TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 646, § 1, 62 Stat. 869

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1966—Pub. L. 89–554, § 4(a), Sept. 6, 1966, 80 Stat. 611, substituted ''Department of Justice'' for ''United States Attorneys and Marshals'' in item for part II.

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383	Rep. See Civ. Proc. R. 65(d).
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634	T. 18 § 3486
635	Rep. See Civ. Proc. R. 43(a).
636	Rep. See Civ. Proc. R. 34, 55.
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642	Rep. See Civ. Proc. R. 28.
643, 644	Rep. See Civ. Proc. R. 26 et seq.
645	Rep. See Civ. Proc. R. 27(a)(4).
646	Rep. See Civ. Proc. R. 26 et seq.
647	Rep. See Civ. Proc. R. 45; Cr. Proc. R. 17.
648	Rep. See Civ. Proc. R. 45(d); Cr. Proc. R. 17(f).
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655	Rep. See Civ. Proc. R. 45; Cr. Proc. R. 17.
656	Rep. See Cr. Proc. R. 17(b).
657	Rep. See Cr. Proc. R. 46(b).
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[1] Court of Claims Rules were replaced by U.S. Claims Court Rules effective Oct. 1, 1982, and subsequently by United States Court of Federal Claims Rules effective Dec. 4, 1992.

[2] Admiralty Rules were superseded July 1, 1966, by Supplemental Rules for Certain Admiralty and Maritime Claims.

ENACTMENT INTO LAW; CITATION

Section 1 of act June 25, 1948, ch. 646, 62 Stat. 869, provided in part: ''That title 28 of the United States Code, entitled 'Judicial Code and Judiciary' is hereby revised, codified, and enacted into law, and may be cited as 'Title 28, United States Code, section _____.' ''

LEGISLATIVE CONSTRUCTION

Section 33 of act June 25, 1948, ch. 646, 62 Stat. 991, provided that: ''No inference of a legislative construction is to be drawn by reason of the chapter in Title 28, Judiciary and Judicial Procedure, as set out in section 1 of this Act, in which any section is placed, nor by reason of the catchlines used in such title.''

SEPARABILITY

Section 34 of act June 25, 1948, ch. 646, 62 Stat. 991, provided that: ''If any part of Title 28, Judiciary and Judicial Procedure, as set out in section 1 of this Act, shall be held invalid, the remainder shall not be affected thereby.''

EFFECTIVE DATE

Section 38 of act June 25, 1948, ch. 646, 62 Stat. 992, provided that: ''The provisions of this Act shall take effect on September 1, 1948.''

REPEALS; RIGHTS AND LIABILITIES SAVED

Section 39 of act June 25, 1948, ch. 646, 62 Stat. 992, repealed the sections or parts thereof of the Revised Statutes of the United States, Statutes at Large, or the Revised Statutes of the District of Columbia covering provisions codified in this title, but saved any rights or liabilities then existing under said sections or parts thereof.

R.S. §1012 as affected by act Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167 [section 880 of former Title 28, Judicial Code and Judiciary], provided that appeals from district courts shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error. This provision was repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992. Section 2 of act Jan. 31, 1928, ch. 14, 45 Stat. 54, as amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, §23, 62 Stat. 990 [section 861b of former Title 28, Judicial Code and Judiciary], provided that: ''All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error.''

WRITS OF ERROR

Act Jan. 31, 1928, ch. 14, §1, 45 Stat. 54 [section 861a of former Title 28, Judicial Code and Judiciary], provided that: ''The writ of error in cases, civil and criminal, is abolished. All relief which heretofore [Jan. 31, 1928] could be obtained by writ of error shall hereafter be obtainable by appeal.'' This provision was omitted from the 1948 Revised Judicial Code as obsolete, and repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992.

TITLE 28 AS CONTINUATION OF EXISTING LAW; CHANGE OF NAME OF CIRCUIT COURTS OF APPEALS

Section 2(b) of act June 25, 1948, ch. 646, 62 Stat. 985, provided that: ''The provisions of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on the effective date of this Act [Sept. 1, 1948], shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appro-

priate provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment: *Provided, however*, That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment.''

CROSS REFERENCES

District of Columbia, organization of courts, see Title 11 of District of Columbia Code.

Territorial courts, see Title 48, Territories and Insular Possessions.

United States Tax Court, see section 7441 et seq. of Title 26, Internal Revenue Code.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 9 section 4; title 5 section 8477; title 10 section 1054; title 11 section 105; title 12 section 2244; title 16 sections 18i, 558c, 742*l*, 823b, 3375; title 22 sections 2702, 4606, 6082; title 23 section 307; title 29 section 1706; title 38 section 7316; title 42 sections 233, 300g–3, 300i–1, 300j–23, 3789h, 5055, 8433; title 43 section 1737; title 48 sections 1424–4, 1614, 1821, 1824.

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AMENDMENTS

1992—Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in item for chapter 7.

1990—Pub. L. 101–650, title I, § 103(d), Dec. 1, 1990, 104 Stat. 5096, added item for chapter 23.

1984—Pub. L. 98–353, title I, § 104(b), July 10, 1984, 98 Stat. 342, added item for chapter 6.

1982—Pub. L. 97–164, title I, §§ 105(b), 106, Apr. 2, 1982, 96 Stat. 28, substituted ''United States Claims Court'' for ''Court of Claims'' in item for chapter 7 and struck out item for chapter 9 ''Court of Customs and Patent Appeals''.

1980—Pub. L. 96–417, title V, § 501(1), Oct. 10, 1980, 94 Stat. 1742, substituted ''Court of International Trade'' for ''Customs Court'' in item for chapter 11.

1978—Pub. L. 98–598, title II, § 201(b), Nov. 6, 1978, 92 Stat. 2660, directed amendment of analysis of chapters comprising part I by adding item for chapter 6 ''Bankruptcy courts'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

[1] Chapter heading amended by Pub. L. 92–397 without corresponding amendment of analysis.

EXECUTIVE ORDER NO. 11992

Ex. Ord. No. 11992, May 24, 1977, 42 F.R. 27195, which established Committee on Selection of Federal Judicial Officers and provided for its membership, functions, etc., was revoked, and Committee terminated, by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 1—SUPREME COURT

Sec.
1. Number of justices; quorum.
2. Terms of court.
3. Vacancy in office of Chief Justice; disability.
4. Precedence of associate justices.
5. Salaries of justices.
6. Records of former court of appeals.

RULES OF THE SUPREME COURT

See Appendix to this title.

CROSS REFERENCES

Allotment of Supreme Court Justices to circuits, see section 42 of this title.

Circuit justices competent to sit as judges of the courts of appeals, see section 43 of this title.

Jurisdiction of Supreme Court, see section 1251 et seq. of this title.

§ 1. Number of justices; quorum

The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

(June 25, 1948, ch. 646, 62 Stat. 869.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 321 (Mar. 3, 1911, ch. 231, § 215, 36 Stat. 1152).

Appointment of ''judges of the Supreme Court'' by the President by and with the advice and consent of the Senate is provided by U.S. Constitution art. 2, § 2, cl. 2.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–317, § 1(a), Oct. 19, 1996, 110 Stat. 3847, provided that: ''This Act [enacting sections 258 and 1932 of this title, amending sections 112, 125, 134, 251, 253, 331, 332, 371, 376, 601, 621, 627, 636, 753, 954, 1332, 1404, 1406, 1442, 1446, 1827, 1914, 1931, and 1963 of this title, sections 3154, 3401, and 3603 of Title 18, Crimes and Criminal Procedure, sections 1983 and 1988 of Title 42, The Public Health and Welfare, and sections 719, 743, 745, 1104, and 1105 of Title 45, Railroads, enacting provisions set out as notes under sections 258, 1332, 1404, 1827, 1914, 1931, and 2412 of this title and section 719 of Title 45, and amending provisions set out as notes under sections 133, 152, 471, and 1913 of this title] may be cited as the 'Federal Courts Improvement Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–420, § 1, Oct. 25, 1994, 108 Stat. 4343, provided that: ''This Act [amending section 612 of this title, amending provisions set out as notes under sections 471 and 651 of this title, and repealing provisions set out as a note under section 651 of this title] may be cited as the 'Judicial Amendments Act of 1994'.''

Pub. L. 103–383, § 1, Oct. 20, 1994, 108 Stat. 4063, provided that: ''This Act [enacting section 1738B of this title and provisions set out as a note under section 1738B of this title] may be cited as the 'Full Faith and Credit for Child Support Orders Act'.''

Pub. L. 103–270, § 1, June 30, 1994, 108 Stat. 732, provided that: ''This Act [amending sections 591 to 596 and 599 of this title and enacting provisions set out as notes under section 591 of this title and section 113 of Title 3,

The President] may be cited as the 'Independent Counsel Reauthorization Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–572, §1, Oct. 29, 1992, 106 Stat. 4506, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Courts Administration Act of 1992'.''

Pub. L. 102–572, title IX, §901, Oct. 29, 1992, 106 Stat. 4516, provided that: ''This title [see Tables for classification] may be cited as the 'Court of Federal Claims Technical and Procedural Improvements Act of 1992'.''

Pub. L. 102–559, §1, Oct. 28, 1992, 106 Stat. 4227, provided that: ''This Act [enacting chapter 178 of this title and provisions set out as a note under section 3701 of this title] may be cited as the 'Professional and Amateur Sports Protection Act'.''

Pub. L. 102–417, §1, Oct. 14, 1992, 106 Stat. 2138, provided that: ''This Act [amending section 1821 of this title and enacting provisions set out as a note under section 1821 of this title] may be cited as the 'Incarcerated Witness Fees Act of 1991'.''

Pub. L. 102–361, §1, Aug. 26, 1992, 106 Stat. 965, provided that: ''This Act [amending section 152 of this title and enacting provisions set out as a note under section 152 of this title] may be cited as the 'Bankruptcy Judgeship Act of 1992'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–650, §1, Dec. 1, 1990, 104 Stat. 5089, provided: ''That this Act [see Tables for classification] may be cited as the 'Judicial Improvements Act of 1990'.''

Pub. L. 101–650, title I, §101, Dec. 1, 1990, 104 Stat. 5089, provided that: ''This title [enacting chapter 23 of this title and provisions set out as notes under section 471 of this title] may be cited as the 'Civil Justice Reform Act of 1990'.''

Pub. L. 101–650, title II, §201, Dec. 1, 1990, 104 Stat. 5098, provided that: ''This title [amending sections 44 and 133 of this title and enacting provisions set out as notes under sections 44, 133, and 331 of this title] may be cited as the 'Federal Judgeship Act of 1990'.''

Pub. L. 101–650, title III, §301, Dec. 1, 1990, 104 Stat. 5104, provided that: ''This title [enacting sections 178, 1367, and 1658 of this title and section 8440b of Title 5, Government Organization and Employees, amending sections 108, 112, 122, 133, 152, 158, 332, 333, 375, 376, 377, 601, 602, 604, 631, 636, 995, 996, 1334, 1391, 1441, 1452, 1499, 1605, 1610, 1821, 1871, and 2072 of this title, sections 8331, 8334, 8336, 8339, and 8402 of Title 5, provisions set out in the Appendix to Title 5, and section 305 of Title 11, Bankruptcy, renumbering section 15 of Title 9, Arbitration, as section 16 of Title 9, enacting provisions set out as notes under sections 376, 620, 631, 1367, and 1658 of this title, section 8331 of Title 5, section 307 of Title 11, and sections 3006A and 3551 of Title 18, Crimes and Criminal Procedure, and amending provisions set out as notes under sections 533 and 581 of this title] may be cited as the 'Federal Courts Study Committee Implementation Act of 1990'.''

Pub. L. 101–650, title IV, §401, Dec. 1, 1990, 104 Stat. 5122, provided that: ''This title [amending sections 332, 372, 453, and 2077 of this title and provisions set out in the Appendix to Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 332 and 372 of this title] may be cited as the 'Judicial Discipline and Removal Reform Act of 1990'.''

Pub. L. 101–647, title XXXVI, §3601, Nov. 29, 1990, 104 Stat. 4933, provided that: ''This title [enacting chapter 176 and section 2044 of this title, amending sections 550, 1962, 1963, and 2410 of this title, section 523 of Title 11, Bankruptcy, and sections 3142 and 3552 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 3001 of this title] may be cited as the 'Federal Debt Collection Procedures Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–702, §1, Nov. 19, 1988, 102 Stat. 4642, provided that: ''This Act [see Tables for classification] may be cited as the 'Judicial Improvements and Access to Justice Act'.''

Pub. L. 100–702, title VII, §701, Nov. 19, 1988, 102 Stat. 4654, provided that: ''This title [amending section 1827 of this title and enacting provisions set out as notes under section 1827 of this title] may be cited as the 'Court Interpreter Amendments Act of 1988'.''

Pub. L. 100–694, §1, Nov. 18, 1988, 102 Stat. 4563, provided that: ''This Act [enacting section 831c–2 of Title 16, Conservation, amending sections 2671, 2674, and 2679 of this title, and enacting provisions set out as notes under sections 2671 and 2679 of this title] may be cited as the 'Federal Employees Liability Reform and Tort Compensation Act of 1988'.''

Pub. L. 100–659, §1, Nov. 15, 1988, 102 Stat. 3910, provided that: ''This Act [enacting section 377 of this title and section 8440a of Title 5, Government Organization and Employees, amending sections 155, 375, 376, 604, 631, and 636 of this title and sections 8334 and 8402 of Title 5, and enacting provisions set out as notes under sections 376 and 377 of this title] may be cited as the 'Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–191, §1, Dec. 15, 1987, 101 Stat. 1293, provided that: ''This Act [enacting section 599 of this title, amending sections 49 and 591 to 598 of this title, sections 203 and 205 of Pub. L. 95–521, set out in the Appendix to Title 5, Government Organization and Employees, and section 202 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as a note under section 591 of this title, and amending provisions set out as a note under section 591 of this title] may be cited as the 'Independent Counsel Reauthorization Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–657, §1, Nov. 14, 1986, 100 Stat. 3670, provided that: ''This Act [amending sections 90 and 121 of this title and enacting provisions set out as a note under section 121 of this title] may be cited as the 'Judicial Housekeeping Act of 1986'.''

Pub. L. 99–570, §1151, Oct. 27, 1986, 100 Stat. 3207–12, provided that: ''This subtitle [subtitle D (§§1151–1153) of title I of Pub. L. 99–570, amending section 524 of this title, section 1963 of Title 18, Crimes and Criminal Procedure, section 1613a of Title 19, Customs Duties, and section 853 of Title 21, Food and Drugs, and repealing section 1613b of Title 19] may be cited as the 'Department of Justice Assets Forfeiture Fund Amendments Act of 1986'.''

Pub. L. 99–363, §1, July 11, 1986, 100 Stat. 770, provided that: ''This Act [amending section 994 of this title] may be cited as the 'Sentencing Guidelines Act of 1986'.''

Pub. L. 99–336, §1, June 19, 1986, 100 Stat. 633, provided that: ''This Act [amending sections 376, 620, 1441, 1914, and 2342 of this title, section 288d of Title 2, The Congress, and sections 8706, 8714a, 8714b, and 8714c of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 376, 620, 1441, 1914, and 2342 of this title, and section 8706 of Title 5] may be cited as the 'Judicial Improvements Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–620, §404, Nov. 8, 1984, 98 Stat. 3361, provided that: ''This subtitle [subtitle B (§§404–411) of title IV of Pub. L. 98–620, amending sections 85, 90, 93, 112, 124, and 126 of this title and enacting provisions set out as notes under sections 85, 90, 93, and 124 of this title] may be cited as the 'Federal District Court Organization Act of 1984'.''

Pub. L. 98–620, prec. §412, Nov. 8, 1984, 98 Stat. 3362, provided that: ''This subtitle [subtitle C (§§412–416) of title IV of Pub. L. 98–620, enacting section 798 of this title, amending section 1292 of this title, section 1071 of Title 15, Commerce and Trade, section 1337 of Title 19, Customs Duties, and sections 142 to 144 of Title 35, Pat-

ents, and enacting provisions set out as notes under section 713 of this title and section 142 of Title 35] may be cited as the 'Technical Amendments to the Federal Courts Improvement Act of 1982'.''

For short title of Pub. L. 98–353 as the Bankruptcy Amendments and Federal Judgeship Act of 1984, see section 1 of Pub. L. 98–353, set out as a note under section 151 of this title.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97–409, § 1, Jan. 3, 1983, 96 Stat. 2039, provided: ''That this Act [amending sections 49, 591, and 592 to 598 of this title and amending provisions set out as a note under section 591 of this title] may be cited as the 'Ethics in Government Act Amendments of 1982'.''

SHORT TITLE OF 1982 AMENDMENTS

For short title of sections 2 to 6 of Pub. L. 97–394 as the Indian Claims Limitation Act of 1982, see section 1 of Pub. L. 97–394, set out as a note under section 2415 of this title.

Pub. L. 97–292, § 1, Oct. 12, 1982, 96 Stat. 1259, provided: ''That this Act [amending section 534 of this title] may be cited as the 'Missing Children Act'.''

Pub. L. 97–164, § 1, Apr. 2, 1982, 96 Stat. 25, provided: ''That this Act [see Tables for classification] may be cited as the 'Federal Courts Improvement Act of 1982'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–486, § 1, Dec. 1, 1980, 94 Stat. 2369, provided: ''That this Act [amending section 1331 of this title and section 2072 of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 1331 of this title] may be cited as the 'Federal Question Jurisdictional Amendments Act of 1980'.''

Pub. L. 96–462, § 1, Oct. 15, 1980, 94 Stat. 2053, provided that: ''This Act [amending sections 84, 95, 105, 113, and 124 of this title and enacting provisions set out as notes under sections 84, 95, 105, and 113 of this title] may be cited as the 'Federal District Court Organization Act of 1980'.''

Pub. L. 96–458, § 1, Oct. 15, 1980, 94 Stat. 2035, provided that: ''This Act [amending sections 331, 332, 372, and 604 of this title and enacting provisions set out as notes under section 331 of this title] may be cited as the 'Judicial Councils Reform and Judicial Conduct and Disability Act of 1980'.''

Pub. L. 96–452, § 1, Oct. 14, 1980, 94 Stat. 1994, provided: ''That this Act [amending sections 41, 44, and 48 of this title and enacting provisions set out as notes under section 41 of this title] may be cited as the 'Fifth Circuit Court of Appeals Reorganization Act of 1980'.''

Pub. L. 96–417, § 1, Oct. 10, 1980, 94 Stat. 1727, provided: ''That this Act [see Tables for classification] may be cited as the 'Customs Courts Act of 1980'.''

SHORT TITLE OF 1979 AMENDMENT

For short title of Pub. L. 96–82, as the ''Federal Magistrate Act of 1979'', see section 1 of Pub. L. 96–82, set out as a note under section 631 of this title.

SHORT TITLE OF 1978 AMENDMENTS

For short title of Pub. L. 95–572 as the ''Jury System Improvements Act of 1978'', see section 1 of Pub. L. 95–572, set out as a note under section 1861 of this title.

Pub. L. 95–539, § 1, Oct. 28, 1978, 92 Stat. 2040, provided: ''That this Act [enacting sections 1827 and 1828 of this title, amending sections 602 to 604 and 1920 of this title, enacting provisions set out as notes under section 602 of this title, and repealing provisions set out as a note under section 602 of this title] may be cited as the 'Court Interpreters Act'.''

Pub. L. 95–408, § 1, Oct. 2, 1978, 92 Stat. 883, provided that: ''This Act [amending sections 89, 93, 97, 98, 104, 112, 114, 133 of this title and enacting provisions set out as a note under section 89 of this title] may be cited as the 'Federal District Court Organization Act of 1978'.''

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–583, § 1, Oct. 21, 1976, 90 Stat. 2891, provided: ''That this Act [enacting sections 1330 and 1602 to 1611 of this title, amending sections 1332, 1391, and 1441 of this title, and enacting provisions set out as notes under section 1602 of this title] may be cited as the 'Foreign Sovereign Immunities Act of 1976'.''

Pub. L. 94–554, § 1, Oct. 19, 1976, 90 Stat. 2603, provided: ''That this Act [amending section 376 of this title and enacting provisions set out as notes under section 376 of this title] may be cited as the 'Judicial Survivors' Annuities Reform Act'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–271, title I, § 101, June 2, 1970, 84 Stat. 274, provided that: ''This title [enacting sections 256 and 257 of this title, amending sections 253 to 255, 1541, 1582, 2601, 2602, and 2631 to 2639 of this title, repealing sections 1583 and 2640 to 2642 of this title, and enacting provisions set out as a note under section 256 of this title] may be cited as 'The Customs Courts Act of 1970'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–504, title II, § 201, July 18, 1966, 80 Stat. 293, provided that: ''This title [enacting provisions set out as notes under sections 603, 604, and 753 of this title] may be cited as the 'Federal Judicial Salary Act of 1966'.''

SHORT TITLE OF 1964 AMENDMENT

Pub. L. 88–426, title IV, § 401, Aug. 14, 1964, 78 Stat. 433, provided that: ''This title [amending sections 5, 44, 135, 173, 213, 252, 603, and 792 of this title, section 867 of Title 10, Armed Forces, section 68 of former Title 11, Bankruptcy, and section 7443 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 603, 604 and 753 of this title] may be cited as the 'Federal Judicial Salary Act of 1964'.''

RULES OF THE SUPREME COURT

Quorum, see rule 4, Appendix to this title.

CROSS REFERENCES

Appointment of Supreme Court Justices, see Const., Art. 2, § 2, cl. 2.

Creation of Supreme Court, see Const., Art. 3, § 1.

Justices to hold office during good behavior, see Const., Art. 3, § 1.

Oath of Justice, see section 453 of this title.

Official station of Supreme Court Justices, see section 456 of this title.

§ 2. Terms of court

The Supreme Court shall hold at the seat of government a term of court commencing on the first Monday in October of each year and may hold such adjourned or special terms as may be necessary.

(June 25, 1948, ch. 646, 62 Stat. 869.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 338 (Mar. 3, 1911, ch. 231, § 230, 36 Stat. 1156; Sept. 6, 1916, ch. 448, § 1, 39 Stat. 726).

Minor changes in phraseology were made.

RULES OF THE SUPREME COURT

Term, see rule 3, Appendix to this title.

CROSS REFERENCES

Courts always open, see section 452 of this title.

Official station of Supreme Court Justices, see section 456 of this title.

Seat of the Government, see chapter 3 of Title 4, Flag and Seal, Seat of Government, and the States.

§ 3. Vacancy in office of Chief Justice; disability

Whenever the Chief Justice is unable to perform the duties of his office or the office is va-

cant, his powers and duties shall devolve upon the associate justice next in precedence who is able to act, until such disability is removed or another Chief Justice is appointed and duly qualified.

(June 25, 1948, ch. 646, 62 Stat. 869.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §323 (Mar. 3, 1911, ch. 231, §217, 36 Stat. 1152).

The sentence, ''This provision shall apply to every Associate Justice who succeeds to the office of Chief Justice'', was omitted as covered by last portion of revised section.

Minor changes were made in phraseology.

For seniority of commissions, see section 4 of this title.

§4. Precedence of associate justices

Associate justices shall have precedence according to the seniority of their commissions. Justices whose commissions bear the same date shall have precedence according to seniority in age.

(June 25, 1948, ch. 646, 62 Stat. 869.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §322 (Mar. 3, 1911, ch. 231, §216, 36 Stat. 1152).

Minor changes in phraseology were made.

§5. Salaries of justices

The Chief Justice and each associate justice shall each receive a salary at annual rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 870; Mar. 2, 1955, ch. 9, §1(a), 69 Stat. 9; Pub. L. 88–426, title IV, §403(a), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94–82, title II, §205(b)(1), Aug. 9, 1975, 89 Stat. 422.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §324 (Mar. 3, 1911, ch. 231, §218, 36 Stat. 1152; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; July 31, 1946, ch. 704, §1, 60 Stat. 716).

The provision ''to be paid monthly'' was omitted since the time of payment of salaries is a matter of administrative convenience. (See 20 Comp. Gen. 834.)

Minor changes in phraseology were made.

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90–206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§351 et seq.) of Title 2, The Congress.

AMENDMENTS

1975—Pub. L. 94–82 substituted provisions setting the annual salary of the Chief Justice and each associate justice at rates determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provisions granting the Chief Justice and each associate justice a salary of $40,000 and $39,500 a year, respectively.

1964—Pub. L. 88–426 increased salary of Chief Justice from $35,500 to $40,000 and that of Associate Justices from $35,000 to $39,500.

1955—Act Mar. 2, 1955, increased salary of Chief Justice from $25,500 to $35,500 and salaries of Associate Justices from $25,000 to $35,000 a year.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

SALARY INCREASES

1998—Salaries of Chief Justice and Associate Justices increased to $175,400 and $167,900 per annum, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1998, by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1997—Salaries of Chief Justice and Associate Justices continued at $171,500 and $164,100 per annum, respectively, by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

1996—Salaries of Chief Justice and Associate Justices continued at $171,500 and $164,100 per annum, respectively, by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

1995—Salaries of Chief Justice and Associate Justices continued at $171,500 and $164,100 per annum, respectively, by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

1993—Salaries of Chief Justice and Associate Justices increased to $171,500 and $164,100 per annum, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1993, by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

1992—Salaries of Chief Justice and Associate Justices increased to $166,200 and $159,000 per annum, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1992, by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

1991—Salaries of Chief Justice and Associate Justices increased to $160,600 and $153,600 per annum, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1991, by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

1990—Salaries of Chief Justice and Associate Justices continued respectively at $115,000 and $110,000 per annum, and increased to $124,000 and $118,600, respectively, effective on first day of first pay period beginning on or after Jan. 31, 1990, by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

1989—Salaries of Chief Justice and Associate Justices increased in the amount of 25 percent of their respective rates (as last in effect before the increase), effective Jan. 1, 1991, see Pub. L. 101–194, title VII, §703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5.

Salaries of Chief Justice and Associate Justices continued respectively at $115,000 and $110,000 per annum by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

1988—Salaries of Chief Justice and Associate Justices continued respectively at $115,000 and $110,000 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

1987—Salaries of Chief Justice and Associate Justices increased respectively to $115,000 and $110,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of Chief Justice and Associate Justices increased to $111,700 and $107,200, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985—Salaries of Chief Justice and Associate Justices increased to $108,400 and $104,100, respectively, effective

on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984—Salaries of Chief Justice and Associate Justices increased to $104,700 and $100,600, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of Chief Justice and Associate Justices increased to $100,700 and $96,700, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 140 of Pub. L. 97–92, funds are not available to pay a salary at a rate which exceeds the rate in effect on Dec. 15, 1981, which was $96,800 for the Chief Justice and $93,000 for the Associate Justices.

Maximum rates payable after Dec. 17, 1982, increased from $96,800 and $93,000 to $100,700 and $96,700, respectively, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1941, set out as a note under section 5318 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5.

1981—Salaries of Chief Justice and Associate Justices increased to $96,800 and $93,000, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Salaries of Chief Justice and Associate Justices increased to $92,400 and $88,700, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $79,125 for the Chief Justice and $75,960 for the Associate Justices.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of Title 5.

1979—Salaries of Chief Justice and Associate Justices increased to $84,700 and $81,300, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $79,125 for the Chief Justice and $75,960 for the Associate Justices.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Salaries of Chief Justice and Associate Justices increased to $79,100 and $76,000, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95–391, title III § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $75,000 for the Chief Justice and $72,000 for the Associate Justices.

1977—Salaries of Chief Justice and Associate Justices increased respectively to $75,000 and $72,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of Chief Justice and Associate Justices increased to $68,800 and $66,000, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1976, by Ex. Order No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $65,600 for the Chief Justice and $63,000 for the Associate Justices.

1975—Salaries of Chief Justice and Associate Justices increased to $65,600 and $63,000, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1975, by Ex. Order No. 11883, Oct. 6, 1975, 40 F.R. 47091, formerly set out as a note under section 5332 of Title 5.

1969—Salaries of Chief Justice and Associate Justices increased respectively from $40,000 and $39,500 to $62,500 and $60,000 per annum, commencing Feb. 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1946—Salary of Chief Justice increased from $20,500 to $25,500 a year, and salaries of associate justices increased from $20,000 to $25,000 a year, by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

1926—Salary of Chief Justice increased from $15,000 to $20,500 a year, and salaries of associate justices increased from $14,500 to $20,000 a year, by act Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919.

1911—Salary of Chief Justice set at $15,000 a year and salaries of associate justices set at $14,500 a year by Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1152.

CROSS REFERENCES

Compensation not to be diminished during continuance in office, see Const. Art. 3, § 1.

Payment of salaries by marshal of Supreme Court, see section 672 of this title.

Retirement of Justices, see section 371 et seq. of this title.

Traveling and subsistence expenses of Justices, payment of, see section 456 of this title.

§ 6. Records of former court of appeals

The records and proceedings of the court of appeals, appointed previous to the adoption of the Constitution, shall be kept until deposited with the National Archives of the United States in the office of the clerk of the Supreme Court, who shall furnish copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court. Such copies shall have the same faith and credit as proceedings of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 870; Oct. 25, 1951, ch. 562, §4(7), 65 Stat. 640.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §329 (Mar. 3, 1911, ch. 231, §222, 36 Stat. 1153).

In a letter dated August 8, 1944, the clerk of the Supreme Court advised that many of the early records mentioned in this section were destroyed by fire. Others are on file in the Clerk's office.

Minor changes in phraseology were made.

AMENDMENTS

1951—Act Oct. 25, 1951, inserted "until deposited with the National Archives of the United States" in first sentence.

CROSS REFERENCES

Management and disposition of records, see sections 2101 et seq., 2301 et seq., 2501 et seq., 2901 et seq., 3101 et seq., and 3301 et seq. of Title 44, Public Printing and Documents.

CHAPTER 3—COURTS OF APPEALS

Sec.
41. Number and composition of circuits.
42. Allotment of Supreme Court justices to circuits.
43. Creation and composition of courts.
44. Appointment, tenure, residence and salary of circuit judges.
45. Chief judges; precedence of judges.
46. Assignment of judges; panels; hearings; quorum.
47. Disqualification of trial judge to hear appeal.
48. Terms of court.
49. Assignment of judges to division to appoint independent counsels.

AMENDMENTS

1983—Pub. L. 97–409, §2(b)(2), Jan. 3, 1983, 96 Stat. 2039, substituted "independent counsels" for "special prosecutors" in item 49.

1978—Pub. L. 95–521, title VI, §602(b), Oct. 26, 1978, 92 Stat. 1874, added item 49.

Pub. L. 95–486, §5(c), Oct. 20, 1978, 92 Stat. 1633, substituted "panels" for "divisions" in item 46.

CROSS REFERENCES

Jurisdiction of courts of appeals, see section 1291 et seq. of this title.

