

“Secretary” substituted for “Director” by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947, set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

APPLICATION TO TERMINATED WAR CONTRACTS

For application of subsecs. (b) to (e) of this section to war contracts terminated at or before July 21, 1944, see section 124 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 124 of this title.

§ 113. Appeals

(a) Failure to settle claims by agreement; preparation of findings; notice to war contractor

Whenever the contracting agency responsible for settling any termination claim has not settled the claim by agreement or has so settled only a part of the claim, (1) the contracting agency at any time may determine the amount due on such claim or such unsettled part, and prepare written findings indicating the basis of the determination, and deliver a copy of such findings to the war contractor, or (2) if the termination claim has been submitted in the manner and substantially the form prescribed under this chapter, the contracting agency, upon written demand by the war contractor for such findings, shall determine the amount due on the claim or unsettled part and prepare and deliver such findings to the war contractor within ninety days after the receipt by the agency of such demand. In preparing such findings, the contracting agency may require the war contractor to furnish such information and to submit to such audits as may be reasonably necessary for that purpose. Within thirty days after the delivery of any such findings, the contracting agency shall pay to the war contractor at least 90 per centum of the amount thereby determined to be due, after deducting the amount of any outstanding interim financing applicable thereto.

(b) Rights of war contractor

Whenever any war contractor is aggrieved by the findings of a contracting agency on his claim or part thereof or by its failure to make such findings in accordance with subsection (a) of this section, he may bring suit against the United States for such claim or such part thereof, in the United States Court of Federal Claims or in a United States district court, in accordance with sections 1346, 2401, and 2402 of title 28, except that, if the contracting agency is the Reconstruction Finance Corporation, or any corporation organized pursuant to the Reconstruction Finance Corporation Act, or any corporation owned or controlled by the United States, the suit shall be brought against such corporation in any court of competent jurisdiction in accordance with existing law.

(c) Procedure

Any proceeding under subsection (b) of this section shall be governed by the following conditions:

(1) When any contracting agency provides a procedure within the agency for protest against such findings or for other appeal therefrom by the war contractor, the war contractor, before proceeding under subsection (b) of this section, (i) in his discretion may resort to such procedure within the time specified in his contract or, if no time is specified, within thirty days after the delivery to him of the findings; and (ii) shall resort to such procedure for protest or other appeal to the extent required by the Administrator of General Services, but failure of the contracting agency to act on any such required protest or appeal within thirty days shall operate as a refusal by the agency to modify its findings. Any revision of the findings by the contracting agency, upon protest or appeal within the agency, shall be treated as the findings of the agency for the purpose of appeal or suit under subsection (b) of this section. Notwithstanding any contrary provision in any war contract, no war contractor shall be required to protest or appeal from such findings within the contracting agency except in accordance with this paragraph.

(2) A war contractor may initiate proceedings in accordance with subsection (b) of this section (i) within ninety days after delivery to him of the findings by the contracting agency, or (ii) in case of protests or appeal within the agency, within ninety days after the determination of such protest or appeal, or (iii) in case of failure to deliver such findings, within one year after his demand therefor. If he does not initiate such proceedings within the time specified, he shall be precluded thereafter from initiating any proceedings in accordance with subsection (b) of this section, and the findings of the contracting agency shall be final and conclusive, or if no findings were made, he shall be deemed to have waived such termination claim.

(3) Notwithstanding any contrary provision in any war contract, the court shall not be bound by the findings of the contracting agency, but shall treat such findings as prima facie correct, and the burden shall be on the war contractor to establish that the amount due on his claim or part thereof exceeds the amount allowed by the findings of the contracting agency. Whenever the court finds that the war contractor failed to negotiate in good faith with the contracting agency for the settlement of his claim or part thereof before appeal or suit thereon, or failed to furnish to the agency any information reasonably requested by it regarding his termination claim or part thereof, or failed to prosecute diligently any protest or appeal required to be taken under subsection (c)(1)(ii) of this section, the court (i) may refuse to receive in evidence any information not submitted to the contracting agency; (ii) may deny interest on the claim or part thereof for such period as it deems proper; or (iii) may remand the case to the contracting agency for further proceedings upon such terms as the court may prescribe. Unless the case is remanded, the court shall enter the appropriate award or judgment on the basis of the law and facts, and may in-

crease or decrease the amount allowed by the findings of the contracting agency.

(4) Any such proceedings shall not affect the authority of the contracting agency concerned to make a settlement of the termination claim, or any part thereof, by agreement with the war contractor at any time before such proceedings are concluded.

