

## HISTORICAL AND REVISION NOTES

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

## Editorial Notes

## 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 L. 95-563, the Contract Disputes Act of 1978, which was classified to former section 607 of this title prior to being repealed and reenacted as subsecs.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

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

**§ 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, counterclaims, 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**

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