§41. Number and composition of circuits

The thirteen judicial circuits of the United States are constituted as follows:

Circuits	Composition
District of Columbia	District of Columbia.
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.
Federal	All Federal judicial districts.

(June 25, 1948, ch. 646, 62 Stat. 870; Oct. 31, 1951, ch. 655, §34, 65 Stat. 723; Pub. L. 96–452, §2, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97–164, title I, §101, Apr. 2, 1982, 96 Stat. 25.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C. 1940 ed., §211, and section 864 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, §35, 31 Stat. 85; Mar. 3, 1911, ch. 231, §116, 36 Stat. 1131; Jan. 28, 1915, ch. 22, §§1, 2, 38 Stat. 803; Mar. 2, 1917, ch. 145, §42, 39 Stat. 966; Feb. 13, 1925, ch. 229, §§1, 13, 43 Stat. 936, 942; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Feb. 28, 1929, ch. 363, §1, 45 Stat. 1346; May 17, 1932, ch. 190, 47 Stat. 158).

Form of section was simplified.

The District of Columbia was added as a separate circuit. This is in accord with the decision of the Supreme Court of the United States which held the Court of Appeals for the District of Columbia to be a circuit court of appeals within the Transfer Act of Sept. 14, 1922, ch. 305, 42 Stat. 837, incorporated in the Judicial Code as §238(a), but repealed by act Feb. 13, 1925, ch. 229, §13, 43 Stat. 942. (See *Swift and Co. v. U.S.*, 1928, 48 S.Ct. 311, 276 U.S. 311, 72 L.Ed. 587.)

In recognizing the District of Columbia as a separate circuit, the Supreme Court recently used this language: "* * * the eleven circuits forming the single federal judicature * * *". *Comm'r. v. Bedford's Estate*, 65 S.Ct. 1157, at page 1160, 325 U.S. 283, 89 L.Ed. 611.

See section 17 of title 28, U.S.C., 1940 ed., providing, "For the purposes of sections 17–23 of this title, the District of Columbia shall be deemed to be a judicial circuit * * *", and act Dec. 23, 1944, ch. 724, 58 Stat. 925, which amended section 215 of title 28, U.S.C., 1940 ed., incorporated in section 42 of this title. Such amendment provided that for the purposes of said section 215 "the District of Columbia shall be deemed to be a judicial circuit."

Many other acts of Congress have recognized the District of Columbia as a separate circuit. (See the following acts; Aug. 24, 1937, ch. 754, 50 Stat. 751; Feb. 11, 1938, ch. 25, 52 Stat. 28; Aug. 5, 1939, ch. 433, 53 Stat. 1204; Aug. 7, 1939, ch. 501, 53 Stat. 1223; Dec. 29, 1942, ch. 835, 56 Stat. 1094; May 11, 1944, ch. 192, 58 Stat. 218; Dec. 23, 1944, ch. 724, 58 Stat. 925.)

See also the following acts recognizing the Court of Appeals for the District of Columbia as a circuit court of appeals: Aug. 15, 1921, ch. 64, 42 Stat. 162; July 5, 1935, ch. 372, 49 Stat. 454; Aug. 24, 1937, ch. 754, 50 Stat. 751; Apr. 6, 1942, ch. 210, 56 Stat. 198; May 9, 1942, ch. 295, 56 Stat. 271. See also Rule 81(d) Federal Rules of Civil Procedure.

In the following cases the Supreme Court of the United States has recognized the status of the Court of Appeals of the District of Columbia as a permanent establishment within the federal judicial system: *O'Donoghue v. United States*, 1933, 53 S.Ct. 740, 289 U.S. 516, 77 L.Ed. 1356; *Federal Trade Commission v. Klesner*, 1927, 47 S.Ct. 557, 274 U.S. 145, 71 L.Ed. 972; *Claiborne-Annapolis Ferry v. United States*, 1932, 52 S.Ct. 440, 285 U.S. 382, 76 L.Ed. 808; *United States v. California Canneries*, 1929, 49 S.Ct. 423, 279 U.S. 553, 73 L.Ed. 838.

Alaska, Canal Zone, and Virgin Islands were added to the 9th, 5th, and 3rd Circuits, respectively, to conform to section 1294 of this title.

Some of the provisions of section 864 of title 48, U.S.C., 1940 ed., have been retained in said title. For those which were incorporated in other sections of this revised title, see Distribution Table.

AMENDMENTS

1982—Pub. L. 97–164 increased number of judicial circuits from twelve to thirteen through addition of Federal circuit composed of all Federal judicial districts.

1980—Pub. L. 96–452 substituted ''twelve'' for ''eleven'' in text preceding table, substituted ''District of the Canal Zone'' for ''Alabama, Canal Zone, Florida, Georgia'' in item relating to fifth circuit, and added new item relating to eleventh circuit.

1951—Act Oct. 31, 1951, inserted reference to Guam in that part relating to composition of Ninth judicial circuit.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 12 of Pub. L. 96–452 provided that: ''This Act and the amendments made by this Act [amending this section and sections 44 and 48 of this title, and enacting provisions set out as notes under this section] shall take effect on October 1, 1981.''

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

COMMISSION ON STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS OF APPEALS

Pub. L. 105–119, title III, § 305, Nov. 26, 1997, 111 Stat. 2491, provided that:

''(a) COMMISSION ON STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS OF APPEALS.—

''(1) ESTABLISHMENT AND FUNCTIONS OF COMMISSION.—

''(A) ESTABLISHMENT.—There is established a Commission on Structural Alternatives for the Federal Courts of Appeals (hereinafter referred to as the 'Commission').

''(B) FUNCTIONS.—The functions of the Commission shall be to—

''(i) study the present division of the United States into the several judicial circuits;

''(ii) study the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit; and

''(iii) report to the President and the Congress its recommendations for such changes in circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process.

''(2) MEMBERSHIP.—

''(A) COMPOSITION.—The Commission shall be composed of five members who shall be appointed by the Chief Justice of the United States.

''(B) APPOINTMENT.—The members of the Commission shall be appointed within 30 days after the date of enactment of this Act [Nov. 26, 1997].

''(C) VACANCY.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

''(D) CHAIR.—The Commission shall elect a chair and vice chair from among its members.

''(E) QUORUM.—Three members of the Commission shall constitute a quorum, but two may conduct hearings.

''(3) COMPENSATION.—

''(A) IN GENERAL.—Members of the Commission who are officers, or full-time employees, of the United States shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

''(B) PRIVATE MEMBERS.—Members of the Commission from private life shall receive $200 for each day (including travel time) during which the member is engaged in the actual performance of duties, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

''(4) PERSONNEL.—

''(A) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director who shall receive compensation at a rate not exceeding the rate prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

''(B) STAFF.—The Executive Director, with the approval of the Commission, may appoint and fix the compensation of such additional personnel as the Executive Director determines necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Compensation under this paragraph shall not exceed the annual maximum rate of basic pay for a position above GS–15 of the General Schedule under section 5108 of title 5, United States Code.

''(C) EXPERTS AND CONSULTANTS.—The Executive Director may procure personal services of experts and consultants as authorized by section 3109 of title 5, United States Code, at rates not to exceed the highest level payable under the General Schedule pay rates under section 5332 of title 5, United States Code.

''(D) SERVICES.—The Administrative Office of the United States Courts shall provide administrative services, including financial and budgeting services, to the Commission on a reimbursable basis. The Federal Judicial Center shall provide necessary research services to the Commission on a reimbursable basis.

''(5) INFORMATION.—The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance the Commission determines necessary to carry out its functions under this section. Each such department, agency, and independent instrumentality is authorized to provide such information and assistance to the extent permitted by law when requested by the chair of the Commission.

''(6) REPORT.—The Commission shall conduct the studies required in this section during the 10-month period beginning on the date on which a quorum of the Commission has been appointed. Not later than 2 months following the completion of such 10-month period, the Commission shall submit its report to the President and the Congress. The Commission shall terminate 90 days after the date of the submission of its report.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums, not to exceed $900,000, as may be necessary to

carry out the purposes of this section. Such sums as are appropriated shall remain available until expended.''

ASSIGNMENT OF JUDGES AND PROCEDURE FOR ADMINISTRATION OF PENDING CASES WITH REGARD TO REORGANIZATION OF THE FIFTH CIRCUIT COURT OF APPEALS

Sections 5 to 10 of Pub. L. 96–452 provided that:

''SEC. 5. Each circuit judge in regular active service of the former fifth circuit whose official station on the day before the effective date of this Act [Oct. 1, 1981]—

''(1) is in Louisiana, Mississippi, or Texas is assigned as a circuit judge of the new fifth circuit; and

''(2) is in Alabama, Florida, or Georgia is assigned as a circuit judge of the eleventh circuit.

''SEC. 6. Each judge who is a senior judge of the former fifth circuit on the day before the effective date of this Act [Oct. 1, 1981] may elect to be assigned to the new fifth circuit or to the eleventh circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

''SEC. 7. The seniority of each judge—

''(1) who is assigned under section 5 of this Act; or

''(2) who elects to be assigned under section 6 of this Act;

shall run from the date of commission of such judge as a judge of the former fifth circuit.

''SEC. 8. The eleventh circuit is authorized to hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia.

''SEC. 9. The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this Act [Oct. 1, 1981], an appeal or other proceeding has been filed with the former fifth circuit:

''(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this Act [amending sections 41, 44, and 48 of this title, and enacting provisions set out as notes under this section] had not been enacted.

''(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

''(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act [Oct. 1, 1981], or submitted before the effective date of this Act and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted.

''SEC. 10. As used in sections 5, 6, 7, 8, and 9 of this Act, the term—

''(1) 'former fifth circuit' means the fifth judicial circuit of the United States as in existence on the day before the effective date of this Act [Oct. 1, 1981];

''(2) the term 'new fifth circuit' means the fifth judicial circuit of the United States established by the amendment made by section 2(2) of this Act [amending item relating to the fifth circuit in this section]; and

''(3) the term 'eleventh circuit' means the eleventh judicial circuit of the United States established by the amendment made by section 2(3) of this Act [adding item relating to the eleventh circuit in this section].''

ADMINISTRATIVE ACTION BY FIFTH CIRCUIT COURT OF APPEALS; TERMINATION OF COURT

Section 11 of Pub. L. 96–452 provided that: ''The court of appeals for the fifth circuit as constituted on the day before the effective date of this Act [Oct. 1, 1981] may take such administrative action as may be required to carry out this Act [amending sections 41, 44, and 48 of this title, and enacting provisions set out as notes under this section]. Such court shall cease to exist for administrative purposes on July 1, 1984.''

APPEALS COURT ADMINISTRATIVE UNITS

Pub. L. 95–486, § 6, Oct. 20, 1978, 92 Stat. 1633, provided that: ''Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals.''

NORTHERN MARIANA ISLANDS

Pub. L. 95–157, § 1(a), Nov. 8, 1977, 91 Stat. 1265, provided that the Northern Mariana Islands be part of the same judicial circuit as Guam, i.e., the Ninth Circuit. See section 1694(a) of Title 48, Territories and Insular Possessions.

COMMISSION ON REVISION OF THE FEDERAL APPELLATE SYSTEM

Pub. L. 92–489, Oct. 13, 1972, 86 Stat. 807, as amended by Pub. L. 93–420, Sept. 19, 1974, 88 Stat. 1153, provided for the establishment, membership, travel expenses, personnel, experts and consultants, administrative and research services, cooperation of other governmental agencies, and appropriations of not to exceed $606,000 of a Commission on Revision of the Federal Court Appellate System which Commission was to study the geographical division of the judicial circuits and the structure and internal procedures of the appellate court system and to report to the President, Congress, and the Chief Justice its recommendations for changes in the geographical boundaries of the circuits to expedite disposition of judicial business and for changes in the appellate court structure to expedite disposition of the appellate courts caseload in a manner consistent with fundamental concepts of fairness and due process. The Commission was to cease existence ninety days after submission of its final report, which report was submitted June 20, 1975.

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 25, 1948, ch. 646, 62 Stat. 985, provided in part that the provisions of this title as set out in section 1 of act June 25, 1948, with respect to the organization of each of the several courts therein provided, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title, pursuant to his prior appointment.

CROSS REFERENCES

Circuits in which decisions are reviewable, see section 1294 of this title.

§ 42. Allotment of Supreme Court justices to circuits

The Chief Justice of the United States and the associate justices of the Supreme Court shall from time to time be allotted as circuit justices among the circuits by order of the Supreme Court. The Chief Justice may make such allotments in vacation.

A justice may be assigned to more than one circuit, and two or more justices may be assigned to the same circuit.

(June 25, 1948, ch. 646, 62 Stat. 870.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 215 (Mar. 3, 1911, ch. 231, § 119, 36 Stat. 1131; Dec. 23, 1944, ch. 724, 58 Stat. 925).

The authority of the Chief Justice in vacation to assign a circuit justice to more than one circuit was extended by omitting the phrase ''whenever by reason of death or resignation, no Justice is allotted to a circuit.''

The provision in section 215 of Title 28, U.S.C., 1940 ed., that, for the purposes of said section, the ''District of Columbia shall be deemed to be a judicial circuit,'' was omitted, since the District of Columbia is made a judicial circuit by section 41 of this title.

The last paragraph was added to make clear the intent of Congress that the powers of the Court to assign the justices among the several circuits should be completely flexible.

Changes were made in phraseology.

§ 43. Creation and composition of courts

(a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall be competent to sit as judges of the court.

(June 25, 1948, ch. 646, 62 Stat. 870; Pub. L. 88–176, § 1(a), Nov. 13, 1963, 77 Stat. 331.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 212 (Mar. 3, 1911, ch. 231, § 117, 36 Stat. 1131).

The provision in section 212 of title 28, U.S.C., 1940 ed., for a three-judge court of appeals was permissive and did not limit the power of the court to sit in banc. Thus, subsection (b) reflects present status of law, namely, that court is composed of not only circuit judges of the circuit in active service, of whom there may be more than three, but the circuit justice or justices and judges who may be assigned or designated to the court. (See *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 1942, 62 S.Ct. 272, 314 U.S. 326, 86 L.Ed. 249 and Reviser's Notes under section 46 of this title.)

Words ''with appellate jurisdiction, as hereinafter limited and established'' were omitted as covered by section 1291 et seq. of this title, conferring appellate jurisdiction on the courts of appeals.

The term ''court of appeals'' was substituted in this section and throughout this title for the term ''circuit court of appeals.''

Provision for a quorum of the court is now covered by section 46(d) of this title.

AMENDMENTS

1963—Subsec. (b). Pub. L. 88–176 inserted ''regular'' before ''active service''.

CHANGE OF NAME OF COURT

Section 2(b) of act June 25, 1948, provided in part that each circuit court of appeals should, after Sept. 1, 1948, be known as a United States Court of Appeals, but that the enactment of act June 25, 1948 should in no way entail any loss of rights, interruption of jurisdiction, or prejudice to matters pending in any such courts on Sept. 1, 1948.

CROSS REFERENCES

Assignment of circuit judges and judges of Court of Claims to other circuits or courts, see section 291 et seq. of this title.

Authority to create courts inferior to Supreme Court, see Const., Art. 3, § 1.

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of Judges
District of Columbia	12
First	6
Second	13
Third	14
Fourth	15
Fifth	17
Sixth	16
Seventh	11
Eighth	11
Ninth	28
Tenth	12
Eleventh	12
Federal	12.

(b) Circuit judges shall hold office during good behavior.

(c) Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service. While in active service, each circuit judge of the Federal judicial circuit appointed after the effective date of the Federal Courts Improvement Act of 1982, and the chief judge of the Federal judicial circuit, whenever appointed, shall reside within fifty miles of the District of Columbia. In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state[1] in that circuit.

(d) Each circuit judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 871; Aug. 3, 1949, ch. 387, § 1, 63 Stat. 493; Feb. 10, 1954, ch. 6, § 1, 68 Stat. 8; Mar. 2, 1955, ch. 9, § 1(b), 69 Stat. 10; Pub. L. 87–36, § 1(b), May 19, 1961, 75 Stat. 80; Pub. L. 88–426, title IV, § 403(b), Aug. 14, 1964, 78 Stat. 434; Pub. L. 89–372, § 1(b), Mar. 18, 1966, 80 Stat. 75; Pub. L. 90–347, § 3, June 18, 1968, 82 Stat. 184; Pub. L. 94–82, title II, § 205(b)(2), Aug. 9, 1975, 89 Stat. 422; Pub. L. 95–486, § 3(b), Oct. 20, 1978, 92 Stat. 1632; Pub. L. 96–452, § 3, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97–164, title I, § 102, Apr. 2, 1982, 96 Stat. 25; Pub. L. 98–353, title II, § 201(b), July 10, 1984, 98 Stat. 346; Pub. L. 101–650, title II, § 202(b), Dec. 1, 1990, 104 Stat. 5099; Pub. L. 102–198, § 10(c), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 105–119, title III, § 307, Nov. 26, 1997, 111 Stat. 2493.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 213, and sections 11–201, 11–202, District of Columbia Code, 1940 ed. (Feb.

[1] So in original. Probably should be capitalized.

9, 1893, ch. 74, §1, 27 Stat. 434; Mar. 3, 1901, ch. 854, §§221, 222, 31 Stat. 1224; Mar. 3, 1911, ch. 231, §118, 36 Stat. 1131; Jan. 13, 1912, ch. 9, 37 Stat. 52; Feb. 25, 1919, ch. 29, §2, 40 Stat. 1156; Sept. 14, 1922, ch. 306, §6, 42 Stat. 840; Mar. 3, 1925, ch. 437, 43 Stat. 1116; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Feb. 28, 1929, ch. 363, §2, 45 Stat. 1347; Mar. 1, 1929, ch. 413, §§1, 2, 45 Stat. 1414; June 10, 1930, ch. 437, 46 Stat. 538; June 10, 1930, ch. 438, 46 Stat. 538; June 19, 1930, ch. 538, 46 Stat. 785; June 16, 1933, ch. 102, 48 Stat. 310; Aug. 2, 1935, ch. 425, §1, 49 Stat. 508; June 24, 1936, ch. 735, §1, 49 Stat. 1903; Apr. 14, 1937, ch. 80, 50 Stat. 64; May 31, 1938, ch. 290, §§1, 3, 52 Stat. 584, 585; May 24, 1940, ch. 209, §1, 54 Stat. 219; Dec. 14, 1942, ch. 731, 56 Stat. 1050; Dec. 7, 1944, ch. 521, §1, 58 Stat. 796; July 31, 1946, ch. 704, §1, 60 Stat. 716).

This section includes the members of the United States Court of Appeals for the District of Columbia and designates them as ''judges'' rather than as ''justices'', thus harmonizing it with the provisions of section 41 of this title, which specifically designates the District of Columbia as a judicial circuit of the United States. In doing so it consolidates sections 11–201, 11–202 of the District of Columbia Code, 1940 ed., which provided for one ''chief justice'' and five associate ''justices.''

Act February 9, 1893, established a court of appeals for the District of Columbia to consist of one chief justice and two associate justices whose jurisdiction was almost entirely to review the judgments of the Supreme Court of the District of Columbia, the name of which was changed in 1936 to the District Court of the United States for the District of Columbia. Circuit courts were established by the first Judiciary Act of September 24, 1789, §4, and R.S. §608, enacted June 22, 1874. R.S. §605 provided that the words ''circuit justice'' and ''justice of a circuit'' should designate the justice of the Supreme Court of the United States allotted to any circuit; that ''judge'' when applied to any circuit included such justice.

The Judiciary Appropriation Act, 1945, Act June 26, 1944, ch. 277, §202, 58 Stat. 358, provided that as used in that Act, ''the term 'circuit court of appeals' includes the United States Court of Appeals for the District of Columbia; the term 'senior circuit judge' includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term 'circuit judge' includes associate justice of the United States Court of Appeals for the District of Columbia; and the term 'judge' includes justice.''

Provisions in section 11–202 of the District of Columbia Code, 1940 ed., and section 213 of title 28, U.S.C., 1940 ed., for payment of salaries in monthly installments were omitted, since time of payment is a matter of administrative convenience (20 Comp. Gen. 834).

The exception in subsection (c) extends to circuit judges in the District of Columbia the effect of the recent decision in *U.S. ex rel. Laughlin v. Eicher*, D.C. 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 28, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See Reviser's Note under section 134 of this title.)

The provision in section 213 of the title 28, U.S.C., 1940 ed., that ''it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law,'' was omitted as unnecessary since the duty to serve is implied by the creation and composition of the court in section 43 of this title.

Last sentence, providing that nothing in section 213 of title 28, U.S.C., 1940 ed., should prevent a circuit judge from holding district court as provided by law, was omitted as unnecessary. (See section 291 of this title authorizing assignments to district courts.)

Subsection (b) was added in conformity with the U.S. Constitution, art. 3.

Changes were made in phraseology.

REFERENCES IN TEXT

The effective date of the Federal Courts Improvement Act of 1982, referred to in subsec. (c), is the effective date of Pub. L. 97–164, Oct. 1, 1982. See Effective Date of 1982 Amendment note set out under section 171 of this title.

Section 225 of the Federal Salary Act of 1967, referred to in subsec. (d), is section 225 of Pub. L. 90–206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§351 et seq.) of Title 2, The Congress.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–119 inserted at end ''In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit.''

1991—Subsec. (c). Pub. L. 102–198 substituted ''the Federal Courts Improvement Act of 1982'' for ''this Act''.

1990—Subsec. (a). Pub. L. 101–650 altered number of permanent circuit judgeships in named circuits as follows:

Circuits	*Former*	*New*
Third	12	14
Fourth	11	15
Fifth	16	17
Sixth	15	16
Eighth	10	11
Tenth	10	12

1984—Subsec. (a). Pub. L. 98–353 altered number of permanent circuit judgeships in named circuits as follows:

Circuits	*Former*	*New*
District of Columbia	11	12
First	4	6
Second	11	13
Third	10	12
Fourth	10	11
Fifth	14	16
Sixth	11	15
Seventh	9	11
Eighth	9	10
Ninth	23	28
Tenth	8	10
Eleventh	12	12
Federal	12	12

1982—Subsec. (a). Pub. L. 97–164, §102(a), inserted item relating to Federal circuit with 12 judges.

Subsec. (c). Pub. L. 97–164, §102(b), inserted provision relating to requirement that judges of Federal judicial circuit reside within fifty miles of the District of Columbia.

1980—Subsec. (a). Pub. L. 96–452 substituted ''14'' for ''26'' in item relating to fifth circuit, and added item relating to eleventh circuit.

1978—Subsec. (a). Pub. L. 95–486 altered number of permanent circuit judgeships in the named circuits as follows:

Circuits	*Former*	*New*
District of Columbia	9	11
First	3	4
Second	9	11
Third	9	10
Fourth	7	10
Fifth	15	26
Sixth	9	11
Seventh	8	9
Eighth	8	9
Ninth	13	23
Tenth	7	8

1975—Subsec. (d). Pub. L. 94–82 substituted provision that each circuit judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each circuit judge shall receive a salary of $33,000 a year.

1968—Subsec. (a). Pub. L. 90–347 increased the number of circuit judges in the enumerated circuits as follows:

Third Circuit, eight to nine; Fifth Circuit, nine to fifteen; Sixth Circuit, eight to nine; Ninth Circuit, nine to thirteen, and Tenth Circuit, six to seven.

1966—Subsec. (a). Pub. L. 89–372 increased the number of circuit judges in the enumerated circuits as follows: Fourth Circuit, five to seven; Sixth Circuit, six to eight; Seventh Circuit, seven to eight; Eighth Circuit, seven to eight.

1964—Subsec. (d). Pub. L. 88–426 increased the salary of the circuit judges from $25,500 to $33,000.

1961—Subsec. (a). Pub. L. 87–36 increased the number of circuit judges in the enumerated circuits, as follows: Second Circuit, six to nine; Third Circuit, seven to eight; Fourth Circuit, three to five; Fifth Circuit, seven to nine; Seventh Circuit, six to seven; and Tenth Circuit, five to six.

1955—Subsec. (d). Act Mar. 2, 1955, increased the salary of circuit judges from ''$17,500'' a year to ''$25,500''.

1954—Subsec. (a). Act Feb. 10, 1954, increased the number of circuit judges in the Fifth Circuit from six to seven, and in the Ninth Circuit from seven to nine.

1949—Subsec. (a). Act Aug. 3, 1949, increased the number of circuit judges for the District of Columbia from six to nine, for the third circuit from six to seven, for the seventh circuit from five to six, and for the tenth circuit from four to five.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 206 of title II of Pub. L. 101–650 provided that: ''This title [amending this section and section 133 of this title and enacting provisions set out as notes under this section and sections 133 and 331 of this title] shall take effect on the date of the enactment of this title [Dec. 1, 1990].''

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–452 effective Oct. 1, 1981, see section 12 of Pub. L. 96–452, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

NOMINATION TO FEDERAL JUDGESHIP ON NONDISCRIMINATORY BASIS

Section 211 of Pub. L. 98–353 provided that: ''It is the sense of the Congress that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [see Short Title of 1984 Amendment note set out under section 151 of this title], shall give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin.''

CONTINUED SERVICE OF JUDGES

Section 165 of Pub. L. 97–164 provided that judges of United States Court of Claims and of United States Court of Customs and Patent Appeals in regular active service on Oct. 1, 1982, would continue in office as judges of United States Court of Appeals for the Federal Circuit and senior judges of United States Court of Claims and of United States Court of Customs and Patent Appeals on Oct. 1, 1982, would continue in office as senior judges of United States Court of Appeals for the Federal Circuit.

CONGRESSIONAL STATEMENT REGARDING APPOINTMENT OF JUDGES

Section 168 of Pub. L. 97–164 provided that: ''The Congress—

''(1) takes notice of the fact that the quality of the Federal judiciary is determined by the competence and experience of its judges; and

''(2) suggests that the President, in nominating individuals to judgeships on the United States Court of Appeals for the Federal Circuit and the United States Claims Court [now United States Court of Federal Claims], select from a broad range of qualified individuals.''

SALARY INCREASES

1998—Salaries of circuit judges increased to $145,000 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1998, by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1997—Salaries of circuit judges continued at $141,700 per annum, by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

1996—Salaries of circuit judges continued at $141,700 per annum, by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

1995—Salaries of circuit judges continued at $141,700 per annum, by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

1993—Salaries of circuit judges increased to $141,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1993, by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

1992—Salaries of circuit judges increased to $137,300 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1992, by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

1991—Salaries of circuit judges increased to $132,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1991, by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

1990—Salaries of circuit judges continued at $95,000 per annum, and increased to $102,500, effective on first day of first pay period beginning on or after Jan. 31, 1990, by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

1989—Salaries of circuit judges increased in the amount of 25 percent of their rates (as last in effect before the increase), effective Jan. 1, 1991, see Pub. L. 101–194, title VII, § 703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5.

Salaries of circuit judges continued at $95,000 per annum by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

1988—Salaries of circuit judges continued at $95,000 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

1987—Salaries of circuit judges increased to $95,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of circuit judges increased to $85,700 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 55 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985—Salaries of circuit judges increased to $83,200 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984—Salaries of circuit judges increased to $80,400 effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of circuit judges increased to $77,300 effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 140 of Pub. L. 97–92 funds are not available to pay a salary at a rate which exceeds the rate in effect on Dec. 15, 1981, which was $74,300.

Maximum rate payable after Dec. 17, 1982, increased from $74,300 to $77,300, see Pub. L. 97–377, title I, §129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5.

1981—Salaries of circuit judges increased to $74,300 effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Salaries of circuit judges increased to $70,900 effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $60,662.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of Title 5.

1979—Salaries of circuit judges increased to $65,000 effective on first day of first applicable pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $60,662.50 for circuit judges.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Salaries of circuit judges increased to $60,700 effective on first day of first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12087 further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95–391, title III, §304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

1977—Salaries of circuit judges increased to $57,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of circuit judges increased to $46,800 effective on first day of first pay period beginning on or after Oct. 1, 1976, by Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941 further provided that pursuant to Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1976, which was $44,600.

1975—Salaries of circuit judges increased to $44,600 effective on first day of first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, formerly set out as a note under section 5332 of Title 5.

1969—Salary of circuit judge increased from $33,000 to $42,500 per annum, commencing Feb. 14, 1969, on recommendation of President of United States, see note set out under section 358 of Title 2, The Congress.

1946—Salaries of circuit judges increased from $12,500 to $17,500 a year by act July 31, 1946, ch. 704, §1, 60 Stat. 716.

1926—Salaries of circuit judges increased from $8,500 to $12,500 a year by act Dec. 13, 1926, ch. 6, §1, 44 Stat. 919.

1919—Salaries of circuit judges increased from $7,000 to $8,500 a year by act Feb. 25, 1919, ch. 29, §1, 40 Stat. 1156.

1911—Salaries of circuit court judges set at $7,000 a year by the Judicial Code of 1911, act Mar. 3, 1911, ch. 231, §1, 36 Stat. 1131.

ADDITIONAL JUDGES

Since 1925, the appointment of additional judges was authorized by the following acts:

Second circuit. Act May 31, 1938, ch. 290, §1, 52 Stat. 584.

Third circuit. Act Aug. 3, 1949, ch. 387, §1, 63 Stat. 493; act Dec. 7, 1944, ch. 521, §1, 58 Stat. 796; act June 10, 1930, ch. 438, 46 Stat. 538; act June 24, 1936, ch. 735, §1, 49 Stat. 1903, repealed by act May 31, 1938, ch. 290, §3, 52 Stat. 585.

Fifth circuit. Act Dec. 14, 1942, ch. 731, 56 Stat. 1050; act May 31, 1938, ch. 290, §1, 52 Stat. 584; act June 10, 1930, ch. 437, 46 Stat. 538.

Sixth circuit. Act May 24, 1940, ch. 209, §1, 54 Stat. 219; act May 31, 1938, ch. 290, §1, 52 Stat. 584.

Seventh circuit. Act Aug. 3, 1949, ch. 387, §1, 63 Stat. 493; act May 31, 1938, ch. 290, §1, 52 Stat. 584.

Eighth circuit. Act May 24, 1940, ch. 209, §1, 54 Stat. 219; act Mar. 3, 1925, ch. 436, 43 Stat. 1116.

Ninth circuit. Act Apr. 14, 1937, ch. 80, 50 Stat. 64; act Aug. 2, 1935, ch. 425, §1, 49 Stat. 508; act June 16, 1933, ch. 102, 48 Stat. 310 (removing limitation on filling of vacancy); act Mar. 1, 1929, ch. 413, 45 Stat. 1414.

Tenth circuit. Act Aug. 3, 1949, ch. 387, §1, 63 Stat. 493.