(d) Omitted

(e) Arbitration

The contracting agency responsible for settling any claim and the war contractor asserting the claim, by agreement, may submit all or any part of the termination claim to arbitration, without regard to the amount in dispute. Such arbitration proceedings shall be governed by the provisions of United States Arbitration Act to the same extent as if authorized by an effective agreement in writing between the Government and the war contractor. Any such arbitration award shall be final and conclusive upon the United States to the same extent as a settlement under subsection (c) of section 106 of this title, but shall not be subject to approval by any settlement review board.

(f) Conclusiveness of decisions

Whenever any dispute exists between any war contractor and a subcontractor regarding any termination claim, either of them, by agreement with the other, may submit the dispute to a contracting agency for mediation or arbitration whenever authorized by the agency or required by the Administrator of General Services.

Any award or decision in such proceedings shall be final and conclusive as to the parties so submitting any such dispute and shall not be questioned by the United States in settling any related claim, in the absence of fraud or collusion.

(July 1, 1944, ch. 358, §13, 58 Stat. 660; Ex. Ord. No. 9809, §8, eff. Dec. 12, 1946, 11 F.R. 14281; 1947 Reorg. Plan No. 1, §201, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 951; June 30, 1949, ch. 288, title I, §102(b), 63 Stat. 380; July 14, 1952, ch. 739, 66 Stat. 627; Pub. L. 97-164, title I, §160(a)(14), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

The Reconstruction Finance Corporation Act, referred to in subsec. (b), is act Jan. 22, 1932, ch. 8, 47 Stat. 5, as amended, which was classified to chapter 14 (§601 et seq.) of Title 15, Commerce and Trade, and has been eliminated from the Code. For complete classification of this Act prior to its elimination from the Code, see Tables.

United States Arbitration Act, referred to in subsec. (e), is classified generally to Title 9, Arbitration.

CODIFICATION

In subsec. (b), “sections 1346, 2401, and 2402 of title 28” substituted for “subsection (20) of section 41 of title 28” on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

Subsec. (d), which provided for appointment and duties of an Appeal Board, was omitted on authority of act July 14, 1952, ch. 739, 66 Stat. 627, set out as a note below, which abolished the Appeal Board and terminated all appeals, effective nine months after July 14, 1952. References in other subsections of this section to

the Appeal Board were omitted in view of act July 14, 1952. As a result of these omissions, cl. (1) of subsec. (b), which authorized a war contractor to appeal to the Appeal Board, was deleted, and cl. (2), which permitted suits against the United States, became a part of subsec. (b) without numerical designation.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

1982—Subsec. (b). Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury transferred to Administrator of General Services by section 102(b) of act June 30, 1949, which is classified to section 752(b) of Title 40, Public Buildings, Property, and Works.

“Secretary” substituted for “Director” by section 8 of Ex. Ord. No. 9809 and section 201 of Reorg. Plan No. 1 of 1947, set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Reorg. Plan No. 1 of 1957, §6(a), eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in the Appendix to Title 5, Government Organization and Employees, abolished Reconstruction Finance Corporation.

ABOLITION OF APPEALS BOARD; TERMINATION OF APPEALS; NO FURTHER APPEALS ACCEPTED; RETURN OF ERRONEOUS FILED APPEALS

Act July 14, 1952, ch. 739, 66 Stat. 627, provided: “That the Appeal Board established under section 13(d) of the Contract Settlement Act of 1944 [41 U.S.C. 113(d)] is hereby abolished: *Provided, however,* That said abolition shall not become effective until six months after the enactment of this Act [July 14, 1952] or such later date, nor more than nine months after the enactment of this Act, as may be fixed by written order of the Director of Contract Settlement published in the Federal Register. Such an order shall be made only in case the Director finds that it is impracticable for the Appeal Board to dispose of its pending business before the date fixed for abolition of the Board by this Act or a previous order of the Director. No such order shall be made less than thirty days prior to the date theretofore fixed for abolition of the Appeal Board.

“SEC. 2. (a) Upon the effective date of the abolition of the Appeal Board all appeals and disputes pending therein shall be terminated without prejudice and the right of the parties to pursue such other remedies as are provided by law shall not be affected thereby.

“(b) In any such terminated appeal, timely initiated in the Appeal Board, where the period for pursuit of any other remedy pursuant to section 13(b)(2) of the Contract Settlement Act of 1944 [41 U.S.C. 113(b)(2)] shall have expired or would expire within sixty days after the effective date of the abolition of the Appeal

Board, the period within which proceedings may be initiated in accordance with the said section shall be extended to sixty days after said effective date.

