) (1st sentence).	Pub. L. 95-563, § 6(e), as added Pub. L. 101-552, § 6(a), Nov. 15, 1990, 104 Stat. 2746; Pub. L. 103-355, title II, § 2352, Oct. 13, 1994, 108 Stat. 3322; Pub. L. 104-106, div. D, title XLIII, §§ 4321(a)(7), 4322(b)(6), Feb. 10, 1996, 110 Stat. 671, 677; Pub. L. 104-320, § 6(2), Oct. 19, 1996, 110 Stat. 3871; Pub. L. 105-85, div. A, title X, § 1073(g)(3), Nov. 18, 1997, 111 Stat. 1906.
7103(h)(3)(B)	41:605(e) (last sentence).	

In subsection (b)(1)(D) and (2), the word “duly” is omitted as unnecessary.

In subsection (b)(3), 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 (c)(2), the words “this subsection”, which appear in section 5 of the Contract Disputes Act of 1978 (Pub. L. 95-563, 92 Stat. 2384), and which were probably intended to mean “this section”, are translated 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 1, §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.