District of Columbia Court of Appeals. Act Aug. 3, 1949, ch. 387, §1, 63 Stat. 493; act May 31, 1938, ch. 290, §2, 52 Stat. 584; act June 19, 1930, ch. 538, 46 Stat. 785.

Act Feb. 28, 1929, ch. 363, §2, 45 Stat. 1346, 1347 provided that "There shall be in the sixth, seventh, and tenth circuits, respectively, four circuit judges; and in the second and eighth circuits, respectively, five circuit judges; and, in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate."

Another part of section 1 of act Feb. 10, 1954, which amended subsec. (a) of this section, provided for the appointment by the President, by and with the advice and consent of the Senate, of the additional judges for the Fifth and Ninth Circuits, provided for in such amendment.

Section 1(a) of Pub. L. 87–36 provided that: "The President shall appoint, by and with the advice and consent of the Senate, three additional circuit judges

for the second circuit, one additional circuit judge for the third circuit, two additional circuit judges for the fourth circuit, two additional circuit judges for the fifth circuit, one additional circuit judge for the seventh circuit, and one additional circuit judge for the tenth circuit.''

Section 1(a) of Pub. L. 89–372 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the fourth circuit, two additional circuit judges for the sixth circuit, one additional circuit judge for the seventh circuit, and one additional circuit judge for the eighth circuit.''

Section 1(c) of Pub. L. 89–372, as amended by Pub. L. 90–347, §2, June 18, 1968, 82 Stat. 183, provided that: ''The President shall appoint, by and with the advice and consent of the Senate, four additional circuit judges for the fifth circuit.'' The second sentence of section 1(c) of Pub. L. 89–372 which provided that the first four vacancies occurring in the office of circuit judge in the fifth circuit shall not be filled was deleted by section 2 of Pub. L. 90–347, which also made those judgeships permanent and further provided that the present incumbents of such judgeships shall henceforth hold their offices under this section.

Section 1 of Pub. L. 90–347 provided: ''That the President shall appoint, by and with the advice and consent of the Senate, one additional circuit judge for the third circuit, two additional circuit judges for the fifth circuit, one additional circuit judge for the sixth circuit, four additional circuit judges for the ninth circuit, and one additional circuit judge for the tenth circuit.''

Section 3(a) of Pub. L. 95–486 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional circuit judgeship for the first circuit, two additional circuit judgeships for the second circuit, one additional circuit judgeship for the third circuit, three additional circuit judgeships for the fourth circuit, eleven additional circuit judgeships for the fifth circuit, two additional circuit judgeships for the sixth circuit, one additional circuit judgeship for the seventh circuit, one additional circuit judgeship for the eighth circuit, ten additional circuit judgeships for the ninth circuit, one additional circuit judgeship for the tenth circuit, and two additional circuit judgeships for the District of Columbia.''

Section 201(a) of Pub. L. 98–353 provided that:

''(1) Subject to the provisions of paragraph (2), the President shall appoint, by and with the advice and consent of the Senate, two additional circuit judges for the first circuit court of appeals, two additional circuit judges for the second circuit court of appeals, two additional circuit judges for the third circuit court of appeals, one additional circuit judge for the fourth circuit court of appeals, two additional circuit judges for the fifth circuit court of appeals, four additional circuit judges for the sixth circuit court of appeals, two additional circuit judges for the seventh circuit court of appeals, one additional circuit judge for the eighth circuit court of appeals, five additional circuit judges for the ninth circuit court of appeals, two additional circuit judges for the tenth circuit court of appeals, and one additional circuit judge for the District of Columbia circuit court of appeals.

''(2) The President shall appoint, by and with the advice and consent of the Senate, no more than 11 of such judges prior to January 21, 1985.''

Section 202(a) of Pub. L. 101–650 provided that: ''The President shall appoint, by and with the advice and consent of the Senate—

''(1) 2 additional circuit judges for the third circuit court of appeals;

''(2) 4 additional circuit judges for the fourth circuit court of appeals;

''(3) 1 additional circuit judge for the fifth circuit court of appeals;

''(4) 1 additional circuit judge for the sixth circuit court of appeals;

''(5) 1 additional circuit judge for the eighth circuit court of appeals; and

''(6) 2 additional circuit judges for the tenth circuit court of appeals.''

EXECUTIVE ORDER NO. 11972

Ex. Ord. No. 11972, Feb. 14, 1977, 42 F.R. 9659, as amended by Ex. Ord. No. 11993, May 24, 1977, 42 F.R. 27197, which related to the United States Circuit Judge Nominating Commission, was revoked by Ex. Ord. No. 12059, May 11, 1978, 43 F.R. 20949, formerly set out below.

EXECUTIVE ORDER NO. 12059

Ex. Ord. No. 12059, May 11, 1978, 43 F.R. 20949, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 Stat. 52455, which established the United States Circuit Judge Nominating Commission and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Assignment of circuit judges to other circuits or courts, see section 291 et seq. of this title.

Compensation not to be diminished during continuance in office, see Const., Art. 3, §1.

Judges to hold office during good behavior, see Const., Art. 3, §1.

Oath of judge, see section 453 of this title.

Official station of circuit judges, see section 456 of this title.

Retirement of judges, see section 371 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 992 of this title.

§ 45. Chief judges; precedence of judges

(a)(1) The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who—

(A) are sixty-four years of age or under;

(B) have served for one year or more as a circuit judge; and

(C) have not served previously as chief judge.

(2)(A) In any case in which no circuit judge meets the qualifications of paragraph (1), the youngest circuit judge in regular active service who is sixty-five years of age or over and who has served as circuit judge for one year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no circuit judge in regular active service who has served as a circuit judge for one year or more, the circuit judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided in subparagraph (C), the chief judge of the circuit appointed under paragraph (1) shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge of the circuit.

(B) Except as provided in subparagraph (C), a circuit judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge has been appointed who meets the qualifications under paragraph (1).

(C) No circuit judge may serve or act as chief judge of the circuit after attaining the age of seventy years unless no other circuit judge is qualified to serve as chief judge of the circuit

under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session of the court which he attends. Other circuit judges of the court in regular active service shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

(c) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States, and thereafter the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the circuit judge in active service, present in the circuit and able and qualified to act, who is next in precedence.

(June 25, 1948, ch. 646, 62 Stat. 871; Oct. 31, 1951, ch. 655, §35, 65 Stat. 723; Pub. L. 85–593, §1, Aug. 6, 1958, 72 Stat. 497; Pub. L. 97–164, title II, §§201, 204, Apr. 2, 1982, 96 Stat. 51, 53.)

HISTORICAL AND REVISION NOTES

Based on sections 216 and 216a of title 28, U.S.C., 1940 ed. (Mar. 3, 1911, ch. 231, §120, 36 Stat. 1132; May 23, 1934, ch. 339, 48 Stat. 796).

Subsection (a), providing for ''chief judge,'' is new. Such term is adopted to replace the term ''senior circuit judge'' in recognition of the great increase in administrative duties of such judge.

Subsection (b) conforms with section 4 of this title relating to precedence of associate justices of the Supreme Court, and consolidates the provisions of the second and third sentences of section 216 of title 28, U.S.C., 1940 ed. The designation when filed in the court of appeals will not only record the transfer of function from the relieved chief judge to his successor, but will also determine the question of willingness of the successor to serve.

Other provisions of section 216 of title 28, U.S.C., 1940 ed., are covered by section 47 of this title.

Subsection (c) is new.

Subsection (d) is based on section 216a of title 28, U.S.C., 1940 ed.

The official status of the Chief Justice of the Court of Appeals for the District of Columbia holding office on the effective date of the act is preserved by section 2 of the bill to enact revised Title 28.

Changes were made in phraseology.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–164, §201(a), designated existing first sentence of subsec. (a) as par. (1), substituted ''The chief judge of the circuit shall be the circuit judge in regular active service who is senior in commission of those judges who—(A) are sixty-four years of age or under; (B) have served for one year or more as a circuit judge; and (C) have not served previously as chief judge'' for ''The circuit judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the circuit'' in par. (1) as so designated, designated existing second sentence of subsec. (a) as par. (2)(A), substituted ''In any case in which no circuit judge meets the qualifications of paragraph (1), the youngest circuit judge in regular active service who is sixty-five years of age or over and who has served as circuit judge for one year or more shall act as the chief judge'' for ''If all the circuit judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a circuit judge for one year'' in par. (2)(A) as so designated, and added pars. (2)(B) and (3).

Subsec. (b). Pub. L. 97–164, §204, inserted ''of the court in regular active service'' after ''circuit judges'' in second sentence.

Subsec. (c). Pub. L. 97–164, §201(b), amended subsec. (c) generally, substituting ''the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a)'' for ''the circuit judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the circuit''.

1958—Subsec. (a). Pub. L. 85–593 provided that chief judges of circuit courts cease to serve as such upon reaching the age of seventy, that the youngest circuit judge act as chief judge where all circuit judges in regular active service are seventy years or older until a judge under seventy has been appointed and qualified, and that circuit judge must have served one year before acting as chief judge.

1951—Subsec. (a). Act Oct. 31, 1951, inserted ''in active service who is''.

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 this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85–593, as amended by Pub. L. 95–486, §4, Oct. 20, 1978, 92 Stat. 1632, provided that: ''The amendments to sections 45 and 136 of title 28 of the United States Code made by this Act shall take effect at the expiration of one year from the date of enactment of this Act [Aug. 6, 1958].''

SAVINGS PROVISION

Section 203 of part A of title II of Pub. L. 97–164 provided that:

''(a) The amendments to section 45 of title 28, United States Code, and to section 136 of such title, made by sections 201 and 202 of this Act, shall not apply to or affect any person serving as chief judge on the effective date of this Act [Oct. 1, 1982].

''(b) The provisions of section 45(a) of title 28, United States Code, as in effect on the day before the effective date of this Act [Oct. 1, 1982], shall apply to the chief judge of a circuit serving on such effective date. The provisions of section 136(a) of title 28, United States Code, as in effect on the day before the effective date of this part [Oct. 1, 1982], shall apply to the chief judge of a district court serving on such effective date.''

APPOINTMENT OF CHIEF JUDGE OF COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Section 166 of Pub. L. 97–164 provided that: ''Notwithstanding the provisions of section 45(a) of title 28, United States Code, the first chief judge of the United States Court of Appeals for the Federal Circuit shall be the Chief Judge of the United States Court of Claims or the Chief Judge of the United States Court of Customs and Patent Appeals, whoever has served longer as chief judge of his court. Notwithstanding section 45 of title 28, United States Code, whichever of the two chief judges does not become the first chief judge of the United States Court of Appeals for the Federal Circuit under the preceding sentence shall, while in active service, have precedence and be deemed senior in commission over all the circuit judges of the United States Court of Appeals for the Federal Circuit (other than the first chief judge of that circuit). When the person who first serves as chief judge of the United States Court of Appeals for the Federal Circuit vacates that position, the position shall be filled in accordance with section

45(a) of title 28, United States Code, as modified by the preceding sentence of this section.''

CHIEF JUDGE OF COURT OF APPEALS FOR DISTRICT OF COLUMBIA

Section 2(a) of act June 25, 1948, provided in part that the Chief Justice of the Court of Appeals for the District of Columbia in office on Sept. 1, 1948, shall thereafter be known as the Chief Judge.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 372 of this title.

§ 46. Assignment of judges; panels; hearings; quorum

(a) Circuit judges shall sit on the court and its panels in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels, each consisting of three judges, at least a majority of whom shall be judges of that court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. Such panels shall sit at the times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than three, who constitute a panel.

(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95–486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible (1) to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.

(d) A majority of the number of judges authorized to constitute a court or panel thereof, as provided in paragraph (c), shall constitute a quorum.

(June 25, 1948, ch. 646, 62 Stat. 871; Pub. L. 88–176, § 1(b), Nov. 13, 1963, 77 Stat. 331; Pub. L. 95–486, § 5(a), (b), Oct. 20, 1978, 92 Stat. 1633; Pub. L. 97–164, title I, § 103, title II, § 205, Apr. 2, 1982, 96 Stat. 25, 53; Pub. L. 104–175, § 1, Aug. 6, 1996, 110 Stat. 1556.)

HISTORICAL AND REVISION NOTES

Based in part on title 28, U.S.C., 1940 ed., § 212 (Mar. 3, 1911, ch. 231, § 117, 36 Stat. 1131).

Subsections (a)–(c) authorize the establishment of divisions of the court and provide for the assignment of circuit judges for hearings and rehearings in banc.

The Supreme Court of the United States has ruled that, notwithstanding the three-judge provision of section 212 of title 28, U.S.C., 1940 ed., a court of appeals might lawfully consist of a greater number of judges, and that the five active circuit judges of the third circuit might sit in banc for the determination of an appeal. (See *Textile Mills Securities Corporation v. Commissioner of Internal Revenue*, 1941, 62 S.Ct. 272, 314 U.S. 326, 86 L.Ed. 249.)

The Supreme Court in upholding the unanimous view of the five judges as to their right to sit in banc, notwithstanding the contrary opinion in *Langs Estate v. Commissioner of Internal Revenue*, 1938, 97 F.2d 867, said in the Textile Mills case: ''There are numerous functions of the court, as a 'court of record, with appellate jurisdiction', other than hearing and deciding appeals. Under the Judicial Code these embrace: prescribing the form of writs and other process and the form and style of its seal (28 U.S.C., § 219); the making of rules and regulations (28 U.S.C., § 219); the appointment of a clerk (28 U.S.C., § 221) and the approval of the appointment and removal of deputy clerks (28 U.S.C., § 222); and the fixing of the 'times' when court shall be held (28 U.S.C., § 223). Furthermore, those various sections of the Judicial Code provide that each of these functions shall be performed by the court.''

This section preserves the interpretation established by the Textile Mills case but provides in subsection (c) that cases shall be heard by a court of not more than three judges unless the court has provided for hearing in banc. This provision continues the tradition of a three-judge appellate court and makes the decision of a division, the decision of the court, unless rehearing in banc is ordered. It makes judges available for other assignments, and permits a rotation of judges in such manner as to give to each a maximum of time for the preparation of opinions.

Whether divisions should sit simultaneously at the same or different places in the circuit is a matter for each court to determine.

REFERENCES IN TEXT

Section 6 of Public Law 95–486 (92 Stat. 1633), referred to in subsec. (c), is section 6 of Pub. L. 95–486, Oct. 20, 1978, 92 Stat. 1633, which is set out as an Appeals Court Administrative Units note under section 41 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–175, in last sentence, inserted ''(1)'' after ''eligible'' and '', or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service'' before period at end.

1982—Subsec. (a). Pub. L. 97–164, § 103(a), substituted ''panels'' for ''divisions''.

Subsec. (b). Pub. L. 97–164, § 103(b), substituted ''panels'' for ''divisions'' wherever appearing and inserted provisions requiring that at least a majority of the panels of each circuit be judges of that court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness, and that the United States Court of Appeals for the Federal Circuit determine by rule a procedure for the rotation of judges from panel to panel to ensure that all of the judges sit on a representative cross section of the cases heard and determine by rule the number of judges, not less than three, who constitute a panel.

Subsec. (c). Pub. L. 97–164, §§ 103(c), 205, inserted provision that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three

judges if its rules so provide and that, as an alternative to the requirement that a court in banc consist of all circuit judges in regular active service, such a court may consist of such number of judges as may be prescribed in accordance with section 6 of Public Law 95–486 (92 Stat. 1633), except that any senior circuit judge of the circuit shall be eligible to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member.

Subsec. (d). Pub. L. 97–164, § 103(d), substituted ''panel'' for ''division''.

1978—Pub. L. 95–486, § 5(b), substituted ''panels'' for ''divisions'' in section catchline.

Subsec. (c). Pub. L. 95–486, § 5(a), substituted ''panel'' for ''division'' and struck out provision authorizing a retired circuit judge to sit as a judge of the court in banc in the rehearing of a case if he sat in the court or division in the original hearing of such case.

1963—Subsec. (c). Pub. L. 88–176 inserted ''regular'' before ''active service'' wherever appearing, and provided that a retired circuit judge shall be competent to sit as a judge of the court in banc, in a rehearing if he sat in at the original hearing.

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 this title.

§ 47. Disqualification of trial judge to hear appeal

No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

(June 25, 1948, ch. 646, 62 Stat. 872.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 216, and District of Columbia Code, 1940 ed., § 11–205 (Feb. 9, 1893, ch. 74, § 6, 27 Stat. 435; July 30, 1894, ch. 172, § 2, 28 Stat. 161; Mar. 3, 1901, ch. 854, § 225, 31 Stat. 1225; Mar. 3, 1911, ch. 231, § 120, 36 Stat. 1132).

The provision in section 11–205 of the District of Columbia Code, 1940 ed., that a justice of the district court while on the bench of the Court of Appeals in the District of Columbia shall not sit in review of judgment, order, or decree rendered by him below, was consolidated with a similar provision of section 216 of title 28, U.S.C., 1940 ed. The consolidation simplifies the language without change of substance.

References in said section 11–205 to the power to prescribe rules, requisites of record on appeal, forms of bills of exception, and procedure on appeal, were omitted as covered by Rules 73, 75, 76, of the Federal Rules of Civil Procedure and by Rule 51 of the Federal Rules of Criminal Procedure.

Said section 11–205 contained a provision that on a divided opinion by the Court of Appeals for the District of Columbia the decision of the lower court should stand affirmed. This was omitted as unnecessary as merely expressing a well-established rule of law.

Other provisions of said section 11–205 are incorporated in section 48 of this title.

The provision of section 216 of title 28, U.S.C., 1940 ed., with respect to the competency of justices and judges to sit, was omitted as covered by section 43 of this title.

Specific reference in said section 216 to the Chief Justice of the United States was likewise omitted inasmuch as he sits as a circuit justice.

The provision of said section 216 with respect to assignment of district judges was omitted as covered by section 291 et seq. of this title.

Provision of said section 216 relating to presiding judge was omitted as covered by section 44 of this title.

§ 48. Terms of court

(a) The courts of appeals shall hold regular sessions at the places listed below, and at such other places within the respective circuit as each court may designate by rule.

Circuits	Places
District of Columbia	Washington.
First	Boston.
Second	New York.
Third	Philadelphia.
Fourth	Richmond, Asheville.
Fifth	New Orleans, Fort Worth, Jackson.
Sixth	Cincinnati.
Seventh	Chicago.
Eighth	St. Louis, Kansas City, Omaha, St. Paul.
Ninth	San Francisco, Los Angeles, Portland, Seattle.
Tenth	Denver, Wichita, Oklahoma City.
Eleventh	Atlanta, Jacksonville, Montgomery.
Federal	District of Columbia, and in any other place listed above as the court by rule directs.

(b) Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders. The court may transact any business at a special session which it might transact at a regular session.

(c) Any court of appeals may pretermit any regular session of court at any place for insufficient business or other good cause.

(d) The times and places of the sessions of the Court of Appeals for the Federal Circuit shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the court with as little inconvenience and expense to citizens as is practicable.

(June 25, 1948, ch. 646, 62 Stat. 872; Oct. 31, 1951, ch. 655, § 36, 65 Stat. 723; Pub. L. 96–452, § 4, Oct. 14, 1980, 94 Stat. 1994; Pub. L. 97–164, title I, § 104, Apr. 2, 1982, 96 Stat. 26; Pub. L. 102–572, title V, § 501, Oct. 29, 1992, 106 Stat. 4512.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 223 and § 11–205 District of Columbia Code, 1940 ed. (Feb. 9, 1893, ch. 74, § 6, 27 Stat. 435; July 30, 1894, ch. 172, § 2, 28 Stat. 161; Mar. 3, 1901, ch. 854, § 225, 31 Stat. 1225; Mar. 3, 1911, ch. 231, § 126, 36 Stat. 1132; July 17, 1916, ch. 246, 39 Stat. 385; Jan. 8, 1925, ch. 57, 43 Stat. 729; July 3, 1926, ch. 735, 44 Stat. 809; Feb. 28, 1929, ch. 363, § 3, 45 Stat. 1347; May 17, 1932, ch. 190, 47 Stat. 158).

This section consolidates section 223 of title 28, U.S.C., 1940 ed., with part of section 11–205 of the District of Columbia Code.

Reference to San Juan as a place for holding court in the First Circuit was omitted. The revised section will permit the holding of terms at San Juan when the public interest requires.

The phrase ''and at such other places within the respective circuits as may be designated by rule of court'' was added to enable each court of appeals to hold such additional regular terms as changing circumstances might require.

The provisions of such section 223, for furnishing suitable rooms and accommodation at Oakland City, were omitted as obsolete since the erection of a new Federal building there.

The provisions as to fixed times for holding court in the Fifth Circuit was omitted as inconsistent with the practice in the other circuits. Words ''San Francisco, Los Angeles, Portland, Seattle'' were substituted for ''San Francisco and two other places designated by the court'' to conform with the practice in the Ninth Circuit.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, Jacksonville (Fla.) was added as a place for holding a regular session of the Court of Appeals for the Fifth Circuit. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 struck out '', with the consent of the Judicial Conference of the United States,'' after ''pretermit''.

1982—Subsec. (a). Pub. L. 97–164, § 104(a), (b), designated introductory provisions and table of circuits as subsec. (a) and substituted provisions directing the courts of appeals to hold regular sessions at the places listed in the table and at such other places within the circuits as each court might designate by rule, for provisions which directed that terms or sessions of courts of appeals be held annually at the places listed in the table and at such other places as the courts might designate by rule and authorized each court of appeals to hold special terms at any place within its circuit, and added to the table an item for the Federal circuit, with sessions to be held in the District of Columbia and in any other place listed elsewhere in the table as the Federal circuit court might by rule direct.

Subsec. (b). Pub. L. 97–164, § 104(c), added subsec. (b).

Subsec. (c). Pub. L. 97–164, § 104(c), designated existing provisions following table of circuits as subsec. (c) and substituted ''regular session'' for ''regular term or session''.

Subsec. (d). Pub. L. 97–164, § 104(c), added subsec. (d).

1980—Pub. L. 96–452 substituted ''New Orleans, Fort Worth, Jackson'' for ''New Orleans, Atlanta, Fort Worth, Jacksonville, Montgomery'' in item relating to fifth circuit, and added item relating to eleventh circuit.

1951—Act Oct. 31, 1951, inserted last par.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–452 effective Oct. 1, 1981, see section 12 of Pub. L. 96–452, set out as a note under section 41 of this title.

SURVEY OF JUDICIAL BUSINESS IN ALASKA

Section 23(a) of Pub. L. 86–70, June 25, 1959, 73 Stat. 147, provided that: ''The Judicial Conference of the United States, with the assistance of the Administrative Office of the United States Courts, shall conduct a study, including a field survey, of the Federal judicial business arising in the State of Alaska with a view toward directing the United States Court of Appeals for the Ninth Circuit to hold such terms of court in Anchorage or such other Alaskan cities as may be necessary for the prompt and efficient administration of justice.''

CROSS REFERENCES

Courts always open, see section 452 of this title.

§ 49. Assignment of judges to division to appoint independent counsels

(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing independent counsels. The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.

(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

(f) Except as otherwise provided in chapter 40 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 40 of this title involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves such independent counsel while such independent counsel is serving in that office or which involves the exercise of such independent counsel's official duties, regardless of whether such independent counsel is still serving in that office.

(Added Pub. L. 95–521, title VI, § 602(a), Oct. 26, 1978, 92 Stat. 1873; amended Pub. L. 97–409, § 2(b)(1), Jan. 3, 1983, 96 Stat. 2039; Pub. L. 99–554, title I, § 144(g)(3), Oct. 27, 1986, 100 Stat. 3097; Pub. L. 100–191, §§ 4, 5(a), Dec. 15, 1987, 101 Stat. 1307.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is Oct. 26, 1978.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–191, § 4, inserted at end: ''The Clerk of the United States Court of Appeals for the District of Columbia Circuit shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.''

Subsec. (f). Pub. L. 100–191, § 5(a), substituted ''involving an independent counsel'' for ''involving a independent counsel''.

1986—Subsec. (f). Pub. L. 99–554 substituted ''chapter 40'' for ''chapter 39'' in two places.

1983—Pub. L. 97–409, § 2(b)(1)(B), substituted ''independent counsels'' for ''special prosecutors'' in section catchline.

Subsec. (a). Pub. L. 97–409, §2(b)(1)(B), substituted ''independent counsels'' for ''special prosecutors''.

Subsec. (f). Pub. L. 97–409, §2(b)(1)(A), (C), substituted ''independent counsel'' for ''special prosecutor'' wherever appearing and ''independent counsel's'' for ''special prosecutor's''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95–521, set out as a note under section 591 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 593, 595 of this title.

CHAPTER 5—DISTRICT COURTS

Sec.
81. Alabama.
81A. Alaska.
82. Arizona.
83. Arkansas.
84. California.
85. Colorado.
86. Connecticut.
87. Delaware.
88. District of Columbia.
89. Florida.
90. Georgia.
91. Hawaii.
92. Idaho.
93. Illinois.
94. Indiana.
95. Iowa.
96. Kansas.
97. Kentucky.
98. Louisiana.
99. Maine.
100. Maryland.
101. Massachusetts.
102. Michigan.
103. Minnesota.
104. Mississippi.
105. Missouri.
106. Montana.
107. Nebraska.
108. Nevada.
109. New Hampshire.
110. New Jersey.
111. New Mexico.
112. New York.
113. North Carolina.
114. North Dakota.
115. Ohio.
116. Oklahoma.
117. Oregon.
118. Pennsylvania.
119. Puerto Rico.
120. Rhode Island.
121. South Carolina.
122. South Dakota.
123. Tennessee.
124. Texas.
125. Utah.
126. Vermont.
127. Virginia.
128. Washington.
129. West Virginia.
130. Wisconsin.
131. Wyoming.
132. Creation and composition of district courts.
133. Appointment and number of district judges.
134. Tenure and residence of district judges.
Sec.
135. Salaries of district judges.
136. Chief judges; precedence of district judges.
137. Division of business among district judges.
138. Terms abolished.
139. Times for holding regular sessions.
140. Adjournment.
141. Special sessions; places; notice.
[142. Repealed.]
143. Vacant judgeship as affecting proceedings.
144. Bias or prejudice of judge.

HISTORICAL AND REVISION NOTES

Sections 81–131 of this chapter show the territorial composition of districts and divisions by counties as of January 1, 1945. All references to dates were omitted as unnecessary.

All references to fixed terms of holding court were also omitted in order to vest in each district court a wider discretion and greater flexibility in the disposition of its business. Such times will now be determined by rule of court rather than by statute. See sections 138 and 141 of this title.

AMENDMENTS

1982—Pub. L. 97–164, title I, §115(c)(3), Apr. 2, 1982, 96 Stat. 32, struck out item 142 ''Accommodations at places for holding court''.

1963—Pub. L. 88–139, §3(a), Oct. 16, 1963, 77 Stat. 248, substituted ''Terms abolished'' for ''Times for holding regular terms'' in item 138, ''Times for holding regular sessions'' for ''Term continued until terminated'' in item 139, and ''sessions'' for ''terms'' in item 141.

1958—Pub. L. 85–508, §12(a), July 7, 1958, 72 Stat. 348, added item 81A.

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95–408, Oct. 2, 1978, 92 Stat. 883, as ''Federal District Court Organization Act of 1978'', see note set out under section 1 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

See Appendix to this title.

CROSS REFERENCES

Guam and Virgin Islands district courts, see sections 1424, 1424b, and 1611 et seq. of Title 48, Territories and Insular Possessions.

Jurisdiction and venue of district courts, see sections 1331 et seq. and 1391 et seq. of this title.

Northern Mariana Islands district court, see sections 1821 to 1826 of Title 48, Territories and Insular Possessions.

Three-judge courts, composition, see section 2284 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 451, 1827, 1869 of this title; title 18 section 3006A; title 22 section 1623.

§ 81. Alabama

Alabama is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Alabama.

Northern District

(a) The Northern District comprises seven divisions.

(1) The Northwestern Division comprises the counties of Colbert, Franklin, and Lauderdale.

Court for the Northwestern Division shall be held at Florence.

(2) The Northeastern Division comprises the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan.

Court for the Northeastern Division shall be held at Huntsville and Decatur.

(3) The Southern Division comprises the counties of Blount, Jefferson, and Shelby.

Court for the Southern Division shall be held at Birmingham.

(4) The Eastern Division comprises the counties of Calhoun, Clay, Cleburne, and Talladega.

Court for the Eastern Division shall be held at Anniston.

(5) The Western Division comprises the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa.

Court for the Western Division shall be held at Tuscaloosa.

(6) The Middle Division comprises the counties of Cherokee, De Kalb, Etowah, Marshall, and Saint Clair.

Court for the Middle Division shall be held at Gadsden.

(7) The Jasper Division comprises the counties of Fayette, Lamar, Marion, Walker, and Winston.

Court for the Jasper Division shall be held at Jasper.

Middle District

(b) The Middle District comprises three divisions.

(1) The Northern Division comprises the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike.

Court for the Northern Division shall be held at Montgomery.

(2) The Southern Division comprises the counties of Coffee, Dale, Geneva, Henry, and Houston.

Court for the Southern Division shall be held at Dothan.

(3) The Eastern Division comprises the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa.

Court for the Eastern Division shall be held at Opelika.

Southern District

(c) The Southern District comprises two divisions.

(1) The Northern Division comprises the counties of Dallas, Hale, Marengo, Perry, and Wilcox.

Court for the Northern Division shall be held at Selma.

(2) The Southern Division comprises the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington.

Court for the Southern Division shall be held at Mobile.

(June 25, 1948, ch. 646, 62 Stat. 873; Pub. L. 87–36, § 3(a), May 19, 1961, 75 Stat. 83.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed. § 142 (Mar. 3, 1911, ch. 231, § 70, 36 Stat. 1105; Feb. 28, 1913, ch. 89, 37 Stat. 698; June 27, 1922, ch. 247, 42 Stat. 667).

Provisions relating to the places for the maintenance of the clerks' offices were omitted as covered by section 751 of this title, providing that deputy clerks may be designated to reside and maintain offices at such places for holding court as the judge may determine.

Provisions that the offices of the court shall be kept open at all times were omitted as covered by section 452 of this title.

A provision requiring the district judge for the northern district to reside at Birmingham was omitted as incongruous with section 134 of this title, requiring every district judge to reside within the district for which he is appointed. Likewise the provision of section 142 of title 28, U.S.C., 1940 ed., requiring the court to remain in session at Birmingham at least 6 months in each calendar year was omitted as unnecessary and not in harmony with provisions respecting other districts.

The provisions for furnishing rooms and accommodations at Florence, Gadsden, Jasper and Opelika were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in each of these places.

Changes in arrangement and phraseology were made.

