

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
6707(e)	41:355.	Pub. L. 89-286, § 6, Oct. 22, 1965, 79 Stat. 1035.
6707(f)	41:358.	Pub. L. 89-286, § 10, as added Pub. L. 92-473, § 5, Oct. 9, 1972, 86 Stat. 790; Pub. L. 94-273, § 29, Apr. 21, 1976, 90 Stat. 380.

In subsection (e), the words “the definition of ‘regular rate’ under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))” are substituted for “the regular rate under the Fair Labor Standards Act by provisions of section 7(d) thereof” for clarity, to correct the reference to “the Fair Labor Standards Act” in accordance with section 1 of the Fair Labor Standards Act of 1938 (29:201), which provided the short title for the Act, and to correct the reference to “section 7(d) thereof” in accordance with section 204(d)(1) of the Fair Labor Standards Amendments of 1966 (Public Law 89-601, 80 Stat. 836), which amended the Fair Labor Standards Act of 1938 by redesignating section 7(d) as 7(e).

In subsection (f), the words “paragraphs (1) and (2) of section 2”, which appear in section 10 of the Service Contract Act of 1965, as added by section 5 of Public Law 92-473 (86 Stat. 790), are treated as a reference to paragraphs (1) and (2) of section 2(a) of the Service Contract Act of 1965 to reflect the probable intent of Congress. The words “which are entered into during the applicable fiscal year”, 41:358(1)–(4), and the words “On and after July 1, 1976” are omitted as obsolete.

Subtitle III—Contract Disputes

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CHAPTER 71—CONTRACT DISPUTES

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§ 7101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

(2) AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.—The term “agency board” or “agency board of contract appeals” means—

- (A) the Armed Services Board;
- (B) the Civilian Board;
- (C) the board of contract appeals of the Tennessee Valley Authority; or
- (D) the Postal Service Board established under section 7105(d)(1) of this title.

(3) AGENCY HEAD.—The term “agency head” means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

(4) ARMED SERVICES BOARD.—The term “Armed Services Board” means the Armed Services Board of Contract Appeals established under section 7105(a)(1) of this title.

(5) CIVILIAN BOARD.—The term “Civilian Board” means the Civilian Board of Contract Appeals established under section 7105(b)(1) of this title.

(6) CONTRACTING OFFICER.—The term “contracting officer”—

- (A) means an individual who, by appointment in accordance with applicable regulations, has the authority to make and administer contracts and to make determinations and findings with respect to contracts; and
- (B) includes an authorized representative of the contracting officer, acting within the limits of the representative’s authority.

(7) CONTRACTOR.—The term “contractor” means a party to a Federal Government contract other than the Federal Government.

(8) EXECUTIVE AGENCY.—The term “executive agency” means—

- (A) an executive department as defined in section 101 of title 5;
- (B) a military department as defined in section 102 of title 5;
- (C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; and
- (D) a wholly owned Government corporation as defined in section 9101(3) of title 31.

(9) MISREPRESENTATION OF FACT.—The term “misrepresentation of fact” means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3816.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
7101	41:601.	Pub. L. 95-563, § 2, Nov. 1, 1978, 92 Stat. 2383; Pub. L. 104-106, div. D, title XLIII, § 4322(b)(5), Feb. 10, 1996, 110 Stat. 677; Pub. L. 109-163, div. A, title VIII, § 847(d)(1), Jan. 6, 2006, 119 Stat. 3393.

In paragraph (8)(C), the words “Government Accountability Office” are substituted for “General Accounting Office” because of section 8(b) of the GAO Human Capital Reform Act of 2004 (Public Law 108-271, 118 Stat. 814, 31 U.S.C. 702 note).

In paragraph (8)(D), the words “section 9101(3) of title 31” are substituted for “section 846 of title 31” because of section 4(b) of Public Law 97-258 (31 U.S.C. note prec. 101).

§ 7102. Applicability of chapter

(a) EXECUTIVE AGENCY CONTRACTS.—Unless otherwise specifically provided in this chapter, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) made by an executive agency for—

- (1) the procurement of property, other than real property in being;

- (2) the procurement of services;
- (3) the procurement of construction, alteration, repair, or maintenance of real property; or
- (4) the disposal of personal property.

(b) TENNESSEE VALLEY AUTHORITY CONTRACTS.—

(1) IN GENERAL.—With respect to contracts of the Tennessee Valley Authority, this chapter applies only to contracts containing a clause that requires contract disputes to be resolved through an agency administrative process.

(2) EXCLUSION.—Notwithstanding any other provision of this chapter, this chapter does not apply to a contract of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system.

(c) FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION CONTRACTS.—If an agency head determines that applying this chapter would not be in the public interest, this chapter does not apply to a contract with a foreign government, an agency of a foreign government, an international organization, or a subsidiary body of an international organization.

(d) MARITIME CONTRACTS.—Appeals under section 7107(a) of this title and actions brought under sections 7104(b) and 7107(b) to (f) of this title, arising out of maritime contracts, are governed by chapter 309 or 311 of title 46, as applicable, to the extent that those chapters are not inconsistent with this chapter.

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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
7102(a)-(c) ..	41:602.	Pub. L. 95-563, §§ 3, 4, Nov. 1, 1978, 92 Stat. 2383.
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.