“(c) Effective thirty days after the enactment of this Act [July 14, 1952] no further appeals or submitted disputes shall be accepted for determination by said Appeal Board.

“(d) Where an attempt is erroneously made to file an appeal with the Appeal Board after the time limited therefor by section 1(c) of this Act but prior to the effective date of the abolition of the Appeal Board, said Board shall forthwith return the papers to the person therein named as appellant together with a notice in writing that, pursuant to the terms of section 1(c) of this Act, it can no longer accept such an appeal. Where such an attempt is made in good faith and the appeal would, except for the provisions of section 1(c) of this Act, have been timely and the period for pursuit of any other remedy pursuant to section 13(b)(2) of the Contract Settlement Act of 1944 [41 U.S.C. 113(b)(2)] expires or would expire prior to the expiration of sixty days after the receipt of such notice, the period within which proper proceedings may be initiated in accordance with said section 13(b)(2) shall be extended to sixty days after the receipt of such notice.”

APPLICATION TO TERMINATED WAR CONTRACTS

For application of this section to war contracts terminated at or before July 21, 1944, see section 124 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 117, 124 of this title; title 40 section 752.

§ 114. Court of Federal Claims

(a) Appointment of auditors

For the purpose of expediting the adjudication of termination claims, the United States Court of Federal Claims is authorized to appoint not more than ten auditors.

(b) Procedure

The United States Court of Federal Claims, on motion of either of the parties, or on its own motion, may summon any and all persons with legal capacity to be sued to appear as a party or parties in any suit or proceeding of any nature whatsoever pending in said court to assert and defend their interests, if any, in such suits or proceedings, within such period of time prior to judgment as the United States Court of Federal Claims shall prescribe. If the name and address of any such person is known or can be ascertained by reasonable diligence, and if he resides within the jurisdiction of the United States, he shall be summoned to appear by personal service; but if any such person resides outside of the jurisdiction of the United States, or is unknown, or if for any other good and sufficient reason appearing to the court personal service cannot be had, he may be summoned by publication, under such rules as the court may adopt, together with a copy of the summons mailed by registered mail to such person's last known address. The United States Court of Federal Claims may, upon motion of the Attorney General, in any suit or proceeding where there may be any number of persons having possible interests therein, notify such persons to appear to assert and defend such interests. Upon failure so to appear, any and all claims or interests in claims of any such person against the United States, in respect of the subject matter of such suit or pro-

ceeding, shall forever be barred and the court shall have jurisdiction to enter judgment pro confesso upon any claim or contingent claim asserted on behalf of the United States against any person who, having been duly served with summons, fails to respond thereto, to the same extent and with like effect as if such person had appeared and had admitted the truth of all allegations made on behalf of the United States. Upon appearance by any person pursuant to any such summons or notice, the case as to such person shall, for all purposes, be treated as if an independent proceeding has been instituted by such person pursuant to sections 1491, 1496, 1501, 1503, and 2501 of title 28, and as if such independent proceeding had then been consolidated, for purposes of trial and determination, with the case in respect of which the summons or notice was issued, except that the United States shall not be heard upon any counterclaims, claims for damages or other demands whatsoever against such person, other than claims and contingent claims for the recovery of money hereafter paid by the United States in respect of the transaction or matter which constitutes the subject matter of such case, unless and until such person shall assert therein a claim, or an interest in a claim, against the United States, and the United States Court of Federal Claims shall have jurisdiction to adjudicate, as between any and all adverse claimants, their respective several interests in any matter in suit and to award several judgments in accordance therewith.

(c) Jurisdiction

The jurisdiction of the United States Court of Federal Claims shall not be affected by this chapter except to the extent necessary to give effect to this chapter, and no person shall recover judgment on any claim, or on any interest in any claim, in said court which such person would not have had a right to assert in said court if this section had not been enacted.

(July 1, 1944, ch. 358, §14, 58 Stat. 663; July 28, 1953, ch. 253, §5, 67 Stat. 226; Pub. L. 97-164, title I, §160(a)(14), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

CODIFICATION

In subsec. (b), “sections 1491, 1496, 1501, 1503, and 2501 of title 28” substituted for “section 250 of title 28” on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court” wherever appearing.

1982—Pub. L. 97-164 substituted “United States Claims Court” for “Court of Claims” wherever appearing.

1953—Subsec. (a). Act July 28, 1953, struck out provisions relating to the appointment of a maximum of twenty commissioners for the purpose of expediting the adjudication of termination claims.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.