AMENDMENTS

1961—Subsec. (a)(2). Pub. L. 87–36 provided for holding court at Decatur.

§ 81A. Alaska

Alaska constitutes one judicial district.

Court shall be held at Anchorage, Fairbanks, Juneau, Ketchikan, and Nome.

(Added Pub. L. 85–508, § 12(b), July 7, 1958, 72 Stat. 348; amended Pub. L. 86–70, § 23(b), June 25, 1959, 73 Stat. 147.)

AMENDMENTS

1959—Pub. L. 86–70 inserted ''Ketchikan,''.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 12 of Pub. L. 85–508 provided in part that this section, and the amendments to sections 133, 333, 373, 376, 460, 610, 753, 1252, 1291, 1292, 1294, 1346, 1963, 2072, 2201 and 2410 of this title, section 341b of Title 5, Government Organization and Employees, and sections 3241, 3401, 3771 and 3772 of Title 18, Crimes and Criminal Procedure, are effective on the admission of Alaska into the Union. Admission as a State was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes set out preceding section 21 of Title 48, Territories and Insular Possessions.

CONTINUATION OF SUITS

Section 13 of Pub. L. 85–508 provided that: ''No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

''All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit, action, or prosecution shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses as shall have been committed against

the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.''

APPEALS

Section 14 of Pub. L. 85–508 provided that: ''All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final judgement has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: *Provided*, That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.''

TRANSFER OF CASES

Section 15 of Pub. L. 85–508 provided that: ''All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.''

SUCCESSION OF COURTS

Section 16 of Pub. L. 85–508 provided that: ''Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.''

PENDING CASES

Section 17 of Pub. L. 85–508 provided that: ''All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.''

TERMINATION OF JURISDICTION OF DISTRICT COURT FOR THE TERRITORY OF ALASKA

Section 18 of Pub. L. 85–508 provided that: ''The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act [see section 8(b) of Pub. L. 85–508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.''

SCHEDULE OF FEES, MILEAGE, OR OTHER COMPENSATION

Section 23(c) of Pub. L. 86–70, June 25, 1959, 73 Stat. 147, provided that: ''Such authority as has been exercised by the Attorney General heretofore, with regard to the Federal court system in Alaska, pursuant to section 30 of the Act of June 6, 1900 (48 U.S.C. 25) shall continue to be exercised by him after the court created by section 12(b) of the Act of July 7, 1958 (72 Stat. 339, 348) [this section], providing for the admission of the State of Alaska into the Union, is established.''

EX. ORD. NO. 10867. ASSUMPTION OF FUNCTIONS BY UNITED STATES DISTRICT COURT FOR DISTRICT OF ALASKA

Ex. Ord. No. 10867, Feb. 20, 1960, 25 F.R. 1584, provided:

WHEREAS the act of July 7, 1958, 72 Stat. 339 [set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], relating to the admission of the State of Alaska into the Union, provides that the United States District Court for the Territory of Alaska shall continue to function as theretofore for a period of three years after the effective date of that act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of that act, is prepared to assume the functions imposed upon it; and

WHEREAS that act further provides that its provisions relating to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of the rights of litigants in suits before such courts shall not be effective until the expiration of the above-mentioned three-year period or until such Executive order is issued; and that the tenure of the judges, the United States Attorneys, Marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function; and

WHEREAS, I have appointed, by and with the advice and consent of the Senate, and commissioned the Honorable Walter N. Hodge to be United States District Judge for the District of Alaska, and he has taken his oath of office; and

WHEREAS Judge Hodge has appointed an acting United States Attorney, an acting United States Marshal, and other court officers; and

WHEREAS the United States District Court for the District of Alaska is now prepared to assume the functions imposed upon it:

NOW, THEREFORE, by virtue of the authority vested in me by section 18 of the said act of July 7, 1958 [set out above], I hereby proclaim that the United States District Court for the District of Alaska is prepared to assume the functions imposed upon it. Accordingly, the jurisdiction of the District Court for the Territory of Alaska and the tenure of the judges, the United States Attorneys, Marshals, and other officers of that court are now terminated.

DWIGHT D. EISENHOWER.

§ 82. Arizona

Arizona constitutes one judicial district.

Court shall be held at Globe, Phoenix, Prescott, and Tucson.

(June 25, 1948, ch. 646, 62 Stat. 874.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 143 (June 20, 1910, ch. 310, § 31, 36 Stat. 576; Oct. 3, 1913, ch. 17, §§ 1, 2, 38 Stat. 203).

A provision for transfer of causes, civil or criminal, from one place for holding court to another was omitted. Such provision, as to civil cases, is covered by section 1404 of this title, and, as to criminal cases, is rendered unnecessary because of inherent power of the court and Rules 18–20 of the Federal Rules of Criminal Procedure, relating to venue.

A provision for making an interlocutory order at any place designated for holding court was omitted as unnecessary in view of Federal Rules of Civil Procedure, rule 77(b).

A provision requiring the clerk to keep his office at the State capital was omitted as covered by section 751 of this title.

Changes in arrangement and phraseology were made.

§ 83. Arkansas

Arkansas is divided into two judicial districts to be known as the Eastern and Western Districts of Arkansas.

Eastern District

(a) The Eastern District comprises five divisions.

(1) The Eastern Division comprises the counties of Cross, Lee, Monroe, Phillips, Saint Francis, and Woodruff.

Court for the Eastern Division shall be held at Helena.

(2) The Western Division comprises the counties of Conway, Faulkner, Lonoke, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White and Yell.

Court for the Western Division shall be held at Little Rock.

(3) The Pine Bluff Division comprises the counties of Arkansas, Chicot, Cleveland, Dallas, Desha, Drew, Grant, Jefferson, and Lincoln.

Court for the Pine Bluff Division shall be held at Pine Bluff.

(4) The Northern Division comprises the counties of Cleburne, Fulton, Independence, Izard, Jackson, Sharp, and Stone.

Court for the Northern Division shall be held at Batesville.

(5) The Jonesboro Division comprises the counties of Clay, Craighead, Crittenden, Greene, Lawrence, Mississippi, Poinsett, and Randolph.

Court for the Jonesboro Division shall be held at Jonesboro.

Western District

(b) The Western District comprises six divisions.

(1) The Texarkana Division comprises the counties of Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier.

Court for the Texarkana Division shall be held at Texarkana.

(2) The El Dorado Division comprises the counties of Ashley, Bradley, Calhoun, Columbia, Ouachita, and Union.

Court for the El Dorado Division shall be held at El Dorado.

(3) The Fort Smith Division comprises the counties of Crawford, Franklin, Johnson, Logan, Polk, Scott, and Sebastian.

Court for the Fort Smith Division shall be held at Fort Smith.

(4) The Harrison Division comprises the counties of Baxter, Boone, Carroll, Marion, Newton, and Searcy.

Court for the Harrison Division shall be held at Harrison.

(5) The Fayetteville Division comprises the counties of Benton, Madison, and Washington.

Court for the Fayetteville Division shall be held at Fayetteville.

(6) The Hot Springs Division comprises the counties of Clark, Garland, Hot Springs, Montgomery, and Pike.

Court for the Hot Springs Division shall be held at Hot Springs.

(June 25, 1948, ch. 646, 62 Stat. 874; Pub. L. 87–36, § 5, May 19, 1961, 75 Stat. 84.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 144 (Mar. 3, 1911, ch. 231, § 71, 36 Stat. 1106; Apr. 12, 1924, ch. 87, § 1, 43 Stat. 90; Feb. 17, 1925, ch. 252, 43 Stat. 948; Apr. 16, 1926, ch. 147, § 1, 44 Stat. 296; Apr. 21, 1926, ch. 168, 44 Stat. 304; Feb. 7, 1928, ch. 29, § 1, 45 Stat. 58; Apr. 17, 1940, ch. 100, 54 Stat. 109; June 11, 1940, ch. 321, § 1, 54 Stat. 302).

A provision making inoperative the terms of the last paragraph of this section, whenever court accommodations shall be provided in Federal buildings was omitted as unnecessary. When such buildings become available the Director of the Administrative Office of the United States Courts will, under section 604 of this title, provide court accommodations therein.

Provisions relating to places for maintenance of clerks' offices and requiring said offices to be kept open at all times were omitted as covered by sections 452 and 751 of this title.

The provision authorizing the referee in bankruptcy for the western division of the eastern district to serve by appointment in the Hot Springs division of the western district is to be transferred to title 11, U.S.C., 1940 ed., Bankruptcy.

The provision with reference to court accommodations at Fayetteville and Hot Springs was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1961—Subsec. (a). Pub. L. 87–36 struck out from enumeration in par. (1) the parish of Desha and in par. (2) the parishes of Arkansas, Chicot, Cleveland, Dallas, Drew, Grant, Jefferson, and Lincoln, added par. (3) consisting of such parishes, and redesignated former par. (3) and (4) as (4) and (5), respectively.

§ 84. California

California is divided into four judicial districts to be known as the Northern, Eastern, Central, and Southern Districts of California.

Northern District

(a) The Northern District comprises the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, and Sonoma.

Court for the Northern District shall be held at Eureka, Oakland, San Francisco, and San Jose.

Eastern District

(b) The Eastern District comprises the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

Court for the Eastern District shall be held at Fresno, Redding, and Sacramento.

Central District

(c) The Central District comprises 3 divisions.

(1) The Eastern Division comprises the counties of Riverside and San Bernardino.

Court for the Eastern Division shall be held at a suitable site in the city of Riverside, the city of San Bernardino, or not more than 5 miles from the boundary of either such city.

(2) The Western Division comprises the counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

Court for the Western Division shall be held at Los Angeles.

(3) The Southern Division comprises Orange County.

Court for the Southern Division shall be held at Santa Ana.

Southern District

(d) The Southern District comprises the counties of Imperial and San Diego.

Court for the Southern District shall be held at San Diego.

(June 25, 1948, ch. 646, 62 Stat. 875; Pub. L. 89–372, § 3(a), Mar. 18, 1966, 80 Stat. 75; Pub. L. 96–462, § 2, Oct. 15, 1980, 94 Stat. 2053; Pub. L. 102–357, § 2, Aug. 26, 1992, 106 Stat. 958.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 145 and section 76 of title 16, Conservation (Mar. 3, 1911, ch. 231, § 72, 36 Stat. 1107; May 16, 1916, ch. 122, 39 Stat. 122; June 2, 1920, ch. 218, § 2, 41 Stat. 731; Mar. 1, 1929, ch. 421, 45 Stat. 1424).

A provision relating to the place for maintenance of a clerk's office, and requiring such office to be kept open at all times, was omitted as covered by sections 452 and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–357 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Central District comprises the counties of Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

"Court for the Central District shall be held at Los Angeles and Santa Ana."

1980—Subsec. (c). Pub. L. 96–462 inserted "and Santa Ana" after "at Los Angeles".

1966—Pub. L. 89–372 expanded the number of judicial districts in California from two to four by creating an Eastern and a Central District in addition to the existing Northern and Southern Districts, removed the provisions separating the Northern and Southern Districts into divisions, transferred to the newly created Eastern Division the counties of Alpine, Almador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba from the Northern District and Fresno, Inyo Kern, Kings, Madera, Mariposa, Merced, and Tulare from the Southern District, transferred to the newly created Central District the counties of Los Angeles, Orange, Riverside, San Bernardino, San Louis Obispo, Santa Barbara, and Ventura from the Southern District, substituted Eureka, Oakland, San Francisco, and San Jose for Eureka, Sacramento, and San Francisco as places for holding court for the Northern District, removed Fresno and Los Angeles from the list of places for holding court for the Southern District leaving San Diego as the only place for holding of court in the Southern District, and provided for the holding of court in Los Angeles for the Central District and in Fresno, Redding, and Sacramento for the Eastern District.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3 of Pub. L. 102–357 provided that:

"(a) IN GENERAL.—This Act [amending this section and enacting provisions set out below] and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act [Aug. 26, 1992].

"(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the Central District of California on such date.

"(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Central Judicial District of California on the effective date of this Act."

EFFECTIVE DATE OF 1980 AMENDMENT; SAVINGS PROVISION

Section 7 of Pub. L. 96–462 provided that:

"(a) This Act and the amendments made by this Act [amending this section and sections 95, 105, 113, and 124 of this title and enacting provisions set out as notes under this section and sections 95, 105, and 113 of this title] shall take effect on October 1, 1981.

"(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act [Oct. 1, 1981]."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(i) of Pub. L. 89–372 provided that: "The provisions of this section [amending this section and enacting provisions set out as a note under this section and section 133 of this title] shall become effective six months after the date of enactment of this Act [Mar. 18, 1966]."

CONGRESSIONAL FINDINGS CONCERNING CREATION OF THREE DIVISIONS IN CENTRAL DISTRICT

Section 1 of Pub. L. 102–357 provided that: "The Congress makes the following findings:

"(1) The Federal Government has the responsibility to provide quality services which are readily accessible to the people it serves.

''(2) The court facilities in the Central Judicial District of California are presently inadequate, and current and projected growth exacerbates the problem.

''(3) The population demographics of southern California have changed dramatically over the last decade, as the center of population shifts inland. Between 1980 and 1990, the population of Riverside County increased 76.5 percent, and San Bernardino County's population increased 58.5 percent, to a combined population of 2,600,000.

''(4) In the next 15 years, the population in Riverside and San Bernardino Counties is expected to increase again by 70 percent, and 67 percent, respectively. By the year 2005, Riverside and San Bernardino Counties will have 4,400,000 residents.

''(5) As a result of the population growth, the freeways connecting the Pacific coast and the inland areas are tremendously overburdened, and Federal offices along the coast are no longer accessible to the residents of Riverside and San Bernardino Counties.

''(6) The creation of 3 divisions in the Central Judicial District of California is urgently needed to provide for the delivery of judicial services to all areas and all residents of the Central Judicial District of California.''

STUDY OF JUDICIAL BUSINESS IN CENTRAL DISTRICT, CALIFORNIA AND EASTERN DISTRICT, NEW YORK AND RECOMMENDATIONS FOR CREATION OF NEW JUDICIAL DISTRICTS

Pub. L. 95–573, § 5, Nov. 2, 1978, 92 Stat. 2458, required the Director of the Administrative Office of the United States Courts to conduct a study of the judicial business of the Central District of California and the Eastern District of New York, within one year of Nov. 2, 1978, and to make recommendations to Congress with respect to the need for creation of new judicial districts.

CREATION OF EASTERN AND CENTRAL DISTRICTS: TRANSFER OF DISTRICT JUDGES; TRANSFER AND APPOINTMENT OF UNITED STATES ATTORNEYS AND UNITED STATES MARSHALS

Section 3(b)–(g) of Pub. L. 89–372 provided that:

''(b) The two district judges for the northern district of California holding office on the day before the effective date of this section [see Effective Date of 1966 Amendment note above] and whose official station is Sacramento shall, on and after such date, be district judges for the eastern district of California. All other district judges for the northern district of California holding office on the day before the effective date of this section shall, on and after such date, be district judges for the northern district of California.

''(c) The district judge for the southern district of California, residing in the northern division thereof and holding office on the day before the effective date of this section [see Effective Date of 1966 Amendment note above], shall, on and after such date, be a district judge for the eastern district of California. The two district judges for the southern district of California holding office on the day before the effective date of this section [see Effective Date of 1966 Amendment note above], and whose official station is San Diego shall, on and after such date, be the district judges for the southern district of California. All other district judges for the southern district of California holding office on the day before the effective date of this section shall, on and after such date, be district judges for the central district of California.

''(d) Nothing in this Act [amending this section and sections 44 and 133 of this title and enacting provisions set out as notes under this section and sections 44 and 133 of this title] shall in any manner affect the tenure of office of the United States attorney and the United States marshal for the northern district of California who are in office on the effective date of this section [see Effective Date of 1966 Amendment note above], and who shall be during the remainder of their present terms of office the United States attorney and marshal for such district as constituted by this Act.

''(e) Nothing in this Act [amending this section and sections 44 and 133 of this title and enacting provisions set out as notes under this section and sections 44 and 133 of this title] shall in any manner affect the tenure of office of the United States attorney and the United States marshal for the southern district of California who are in office on the effective date of this section, and who shall be during the remainder of their present terms of office the United States attorney and marshal for the central district of California.

''(f) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and a United States marshal for the southern district of California.

''(g) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and a United States marshal for the eastern district of California.''

§ 85. Colorado

Colorado constitutes one judicial district.

Court shall be held at Boulder, Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling.

(June 25, 1948, ch. 646, 62 Stat. 875; Pub. L. 98–620, title IV, § 409, Nov. 8, 1984, 98 Stat. 3362.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 146 (Mar. 3, 1911, ch. 231, § 73, 36 Stat. 1108; June 12, 1916, ch. 143, 39 Stat. 225; May 29, 1924, ch. 209, 43 Stat. 243).

A provision for furnishing rooms and accommodations at Sterling was omitted as obsolete upon advice from the Director of the Administrative Office of the United States Courts that Federal accommodations are now available.

A provision authorizing adjournment at Denver when there is not business for terms at other places, is incorporated in section 138 of this title.

Provisions as to clerk's and marshal's deputies and maintenance of offices were deleted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1984—Pub. L. 98–620 provided for holding court at Boulder.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 411 of Pub. L. 98–620 provided that:

''(a) The amendments made by this subtitle [subtitle B (§§ 404–411) of title IV of Pub. L. 98–620, amending this section and sections 90, 93, 112, 124, and 126 of this title and enacting provisions set out as notes under sections 1, 90, 93, and 124 of this title] shall take effect on January 1, 1985.

''(b) The amendments made by this subtitle shall not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on the effective date of this subtitle [Jan. 1, 1985].''

§ 86. Connecticut

Connecticut constitutes one judicial district.

Court shall be held at Bridgeport, Hartford, New Haven, New London, and Waterbury.

(June 25, 1948, ch. 646, 62 Stat. 875; Pub. L. 87–36, § 3(b), May 19, 1961, 75 Stat. 83; Pub. L. 89–558, Sept. 7, 1966, 80 Stat. 705.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 147 (Mar. 3, 1911, ch. 231, § 74, 36 Stat. 1108; Feb. 27, 1921, ch. 74, 41 Stat.

1146; June 15, 1933, ch. 80, 48 Stat. 148; Dec. 28, 1945, ch. 599, 59 Stat. 663).

Changes in arrangement and phraseology were made.

AMENDMENTS

1966—Pub. L. 89–558 provided for holding court at New London.

1961—Pub. L. 87–36 provided for holding court at Bridgeport and Waterbury.

§ 87. Delaware

Delaware constitutes one judicial district.

Court shall be held at Wilmington.

(June 25, 1948, ch. 646, 62 Stat. 875.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 148 (Mar. 3, 1911, ch. 231, § 75, 36 Stat. 1108).

Minor changes in phraseology were made.

§ 88. District of Columbia

The District of Columbia constitutes one judicial district.

Court shall be held at Washington.

(June 25, 1948, ch. 646, 62 Stat. 875.)

HISTORICAL AND REVISION NOTES

This section expressly makes the District of Columbia a judicial district of the United States.

Section 41 of this title also makes the District of Columbia a judicial circuit of the United States.

Section 11–305 of the District of Columbia Code, 1940 ed., provides that the District Court of the United States for the District of Columbia shall possess the same powers and exercise the same jurisdiction as the district courts of the United States, and shall be deemed a court of the United States.

It is consonant with the ruling of the Supreme Court in *O'Donoghue v. United States*, 1933, 53 S.Ct. 740, 289 U.S. 516, 77 L.Ed. 1356, that the (then called) Supreme Court and Court of Appeals of the District of Columbia are constitutional courts of the United States, ordained and established under article III of the Constitution, Congress enacted that the Court of Appeals "shall hereafter be known as the United States Court of Appeals for the District of Columbia" (Act of June 7, 1934, 48 Stat. 926); and also changed the name of the Supreme Court of the District of Columbia to "district court of the United States for the District of Columbia" (Act of June 25, 1936, 49 Stat. 1921). In *Federal Trade Commission v. Klesner*, 1927, 47 S.Ct. 557, 274 U.S. 145, 71 L.Ed. 972, the Supreme Court ruled: "* * * The parallelism between the Supreme Court of the District [of Columbia] and the Court of Appeals of the District [of Columbia], on the one hand, and the district courts of the United States and the circuit courts of appeals, on the other, in the consideration and disposition of cases involving what among the States would be regarded as within Federal jurisdiction, is complete." See also to the same effect *Clairborne-Annapolis Ferry Company v. United States*, 1932, 52 S.Ct. 440, 285 U.S. 382, 76 L.Ed. 808.

§ 89. Florida

Florida is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Florida.

Northern District

(a) The Northern District comprises the counties of Alachua, Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

Court for the Northern District shall be held at Gainesville, Marianna, Panama City, Pensacola, and Tallahassee.

Middle District

(b) The Middle District comprises the counties of Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Lake, Lee, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia.

Court for the Middle District shall be held at Fernandina, Fort Myers, Jacksonville, Live Oak, Ocala, Orlando, Saint Petersburg, and Tampa.

Southern District

(c) The Southern District comprises the counties of Broward, Dade, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, and St. Lucie.

Court for the Southern District shall be held at Fort Lauderdale, Fort Pierce, Key West, Miami, and West Palm Beach.

(June 25, 1948, ch. 646, 62 Stat. 876; July 17, 1952, ch. 929, 66 Stat. 757; Pub. L. 87–36, § 3(f), May 19, 1961, 75 Stat. 83; Pub. L. 87–562, § 1, July 30, 1962, 76 Stat. 247; Pub. L. 91–272, § 10, June 2, 1970, 84 Stat. 298; Pub. L. 95–408, § 4(a), Oct. 2, 1978, 92 Stat. 884; Pub. L. 100–702, title X, § 1021(a), Nov. 19, 1988, 102 Stat. 4672.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 149 (Mar. 3, 1911, ch. 231, § 76, 36 Stat. 1108; June 15, 1933, ch. 77, 48 Stat. 147; Aug. 25, 1937, ch. 763, § 1, 50 Stat. 800).

A provision requiring rooms and accommodations to be furnished at Orlando without cost to the United States was omitted as obsolete, upon advice of the Director of the Administrative Office for the United States Courts that Federal accommodations are now available in Orlando.

A provision requiring court to be open at all times was omitted as covered by section 452 of this title.

A provision that no deputy clerk or deputy marshal should be appointed at Fort Pierce, was omitted as incongruous with other sections of this title. See sections 541 [see 561], 542 [see 561], and 751 of this title.

The provision respecting court accommodations at Fort Pierce and Panama City was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–702, § 1021(a)(1), added Collier, Glades, and Hendry to the counties comprising the Middle District.

Subsec. (c). Pub. L. 100–702, § 1021(a)(2), struck out Collier, Glades, and Hendry from the counties comprising the Southern District.

1978—Subsec. (a). Pub. L. 95–408, § 4(a)(1), added Madison to the counties comprising the Northern District.

Subsec. (b). Pub. L. 95–408, § 4(a)(2), struck out Madison from the counties comprising the Middle District.

1970—Subsec. (c). Pub. L. 91–272 provided for holding court at Fort Lauderdale.

1962—Pub. L. 87–562 struck out provisions which authorized court for the Northern District to be held at Live Oak, and for the Southern District at Fernandina, Fort Myers, Jacksonville, Ocala, Orlando, and Tampa, and removed the counties of Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Columbia, De Soto, Duval,

Flagler, Hamilton, Hardee, Hernando, Hillsborough, Lake, Lee, Madison, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Saint Johns, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia from the Southern District and created the Middle District to comprise such counties.

1961—Subsec. (a). Pub. L. 87–36 provided for holding court at Live Oak.

1952—Subsec. (b). Act July 17, 1952, provided for holding court at Fort Myers and West Palm Beach.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1021(b), (c) of title X of Pub. L. 100–702 provided that:

''(b) EFFECTIVE DATE.—(1) The amendments made by this section [amending this section] shall take effect 90 days after the date of enactment of this title [Nov. 19, 1988].

''(2) The amendments made by subsection (a) [amending this section] shall apply to any action commenced in the United States District Court for the Middle District of Florida, or in the United States District Court for the Southern District of Florida, on or after the effective date of this title [probably should be effective date of this section], and shall not affect any action pending in either such court on such effective date.

''(c) JURIES.—The amendments made by this section [amending this section] shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the effective date of this title [probably should be effective date of this section].''

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Section 5 of Pub. L. 95–408 provided that:

''(a) The amendments made by this Act [amending this section and sections 93, 97, 98, 104, 112, 114, and 133 of this title and enacting provisions set out as a note under section 81 of this title] shall take effect 180 days after the date of enactment of this Act [Oct. 2, 1978].

''(b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of Pub. L. 87–562 provided that: ''This Act [amending this section and section 133 of this title and enacting provisions set out as notes under this section and section 142 of this title] shall become effective ninety days after the date of enactment [July 30, 1962].''

DISTRICT JUDGES, UNITED STATES ATTORNEYS, AND UNITED STATES MARSHALS DESIGNATIONS; TENURE; APPOINTMENTS

Section 2 of Pub. L. 87–562 provided that:

''(a) The district judge appointed September 26, 1950, the district judge appointed August 13, 1955, and the district judge appointed March 8, 1961, all for the Southern District of Florida, shall hereafter be designated as district judges for the Middle District of Florida.

''(b) The district judge for the Northern and Southern Districts of Florida shall hereafter be designated as the district judge for the Northern, Middle, and Southern Districts of Florida.

''(c) Nothing in this Act [amending this section and section 133 of this title, and enacting provisions set out as notes under this section and section 142 of this title] shall in any manner affect the tenure of office of the United States Attorney and the United States Marshal for the Northern District of Florida who are in office at the time of the enactment of this Act [July 30, 1962], and who shall be during the remainder of their present terms of office the United States Attorney and Marshal for such district as constituted by this Act.

''(d) Nothing in this Act [amending this section and section 133 of this title and enacting provisions set out as notes under this section and section 142 of this title] shall in any manner affect the tenure of office of the United States Attorney and the United States Marshal for the Southern District of Florida who are in office at the time of the enactment of this Act [July 30, 1962], and who shall be during the remainder of their present terms of office the United States Attorney and Marshal for the Middle District of Florida as constituted by this Act.

''(e) The President is authorized to appoint, by and with the advice and consent of the Senate, a United States Attorney and a United States Marshal for the Southern District of Florida.''

ELIMINATION OF DISTRICT JUDGESHIP FOR NORTHERN, MIDDLE, AND SOUTHERN DISTRICTS OF FLORIDA

District judgeship for northern, middle, and southern districts changed to district judgeship for middle district only, see section 2(b) of Pub. L. 89–372, set out as a note under section 133 of this title.

§ 90. Georgia

Georgia is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Georgia.

Northern District

(a) The Northern District comprises four divisions.

(1) The Gainesville Division comprises the counties of Banks, Barrow, Dawson, Fannin, Forsyth, Gilmer, Habersham, Hall, Jackson, Lumpkin, Pickens, Rabun, Stephens, Towns, Union, and White.

Court for the Gainesville Division shall be held at Gainesville.

(2) The Atlanta Division comprises the counties of Cherokee, Clayton, Cobb, De Kalb, Douglas, Fulton, Gwinnett, Henry, Newton, and Rockdale.

Court for the Atlanta Division shall be held at Atlanta.

(3) The Rome Division comprises the counties of Bartow, Catoosa, Chattooga, Dade, Floyd, Gordon, Murray, Paulding, Polk, Walker, and Whitfield.

Court for the Rome Division shall be held at Rome.

(4) The Newnan Division comprises the counties of Carroll, Coweta, Fayette, Haralson, Heard, Meriwether, Pike, Spalding, and Troup.

Court for the Newnan Division shall be held at Newnan.

Middle District

(b) The Middle District comprises seven divisions.

(1) The Athens Division comprises the counties of Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, and Walton.

Court for the Athens Division shall be held at Athens.

(2) The Macon Division comprises the counties of Baldwin, Bibb, Bleckley, Butts, Crawford, Hancock, Houston, Jasper, Jones, Lamar, Monroe, Peach, Pulaski, Putnam, Twiggs, Upson, Washington, and Wilkinson.

Court for the Macon Division shall be held at Macon.

(3) The Columbus Division comprises the counties of Chattahoochee, Clay, Harris, Marion, Muscogee, Quitman, Randolph, Stewart, Talbot, and Taylor.

Court for the Columbus Division shall be held at Columbus.

(4) The Americus Division comprises the counties of Ben Hill, Crisp, Dooly, Lee, Macon, Schley, Sumter, Terrell, Webster, and Wilcox.

Court for the Americus Division shall be held at Americus.

(5) The Albany Division comprises the counties of Baker, Calhoun, Dougherty, Early, Miller, Mitchell, Turner, and Worth.

Court for the Albany Division shall be held at Albany.

(6) The Valdosta Division comprises the counties of Berrien, Clinch, Cook, Echols, Irwin, Lanier, Lowndes, and Tift.

Court for the Valdosta Division shall be held at Valdosta.

(7) The Thomasville Division comprises the counties of Brooks, Colquitt, Decatur, Grady, Seminole, and Thomas.

Court for the Thomasville Division shall be held at Thomasville.

Southern District

(c) The Southern District comprises six divisions.

(1) The Augusta Division comprises the Counties of Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Taliaferro, Warren, and Wilkes.

Court for the Augusta Division shall be held at Augusta.

(2) The Dublin Division comprises the counties of Dodge, Johnson, Laurens, Montgomery, Telfair, Treutlen, and Wheeler.

Court for the Dublin Division shall be held at Dublin.

(3) The Savannah Division comprises the counties of Bryan, Chatham, Effingham, and Liberty.

Court for the Savannah Division shall be held at Savannah.

(4) The Waycross Division comprises the counties of Atkinson, Bacon, Brantley, Charlton, Coffee, Pierce, and Ware.

Court for the Waycross Division shall be held at Waycross.

(5) The Brunswick Division comprises the counties of Appling, Camden, Glynn, Jeff Davis, Long, McIntosh, and Wayne.

Court for the Brunswick Division shall be held at Brunswick.

(6) The Statesboro Division comprises the counties of Bulloch, Candler, Emanuel, Evans, Jenkins, Screven, Tattnall, and Toombs.

Court for the Statesboro Division shall be held at Statesboro.

(June 25, 1948, ch. 646, 62 Stat. 876; Aug. 16, 1949, ch. 444, 63 Stat. 610; Oct. 31, 1951, ch. 655, §36a, 65 Stat. 723; Pub. L. 98–620, title IV, §408(a)–(c), Nov. 8, 1984, 98 Stat. 3362; Pub. L. 99–657, §3, Nov. 14, 1986, 100 Stat. 3670.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §150 (Mar. 3, 1911, ch. 231, §77, 36 Stat. 1108; May 28, 1926, ch. 414, §§1, 2, 44 Stat. 670; Aug. 22, 1935, ch. 603, §§1–3, 49 Stat. 680, 681; June 20, 1936, ch. 639, 49 Stat. 1561; Aug. 21, 1937, ch. 728, §§1, 2, 50 Stat. 739, 740; Mar. 6, 1942, ch. 153, §§1–3, 56 Stat. 139; Oct. 29, 1945, ch. 435, 59 Stat. 550).

Provisions for furnishing rooms and accommodations at Americus and Dublin were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in each of those places.

The provisions respecting court accommodations at Brunswick, Newnan, or Thomasville were omitted as covered by section 142 of this title.

Since the latest amendment of section 150 of title 28, U.S.C., 1940 ed., the former counties of Campbell and Milton were merged with Fulton County in the Atlanta Division of the Northern District.

Changes in arrangement and phraseology were made.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–657, §3(1), substituted ''Jefferson, Lincoln'' for ''Lincoln''.

Subsec. (c)(3). Pub. L. 99–657, §3(2), substituted ''and Liberty'' for ''Evans, Liberty, Screven, and Tattnall''.

Subsec. (c)(6). Pub. L. 99–657, §3(3), substituted ''Evans, Jenkins, Screven, Tattnall'' for ''Jefferson, Jenkins''.

1984—Subsec. (a)(1). Pub. L. 98–620, §408(a), added Fannin, Gilmer, and Pickens to the counties comprising the Gainesville Division of the Northern District.

Subsec. (a)(2). Pub. L. 98–620, §408(b), struck out Fannin, Gilmer, and Pickens from the counties comprising the Atlanta Division of the Northern District.

Subsec. (c)(6). Pub. L. 98–620, §408(c), substituted ''Statesboro'' for ''Swainsboro'' in three places.

1951—Subsec. (c)(6). Act Oct. 31, 1951, struck out ''Washington,''.

1949—Subsec. (c). Act Aug. 16, 1949, created a Swainsboro division and provided for holding court there.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–657 effective 90 days after Nov. 14, 1986, and not to affect any action commenced before and pending on such effective date, or to affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on such date, see section 4 of Pub. L. 99–657, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 408(d) of Pub. L. 98–620 provided that: ''The amendments made by this section [amending this section] shall apply to any action commenced in the United States District Court for the Northern District of Georgia on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date.''

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

§91. Hawaii

Hawaii constitutes one judicial district which includes the Midway Islands, Wake Island, Johnston Island, Sand Island, Kingman Reef, Palmyra Island, Baker Island, Howland Island, Jarvis Island, Canton Island, and Enderbury Island: *Provided*, That the inclusion of Canton and Enderbury Islands in such judicial district shall in no way be construed to be prejudicial to the claims of the United Kingdom to said Islands in accordance with the agreement of April 6, 1939, between the Governments of the United States and of the United Kingdom to set up a regime for their use in common.

Court shall be held at Honolulu.

(June 25, 1948, ch. 646, 62 Stat. 877; May 24, 1949, ch. 139, § 64a, 63 Stat. 99; Pub. L. 86–3, § 14(i), Mar. 18, 1959, 73 Stat. 11; Pub. L. 86–624, § 19, July 12, 1960, 74 Stat. 416.)

HISTORICAL AND REVISION NOTES

Based on sections 641 and 642a of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; July 9, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919; Aug. 13, 1940, ch. 662, 54 Stat. 784).

Section consolidates parts of sections 641 and 642a of title 48, U.S.C., 1940 ed.

The provisions of section 641 of title 48, U.S.C., 1940 ed., with reference to regular and special terms and the times of holding same were omitted as covered by sections 138 and 141 of this title.

Provisions of section 642a of title 48, U.S.C., 1940 ed., relating to jurisdiction of civil actions and criminal offenses, were omitted as covered by the general jurisdictional provisions of this title and revised title 18 (H. R. 3190, 80th Cong.).

Provisions of section 642a of title 48, U.S.C., 1940 ed., as to appeals were omitted as covered by section 1295 of this title. Provisions of said section 642a with reference to juries and jury trials were omitted as covered by chapter 121 of this title.

Other provisions of section 641 of title 48, U.S.C., 1940 ed., are incorporated in sections 132 and 133 of this title.

Changes were made in phraseology.

AMENDMENTS

1960—Pub. L. 86–624 struck out Kure Island.

1959—Pub. L. 86–3 included Palmyra Island.

1949—Act May 24, 1949, inserted provisions relating to inclusion of Canton and Enderbury Islands.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 14 of Pub. L. 86–3 provided that the amendments of sections 91, 373, 1252, 1293, and 1294 of this title, sections 3771 and 3772 of Title 18, Crimes and Criminal Procedure, and section 644a of Title 48, Territories and Insular Possessions, the repeal of sections 536, 539, 634, 634a, and 645 of title 48, and notes set out under sections 371 and 373 of this title, are effective on admission of the State of Hawaii into the Union. See Admission of Hawaii as State note below.

CANTON AND ENDERBURY ISLANDS; SOVEREIGNTY OF KIRIBATI

By a treaty of friendship, TIAS 10777, which entered into force Sept. 23, 1983, the United States recognized the sovereignty of Kiribati over Canton Island and Enderbury Island.

ADMISSION OF HAWAII AS STATE

Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

COURT OF THE UNITED STATES; DISTRICT JUDGES

Section 9(a) of Pub. L. 86–3 provided that: ''The United States District Court for the District of Hawaii established by and existing under title 28 of the United States Code shall thence forth be a court of the United States with judicial power derived from article III, section 1, of the Constitution of the United States: *Provided, however*, That the terms of office of the district judges for the district of Hawaii then in office shall terminate upon the effective date of this section and the President, pursuant to sections 133 and 134 of title 28, United States Code, as amended by this Act, shall appoint, by and with the advice and consent of the Senate, two district judges for the said district who shall hold office during good behavior.''

Section 9 of Pub. L. 86–3 provided in part that subsec. (a) of that section should be effective upon the admission of the State of Hawaii into the Union.

CONTINUATION OF SUITS

Section 12 of Pub. L. 86–3 provided that: ''No writ, action, indictment, cause, or proceeding pending in any court of the Territory of Hawaii or in the United States District Court for the District of Hawaii shall abate by reason of the admission of said State into the Union, but the same shall be transferred to and proceeded with in such appropriate State courts as shall be established under the constitution of said State, or shall continue in the United States District Court for the District of Hawaii, as the nature of the case may require. And no writ, action, indictment, cause or proceeding shall abate by reason of any change in the courts, but shall be proceeded with in the State or United States courts according to the laws thereof, respectively. And the appropriate State courts shall be the successors of the courts of the Territory as to all cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein, and all the files, records, indictments, and proceedings relating to any such writ, action, indictment, cause or proceeding shall be transferred to such appropriate State courts and the same shall be proceeded with therein in due course of law.

''All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no writ, action, indictment or proceeding shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Hawaii in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said State courts had been established prior to the accrual of such causes of action or the commission of such offenses. The admission of said State shall effect no change in the substantive or criminal law governing such causes of action and criminal offenses which shall have arisen or been committed; and such of said criminal offenses as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Hawaii.''

APPEALS

Section 13 of Pub. L. 86–3 provided that: ''Parties shall have the same rights of appeal from and appellate review of final decisions of the United States District Court for the District of Hawaii or the Supreme Court of the Territory of Hawaii in any case finally decided prior to admission of said State into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided prior to admission of said State into the Union, and any mandate issued subsequent to the admission of said State shall be to the United States District Court for the District of Hawaii or a court of the State, as may be appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Hawaii and of the Supreme Court of the State of Hawaii as successor to the Supreme Court of the Territory of Hawaii, in any case pending at the time of admission of said State into the Union, and the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States shall have the same jurisdiction

therein, as by law provided in any case arising subsequent to the admission of said State into the Union.''

EXTENSION OF JURISDICTION OF UNITED STATES DISTRICT COURT FOR DISTRICT OF HAWAII AND OF CIVIL AND CRIMINAL LAWS TO MIDWAY, WAKE, JOHNSON, SAND, ETC., ISLANDS

The jurisdiction of the United States District Court for the District of Hawaii and the laws of the United States relating to civil acts or offenses consummated or committed on the high seas on board a vessel belonging to the United States were extended to the Midway Islands, Wake, Johnson, Sand, etc., Islands by section 644a of Title 48, Territories and Insular Possessions.

FEDERAL RULES OF CRIMINAL PROCEDURE

Application of rules, see note by Advisory Committee under rule 54, Title 18, Appendix, Crimes and Criminal Procedure.

§ 92. Idaho

Idaho, exclusive of Yellowstone National Park, constitutes one judicial district.

Court shall be held at Boise, Coeur d'Alene, Moscow, and Pocatello.

(June 25, 1948, ch. 646, 62 Stat. 877; Pub. L. 91–272, § 5, June 2, 1970, 84 Stat. 297.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 151 (Mar. 3, 1911, ch. 231, § 78, 36 Stat. 1109; May 11, 1939, ch. 121, 53 Stat. 738).

All of Yellowstone National Park is included in the judicial district of Wyoming by section 131 of this title. Those parts of the park lying in Idaho are accordingly excluded from the judicial district of Idaho.

A provision as to the places for maintenance of the clerk's offices, and requiring that they be open at all times, was omitted as covered by sections 452–751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1970—Pub. L. 91–272 struck out provisions which had divided the judicial district of Idaho into a Northern Division, a Central Division, a Southern Division, and an Eastern Division.

§ 93. Illinois

Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

Northern District

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Cook, Du Page, Grundy, Kane, Kendall, Lake, La Salle, and Will.

Court for the Eastern Division shall be held at Chicago.

(2) The Western Division comprises the counties of Boone, Carroll, De Kalb, Jo Daviess, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

Central District

(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Kankakee, Knox, Livingston, Logan, McDonough, McLean, Macoupin, Macon, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

Court for the Central District shall be held at Champaign/Urbana, Danville, Peoria, Quincy, Rock Island, and Springfield.

Southern District

(c) The Southern District comprises the counties of Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, and Williamson.

Court for the Southern District shall be held at Alton, Benton, Cairo, and East Saint Louis.

(June 25, 1948, ch. 646, 62 Stat. 878; Aug. 10, 1950, ch. 675, § 1, 64 Stat. 438; Pub. L. 87–36, § 3(c), May 19, 1961, 75 Stat. 83; Pub. L. 91–272, § 8, June 2, 1970, 84 Stat. 297; Pub. L. 95–408, § 4(b)(1), Oct. 2, 1978, 92 Stat. 884; Pub. L. 95–573, § 1, Nov. 2, 1978, 92 Stat. 2458; Pub. L. 98–620, title IV, § 406(a), (c), Nov. 8, 1984, 98 Stat. 3361.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 152 (Mar. 3, 1911, ch. 231, § 79, 36 Stat. 1110; Aug. 12, 1937, ch. 594, 50 Stat. 624; June 6, 1940, ch. 247, 54 Stat. 237).

Provisions relating to appointment of deputy marshals and maintenance of offices by deputy marshals and deputy clerks were omitted as covered by sections 452, 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–620, § 406(a)(1), struck out De Kalb and McHenry from the counties comprising the Eastern Division of the Northern District.

Subsec. (a)(2). Pub. L. 98–620, § 406(a)(2), added De Kalb and McHenry to the counties comprising the Western Division of the Northern District.

Subsec. (b). Pub. L. 98–620, § 406(c), provided for holding court at Champaign/Urbana.

1978—Pub. L. 95–408 substituted in introductory provisions ''Northern, Central, and Southern Districts of Illinois'' for ''Northern, Southern, and Eastern Districts of Illinois''.

Subsec. (a)(1). Pub. L. 95–573, § 1(1), struck out Kankakee from the counties comprising the Eastern Division of the Northern District.

Pub. L. 95–408 added Kankakee to the counties comprising the Eastern Division of the Northern District.

Subsec. (b). Pub. L. 95–573, § 1(2), added Kankakee to the counties comprising the Central District.

Pub. L. 95–408 substituted ''Central District'' for ''Southern District'' in heading, struck out subsec. (b)(1) and (2) designations, which divided Southern District into a Northern and Southern Division, and in such newly created Central District, added counties of Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Moultrie, Piatt, Shelby, and Vermilion to, and struck out counties of Bond, Calhoun, Jersey, and Madison

from, those counties comprising the new Central District, and substituted provisions for holding of a term of Court for Central District at Danville, Peoria, Quincy, Rock Island, and Springfield for provisions for holding of a term of Court for Northern Division of the former Southern District at Peoria and Rock Island and for Southern Division of former Southern District at Alton, Quincy, and Springfield.

Subsec. (c). Pub. L. 95–408 substituted ''Southern District'' for ''Eastern District'' in heading, and in such Southern District added counties of Bond, Calhoun, Jersey, and Madison to, and struck out counties of Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Kankakee, Moultrie, Piatt, Shelby and Vermilion from, those counties comprising Southern District, and substituted provisions for holding of a term of Court for Southern District at Alton, Benton, Cairo, and East Saint Louis for provisions for holding of a term of Court for Eastern District at Benton, Cairo, Danville, and East Saint Louis.

1970—Subsec. (a)(2). Pub. L. 91–272 provided for holding court at Rockford.

1961—Subsec. (b)(2). Pub. L. 87–36 provided for holding court at Alton.

1950—Subsec. (b)(1). Act Aug. 10, 1950, provided for holding court at Rock Island.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 406(b) of Pub. L. 98–620 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply to any action commenced in the United States District Court for the Northern District of Illinois on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date.''

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6 of Pub. L. 95–573, as amended by Pub. L. 96–4, § 2, Mar. 30, 1979, 93 Stat. 7, provided that:

''(a) Except as provided in subsection (b) of this section, the provisions of this Act [amending this section and sections 99, 112, and 118 of this title and enacting a provision set out as a note under section 84 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 2, 1978].

''(b)(1) The provisions of section 5 of this Act [set out as a note under section 84 of this title] shall take effect on the date of enactment of this Act [Nov. 2, 1978].

''(2) The provisions of the first section of this Act [amending this section] shall take effect on March 31, 1979.

''(c) Nothing in this Act [amending this section and sections 99, 112, and 118 of this title and enacting provisions set out as a note under section 84 of this title] shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

DISTRICT JUDGES, UNITED STATES ATTORNEYS, ASSISTANT UNITED STATES ATTORNEYS, AND UNITED STATES MARSHALS FOR CENTRAL AND SOUTHERN DISTRICTS; DESIGNATION; TENURE; APPOINTMENT; GRAND JURY

Pub. L. 95–408, § 4(b)(2)–(4), as added by Pub. L. 96–4, § 1, Mar. 30, 1979, 93 Stat. 6, provided that:

''(2) The district judge for the Eastern District of Illinois in office on the effective date of this Act [180 days after Oct. 2, 1978] who is senior in commission shall, on and after the effective date of this Act, be a district judge for the Southern District of Illinois. The remaining district judge for the Eastern District of Illinois who is in office on the effective date of this Act and the district judges for the Southern District of Illinois who are in office on the effective date of this Act shall, on and after the effective date of this Act, be district judges for the Central District of Illinois. The President shall appoint, by and with the advice and consent of the Senate, a second district judge for the Southern District of Illinois.

''(3) This section does not in any manner affect the tenure of the United States attorney, the assistant United States attorneys, or the United States marshal for the Eastern District of Illinois or for the Southern District of Illinois who are in office on the effective date of this Act [180 days after Oct. 2, 1978]. The United States attorney, the assistant United States attorneys, and the United States marshal for the Eastern District and for the Southern District of Illinois shall, on the effective date of this Act, become the United States attorney, the assistant United States attorneys, and the United States marshal for the Southern District and for the Central District of Illinois, respectively.

''(4) Notwithstanding section 3240 of title 18, United States Code, any grand jury impaneled on or after the effective date of this Act [180 days after Oct. 2, 1978] by a district court for the Central District or the Southern District of Illinois may inquire into and return indictments charging offenses against the criminal laws of the United States alleged to have been committed anywhere within the territory of the respective judicial districts as such districts were constituted before or after the effective date of this Act.''

§ 94. Indiana

Indiana is divided into two judicial districts to be known as the Northern and Southern Districts of Indiana.

Northern District

(a) The Northern District comprises three divisions.

(1) The Fort Wayne Division comprises the counties of Adams, Allen, Blackford, De Kalb, Grant, Huntington, Jay, Lagrange, Noble, Steuben, Wells, and Whitley.

Court for the Fort Wayne Division shall be held at Fort Wayne.

(2) The South Bend Division comprises the counties of Cass, Elkhart, Fulton, Kosciusko, La Porte, Marshall, Miami, Pulaski, St. Joseph, Starke, and Wabash.

Court for the South Bend Division shall be held at South Bend.

(3) The Hammond Division comprises the counties of Benton, Carroll, Jasper, Lake, Newton, Porter, Tippecanoe, Warren, and White.

Court for the Hammond Division shall be held at Hammond and Lafayette.

Southern District

(b) The Southern District comprises four divisions.

(1) The Indianapolis Division comprises the counties of Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery,

Morgan, Randolph, Rush, Shelby, Tipton, Union, and Wayne.

Court for the Indianapolis Division shall be held at Indianapolis and Richmond.

(2) The Terre Haute Division comprises the counties of Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Vermilion, and Vigo.

Court for the Terre Haute Division shall be held at Terre Haute.

(3) The Evansville Division comprises the counties of Davies, Dubois, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburgh, and Warrick.

Court for the Evansville Division shall be held at Evansville.

(4) The New Albany Division comprises the counties of Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, and Washington.

Court for the New Albany Division shall be held at New Albany.

(June 25, 1948, ch. 646, 62 Stat. 878; Feb. 10, 1954, ch. 6, § 2(b)(7), 68 Stat. 11; Pub. L. 91–272, § 9, June 2, 1970, 84 Stat. 298.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 153 (Mar. 3, 1911, ch. 231, § 80, 36 Stat. 1110; Apr. 21, 1928, ch. 393, 45 Stat. 437).

Words ''when the time fixed as above for the sitting of a court shall fall on a legal holiday the terms shall begin on the next day following,'' were omitted as within the discretion of the court and coverable by rule of court.

A provision that terms should not be limited to any particular number of days, and that a term about to commence in another division might be adjourned until the business of the court in session was concluded, was omitted as covered by section 140 of this title.

A provision authorizing indictments for offenses committed in divisions other than that wherein a grand jury is sitting was omitted as covered by Federal Rules of Criminal Procedure, Rules 6, 7.

Provisions as to maintenance of clerks' offices were omitted as covered by sections 452 and 751 of this title.

The following provisions were omitted as either executed or covered by section 501 [now 541] et seq. and section 541 [now 561] et seq. of this title, containing similar provisions as to United States attorneys and marshals:

''A. The senior district judge for the district of Indiana in office immediately prior to April 21, 1928, shall be the district judge for the southern district as constituted by this section; the junior district judge for the district of Indiana immediately prior to April 21, 1928, shall be the district judge for the northern district as constituted by this section; and the district attorney and marshal for the district of Indiana in office immediately prior to April 21, 1928, shall be during the remainder of their present terms of office the district attorney and marshal for the southern district as constituted by this section.

''B. The President is authorized and directed to appoint, by and with the advice and consent of the Senate, a district attorney and a marshal for the United States District Court for the Northern District of Indiana.''

Changes in arrangement and phraseology were made.

AMENDMENTS

1970—Subsec. (b)(1). Pub. L. 91–272 provided for holding court at Richmond.

1954—Subsec. (a)(3). Act Feb. 10, 1954, provided for holding court at Lafayette.

§ 95. Iowa

Iowa is divided into two judicial districts to be known as the Northern and Southern Districts of Iowa.

Northern District

(a) The Northern District comprises four divisions.

(1) The Cedar Rapids Division comprises the counties of Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, and Tama.

Court for the Cedar Rapids Division shall be held at Cedar Rapids.

(2) The Eastern Division comprises the counties of Allamakee, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, and Winneshiek.

Court for the Eastern Division shall be held at Dubuque and Waterloo.

(3) The Western Division comprises the counties of Buena Vista, Cherokee, Clay, Crawford, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, and Woodbury.

Court for the Western Division shall be held at Sioux City.

(4) The Central Division comprises the counties of Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth and Wright.

Court for the Central Division shall be held at Fort Dodge and Mason City.

Southern District

(b) The Southern District comprises six divisions.

(1) The Central Division comprises the counties of Boone, Dallas, Greene, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren.

Court for the Central Division shall be held at Des Moines.

(2) The Eastern Division comprises the counties of Des Moines, Henry, Lee, Louisa, and Van Buren.

Court for the Eastern Division shall be held at Keokuk.

(3) The Western Division comprises the counties of Audubon, Cass, Fremont, Harrison, Mills, Montgomery, Page, Pottawattamie, and Shelby.

Court for the Western Division shall be held at Council Bluffs.

(4) The Southern Division comprises the counties of Adair, Adams, Clarke, Decatur, Lucas, Ringgold, Taylor, Union, and Wayne.

Court for the Southern Division shall be held at Creston.

(5) The Davenport Division comprises the counties of Clinton, Johnson, Muscatine, Scott, and Washington.

Court for the Davenport Division shall be held at Davenport.

(6) The Ottumwa Division comprises the counties of Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and Wapello.

Court for the Ottumwa Division shall be held at Ottumwa.

(June 25, 1948, ch. 646, 62 Stat. 877; Pub. L. 96–462, § 3(a), Oct. 15, 1980, 94 Stat. 2053.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 156 and 156a (Mar. 3, 1911, ch. 231, § 81, 36 Stat. 1111; Mar. 3, 1913, ch. 122, 37 Stat. 734; Feb. 23, 1916, ch. 32, 39 Stat. 12; Apr. 27, 1916, ch. 90, 39 Stat. 55; Mar. 4, 1923, ch. 256, 42 Stat. 1483; Jan. 28, 1925, ch. 104, 43 Stat. 794; July 5, 1937, ch. 428, 50 Stat. 474).

A provision relating to the maintenance of clerk's office was omitted as covered by section 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1980—Subsec. (b)(3). Pub. L. 96–462, § 3(a)(1), added Fremont and Page counties to Western Division of Southern District.

Subsec. (b)(4). Pub. L. 96–462, § 3(a)(2), struck out references to Fremont and Page counties in list of counties comprising Southern Division of Southern District.

EFFECTIVE DATE OF 1980 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 96–462 effective Oct. 1, 1981, but not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on Oct. 1, 1981, see section 7 of Pub. L. 96–462, set out as a note under section 84 of this title.

Section 3(b) of Pub. L. 96–462 provided that: ''The amendments made by subsection (a) [amending this section] shall not apply to any action commenced before the effective date of such amendments [Oct. 1, 1981] and pending in the United States District Court for the Southern District of Iowa on such date.''

§ 96. Kansas

Kansas constitutes one judicial district.

Court shall be held at Kansas City, Lawrence, Leavenworth, Salina, Topeka, Hutchinson, Wichita, Dodge City, and Fort Scott.

(June 25, 1948, ch. 646, 62 Stat. 880; Aug. 27, 1949, ch. 516, 63 Stat. 666; Pub. L. 99–554, title I, § 141, Oct. 27, 1986, 100 Stat. 3096.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 157 (Mar. 3, 1911, ch. 231, § 82, 36 Stat. 1112; Sept. 6, 1916, ch. 447, 39 Stat. 725; June 7, 1924, ch. 319, 43 Stat. 607; June 13, 1938, ch. 349, 52 Stat. 673).

Provisions as to the appointment and residence of deputy marshals and deputy clerks and maintenance of offices by them were omitted. See sections 541 [see 561], 542 [see 561], and 751 of this title.

A provision making inoperative the terms of the last paragraph of this section, whenever, upon the recommendation of the Attorney General, court accommodations should be provided in Federal buildings, was omitted as unnecessary. When such buildings become available the Director of the Administrative Office of the United States Courts will, under section 604 of this title, provide court accommodations therein.

The provision respecting court accommodations at Hutchinson was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1986—Pub. L. 99–554 provided for holding court at Lawrence.

1949—Act Aug. 27, 1949, abolished the three divisions which constituted the judicial district, and added Dodge City as an additional place for holding court.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 97. Kentucky

Kentucky is divided into two judicial districts to be known as the Eastern and Western Districts of Kentucky.

Eastern District

(a) The Eastern District comprises the counties of Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Henry, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, and Woodford.

Court for the Eastern District shall be held at Ashland, Catlettsburg, Covington, Frankfort, Jackson, Lexington, London, Pikeville, and Richmond.

Western District

(b) The Western District comprises the counties of Adair, Allen, Ballard, Barren, Breckenridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Casey, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Jefferson, Larue, Livingston, Logan, Lyon, McCracken, McLean, Marion, Marshall, Meade, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Oldham, Russell, Simpson, Spencer, Taylor, Todd, Trigg, Union, Warren, Washington, and Webster.

Court for the Western District shall be held at Bowling Green, Louisville, Owensboro, and Paducah.

(June 25, 1948, ch. 646, 62 Stat. 880; Pub. L. 95–408, § 2(a), Oct. 2, 1978, 92 Stat. 883.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 158 (Mar. 3, 1911, ch. 231, § 83, 36 Stat. 1112; Jan. 29, 1920, ch. 57, 41 Stat. 400; June 22, 1936, ch. 707, 49 Stat. 1822).

Last paragraph of section 158 of title 28, U.S.C., 1940 ed., relating to process, was omitted as covered by Rule 4 of the Federal Rules of Civil Procedure.

Provisions relating to maintenance of clerk's offices were omitted as covered by sections 452 and 751 of this title.

Provisions for furnishing rooms and accommodations at Lexington and Pikeville were omitted as obsolete on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in each of those places.

Words ''with the waters thereof,'' after the list of counties in each district, were omitted as unnecessary and inconsistent with other sections of this chapter.

McCreary County of the Eastern District was formed from parts of the counties of Pulaski, Wayne, and Whitley since the latest amendment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–408 provided for holding court at Ashland.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

§ 98. Louisiana

Louisiana is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Louisiana.

Eastern District

(a) The Eastern District comprises the parishes of Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne, and Washington.

Court for the Eastern District shall be held at New Orleans, and Houma.

Middle District

(b) The Middle District comprises the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, and West Feliciana.

Court for the Middle District shall be held at Baton Rouge.

Western District

(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport.

(June 25, 1948, ch. 646, 62 Stat. 881; Pub. L. 87–36, § 4, May 19, 1961, 75 Stat. 83; Pub. L. 92–208, § 3(a), Dec. 18, 1971, 85 Stat. 741; Pub. L. 95–408, § 3(a), Oct. 2, 1978, 92 Stat. 883; Pub. L. 98–353, title II, § 203(b), July 10, 1984, 98 Stat. 350.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 159 (Mar. 3, 1911, ch. 231, § 84, 36 Stat. 1113).

Provisions relating to the maintenance of offices by the clerks were omitted as covered by sections 452 and 751 of this title.

The parishes of Allen, Beauregard, and Jefferson Davis of the Lake Charles Division of the Western District were formed out of part of Calcasieu Parish since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–353 inserted ", and Houma" after "New Orleans".

1978—Subsec. (c). Pub. L. 95–408 struck out par. (1) to (6) designations which had divided the parishes of Western District into six divisions.

1971—Pub. L. 92–208 created a Middle District consisting of the nine parishes formerly making up Baton Rouge Division of Eastern District and designated as the entire Eastern District the thirteen parishes formerly making up New Orleans Division of Eastern District.

1961—Pub. L. 87–36 struck out from enumeration in subsec. (a)(1) the parishes of Iberia and Saint Mary, in subsec. (b)(1) Lafayette, Saint Martin and Vermilion, and in subsec. (b)(5) Acadia, and created sixth division of subsec. (b), consisting of such parishes.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3(f) of Pub. L. 92–208 provided that: "The provisions of this section [amending this section and sections 133 and 134 of this title and enacting provisions set out below] shall become effective one hundred and twenty days after the date of enactment of this Act [Dec. 18, 1971]."

DISTRICT JUDGE, UNITED STATES ATTORNEY, AND UNITED STATES MARSHAL FOR MIDDLE DISTRICT; DESIGNATION; TENURE; APPOINTMENT

Section 3(b), (c) of Pub. L. 92–208 provided that:

"(b) The district judge for the Eastern District of Louisiana holding office on the day immediately prior to the effective date of this section [see Effective Date of 1971 Amendment Note above], and whose official station on such date is Baton Rouge, shall, on and after such date, be the district judge for the Middle District of Louisiana. All other district judges for the Eastern District of Louisiana holding office on the day immediately prior to the effective date of this section shall be district judges for the Eastern District of Louisiana as constituted by this section.

"(c)(1) Nothing in this section shall in any manner affect the tenure of office of the United States attorney and the United States marshal for the Eastern District of Louisiana who are in office on the effective date of this section, and who shall be during the remainder of their present terms of office the United States attorney and marshal for the Eastern District of Louisiana as constituted by this section.

"(2) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and marshal for the Middle District of Louisiana."

§ 99. Maine

Maine constitutes one judicial district.

Court shall be held at Bangor and Portland.

(June 25, 1948, ch. 646, 62 Stat. 881; Pub. L. 95–573, § 2, Nov. 2, 1978, 92 Stat. 2458.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 160 (Mar. 3, 1911, ch. 231, § 85, 36 Stat. 1114; Dec. 22, 1911, ch. 7, 37 Stat. 51; Sept. 8, 1916, ch. 475, §§ 1, 3, 39 Stat. 850; Mar. 4, 1923, ch. 279, 42 Stat. 1506).

Changes in arrangement and phraseology were made.

AMENDMENTS

1978—Pub. L. 95–573 struck out provision for two separate divisions, (1) the Northern Division comprising the counties of Aroostook, Hancock, Penobscot,

Piscataquis, Somerset, Waldo, and Washington and (2) the Southern Division comprising the counties of Androscoggin, Cumberland, Franklin, Kennebec, Knox, Lincoln, Oxford, Sagadahoc, and York.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–573 effective 180 days after Nov. 2, 1978, see section 6 of Pub. L. 95–573, set out as a note under section 93 of this title.

§ 100. Maryland

Maryland constitutes one judicial district comprising two divisions.

(1) The Northern Division comprises the counties of Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico, and Worcester, and the City of Baltimore.

Court for the Northern Division shall be held at Baltimore, Cumberland, and Denton.

(2) The Southern Division comprises the counties of Calvert, Charles, Montgomery, Prince George's, and St. Mary's.

Court for the Southern Division shall be held at a suitable site in Montgomery or Prince George's County not more than five miles from the boundary of Montgomery and Prince George's Counties.

(June 25, 1948, ch. 646, 62 Stat. 882; Pub. L. 91–546, § 4, Dec. 14, 1970, 84 Stat. 1412; Pub. L. 100–487, § 1, Oct. 14, 1988, 102 Stat. 2431.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 166 (Mar. 3, 1911, ch. 231, § 86, 36 Stat. 1114; Mar. 3, 1925, ch. 422, 43 Stat. 1106).

Provisions relating to appointment of a deputy clerk and a deputy marshal and the maintenance of offices by such deputies were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

The provisions respecting court accommodations at Denton were omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1988—Pub. L. 100–702 amended section generally. Prior to amendment, section provided that Maryland constituted one judicial district and that court be held at Baltimore, Cumberland, Denton, and at a suitable site in Prince Georges County not more than five miles from the boundary of Montgomery and Prince Georges Counties.

1970—Pub. L. 91–546 added a suitable site in Prince Georges County not more than five miles from the boundary of Montgomery and Prince Georges Counties to the list of enumerated places for holding court in Maryland.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2 of Pub. L. 100–487 provided that:

''(a) IN GENERAL.—This Act and the amendments made by this Act [amending this section] shall take effect 180 days after the date of the enactment of this Act [Oct. 14, 1988].

''(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the District of Maryland on such date.

''(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Judicial District of Maryland on the effective date of this Act.''

§ 101. Massachusetts

Massachusetts constitutes one judicial district.

Court shall be held at Boston, New Bedford, Springfield, and Worcester.

(June 25, 1948, ch. 646, 62 Stat. 882.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 167 (Mar. 3, 1911, ch. 231, § 87, 36 Stat. 1114; May 1, 1922, ch. 173, 42 Stat. 503; May 17, 1926, ch. 306, 44 Stat. 559).

Words ''and the terms at Boston shall not be terminated or affected by the terms at Springfield, New Bedford, or Worcester,'' were omitted as covered by section 138 of this title.

Provisions relating to appointment of deputy clerks and deputy marshals, and maintenance of office by said deputies were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Provisions for furnishing rooms and accommodations at Springfield and Worcester were omitted as obsolete upon advice of Director of the Administrative Office of the United States Courts that federal accommodations have been provided at such places.

A provision requiring the return of all process to the terms at Boston and the keeping of all court papers in the clerk's office at Boston, unless otherwise specially ordered by the court, was omitted, since such matters can be regulated more appropriately by court rule or order. See Federal Rules of Civil Procedure, Rule 4(g).

The provision respecting court accommodations at New Bedford was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

§ 102. Michigan

Michigan is divided into two judicial districts to be known as the Eastern and Western Districts of Michigan.

Eastern District

(a) The Eastern District comprises two divisions.

(1) The Southern Division comprises the counties of Genesee, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saint Clair, Sanilac, Shiawassee, Washtenaw, and Wayne.

Court for the Southern Division shall be held at Ann Arbor, Detroit, Flint, and Port Huron.

(2) The Northern Division comprises the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, and Tuscola.

Court for the Northern Division shall be held at Bay City.

Western District

(b) The Western District comprises two divisions.

(1) The Southern Division comprises the counties of Allegan, Antrim, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clinton, Eaton, Emmet,

Grand Traverse, Hillsdale, Ingham, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford.

Court for the Southern Division shall be held at Grand Rapids, Kalamazoo, Lansing, and Traverse City.

(2) The Northern Division comprises of counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

Court for the Northern Division shall be held at Marquette and Sault Sainte Marie.

(June 25, 1948, ch. 646, 62 Stat. 882; Feb. 10, 1954, ch. 6 §2(b)(8), 68 Stat. 11; Pub. L. 87–36, §3(d), May 19, 1961, 75 Stat. 83; Pub. L. 88–627, Oct. 6, 1964, 78 Stat. 1003; Pub. L. 91–272, §11, June 2, 1970, 84 Stat. 298.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §168 (Mar. 3, 1911, ch. 231, §88, 36 Stat. 1114; July 9, 1912, ch. 222, 37 Stat. 190; Mar. 31, 1930, ch. 101, 46 Stat. 138).

Provisions of section 168 of title 28, U.S.C., 1940 ed., relating to venue, were omitted as covered by section 1391 et seq. of this title.

A provision for a special or adjourned term at Bay City for the hearing of admiralty cases, beginning in February of each year, was omitted. Adequate provision is made for such terms by section 141 of this title.

Words ''and mileage on service of process in said northern division shall be computed from Bay City,'' at the end of the section, were omitted as covered by section 553 of this title.

Provisions relating to appointment and residence of deputy clerks and deputy marshals and maintenance of offices by such deputies were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1970—Subsec. (b)(1). Pub. L. 91–272 provided for holding court at Traverse City.

1964—Subsec. (a). Pub. L. 88–627 transferred counties of Genesee and Shiawassee from Northern Division to Southern Division, added Ann Arbor and Flint as places of court for Southern Division, and struck out Flint as a place for holding court.

1961—Subsec. (b)(1). Pub. L. 87–36 provided for holding court at Lansing instead of Mason.

1954—Subsec. (a)(1). Act Feb. 10, 1954, §2(b)(8)(a), struck out counties of Branch, Calhoun, Clinton, Hillsdale, and Ingham, with respect to Southern Division of Eastern District.

Subsec. (a)(2). Act Feb. 10, 1954, §2(b)(8)(b), substituted ''Flint'' for ''Port Huron'', as a place for holding court.

Subsec. (b)(1). Act Feb. 10, 1954, §2(b)(8)(c), inserted a reference to counties of Branch, Calhoun, Clinton, Hillsdale, and Ingham, with respect to composition of Southern Division of the Western District, and provided for holding court at Kalamazoo and Mason.

§103. Minnesota

Minnesota constitutes one judicial district comprising six divisions.

(1) The First Division comprises the counties of Dodge, Fillmore, Houston, Mower, Olmsted, Steele, Wabasha, and Winona.

Court for the First Division shall be held at Winona.

(2) The Second Division comprises the counties of Blue Earth, Brown, Cottonwood, Faribault, Freeborn, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Waseca, Watonwan, and Yellow Medicine.

Court for the Second Division shall be held at Mankato.

(3) The Third Division comprises the counties of Chisago, Dakota, Goodhue, Ramsey, Rice, Scott, and Washington.

Court for the Third Division shall be held at Saint Paul.

(4) The Fourth Division comprises the counties of Anoka, Carver, Chippewa, Hennepin, Isanti, Kandiyohi, McLeod, Meeker, Renville, Sherburne, Swift, and Wright.

Court for the Fourth Division shall be held at Minneapolis.

(5) The Fifth Division comprises the counties of Aitkin, Benton, Carlton, Cass, Cook, Crow Wing, Itasca, Kanabec, Koochiching, Lake, Mille Lacs, Morrison, Pine, and Saint Louis.

Court for the Fifth Division shall be held at Duluth.

(6) The Sixth Division comprises the counties of Becker, Beltrami, Big Stone, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stearns, Stevens, Todd, Traverse, Wadena, and Wilkin.

Court for the Sixth Division shall be held at Fergus Falls.

(June 25, 1948, ch. 646, 62 Stat. 882.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §169 (Mar. 3, 1911, ch. 231, §89, 36 Stat. 1115; Apr. 10, 1926, ch. 113, 44 Stat. 238).

Provisions relating to the appointment and residence of deputy clerks and the maintenance of offices by them were omitted as covered by section 751 of this title.

The counties of Pennington and Lake of the Woods, in the Sixth Division, were created since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

§104. Mississippi

Mississippi is divided into two judicial districts to be known as the northern and southern districts of Mississippi.

Northern District

(a) The northern district comprises four divisions.

(1) Eastern division comprises the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tishomingo, and Winston.

Court for the eastern division shall be held at Aberdeen, Ackerman, and Corinth.

(2) The western division comprises the counties of Benton, Calhoun, Grenada, Lafayette, Marshall, Montgomery, Pontotoc, Tippah, Union, Webster, and Yalobusha.

Court for the Western division shall be held at Oxford.

(3) The Delta division comprises the counties of Bolivar, Coahoma, De Soto, Panola, Quitman, Tallahatchie, Tate, and Tunica.

Court for the Delta division shall be held at Clarksdale.

(4) The Greenville division comprises the counties of Carroll, Humphreys, Leflore, Sunflower, and Washington.

Court for the Greenville division shall be held at Greenville.

Southern District

(b) The southern district comprises five divisions.

(1) The Jackson division comprises the counties of Amite, Copiah, Franklin, Hinds, Holmes, Leake, Lincoln, Madison, Pike, Rankin, Scott, Simpson, and Smith.

Court for the Jackson division shall be held at Jackson.

(2) The eastern division comprises the counties of Clarke, Jasper, Kemper, Lauderdale, Neshoba, Newton, Noxubee, and Wayne.

Court for the eastern division shall be held at Meridian.

(3) The western division comprises the counties of Adams, Claiborne, Issaquena, Jefferson, Sharkey, Warren, Wilkinson, and Yazoo.

Court for the western division shall be held at Natchez and Vicksburg: *Provided*, That court shall be held at Natchez if suitable quarters and accommodations are furnished at no cost to the United States.

(4) The southern division comprises the counties of George, Hancock, Harrison, Jackson, Pearl River, and Stone.

Court for the southern division shall be held at Biloxi and Gulfport.

(5) The Hattiesburg division comprises the counties of Covington, Forrest, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Marion, Perry, and Walthall.

Court for the Hattiesburg division shall be held at Hattiesburg.

(June 25, 1948, ch. 646, 62 Stat. 883; Aug. 7, 1950, ch. 601, 64 Stat. 415; Pub. L. 90–92, Sept. 27, 1967, 81 Stat. 229; Pub. L. 91–546, §§2, 3, Dec. 14, 1970, 84 Stat. 1412; Pub. L. 95–408, §2(b), Oct. 2, 1978, 92 Stat. 883.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §170 (Mar. 3, 1911, ch. 231, §90, 36 Stat. 1116; Feb. 5, 1912, ch. 28, 37 Stat. 59; May 27, 1912, ch. 136, 37 Stat. 118; Feb. 12, 1925, ch. 212, 43 Stat. 882; May 19, 1936, ch. 428, 49 Stat. 1362; May 8, 1939, ch. 116, §1, 53 Stat. 684).

Provisions relating to the maintenance of offices by the clerks and marshals were omitted as covered by sections 452, 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–408 provided for holding court at Corinth.

1970—Subsec. (b)(3). Pub. L. 91–546, §3, provided for holding court at Natchez if suitable quarters and accommodations are furnished at no cost to the United States.

Subsec. (b)(4). Pub. L. 91–546, §2, provided for holding court at Gulfport.

1967—Subsec. (a)(1). Pub. L. 90–92 provided for holding court at Ackerman.

1950—Act Aug. 7, 1950, created Greenville division in the northern district with terms of courts to be held at Greenville.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

§ 105. Missouri

Missouri is divided into two judicial districts to be known as the Eastern and Western Districts of Missouri.

Eastern District

(a) The Eastern District comprises three divisions.

(1) The Eastern Division comprises the counties of Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Phelps, Saint Charles, Saint Francois, Saint Genevieve, Saint Louis, Warren, and Washington, and the city of Saint Louis.

Court for the Eastern Division shall be held at Saint Louis.

(2) The Northern Division comprises the counties of Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby.

Court for the Northern Division shall be held at Hannibal.

(3) The Southeastern Division comprises the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne.

Court for the Southeastern Division shall be held at Cape Girardeau.

Western District

(b) The Western District comprises five divisions.

(1) The Western Division comprises the counties of Bates, Carroll, Cass, Clay, Henry, Jackson, Johnson, Lafayette, Ray, Saint Clair, and Saline.

Court for the Western Division shall be held at Kansas City.

(2) The Southwestern Division comprises the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon.

Court for the Southwestern Division shall be held at Joplin.

(3) The Saint Joseph Division comprises the counties of Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, De Kalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway, Platte, Putnam, Sullivan, and Worth.

Court for the Saint Joseph Division shall be held at Saint Joseph.

(4) The Central Division comprises the counties of Benton, Boone, Callaway, Camden, Cole, Cooper, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis.

Court for the Central Division shall be held at Jefferson City.

(5) The Southern Division comprises the counties of Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright.

Court for the Southern Division shall be held at Springfield.

(June 25, 1948, ch. 646, 62 Stat. 884; Pub. L. 87–461, May 31, 1962, 76 Stat. 85; Pub. L. 96–462, §4(a), Oct. 15, 1980, 94 Stat. 2053.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §171 (Mar. 3, 1911, ch. 231, §91, 36 Stat. 1117; Dec. 22, 1911, ch. 8, 37 Stat. 51).

Provisions for furnishing rooms and accommodations at Chillicothe were omitted as obsolete upon advice of Director of the Administrative Office of the United States Courts that Federal accommodations are now available in such place.

"Rolla" was omitted as a place for holding court in the Eastern Division of the Eastern District, and the provision for furnishing quarters there without cost to the United States was also omitted on advice from the clerk of court that no term of court has been held there since 1920. All cases arising in Phelps county in which Rolla is situated are heard at St. Louis.

Provisions relating to the maintenance of offices by the clerks and marshals or their deputies were omitted as covered by sections 452, 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96–462, §4(a)(1), struck out references to Audrain and Montgomery counties in the list of counties comprising the Eastern Division of the Eastern District.

Subsec. (a)(2). Pub. L. 96–462, §4(a)(2), added Audrain and Montgomery counties to the Northern Division of the Eastern District.

1962—Subsec. (b). Pub. L. 87–461 transferred the counties of Caldwell, Grundy, Livingston, Mercer, Putnam, and Sullivan from the Western Division to the Saint Joseph Division, and omitted Chillicothe as a place for holding court.

EFFECTIVE DATE OF 1980 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 96–462 effective Oct. 1, 1981, but not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on Oct. 1, 1981, see section 7 of Pub. L. 96–462, set out as a note under section 84 of this title.

Section 4(b) of Pub. L. 96–462 provided that: "The amendments made by subsection (a) [amending this section] shall not apply to any action commenced before the effective date of such amendments [Oct. 1, 1981] and pending in the United States District Court for the Eastern District of Missouri on such date."

§106. Montana

Montana, exclusive of Yellowstone National Park, constitutes one judicial district.

Court shall be held at Billings, Butte, Glasgow, Great Falls, Havre, Helena, Kalispell, Lewistown, Livingston, Miles City, and Missoula.

(June 25, 1948, ch. 646, 62 Stat. 884.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §172 (Mar. 3, 1911, ch. 231, §92, 36 Stat. 1118; July 3, 1926, ch. 748, 44 Stat. 825; July 5, 1937, ch. 430, 50 Stat. 474; Aug. 26, 1937, ch. 819, §2, 50 Stat. 837; Aug. 7, 1939, ch. 506, 53 Stat. 1236).

All of Yellowstone National Park is included in the judicial district of Wyoming by section 131 of this title. Those parts of the park lying in Montana are accordingly excluded from the judicial district of Montana.

A provision for furnishing rooms and accommodations at Havre was omitted as obsolete on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available there.

A provision for transfer of causes, civil or criminal, from one place of holding court to another was omitted. Such provision, as to civil cases, is covered by section 1404 of this title, and, as to criminal cases, is rendered unnecessary because of inherent power of the court and Rules 18–20 of the Federal Rules of Criminal Procedure, relating to venue.

A provision for the making of any interlocutory order at any place designated for holding court was omitted as unnecessary in view of Federal Rules of Civil Procedure, Rule 77–(b).

The provisions respecting court accommodations at Kalispell, Lewistown, and Livingston were omitted as covered by section 142 of this title.

Changes were made in arrangement and phraseology.

§107. Nebraska

Nebraska constitutes one judicial district.

Court shall be held at Lincoln, North Platte, and Omaha.

(June 25, 1948, ch. 646, 62 Stat. 884; Aug. 9, 1955, ch. 627, §1, 69 Stat. 546.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §173 (Mar. 3, 1911, ch. 231, §93, 36 Stat. 1118).

Provisions for furnishing rooms and accommodations at the various places for holding court were omitted as obsolete upon advice of Director of the Administrative Office of the United States Courts that Federal accommodations are now available at such places.

A provision relating to the appointment and residence of deputy clerks and the places for keeping offices was omitted as covered by section 751 of this title.

The county of Arthur in the North Platte Division was created since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS

1955—Act Aug. 9, 1955, struck out the separate divisions of the district and reduced the number of places of holding terms.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 9, 1955, provided that: "The amendment made by the first section of this Act [amending this section] shall take effect on September 1, 1955."

§108. Nevada

Nevada constitutes one judicial district.

Court shall be held at Carson City, Elko, Las Vegas, Reno, Ely, and Lovelock.

(June 25, 1948, ch. 646, 62 Stat. 885; Pub. L. 101–650, title III, §324(a)(1), Dec. 1, 1990, 104 Stat. 5120.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 174 (Mar. 3, 1911, ch. 231, § 94, 36 Stat. 1118; June 24, 1930, ch. 595, 46 Stat. 806; Nov. 15, 1945, ch. 482, 59 Stat. 582).

Changes in arrangement and phraseology were made.

AMENDMENTS

1990—Pub. L. 101–650 substituted ", Reno, Ely, and Lovelock" for "and Reno".

§ 109. New Hampshire

New Hampshire constitutes one judicial district.

Court shall be held at Concord and Littleton.

(June 25, 1948, ch. 646, 62 Stat. 885.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 175 (Mar. 3, 1911, ch. 231, § 95, 36 Stat. 1119; Aug. 23, 1912, ch. 344, 37 Stat. 357; Feb. 20, 1926, ch. 23, 44 Stat. 8).

Changes in arrangement and phraseology were made.

§ 110. New Jersey

New Jersey constitutes one judicial district.

Court shall be held at Camden, Newark and Trenton.

(June 25, 1948, ch. 646, 62 Stat. 885.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 176 (Mar. 3, 1911, ch. 231, § 96, 36 Stat. 1119; Aug. 9, 1912, ch. 277, 37 Stat. 265; Feb. 14, 1913, ch. 53, 37 Stat. 674; May 17, 1926, ch. 311, 44 Stat. 561).

Provisions relating to maintenance of offices by the clerk and marshal were omitted as covered by sections 452, 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

§ 111. New Mexico

New Mexico constitutes one judicial district.

Court shall be held at Albuquerque, Las Cruces, Las Vegas, Roswell, Santa Fe, and Silver City.

(June 25, 1948, ch. 646, 62 Stat. 885.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 177 (June 20, 1910, ch. 310, § 13, 36 Stat. 565; Mar. 4, 1921, ch. 149, 41 Stat. 1361; June 7, 1924, ch. 332, 43 Stat. 642).

The reference to Raton as a place of holding court was omitted on advice of the clerk that court is no longer held there.

Provisions for furnishing rooms and accommodations at Las Vegas were omitted as obsolete upon advice of Director of the Administrative Office of the United States Courts that Federal accommodations are now available.

Provision for adjournment or continuance in case of insufficient business by orders made anywhere in the district was omitted as covered by section 138 of this title.

Provisions for transfer of causes, civil or criminal, from one place of holding court to another were omitted. Such provisions, as to civil cases, are covered by section 1404 of this title, and, as to criminal cases, are rendered unnecessary because of inherent power of the court, and Rules 18–20 of the Federal Rules of Criminal Procedure, relating to venue.

Provisions for appointment of deputy clerks and deputy marshals and maintenance of offices at various cities were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

The provision respecting court accommodations at Silver City was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

§ 112. New York

New York is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of New York.

Northern District

(a) The Northern District comprises the counties of Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Ulster, Warren, and Washington.

Court for the Northern District shall be held at Albany, Auburn, Binghamton, Malone, Syracuse, Utica, and Watertown.

Southern District

(b) The Southern District comprises the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester and concurrently with the Eastern District, the waters within the Eastern District.

Court for the Southern District shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate.

Eastern District

(c) The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York.

Court for the Eastern District shall be held at Brooklyn, Hauppauge, and Hempstead (including the village of Uniondale).

Western District

(d) The Western District comprises the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates.

Court for the Western District shall be held at Buffalo, Canandaigua, Elmira, Jamestown, and Rochester.

(June 25, 1948, ch. 646, 62 Stat. 885; Pub. L. 90–217, Dec. 18, 1967, 81 Stat. 662; Pub. L. 91–546, § 1, Dec. 14, 1970, 84 Stat. 1412; Pub. L. 95–271, § 1, Apr. 28, 1978, 92 Stat. 221; Pub. L. 95–408, § 4(c), Oct. 2, 1978, 92 Stat. 885; Pub. L. 95–573, § 3, Nov. 2, 1978, 92 Stat. 2458; Pub. L. 98–620, title IV, § 405, Nov. 8, 1984, 98 Stat. 3361; Pub. L. 101–650, title III, § 324(a)(2), Dec. 1, 1990, 104 Stat. 5120; Pub. L. 104–317, title VI, § 609, Oct. 19, 1996, 110 Stat. 3860.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 178 and 178a (Mar. 3, 1911, ch. 231, § 97, 36 Stat. 1119; Jan. 21, 1920, ch. 50, 41 Stat. 394; July 1, 1922, ch. 260, 42 Stat. 812; Aug. 12, 1937, ch. 591, 50 Stat. 623).

A reference in section 178 of title 28, U.S.C., 1940 ed., to Franklin County in the list of Counties in the North-

ern District, in which one term might be held annually, in the discretion of the judge, was omitted as superseded by the provisions of said section 178a of title 28, requiring an annual term to be held at Malone, which is in Franklin County.

References to seizures made, matters done and processes or orders issued respecting waters within the concurrent jurisdiction of the southern and eastern districts, were omitted as unnecessary and covered by the revised language.

Provision for 20 days' notice of the special term authorized in the discretion of the court in the counties of Clinton, Jefferson, Onondaga, Oswego, Rensselaer, St. Lawrence, Saratoga, and Schenectady was omitted as unnecessary, in view of section 141 of this title providing for such notice as the district judge orders.

The special provision permitting any district judge in New York to act as judge in any other district in that State upon request of the resident district judge was omitted, thus making applicable the uniform procedure for designation and assignment of district judges throughout the United States, provided by section 292 of this title.

Words ''with the waters thereof'' after the list of counties in each district were omitted as unnecessary and inconsistent with other sections of this chapter.

The provisions with reference to the return of process in admiralty cases, the designation of judges and their powers, and the holding of sessions for the hearing of motions and for proceedings in bankruptcy and admiralty, were omitted as unnecessary and more properly the subject of rule of court.

The provisions of sections 178 and 178a of title 28, U.S.C., 1940 ed., respecting court accommodations at Malone and in the counties of Schenectady, Rensselaer, Saratoga, Onondaga, St. Lawrence, Clinton, Jefferson, Oswego, and Franklin, were omitted as covered by section 142 of this title.

The county of Bronx, in the southern district, was formed out of a part of New York County in 1912.

Lockport was omitted as a place of holding court in the Western District. Court has not been held there for 32 years.

Changes were made in arrangement and phraseology.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–317 amended last sentence generally, substituting ''Court for the Southern District shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate.'' for ''Court for the Southern District shall be held at New York and White Plains.''

1990—Subsec. (a). Pub. L. 101–650 substituted ''Utica, and Watertown'' for ''and Utica''.

1984—Subsec. (c). Pub. L. 98–620 provided for holding court at Hauppauge.

1978—Subsec. (a). Pub. L. 95–408, §4(c)(1), added counties of Columbia, Greene, and Ulster to those counties comprising the Northern District of New York.

Subsec. (b). Pub. L. 95–573 provided for holding court at White Plains.

Pub. L. 95–408, §4(c)(2), struck out Columbia, Greene, and Ulster from those counties comprising the Southern District of New York.

Subsec. (c). Pub. L. 95–271 substituted ''and Hempstead (including the village of Uniondale)'' for ''Mineola, and Westbury''.

1970—Subsec. (c). Pub. L. 91–546 provided for holding court at Westbury.

1967—Subsec. (c). Pub. L. 90–217 provided for holding court at Mineola.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

PRETERMISSION OF REGULAR SESSION OF COURT AT HEMPSTEAD AND HOLDING OF SPECIAL SESSION AT WESTBURY; PROCEDURES APPLICABLE, APPROPRIATIONS, ETC.

Sections 2 to 5 of Pub. L. 95–271 provided that:

''SEC. 2. The United States District Court for the Eastern District of New York, by order made anywhere within its district, may pretermit the regular session of court at Hempstead until Federal quarters and accommodations are available and ready for occupancy, except that for the entire period and such pretermission, a special session of the court shall be held at Westbury. Pretermission may be ordered without regard to the provisions of section 140(a) of title 28, United States Code.

''SEC. 3. Notwithstanding the provisions of section 142 of title 28, United States Code, the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, shall continue to provide existing quarters and accommodations at Westbury for the duration of the special session held pursuant to section 2 of this Act. Appropriations to the judicial branch of Government shall be available to the Director to make necessary disbursements for such quarters and accommodations, and to pay user charges as required by section 210 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), at rates otherwise authorized by law.

''SEC. 4. Notwithstanding the provisions of section 456 of title 28, United States Code, any judge, and any officer or employee of the judicial branch, whose official station is, on the day before the date of enactment of this Act [Apr. 28, 1978], Westbury, may maintain that official station for the duration of the special session held pursuant to section 2 of this Act.

''SEC. 5. The Director of the Administrative Office of the United States Courts may pay travel and transportation expenses in accordance with subchapter II, chapter 57 of title 5, United States Code, to any officer or employee of the judicial branch whose official station changes as a consequence of this Act [enacting this provision and amending subsec. (c) of this section] and who relocates his residence incident to such change of official station.''

§113. North Carolina

North Carolina is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of North Carolina.

Eastern District

(a) The Eastern District comprises the counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson and that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina.

Court for the Eastern District shall be held at Elizabeth City, Fayetteville, Green-

ville, New Bern, Raleigh, Wilmington, and Wilson.

Middle District

(b) The Middle District comprises the counties of Alamance, Cabarrus, Caswell, Chatham, Davidson, Davie, Durham (excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina), Forsythe, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, and Yadkin.

Court for the Middle District shall be held at Durham, Greensboro, and Winston-Salem.

Western District

(c) The Western District comprises the counties of Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, Watauga, Wilkes, and Yancey.

Court for the Western District shall be held at Asheville, Bryson City, Charlotte, Shelby, and Statesville.

(June 25, 1948, ch. 646, 62 Stat. 886; Pub. L. 89–319, Nov. 2, 1965, 79 Stat. 1186; Pub. L. 96–462, § 5(a)–(c), Oct. 15, 1980, 94 Stat. 2053, 2054; Pub. L. 102–272, Apr. 21, 1992, 106 Stat. 112.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 179 (Mar. 3, 1911, ch. 231, § 98, 36 Stat. 1120; Oct. 7, 1914, ch. 318, 38 Stat. 728; Mar. 17, 1920, ch. 101, § 1, 41 Stat. 531; June 7, 1924, ch. 359, § 1, 43 Stat. 661; Dec. 24, 1924, ch. 18, 43 Stat. 721; June 12, 1926, ch. 566, 44 Stat. 734; June 22, 1926, ch. 645, 44 Stat. 758; June 22, 1926, ch. 646, 44 Stat. 758; Mar. 2, 1927, ch. 276, 44 Stat. 1339; Apr. 25, 1928, ch. 432, 45 Stat. 457; May 10, 1928, ch. 516, 45 Stat. 495; Feb. 20, 1933, ch. 107, 47 Stat. 859; Feb. 28, 1933, ch. 133, 47 Stat. 1350; June 28, 1935, ch. 330, §§ 1, 2, 49 Stat. 429; June 24, 1936, ch. 744, 49 Stat. 1898; June 24, 1936, ch. 759, 49 Stat. 1910; Aug. 17, 1937, ch. 688, 50 Stat. 671).

References to civil and criminal terms at Raleigh were omitted as more properly the subject of rule of court.

The following language at the end of section 179 of title 28, U.S.C., 1940 ed., was omitted: ''There shall be a judge appointed for the said middle district in the manner now provided by law who shall receive the salary provided by law for the judges of the eastern and western districts, and a district attorney, marshal, clerk, and other officers in the manner and at the salary now provided by law. All causes in the said middle district in equity, bankruptcy, or admiralty, in which orders and decrees have already been made and which are now in process of trial, shall continue and remain subject to the jurisdiction of the judge of that district by whom the same shall have been made and before whom the same shall have been partially tried and determined.''

The first sentence is superfluous in view of other sections of this title governing the appointment and compensation of the judges, clerks and marshals of the district courts and of district attorneys. The last sentence is obsolete, having been enacted in 1927, and being limited to cases affected by the creation of the middle district.

Provisions for maintenance of offices by the clerks at certain cities were omitted. (See Reviser's Note under sections 452 and 751 of this title.)

Provisions for furnishing rooms and accommodations at Durham, Rockingham, and Winston-Salem were omitted as obsolete upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available in such places.

The provisions respecting court accommodations at Bryson City and Shelby were omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–272, which directed the amendment of subsec. (a) by striking out ''Clinton,'' and ''Washington,'' and inserting ''Greenville,'' after ''Fayetteville,'', was executed to the second sentence to reflect the probable intent of Congress.

1980—Subsec. (a). Pub. L. 96–462, § 5(a), added that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina to the Eastern District.

Subsec. (b). Pub. L. 96–462, § 5(b), struck out references to Alleghany, Ashe, Watauga, and Wilkes counties in the list of counties comprising the Middle District; inserted ''(excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina)'' in first sentence as the probable intent of Congress; and struck out Rockingham, Salisbury, and Wilkesboro as places for holding court.

Subsec. (c). Pub. L. 96–462, § 5(c), added Alleghany, Ashe, Watauga, and Wilkes counties to the Western District.

1965—Pub. L. 89–319 provided for holding court at Clinton.

EFFECTIVE DATE OF 1980 AMENDMENT; SAVINGS PROVISIONS

Amendment by Pub. L. 96–462 effective Oct. 1, 1981, but not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on Oct. 1, 1981, see section 7 of Pub. L. 96–462, set out as a note under section 84 of this title.

Section 5(d) of Pub. L. 96–462 provided that: ''The amendments made by this section [amending this section] shall not apply to any action commenced before the effective date of such amendments [Oct. 1, 1981] and pending in any judicial district of North Carolina on such date.''

§ 114. North Dakota

North Dakota constitutes one judicial district comprising four divisions.

(1) The Southwestern Division comprises the counties of Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McLean, Mercer, Morton, Oliver, Sioux, Slope, and Stark.

Court for the Southwestern Division shall be held at Bismarck.

(2) The Southeastern Division comprises the counties of Barnes, Cass, Dickey, Eddy, Foster, Griggs, La Moure, Ransom, Richland, Sargent, Steele, and Stutsman.

Court for the Southeastern Division shall be held at Fargo.

(3) The Northeastern Division comprises the counties of Benson, Cavalier, Grand Forks, Nelson, Pembina, Ramsey, Rolette, Towner, Traill, and Walsh.

Court for the Northeastern Division shall be held at Grand Forks.

(4) The Northwestern Division comprises the counties of Bottineau, Burke, Divide,

McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells, and Williams.

Court for the Northwestern Division shall be held at Minot.

(June 25, 1948, ch. 646, 62 Stat. 886; Pub. L. 95–408, §3(b), Oct. 2, 1978, 92 Stat. 883.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §180 (Mar. 3, 1911, ch. 231, §99, 36 Stat. 1121; Feb. 5, 1912, ch. 28, 37 Stat. 60; July 17, 1916, ch. 248, 39 Stat. 386; Apr. 10, 1926, ch. 112, 44 Stat. 237; June 3, 1930, ch. 394, 46 Stat. 495; June 29, 1932, ch. 305, 47 Stat. 341; June 19, 1934, ch. 664, 48 Stat. 1120; Dec. 16, 1944, ch. 604, 58 Stat. 814).

A provision relating to maintenance of offices by the clerk was omitted as covered by section 751 of this title.

The provision that Indian reservations shall constitute parts of the divisions within which they are situated was omitted as surplusage. Similar provisions, relating to reservations in South Dakota and Washington, respectively, appeared in sections 187 and 193 of said title 28, on which sections 122 and 128 of this title are based. They were omitted for the same reason. Such provisions did not appear in sections respecting other States containing Indian reservations.

Jamestown and Devils Lake were omitted as places of holding court. The Director of the Administrative Office of the United States Courts, the district judge, and the senior circuit judge advise that court has not been held in these places for many years.

Changes in arrangement and phraseology were made.

AMENDMENTS

1978—Par. (2). Pub. L. 95–408, §3(b)(1), struck out Sheridan and Wells from the counties comprising the Southeastern Division.

Par. (3). Pub. L. 95–408, §3(b)(2), struck out Bottineau, McHenry and Pierce from the counties comprising the Northeastern Division.

Par. (4). Pub. L. 95–408, §3(b)(3), added Bottineau, McHenry, Pierce, Sheridan and Wells to those counties comprising the Northwestern Division.

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

§115. Ohio

Ohio is divided into two judicial districts to be known as the Northern and Southern Districts of Ohio.

Northern District

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Ashland, Ashtabula, Carroll, Columbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne.

Court for the Eastern Division shall be held at Cleveland, Youngstown, and Akron.

(2) The Western Division comprises the counties of Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Woods, and Wyandot.

Court for the Western Division shall be held at Lima and Toledo.

Southern District

(b) The Southern District comprises two divisions.

(1) The Western Division comprises the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren.

Court for the Western Division shall be held at Cincinnati and Dayton.

(2) The Eastern Division comprises the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington.

Court for the Eastern Division shall be held at Columbus and Steubenville.

(June 25, 1948, ch. 646, 62 Stat. 887; Feb. 10, 1954, ch. 6, §2(b)(9), 68 Stat. 11.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §181 (Mar. 3, 1911, ch. 231, §100, 36 Stat. 1121; Mar. 4, 1915, ch. 159, 38 Stat. 1187; Feb. 14, 1923, ch. 78, 42 Stat. 1246).

Other provisions of said section 181 of title 28, U.S.C., 1940 ed., are incorporated in section 1865 of this title.

Provisions relating to the place of institution or trial of prosecutions and civil actions and transfer thereof were omitted. Such provisions, as to civil cases, are covered by section 1391 et seq. of this title, and as to criminal cases, are rendered unnecessary because of inherent power of the court and Rules 18–20 of the Federal Rules of Criminal Procedure relating to venue.

The provision respecting court accommodations at Lima was omitted as covered by section 142 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1954—Subsec. (a)(1). Act Feb. 10, 1954, provided for holding court at Akron.

§116. Oklahoma

Oklahoma is divided into three judicial districts to be known as the Northern, Eastern, and Western Districts of Oklahoma.

Northern District

(a) The Northern District comprises the counties of Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington.

Court for the Northern District shall be held at Bartlesville, Miami, Pawhuska, Tulsa, and Vinita.

Eastern District

(b) The Eastern District comprises the counties of Adair, Atoka, Bryan, Carter, Cherokee,

Choctaw, Coal, Haskell, Hughes, Johnston, Latimer Le Flore Love, McCurtain, McIntosh, Marshall, Murray, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, and Wagoner.

Court for the Eastern District shall be held at Ada, Ardmore, Durant, Hugo, Muskogee, Okmulgee, Poteau, and S. McAlester.

Western District

(c) The Western District comprises the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, McClain, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Stephens, Texas, Tillman, Washita, Woods, and Woodward.

Court for the Western District shall be held at Chickasha, Enid, Guthrie, Lawton, Mangum, Oklahoma City, Pauls Valley, Ponca City, Shawnee, and Woodward.

(June 25, 1948, ch. 646, 62 Stat. 887; Pub. L. 89–526, § 1, Aug. 4, 1966, 80 Stat. 335.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 182, 182a (Mar. 3, 1911, ch. 231, § 101, 36 Stat. 1122; Feb. 20, 1917, ch. 102, 39 Stat. 927; June 13, 1918, ch. 98, 40 Stat. 604; Feb. 26, 1919, ch. 54, 40 Stat. 1184; June 5, 1924, ch. 259, 43 Stat. 387; Jan. 10, 1925, chs. 68, 69, 43 Stat. 730, 731; Feb. 16, 1925, ch. 233, § 1, 43 Stat. 945; May 7, 1926, ch. 255, 44 Stat. 408; Apr. 21, 1928, ch. 395, 45 Stat. 440; Mar. 2, 1929, ch. 539, 45 Stat. 1518; June 28, 1930, ch. 714, 46 Stat. 829; May 13, 1936, ch. 386, 49 Stat. 1271; Aug. 12, 1937, ch. 595, 50 Stat. 625).

Provisions for furnishing rooms and accommodations at Ada, Bartlesville, Mangum, Miami, Okmulgee, and Ponca City were omitted as obsolete, on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available at such places.

A provision making inoperative the requirement for furnishing court accommodations without cost to the United States whenever the same shall be provided in federal buildings at Shawnee, was omitted as unnecessary. When such buildings become available the Director will, under section 604 of this title, provide court accommodations therein.

A provision for adjournment of any term by an order made in chambers, is incorporated in section 140 of this title.

Provisions relating to maintenance of offices by the clerks were omitted as covered by section 751 of this title.

The provisions respecting court accommodations at Durant, Hugo, Poteau, Pauls Valley, Pawhuska, and Shawnee were omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1966—Pub. L. 89–526 transferred from the Eastern District in subsec. (b) to the Western District in subsec. (c) the counties of Garvin, Grady, Jefferson, McClain, and Stephens and the places for holding court at Chickasha and Pauls Valley.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–526 provided that: ''The amendments made by this Act [amending this section] shall take effect on the sixtieth day after the date of enactment of this Act [Aug. 4, 1966].''

§ 117. Oregon

Oregon constitutes one judicial district.

Court shall be held at Coquille, Eugene, Klamath Falls, Medford, Pendleton, and Portland.

(June 25, 1948, ch. 646, 62 Stat. 888; Aug. 3, 1950, ch. 514, 64 Stat. 393; Pub. L. 91–272, § 7, June 2, 1970, 84 Stat. 297.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 183 (Mar. 3, 1911, ch. 231, § 102, 36 Stat. 1122; Nov. 6, 1945, ch. 447, 59 Stat. 555).

Provisions relating to appointment and residence of deputies by the clerk and marshal, and maintenance of offices by said officers, were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1970—Pub. L. 91–272 provided for holding court at Coquille.

1950—Act Aug. 3, 1950, provided for holding court at Eugene.

§ 118. Pennsylvania

Pennsylvania is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Pennsylvania.

Eastern District

(a) The Eastern District comprises the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill.

Court for the Eastern District shall be held at Allentown, Easton, Lancaster, Reading, and Philadelphia.

Middle District

(b) The Middle District comprises the counties of Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.

Court for the Middle District shall be held at Harrisburg, Lewisburg, Scranton, Wilkes-Barre, and Williamsport.

Western District

(c) The Western District comprises the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.

Court for the Western District shall be held at Erie, Johnstown, and Pittsburgh.

(June 25, 1948, ch. 646, 62 Stat. 888; Pub. L. 91–272, § 6, June 2, 1970, 84 Stat. 297; Pub. L. 95–573, § 4, Nov. 2, 1978, 92 Stat. 2458; Pub. L. 102–396, title IX, § 9161, Oct. 6, 1992, 106 Stat. 1947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 184 (Mar. 3, 1911, ch. 231, § 103, 36 Stat. 1123; Mar. 3, 1913, ch. 113, 37 Stat.

730; June 6, 1914, ch. 104, 38 Stat. 385; Sept. 9, 1914, ch. 296, 38 Stat. 713; Apr. 26, 1926, ch. 185, 44 Stat. 324; June 27, 1930, ch. 634, 46 Stat. 820; Aug. 3, 1935, ch. 433, 49 Stat. 514; May 13, 1936, ch. 385, 49 Stat. 1271; June 13, 1938, ch. 351, 52 Stat. 674; Mar. 5, 1942, ch. 143, 56 Stat. 132).

Provisions relating to maintenance of offices at certain places by the clerks and marshals were omitted as covered by sections 541 [see 561] and 751 of this title.

Provisions for the continuance of terms were omitted as covered by section 139 of this title.

Provisions with respect to the return of process, and the places of keeping court papers, were omitted as matters for determination by rule of court or for the action of the judicial council in cooperation with the Administrative Office of the United States Courts.

The provisions for trial of cases at Lewisburg and Erie unless counsel consent to trial elsewhere were omitted as inconsistent with the uniform practice provided by this title.

Changes were made in phraseology and arrangement.

SENATE REVISION AMENDMENT

By Senate amendment to the bill, Blair County was transferred from the Middle District to the Western District of Pennsylvania. This was in conformity with Act July 11, 1947, ch. 224, 61 Stat. 310, which so amended section 184 of title 28, U.S.C., 1940 ed., the source of this section. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–396 inserted ''Lancaster,'' before ''Reading''.

1978—Subsec. (c). Pub. L. 95–573 provided for holding court at Johnstown.

1970—Subsec. (a). Pub. L. 91–272 provided for holding court at Allentown and Reading.

§ 119. Puerto Rico

Puerto Rico constitutes one judicial district. Court shall be held at Mayaguez, Ponce, and San Juan.

(June 25, 1948, ch. 646, 62 Stat. 889.)

HISTORICAL AND REVISION NOTES

Based on sections 863 and 864 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, §§34, 35, 31 Stat. 84, 85; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 2, 1917, ch. 145, §§41, 42, 39 Stat. 965, 966; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; Feb. 13, 1925, ch. 229, §§1, 13, 43 Stat. 936, 942; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; May 17, 1932, ch. 190, 47 Stat. 158; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118).

Section consolidates parts of sections 863 and 864 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

The provision of sections 863 of title 48, U.S.C., 1940 ed., for appointment of a district judge is incorporated in section 133 of this title; for tenure, in section 134 of this title, and for salary was omitted as covered by section 135 of this title.

The provisions of section 863 of title 48, U.S.C., 1940 ed., for appointment and tenure of United States attorneys and marshals are incorporated in sections 501 [now 541], 504 [now 541 to 544], and 541 [see 561] of this title.

The provisions of section 863 of title 48, U.S.C., 1940 ed., for appointment of United States Commissioners and other court officers are incorporated in sections 631 and 751 of this title.

The provision of section 864 of title 48, U.S.C., 1940 ed., as to the holding of regular and special terms of court was omitted as covered by sections 138 and 141 of this title.

The provision of section 864 of title 48, U.S.C., 1940 ed., that the district court shall be attached to the first circuit is incorporated in section 41 of this title.

The provision of section 864 of title 48, U.S.C., 1940 ed., for appeals to the circuit court of appeals is incorporated in section 1295 of this title.

Other provisions of sections 863 and 864 of title 48, U.S.C., 1940 ed., are retained in title 48.

§ 120. Rhode Island

Rhode Island constitutes one judicial district. Court shall be held at Providence.

(June 25, 1948, ch. 646, 62 Stat. 889.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §185 (Mar. 3, 1911, ch. 231, §104, 36 Stat. 1123; Feb. 1, 1912, ch. 27, 37 Stat. 59).

Changes in phraseology were made.

§ 121. South Carolina

South Carolina constitutes one judicial district comprising eleven divisions.

(1) The Charleston Division comprises the counties of Berkeley, Charleston, Clarendon, Colleton, Dorchester, and Georgetown.

Court for the Charleston Division shall be held at Charleston.

(2) The Columbia Division comprises the counties of Kershaw, Lee, Lexington, Richland, and Sumter.

Court for the Columbia Division shall be held at Columbia.

(3) The Florence Division comprises the counties of Chesterfield, Darlington, Dillon, Florence, Horry, Marion, Marlboro, and Williamsburg.

Court for the Florence Division shall be held at Florence.

(4) The Aiken Division comprises the counties of Aiken, Allendale, and Barnwell.

Court for the Aiken Division shall be held at Aiken.

(5) The Orangeburg Division comprises the counties of Bamberg, Calhoun, and Orangeburg.

Court for the Orangeburg Division shall be held at Orangeburg.

(6) The Greenville Division comprises the counties of Greenville and Laurens.

Court for the Greenville Division shall be held at Greenville.

(7) The Rock Hill Division comprises the counties of Chester, Fairfield, Lancaster, and York.

Court for the Rock Hill Division shall be held at Rock Hill.

(8) The Greenwood Division comprises the counties of Abbeville, Edgefield, Greenwood, McCormick, Newberry, and Saluda.

Court for the Greenwood Division shall be held at Greenwood.

(9) The Anderson Division comprises the counties of Anderson, Oconee, and Pickens.

Court for the Anderson Division shall be held at Anderson.

(10) The Spartanburg Division comprises the counties of Cherokee, Spartanburg, and Union.

Court for the Spartanburg Division shall be held at Spartanburg.

(11) The Beaufort Division comprises the counties of Beaufort, Hampton, and Jasper.

Court for the Beaufort Division shall be held at Beaufort.

(June 25, 1948, ch. 646, 62 Stat. 889; Pub. L. 89–242, § 1(a), Oct. 7, 1965, 79 Stat. 951; Pub. L. 99–657, § 2, Nov. 14, 1986, 100 Stat. 3670; Pub. L. 102–140, title III, § 304, Oct. 28, 1991, 105 Stat. 810.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 186 (Mar. 3, 1911, ch. 231, § 105, 36 Stat. 1123; Feb. 5, 1912, ch. 28, 37 Stat. 60; Mar. 3, 1915, ch. 100, § 5, 38 Stat. 961; Sept. 1, 1916, ch. 434, 39 Stat. 721; Mar. 4, 1923, ch. 261, 42 Stat. 1486; Jan. 30, 1925, ch. 118, 43 Stat. 800; June 26, 1926, ch. 696, §§ 1–3, 44 Stat. 773; June 20, 1936, ch. 637, §§ 1–3, 49 Stat. 1558, 1559; June 12, 1940, ch. 335, 54 Stat. 344; June 28, 1943, ch. 173, title II, § 204, 57 Stat. 244; Dec. 13, 1944, ch. 556, 58 Stat. 801).

The last sentence of section 186 of title 28, U.S.C., 1940 ed., relating to trial of criminal cases in the division in which the offense was committed, was omitted as fully covered by Rules 18–22 of the Federal Rules of Criminal Procedure.

A provision relating to the places of the clerks' offices was omitted as covered by section 751 of this title.

The provision respecting court accommodations at Orangeburg was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1991—Par. (4). Pub. L. 102–140, § 304(1), struck out reference to Hampton County.

Par. (11). Pub. L. 102–140, § 304(2), inserted reference to Hampton County.

1986—Pub. L. 99–657, § 2(1), substituted ''eleven divisions'' for ''ten divisions'' in introductory text.

Par. (1). Pub. L. 99–657, § 2(2), struck out ''Beaufort,'' after ''counties of'' and substituted ''and Georgetown'' for ''Georgetown, and Jasper''.

Par. (11). Pub. L. 99–657, § 2(3), added par. (11).

1965—Pub. L. 89–242 consolidated into a single district the 10 divisions of the state which had formerly been divided into an Eastern and a Western District.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4 of Pub. L. 99–657 provided that:

''(a) EFFECTIVE DATE.—(1) The amendments made by sections 2 and 3 [amending this section and section 90 of this title] take effect 90 days after the date of the enactment of this Act [Nov. 14, 1986].

''(2) The amendment made by section 4 [enacting this note] takes effect on the date of the enactment of this Act.

''(b) PENDING ACTIONS.—The amendments made by this Act [amending this section and section 90 of this title] shall not affect any action commenced before the effective date of such amendments and pending on such date.

''(c) JURIES.—The amendments made by this Act [amending this section and section 90 of this title] shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the effective date of such amendments.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 6 of Pub. L. 89–242 provided that: ''The provisions of this Act [amending this section and section 133 of this title and enacting provisions set out as a note below] shall become effective on the first day of the month following the date of enactment of this Act [Oct. 7, 1965].''

CONSOLIDATION OF SOUTH CAROLINA INTO A SINGLE JUDICIAL DISTRICT

Sections 2 to 5 of Pub. L. 89–242 provided for the consolidation, in compliance with section 132 of this title, of the Eastern and Western Districts of South Carolina into a single district with continuing jurisdiction over civil cases and criminal acts pending or committed prior to Nov. 1, 1965, and appropriate provisions for the appointment or transfer of United States attorneys, marshalls, and other court personnel, then serving, from the two districts to the consolidated district.

§ 122. South Dakota

South Dakota constitutes one judicial district comprising four divisions.

(1) The Northern Division comprises the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmonds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, and Walworth.

Court for the Northern Division shall be held at Aberdeen.

(2) The Southern Division comprises the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton.

Court for the Southern Division shall be held at Sioux Falls.

(3) The central division comprises the counties of Buffalo, Dewey, Faulk, Gregory, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, Mellette, Potter, Stanley, Sully, Todd, Tripp, and Ziebach.

Court for the Central Division shall be held at Pierre.

(4) The Western Division comprises the counties of Bennett, Butte, Custer, Fall River, Harding, Jackson, Lawrence, Meade, Pennington, Perkins, and Shannon.

Court for the Western Division shall be held at Deadwood and Rapid City.

(June 25, 1948, ch. 646, 62 Stat. 889; Pub. L. 89–638, Oct. 10, 1966, 80 Stat. 883; Pub. L. 92–376, Aug. 10, 1972, 86 Stat. 529; Pub. L. 101–650, title III, § 324(b), Dec. 1, 1990, 104 Stat. 5120.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 187 (Mar. 3, 1911, ch. 231, § 106, 36 Stat. 1123; June 11, 1932, ch. 242, 47 Stat. 300).

A provision relating to maintenance of offices by the clerk was omitted as covered by sections 452 and 751 of this title.

Provisions that the Northern Division included Lake Traverse Indian Reservation and that part of Standing Rock Indian Reservation lying in South Dakota; that the Southern Division included the Yorkton Indian Reservation; that the Central Division included the Cheyenne River, Lower Brule, and Crow Creek Indian Reservations; and that the Western Division included Rosebud and Pine Ridge Indian Reservations, were all omitted as surplusage. (See Reviser's Note under section 114 of this title.)

Changes in arrangement and phraseology were made.

AMENDMENTS

1990—Par. (3). Pub. L. 101–650, § 324(b)(1), struck out ''Jackson,'' after ''Hyde,''.

Par. (4). Pub. L. 101–650, § 324(b)(2), inserted ''Jackson,'' after ''Harding,'' and substituted ''and Shannon'' for ''Shannon, Washabaugh, and Washington''.

1972—Par. (2). Pub. L. 92–376, § 1(a), removed Gregory County from the Southern Division.

Par. (3). Pub. L. 92–376, § 1(b), added Gregory, Mellette, Todd, and Tripp counties to the Central Divi-

sion and removed Armstrong county from the Central Division.

Par. (4). Pub. L. 92–376, § 1(c), removed Mellette, Todd, and Tripp counties from the Western Division.

1966—Pub. L. 89–638 provided for holding court at Rapid City.

§ 123. Tennessee

Tennessee is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Tennessee.

Eastern District

(a) The Eastern District comprises four divisions.

(1) The Northern Division comprises the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, and Union.

Court for the Northern Division shall be held at Knoxville.

(2) The Northeastern Division comprises the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington.

Court for the Northeastern Division shall be held at Greenville.

(3) The Southern Division comprises the counties of Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie.

Court for the Southern Division shall be held at Chattanooga.

(4) The Winchester Division comprises the counties of Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Van Buren, and Warren.

Court for the Winchester Division shall be held at Winchester.

Middle District

(b) The Middle District comprises three divisions.

(1) The Nashville Division comprises the counties of Cannon, Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson.

Court for the Nashville Division shall be held at Nashville.

(2) The Northeastern Division comprises the counties of Clay, Cumberland, De Kalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, and White.

Court for the Northeastern Division shall be held at Cookeville.

(3) The Columbia Division comprises the counties of Giles, Hickman, Lawrence, Lewis, Marshall, Maury, and Wayne.

Court for the Columbia Division shall be held at Columbia.

Western District

(c) The Western District comprises two divisions.

(1) The Eastern Division comprises the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley.

The Eastern Division also includes the waters of Tennessee River to low-water mark on the eastern shore wherever such river forms the boundary between the western and middle districts from the north line of Alabama north to the point in Henry County, Tennessee, where the south boundary of Kentucky strikes the east bank of the river.

Court for the Eastern Division shall be held at Jackson.

(2) The Western Division comprises the counties of Dyer, Fayette, Lauderdale, Shelby, and Tipton.

Court for the Western Division shall be held at Memphis and Dyersburg.

The district judge for the Eastern District in office on November 27, 1940, shall hold court in the Northern and Northeastern Divisions. The other judge of that district shall hold the terms of court in the Southern and Winchester Divisions. Each may appoint and remove all officers and employees of the court whose official headquarters are located in the divisions within which he holds court and whose appointments are vested by law in a district judge or chief judge of a district.

(June 25, 1948, ch. 646, 62 Stat. 890; Pub. L. 87–36, § 3(e), May 19, 1961, 75 Stat. 83; Pub. L. 87–86, July 11, 1961, 75 Stat. 203; Pub. L. 91–272, § 12, June 2, 1970, 84 Stat. 298.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 188 (Mar. 3, 1911, ch. 231, § 107, 36 Stat. 1124; Aug. 20, 1912, ch. 306, 37 Stat. 314; June 22, 1916, ch. 161, 39 Stat. 232; Mar. 4, 1923, ch. 289, 42 Stat. 1520; May 17, 1926, ch. 310, 44 Stat. 561; Mar. 1, 1927, ch. 244, 44 Stat. 1262; May 13, 1932, ch. 179, 47 Stat. 153; June 16, 1933, ch. 94, 48 Stat. 253; July 30, 1937, ch. 539, 50 Stat. 546; June 12, 1940, ch. 341, 54 Stat. 348; Nov. 27, 1940, ch. 920, § 1, 54 Stat. 1216; Dec. 3, 1943, ch. 332, 57 Stat. 595).

Words "The said judge shall possess the same powers, perform the same duties, and receive the same compensation as other district judges," and words, "The President is authorized to appoint, by and with the consent of the Senate, a successor or successors to said judge as vacancies may occur. Nothing herein contained shall be construed to prevent said judge or his successors from becoming the senior district judge by succession, or from exercising the powers and rights of senior district judge of said district. The judge designated herein to hold regular and special terms of court at Winchester and Chattanooga shall make all necessary orders for the disposition of business and assignment of cases for trial in said divisions," were deleted as superfluous, in view of sections 132 and 141 of this title.

Words "The district attorneys and marshals for the eastern, middle, and western districts of Tennessee in office immediately prior to November 27, 1940, shall be during the remainder of their present terms of office the district attorneys and marshals for such districts as constituted by this section. The district judge for the middle district of Tennessee shall be the district judge for the middle district of Tennessee as constituted by this section and shall hold regular and special terms of court at Nashville, Columbia, and Cookeville. The district judge for the western district of Tennessee shall hold regular and special terms of court at Memphis and Jackson," at the end of the section, were deleted as temporary, and as superfluous, in view of the remainder of the section, prescribing the places for holding terms of court.

A provision for furnishing rooms and accommodations by the local authorities for holding court at Columbia ''but only until such time as such accommodations shall be provided upon the recommendation of the Director of the Administrative Office of the United States Courts in a public building or other quarters provided by the Federal Government for such purpose,'' was omitted on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available.

An identical provision with reference to Winchester is retained in part, but the words quoted above were omitted as unnecessary since, when such buildings become available, the Director will, under section 604 of this title, provide court accommodations therein.

The last paragraph of the revised section consolidates the provisions of paragraphs (e) and (f) of section 188 of title 28, U.S.C., 1940 ed., relating to the terms of court to be held in the two divisions of the eastern district by the two judges, and their respective powers of appointment of court officers and employees.

Provisions relating to appointment and residence of deputy marshals and maintenance of clerk's office, were omitted as covered by sections 542 [see 561] and 751 of this title.

The clerk of court in a letter dated February 7, 1945, calls attention to a rule of court providing for hearing of all bankruptcy matters arising in Haywood County at Jackson in the eastern division of the western district.

The provision respecting court accommodations at Winchester was omitted as covered by section 142 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91–272, § 12(a), added Haywood County to the enumeration of counties comprising the Eastern Division of the Western District.

Subsec. (c)(2). Pub. L. 91–272, § 12(b), struck out Haywood County from the enumeration of counties comprising the Western Division of the Western District.

1961—Subsec. (c)(2). Pub. L. 87–36, as amended by Pub. L. 87–86, provided for holding court at Dyersburg.

§ 124. Texas

Texas is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of Texas.

Northern District

(a) The Northern District comprises seven divisions.

(1) The Dallas Division comprises the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall.

Court for the Dallas Division shall be held at Dallas.

(2) The Fort Worth Division comprises the counties of Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise.

Court for the Fort Worth Division shall be held at Fort Worth.

(3) The Abilene Division comprises the counties of Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackleford, Stephens, Stonewall, Taylor, and Throckmorton.

Court for the Abilene Division shall be held at Abilene.

(4) The San Angelo Division comprises the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green.

Court for the San Angelo Division shall be held at San Angelo.

(5) The Amarillo Division comprises the counties of Armstrong, Brisco, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

Court for the Amarillo Division shall be held at Amarillo.

(6) The Wichita Falls Division comprises the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young.

Court for the Wichita Falls Division shall be held at Wichita Falls.

(7) The Lubbock Division comprises the counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum.

Court for the Lubbock Division shall be held at Lubbock.

Southern District

(b) The Southern District comprises seven divisions.

(1) The Galveston Division comprises the counties of Brazoria, Chambers, Galveston, and Matagorda.

Court for the Galveston Division shall be held at Galveston.

(2) The Houston Division comprises the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton.

Court for the Houston Division shall be held at Houston.

(3) The Laredo Division comprises the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata.

Court for the Laredo Division shall be held at Laredo.

(4) The Brownsville Division comprises the counties of Cameron and Willacy.

Court for the Brownsville Division shall be held at Brownsville.

(5) The Victoria Division comprises the counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria.

Court for the Victoria Division shall be held at Victoria.

(6) The Corpus Christi Division comprises the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio.

Court for the Corpus Christi Division shall be held at Corpus Christi.

(7) The McAllen Division comprises the counties of Hidalgo and Starr.

Court for the McAllen Division shall be held at McAllen.

Eastern District

(c) The Eastern District comprises seven divisions.

(1) The Tyler Division comprises the counties of Anderson, Cherokee, Gregg, Henderson, Panola, Rains, Rusk, Smith, Van Zandt, and Wood.

Court for Tyler Division will be held at Tyler.

(2) The Beaumont Division comprises the counties of Hardin, Jasper, Jefferson, Liberty, Newton, and Orange.

Court for the Beaumont Division is to be held at Beaumont.

(3) The Sherman Division comprises the counties of Collin, Cook, Denton, and Grayson.

Court for the Sherman Division shall be held at Sherman.

(4) The Paris Division comprises the counties of Delta, Fannin, Hopkins, Lamar, and Red River.

Court for the Paris Division shall be held at Paris.

(5) The Marshall Division comprises the counties of Camp, Cass, Harrison, Marion, Morris, and Upshur.

Court for the Marshall Division shall be held at Marshall.

(6) The Texarkana Division comprises the counties of Bowie, Franklin, and Titus.

Court for the Texarkana Division shall be held at Texarkana.

(7) The Lufkin Division comprises the counties of Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity, and Tyler.

Court for the Lufkin Division shall be held at Lufkin.

Western District

(d) The Western District comprises seven divisions.

(1) The Austin Division comprises the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson.

Court for the Austin Division shall be held at Austin.

(2) The Waco Division comprises the counties of Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell.

Court for the Waco Division shall be held at Waco.

(3) The El Paso Division comprises the county of El Paso.

Court for the El Paso Division shall be held at El Paso.

(4) The San Antonio Division comprises the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, and Wilson.

Court for the San Antonio Division shall be held at San Antonio.

(5) The Del Rio Division comprises the counties of Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, and Zavalla.

Court for the Del Rio Division shall be held at Del Rio.

(6) The Pecos Division comprises the counties of Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward and Winkler.

Court for the Pecos Division shall be held at Pecos.

(7) The Midland-Odessa Division comprises the counties of Andrews, Crane, Ector, Martin, Midland, and Upton.

Court for the Midland-Odessa Division shall be held at Midland. Court may be held, in the discretion of the court, in Odessa, when courtroom facilities are made available at no expense to the Government.

(June 25, 1948, ch. 646, 62 Stat. 891; Feb. 10, 1954, ch. 6, §2(b)(9)(a), (b), 68 Stat. 11; Pub. L. 85–298, §§1, 2, Sept. 4, 1957, 71 Stat. 618; Pub. L. 87–352, Oct. 4, 1961, 75 Stat. 772; Pub. L. 88–282, Mar. 11, 1964, 78 Stat. 163; Pub. L. 88–512, Aug. 30, 1964, 78 Stat. 695; Pub. L. 90–216, Dec. 18, 1967, 81 Stat. 661; Pub. L. 96–462, §6, Oct. 15, 1980, 94 Stat. 2054; Pub. L. 98–620, title IV, §407(a), Nov. 8, 1984, 98 Stat. 3362.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §189 (Mar. 3, 1911, ch. 231, §108, 36 Stat. 1125; May 29, 1912, ch. 144, 37 Stat. 120; Feb. 5, 1913, ch. 28, §§1, 2, 37 Stat. 663; Feb. 26, 1917, ch. 122, 39 Stat. 939; Mar. 1, 1919, ch. 87, 40 Stat. 1270; Mar. 2, 1923, ch. 172, §§1, 2, 42 Stat. 1373; Apr. 3, 1924, ch. 82, 43 Stat. 64; May 29, 1924, ch. 211, §§1, 2, 43 Stat. 244; May 26, 1928, ch. 752, §1, 45 Stat. 747; June 6, 1930, ch. 408, 46 Stat. 521; June 24, 1930, ch. 596, 46 Stat. 807; Feb. 20, 1932, ch. 51, 47 Stat. 52; July 25, 1939, ch. 356, §1, 53 Stat. 1082; June 6, 1940, ch. 252, 54 Stat. 241.)

Words ''and all prosecutions against persons for offenses committed in the county of Reagan shall be tried in the court at San Angelo: Provided, That no civil or criminal cause begun and pending prior to May 29, 1924, shall be in any way affected,'' words ''and all prosecutions against persons for offenses committed in the county of Pecos shall be tried in the district court at El Paso, or Pecos City: Provided, That no civil or criminal cause begun and pending prior to March 2, 1923, shall be in any way affected,'' and words ''Provided, That no civil or criminal cause commenced prior to June 24, 1930, shall be in any way affected,'' were all deleted as superseded by Federal Rules of Criminal Procedure, Rules 18–22, and as obsolete, in view of the lapse of time after the dates included in such provisions.

Provisions for furnishing rooms and accommodations at Pecos and Wichita Falls were omitted as obsolete, on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available at such places.

Provisions relating to the maintenance of offices at various cities by the clerks were omitted as covered by sections 452 and 751 of this title.

Provisions that process against residents of Pecos County shall issue from and be returnable to the court at Pecos City and against residents of Reagan County at San Angelo, were omitted since such matter can be regulated more appropriately by court rule or order. (See Rule 4 of Federal Rules of Civil Procedure.)

The provisions requiring notice to be given for time of holding court in Pecos division and at Corpus Christi, were omitted as covered by section 141 of this title.

Five counties included in this section were created since the enactment of section 189 of title 28. These were Kleberg County and Kenedy County of the Corpus Christi division of the southern district, Culberson County and Hudspeth County of the El Paso division of the western district, and Real County of the San Antonio division of the western district. Pecos County is included in the Pecos division and omitted from the El

Paso division of the western district to conform to the practice of the court.

Changes in arrangement and phraseology were made.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620, § 407(a)(1), substituted ''seven'' for ''six'' in provisions preceding par. (1).

Subsec. (b)(4). Pub. L. 98–620, § 407(a)(2), struck out references to Hidalgo and Starr counties from the counties comprising the Brownsville Division of the Southern District.

Subsec. (b)(7). Pub. L. 98–620, § 407(a)(3), added par. (7).

1980—Subsec. (b)(2). Pub. L. 96–462, § 6(a), struck out references to Polk and Trinity counties in list of counties comprising Houston Division of Southern District.

Subsec. (c). Pub. L. 96–462, § 6(b), in provisions preceding par. (1) substituted ''seven'' for ''six''; in par. (1) struck out references to Angelina, Houston, Nacogdoches, and Shelby counties in list of counties comprising Tyler Division of Eastern District; in par. (2) struck out references to Sabine, San Augustine, and Tyler counties in list of counties comprising Beaumont Division of Eastern District; and added par. (7).

1967—Subsec. (d). Pub. L. 90–216, § 1(4), enlarged from six to seven the number of divisions comprising Western District.

Subsec. (d)(3). Pub. L. 90–216, § 1(1), transferred counties of Brewster, Culberson, Hudspeth, and Presidio from El Paso Division to Pecos Division.

Subsec. (d)(6). Pub. L. 90–216, § 1(2), added counties of Brewster, Culberson, Hudspeth, and Presidio to Pecos Division from El Paso Division, and transferred counties of Andrews, Crane, Ector, Martin, Midland, and Upton from Pecos Division to Midland-Odessa Division.

Subsec. (d)(7). Pub. L. 90–216, § 1(3), added par. (7), which created Midland-Odessa Division, comprised of counties of Andrews, Crane, Ector, Martin, Midland, and Upton, transferred from Pecos Division.

1964—Subsec. (b)(1). Pub. L. 88–282, § 1(a), struck out Austin, Fort Bend, and Wharton counties from list comprising Galveston Division.

Subsec. (b)(2). Pub. L. 88–282, § 1(b), added Austin, Fort Bend, and Wharton counties to list comprising Houston Division.

Subsec. (c)(4). Pub. L. 88–512, § 1(a), added county of Hopkins to Paris Division.

Subsec. (c)(5). Pub. L. 88–512, § 1(b), struck out county of Hopkins from Marshall Division.

1961—Subsec. (c)(5). Pub. L. 87–352 changed the name of Division from Jefferson to Marshall, and provided for holding court at Marshall.

1957—Subsec. (c)(1). Pub. L. 85–298, § 2, inserted Shelby County in list of counties comprising Tyler Division.

Subsec. (c)(2). Pub. L. 85–298, § 1, struck out Shelby County from list of counties comprising Beaumont Division.

1954—Subsec. (d)(4). Act Feb. 10, 1954, § 2(b)(9)(a), struck out Edwards County from list of counties comprising San Antonio Division of Western District.

Subsec. (d)(5). Act Feb. 10, 1954, § 2(b)(9)(b), inserted Edwards County in list of counties comprising Del Rio Division of Western District.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 407(b) of Pub. L. 98–620 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply to any action commenced in the United States District Court for the Southern District of Texas on or after the effective date of this subtitle [Jan. 1, 1985], and shall not affect any action pending in such court on such effective date.''

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 96–462 effective Oct. 1, 1981, but not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on Oct. 1, 1981, see section 7 of Pub. L. 96–462, set out as a note under section 84 of this title.

§ 125. Utah

Utah constitutes one judicial district comprising two divisions.

(1) The Northern Division comprises the counties of Box Elder, Cache, Davis, Morgan, Rich, and Weber.

Court for the Northern Division shall be held at Salt Lake City and Ogden.

(2) The Central Division comprises the counties of Beaver, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, and Wayne.

Court for the Central Division shall be held at Salt Lake City, Provo, and St. George.

(June 25, 1948, ch. 646, 62 Stat. 893; Pub. L. 104–317, title VI, § 606, Oct. 19, 1996, 110 Stat. 3859.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 190 (Mar. 3, 1911, ch. 231, § 109, 36 Stat. 1127).

A provision relating to the maintenance of offices by the clerk was omitted as covered by section 751 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1996—Par. (1). Pub. L. 104–317, § 606(a), inserted ''Salt Lake City and'' before ''Ogden''.

Par. (2). Pub. L. 104–317, § 606(b), inserted '', Provo, and St. George'' after ''Salt Lake City''.

§ 126. Vermont

Vermont constitutes one judicial district.

Court shall be held at Bennington, Brattleboro, Burlington, Montpelier, Rutland, Saint Johnsbury, and Windsor.

(June 25, 1948, ch. 646, 62 Stat. 893; Pub. L. 88–312, May 28, 1964, 78 Stat. 201; Pub. L. 98–620, title IV, § 410, Nov. 8, 1984, 98 Stat. 3362.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 191 (Mar. 3, 1911, ch. 231, § 110, 36 Stat. 1127; Feb. 1, 1912, ch. 26, 37 Stat. 58; Feb. 28, 1929, ch. 360, 45 Stat. 1345).

Provision that ''any stated term may, when adjourned, be adjourned to meet at any of the other places at Montpelier or Newport,'' was omitted as unnecessary and inconsistent with sections 140 and 141 of this title.

Changes in arrangement and phraseology were made.

AMENDMENTS

1984—Pub. L. 98–620 provided for holding court at Bennington.

1964—Pub. L. 88–312 provided for holding court at Montpelier and Saint Johnsbury.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 effective Jan. 1, 1985, and not to affect the composition, or preclude the serv-

ice, of any grand or petit jury summoned, impaneled, or actually serving on that date, see section 411 of Pub. L. 98–620, set out as a note under section 85 of this title.

§ 127. Virginia

Virginia is divided into two judicial districts, to be known as the Eastern and Western districts of Virginia.

Eastern District

(a) The Eastern District comprises the counties of Accomac, Amelia, Arlington, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex Warwick, Westmoreland, and York.

Court for the Eastern District shall be held at Alexandria, Newport News, Norfolk, and Richmond.

Western District

(b) The Western District comprises the counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Culpeper, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Louisa, Madison, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

Court for the Western District shall be held at Abingdon, Big Stone Gap, Charlottesville, Danville, Harrisonburg, Lynchburg, and Roanoke.

(c) Cities and incorporated towns are included in that district in which are included the counties within the exterior boundaries of which such cities and incorporated towns are geographically located or out of the territory of which they have been incorporated.

(June 25, 1948, ch. 646, 62 Stat. 893; Pub. L. 90–383, July 5, 1968, 82 Stat. 292; Pub. L. 102–200, § 1, Dec. 10, 1991, 105 Stat. 1630.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., §§ 192 and 192a, and section 403c–2 of title 16, U.S.C., 1940 ed., Conservation (Mar. 3, 1911, ch. 231, § 111, 36 Stat. 1127; June 13, 1918, ch. 100, 40 Stat. 605; Apr. 30, 1924, ch. 144, 43 Stat. 114; Feb. 21, 1925, ch. 290, 43 Stat. 962; Jan. 20, 1930, ch. 20, § 1, 46 Stat. 56; Aug. 19, 1937, ch. 703, § 2, 50 Stat. 701; June 13, 1938, ch. 350, 52 Stat. 674; Oct. 31, 1945, ch. 443, § 202, 59 Stat. 554).

A provision of section 192 of title 28 relating to the maintenance of offices by the clerk of the western district was omitted as covered by sections 452 and 751 of this title.

Changes in arrangement and phraseology were made.

Senate Revision Amendment

By Senate amendment, ''Newport News'' was inserted after ''Alexandria'' in second paragraph of subsection (a) of this section. See 80th Congress Senate Report No. 1559.

Amendments

1991—Subsec. (a). Pub. L. 102–200, § 1(1), struck out reference to Culpeper, Louisa, and Orange counties.

Subsec. (b). Pub. L. 102–200, § 1(2), inserted reference to Culpeper, Louisa, and Orange counties.

1968—Subsec. (c). Pub. L. 90–383 added subsec. (c).

Applicability of 1991 Amendments

Section 2 of Pub. L. 102–200 provided that:

''(a) Pending Actions.—The amendments made by section 1 [amending this section] shall not apply to any action commenced before the date of the enactment of this Act [Dec. 10, 1991] and pending in the United States District Court for the Eastern District of Virginia on such date.

''(b) Juries.—The amendments made by section 1 shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Eastern or Western District of Virginia on the date of the enactment of this Act.''

§ 128. Washington

Washington is divided into two judicial districts to be known as the Eastern and Western Districts of Washington.

Eastern District

(a) The Eastern District comprises the counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

Court for the Eastern District shall be held at Spokane, Yakima, Walla Walla, and Richland.

Western District

(b) The Western District comprises the counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

Court for the Western District shall be held at Bellingham, Seattle, and Tacoma.

(June 25, 1948, ch. 646, 62 Stat. 894; Pub. L. 87–699, Sept. 25, 1962, 76 Stat. 598; Pub. L. 91–272, § 4, June 2, 1970, 84 Stat. 297.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., § 193 (Mar. 3, 1911, ch. 231, § 112, 36 Stat. 1128; June 15, 1937, ch. 351, 50 Stat. 260; Dec. 28, 1945, ch. 596, 59 Stat. 661).

Words ''with the waters thereof,'' after the list of counties in each division, were omitted as unnecessary, and in view of the absence of such words in most similar sections relating to other States.

A provision relating to the maintenance of offices by the clerks were omitted as covered by section 751 of this title.

Provisions that the counties in both divisions of the eastern district included all Indian reservations in such counties and that the counties in both divisions of the western district included all Indian reservations in such counties were omitted as surplusage. (See Reviser's Note under section 114 of this title.)

Pend Oreille County of the northern division of the eastern district and Grays Harbor of the southern divi-

sion of the western district were created since the enactment of the Judicial Code.

Changes in arrangement and phraseology were made.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–272, § 4(a), struck out provisions which had divided Eastern District into a Northern Division and a Southern Division.

Subsec. (b). Pub. L. 91–272, § 4(b), struck out provisions which had divided Western District into a Northern Division and a Southern Division.

1962—Subsec. (a)(2). Pub. L. 87–699 provided for holding court at Richland.

§ 129. West Virginia

West Virginia is divided into two judicial districts to be known as the Northern and Southern Districts of West Virginia.

Northern District

(a) The Northern District comprises the counties of Barbour, Berkeley, Braxton, Brooke, Calhoun, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Webster, and Wetzel.

Court for the Northern District shall be held at Clarksburg, Elkins, Fairmont, Martinsburg, and Wheeling.

Southern District

(b) The Southern District comprises the counties of Boone, Cabell, Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Putnam, Raleigh, Roane, Summers, Wayne, Wirt, Wood, and Wyoming.

Court for the Southern District shall be held at Beckley, Bluefield, Charleston, Huntington, Lewisburg, and Parkersburg.

(June 25, 1948, ch. 646, 62 Stat. 894; Pub. L. 97–471, § 1, Jan. 14, 1983, 96 Stat. 2601.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 194 (Mar. 3, 1911, ch. 231, § 113, 36 Stat. 1129; Mar. 23, 1912, ch. 63, 37 Stat. 76; Aug. 22, 1914, ch. 265, 38 Stat. 702; Feb. 27, 1922, ch. 83, 42 Stat. 398; June 22, 1936, ch. 695, 49 Stat. 1805; Aug. 23, 1937, ch. 737, 50 Stat. 744; June 29, 1938, ch. 817, 52 Stat. 1245).

Words ''with the waters thereof,'' after the list of counties in each district, were omitted as unnecessary, and in view of the absence of such words in similar sections relating to other States.

Provisions relating to special terms of court were omitted as covered by section 141 of this title.

A provision that the term at Fairmont be held ''when suitable rooms and accommodations for holding terms of the court shall be furnished at Fairmont free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Fairmont, a Federal building containing such suitable rooms and accommodations for holding court shall be erected at such place,'' was omitted as obsolete on advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available.

Provisions respecting court accommodations at Beckley and Lewisburg were omitted as covered by section 142 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–471, § 1(1), struck out references to Parkersburg, Wirt, and Wood counties and inserted references to Braxton, Pocahontas, and Webster counties.

Subsec. (b). Pub. L. 97–471, § 1(2), struck out references to Braxton, Pocahontas, and Webster counties and inserted references to Parkersburg, Wirt, and Wood counties.

§ 130. Wisconsin

Wisconsin is divided into two judicial districts to be known as the Eastern and Western districts of Wisconsin.

Eastern District

(a) The Eastern District comprises the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago.

Court for the Eastern District shall be held at Green Bay, Milwaukee, and Oshkosh.

Western District

(b) The Western District comprises the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood.

Court for the Western District shall be held at Eau Claire, La Crosse, Madison, Superior, and Wausau.

(June 25, 1948, ch. 646, 62 Stat. 894; Pub. L. 87–573, Aug. 6, 1962, 76 Stat. 307.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 195 (Mar. 3, 1911, ch. 231, § 114, 36 Stat. 1129; July 24, 1935, ch. 413, 49 Stat. 495).

Provisions for keeping the courts and their offices open at all times were omitted as covered by section 452 of this title.

Provisions for maintenance of offices by the clerk and marshal, and for the appointment and residence of a deputy marshal for Superior, were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

Words ''All causes and proceedings instituted in the court at Superior shall be tried therein, unless by consent of the parties, or upon the order of the court, they are transferred to another place for trial,'' were omitted as unnecessary. Such provision, as to civil cases, is covered by section 1404 of this title, and, as to criminal cases, is rendered unnecessary because of inherent power of the court and Rules 18–20 of the Federal Rules of Criminal Procedure.

Provisions for the return of process, including criminal warrants, at Superior and other places in the western district and for the keeping of records in the clerk's office at Superior, were omitted, since such matters can be regulated more appropriately by court rule or order. (See Federal Rules of Civil Procedure, Rule 4, and Federal Rules of Criminal Procedure, Rule 4(g).)

Changes in arrangement and phraseology were made.

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–573 inserted reference to Menominee county.

§ 131. Wyoming

Wyoming and those portions of Yellowstone National Park situated in Montana and Idaho constitute one judicial district.

Court shall be held at Casper, Cheyenne, Evanston, Lander, Jackson, and Sheridan.

(June 25, 1948, ch. 646, 62 Stat. 895; Pub. L. 98–353, title II, § 203(a), July 10, 1984, 98 Stat. 350.)

HISTORICAL AND REVISION NOTES

Based on section 27 of title 16, U.S.C., 1940 ed., Conservation, and title 28, U.S.C., 1940 ed., § 196 (May 7, 1894, ch. 72, § 5, 28 Stat. 74; Mar. 3, 1911, ch. 231, §§ 115, 291, 36 Stat. 1130, 1167; June 5, 1924, ch. 260, 43 Stat. 388; June 28, 1938, ch. 778, § 1, 52 Stat. 1213).

Section consolidates section 196 of title 28, U.S.C., 1940 ed., with a portion of section 27 of title 16, U.S.C., 1940 ed., with necessary changes in arrangement and phraseology. Reference to parts of Yellowstone National Park in Montana and Idaho is derived from said section 27. Other provisions of said section are incorporated in sections 631 and 632 of this title.

A provision of section 196 of title 28, U.S.C., 1940 ed., for furnishing rooms and accommodations at Casper was omitted as obsolete, upon advice of the Director of the Administrative Office of the United States Courts that Federal accommodations are now available there.

Provisions of section 196 of title 28, U.S.C., 1940 ed., for appointment of deputies and maintenance of offices by the clerk and marshal were omitted as covered by sections 541 [see 561], 542 [see 561], and 751 of this title.

AMENDMENTS

1984—Pub. L. 98–353 provided for holding court at Jackson.

§ 132. Creation and composition of district courts

(a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

(b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

(June 25, 1948, ch. 646, 62 Stat. 895; Pub. L. 88–176, § 2, Nov. 13, 1963, 77 Stat. 331.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 1, and section 641 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; July 30, 1914, ch. 216, 38 Stat. 580; July 19, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 19).

Section consolidates section 1 of title 28, U.S.C., 1940 ed., and section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Subsection (c) is derived from section 641 of title 48, U.S.C., 1940 ed., which applied only to the Territory of Hawaii. The revised section, by extending it to all districts, merely recognizes established practice.

Other portions of section 1 of title 28, U.S.C., 1940 ed., are incorporated in sections 133 and 134 of this title. The remainder of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 133 of this title.

AMENDMENTS

1963—Subsec. (b). Pub. L. 88–176 inserted ''regular'' before ''active service''.

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 25, 1948, provided in part that the provisions of this title as set out in section 1 of act June 25, 1948, with respect to the organization of the court, shall be construed as a continuation of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title pursuant to his prior appointment.

CROSS REFERENCES

Guam and Virgin Islands district courts, see sections 1424, 1424b and 1611 et seq. of Title 48, Territories and Insular Possessions.

Assignment of district judges to other districts or courts, see section 292 et seq. of this title.

Authority to create courts inferior to Supreme Court, see Const., Art. 3, § 1.

Jurisdiction and venue of district courts, see sections 1331 et seq. and 1391 et seq. of this title.

Three-judge courts, composition and procedure, see section 2284 of this title.

§ 133. Appointment and number of district judges

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	8
Arkansas:	
Eastern	5
Western	3
California:	
Northern	14
Eastern	6
Central	27
Southern	8
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	11
Southern	16
Georgia:	
Northern	11
Middle	4
Southern	3

Districts	Judges
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	3
Southern	3
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	
Eastern	4
Western	4
Eastern and Western	1
Louisiana:	
Eastern	12
Middle	3
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	7
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	4
New Hampshire	3
New Jersey	17
New Mexico	5
New York:	
Northern	4
Southern	28
Eastern	15
Western	4
North Carolina:	
Eastern	4
Middle	4
Western	3
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	9
South Dakota	3
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	18
Eastern	7
Western	10
Utah	5
Vermont	2
Virginia:	
Eastern	9
Western	4
Washington:	
Eastern	4
Western	7
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	4
Western	2
Wyoming	3.

(b)(1) In any case in which a judge of the United States (other than a senior judge) assumes the duties of a full-time office of Federal judicial administration, the President shall appoint, by and with the advice and consent of the Senate, an additional judge for the court on which such judge serves. If the judge who assumes the duties of such full-time office leaves that office and resumes the duties as an active judge of the court, then the President shall not appoint a judge to fill the first vacancy which occurs thereafter in that court.

(2) For purposes of paragraph (1), the term ''office of Federal judicial administration'' means a position as Director of the Federal Judicial Center, Director of the Administrative Office of the United States Courts, or administrative assistant to the Chief Justice.

(June 25, 1948, ch. 646, 62 Stat. 895; Aug. 3, 1949, ch. 387, § 2(a), 63 Stat. 493; Aug. 14, 1950, ch. 708, 64 Stat. 443; Aug. 29, 1950, ch. 819, § 1, 64 Stat. 562; Sept. 5, 1950, ch. 848, § 1, 64 Stat. 578; Feb. 10, 1954, ch. 6, § 2(a)(3), 68 Stat. 9; Pub. L. 85–310, Sept. 7, 1957, 71 Stat. 631; Pub. L. 85–508, § 12(c), July 7, 1958, 72 Stat. 348; Pub. L. 86–3, § 9(b), Mar. 18, 1959, 73 Stat. 8; Pub. L. 87–36, § 2(d), May 19, 1961, 75 Stat. 81; Pub. L. 87–562, § 3, July 30, 1962, 76 Stat. 248; Pub. L. 89–242, § 1(c), Oct. 7, 1965, 79 Stat. 951; Pub. L. 89–372, § 4, Mar. 18, 1966, 80 Stat. 77; Pub. L. 91–272, § 1(d), June 2, 1970, 84 Stat. 295; Pub. L. 92–208, § 3(d), Dec. 18, 1971, 85 Stat. 742; Pub. L. 95–408, § 4(b)(2), Oct. 2, 1978, 92 Stat. 885; Pub. L. 95–486, § 1(c), Oct. 20, 1978, 92 Stat. 1630; Pub. L. 97–471, § 3, Jan. 14, 1983, 96 Stat. 2601; Pub. L. 98–353, title II, § 202(e), July 10, 1984, 98 Stat. 348; Pub. L. 101–650, title II, § 203(d), title III, § 303, Dec. 1, 1990, 104 Stat. 5101, 5105; Pub. L. 105–53, § 4, Oct. 6, 1997, 111 Stat. 1174.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 1 and notes; sections 641, 643, 863, and 864 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions; District of Columbia Code, 1940 ed., § 11–301 (Apr. 12, 1900, ch. 191, §§ 34, 35, 31 Stat. 84, 85; Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1901, ch. 854, § 60, 31 Stat. 1199; Mar. 3, 1909, ch.

269, §1, 35 Stat. 838; Mar. 3, 1911, ch. 231, §1, 36 Stat. 1087; Jan. 7, 1913, ch. 6, 37 Stat. 648; July 30, 1914, ch. 216, 38 Stat. 580; Mar. 3, 1915, ch. 100, §1, 38 Stat. 961; Apr. 11, 1916, ch. 64, §1, 39 Stat. 48; Feb. 26, 1917, ch. 120, 39 Stat. 938; Mar. 2, 1917, ch. 145, §§41, 42, 39 Stat. 965, 966; Feb. 26, 1919, ch. 50, §1, 40 Stat. 1183; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; July 9, 1921, ch. 42, §313, 42 Stat. 119; Sept. 14, 1922, ch. 306, §1, 42 Stat. 837; Jan. 16, 1925, ch. 83, §3, 43 Stat. 752; Feb. 12, 1925, ch. 220, 43 Stat. 890; Feb. 13, 1925, ch. 229, §§1, 13, 43 Stat. 936, 942; Feb. 16, 1925, ch. 233, §§2, 3, 43 Stat. 946; Mar. 2, 1925, ch. 397, §§1–3, 43 Stat. 1098; Mar. 3, 1927, ch. 297, §1, 44 Stat. 1346; Mar. 3, 1927, ch. 298, 44 Stat. 1347; Mar. 3, 1927, ch. 300, §1, 44 Stat. 1348; Mar. 3, 1927, ch. 332, 44 Stat. 1370; Mar. 3, 1927, ch. 336, §§1, 2, 44 Stat. 1372; Mar. 3, 1927, ch. 338, 44 Stat. 1374; Mar. 3, 1927, ch. 344, 44 Stat. 1380; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Apr. 21, 1928, ch. 393, §5, 45 Stat. 439; May 29, 1928, ch. 882, 45 Stat. 974; Dec. 20, 1928, ch. 41, 45 Stat. 1056; Jan. 17, 1929, ch. 72, §1, 45 Stat. 1081; Feb. 26, 1929, ch. 334, 45 Stat. 1317; Feb. 26, 1929, ch. 337, 45 Stat. 1319; Feb. 28, 1929, ch. 358, §1, 45 Stat. 1344; Feb. 28, 1929, ch. 380, 45 Stat. 1409; May 28, 1930, ch. 346, §1, 46 Stat. 431; June 19, 1930, ch. 537, 46 Stat. 785; June 27, 1930, ch. 633, 46 Stat. 819; June 27, 1930, ch. 635, §1, 46 Stat. 820; July 3, 1930, ch. 852, 46 Stat. 1006; Feb. 20, 1931, ch. 244, 46 Stat. 1196; Feb. 20, 1931, ch. 245, 46 Stat. 1197; Feb. 25, 1931, ch. 296, 46 Stat. 1417; May 17, 1932, ch. 190, 47 Stat. 158; May 20, 1932, ch. 196, 47 Stat. 161; Aug. 2, 1935, ch. 425, 49 Stat. 508; Aug. 19, 1935, ch. 558, §§1, 2, 49 Stat. 659; Aug. 28, 1935, ch. 793, 49 Stat. 945; June 5, 1936, ch. 515, 49 Stat. 1476; June 15, 1936, ch. 544, 49 Stat. 1491; June 16, 1936, ch. 585, §1, 49 Stat. 1523; June 22, 1936, ch. 693, 49 Stat. 1804; June 22, 1936, ch. 694, 49 Stat. 1804; June 22, 1936, ch. 696, 49 Stat. 1806; Aug. 25, 1937, ch. 771, §1, 50 Stat. 805; Mar. 18, 1938, ch. 47, 52 Stat. 110; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118; May 31, 1938, ch. 290, §§4, 5, 6, 52 Stat. 584, 585; June 20, 1938, ch. 528, 52 Stat. 780; Jan. 20, 1940, ch. 11, 54 Stat. 16; May 24, 1940, ch. 209, §2(c), 54 Stat. 220; June 8, 1940, ch. 282, 54 Stat. 253; Nov. 27, 1940, ch. 92, §1, 54 Stat. 1216; Nov. 21, 1941, ch. 479, 55 Stat. 773; July 7, 1942, ch. 489, 56 Stat. 648; Dec. 24, 1942, ch. 817, 56 Stat. 1083; Dec. 24, 1942, ch. 827, 56 Stat. 1092; Dec. 7, 1944, ch. 521, 58 Stat. 796; Dec. 22, 1944, ch. 663, 58 Stat. 887; Oct. 16, 1945, ch. 419, §§1, 2, 59 Stat. 545, 546; June 15, 1946, ch. 413, 60 Stat. 260; July 24, 1946, chs. 600, 602, 60 Stat. 654).

Section consolidates provisions of section 1 of title 28, U.S.C., 1940 ed., and sections 641, 643, 863, and 864 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Provisions of section 1 of title 28, U.S.C., 1940 ed., relating to residence of judges, are covered by section 134 of this title.

The act of Dec. 7, 1944, amended section 2 of the act of May 24, 1940, 54 Stat. 219, section 1, note, of title 28, U.S.C., 1940 ed., to read as follows: ''(a) Provided, That the first vacancy in the office of district judge in each of said districts except in the eastern district of Pennsylvania, shall not be filled.''

The act of Dec. 22, 1944, amended the same section to read as follows: ''(a) Provided, That the first vacancy occurring in the office of district judge in each of said districts except the district of New Jersey shall not be filled.''

The act of July 24, 1946, ch. 600, §1, 60 Stat. 654, amended the proviso in the 1940 act to read as follows: ''Provided, That the first vacancy occurring in the office of district judge in each of said districts, except the district of New Jersey and the eastern district of Pennsylvania, shall not be filled.''

The following additional but temporary judgeships, authorized by Congress, are not included in the revised section:

Districts	*Judges*
Delaware	1
Florida, Northern and Southern	1
Georgia, Northern	1
Kansas	1
Missouri, Eastern and Western	1
Ohio, Northern	1
Oklahoma, Western	1
Pennsylvania, Eastern, Middle and Western	1
West Virginia, Northern and Southern	1

Other provisions of said section 11–301 of the District of Columbia Code, 1940 ed., are incorporated in section 136 of this title.

A part of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 132 of this title.

Parts of sections 863 and 864 of title 48, U.S.C., 1940 ed., are retained in title 48. For other parts of those sections, see Distribution Table.

Other provisions of section 643 of title 48, U.S.C., 1940 ed., are incorporated in sections 501 [now 541], 504 [now 541 to 544], and 541 [see 561] of this title.

Senate Revision Amendment

Provisions for one district judge in the Southern District of Indiana were inserted in this section by Senate amendment. See 80th Congress Senate Report No. 1559.

Codification

Paragraph (2) of subsection (b) of section 4 of Pub. L. 95–408, cited as a credit to this section, was amended generally by Pub. L. 96–4, §1, Mar. 30, 1979, 93 Stat. 6, and enacted provisions which are set out as a note under section 93 of this title.

Amendments

1997—Subsec. (a). Pub. L. 105–53 in item relating to Louisiana, reduced number of permanent district judgeships in Eastern District from ''13'' to ''12'' and increased number in Middle District from ''2'' to ''3''.

1990—Pub. L. 101–650, §303(1), designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 101–650, §203(d), altered number of permanent district judgeships in named districts as follows:

State	*Former*	*New*
Alabama:		
Northern	7	7
Middle	3	3
Southern	3	3
Alaska	3	3
Arizona	8	8
Arkansas:		
Eastern	3	5
Western	1	3
Eastern and Western	2	0
California:		
Northern	12	14
Eastern	6	6
Central	22	27
Southern	7	8
Colorado	7	7
Connecticut	6	8
Delaware	4	4
District of Columbia	15	15
Florida:		
Northern	3	4
Middle	9	11
Southern	15	16
Georgia:		
Northern	11	11
Middle	3	4
Southern	3	3
Hawaii	3	3
Idaho	2	2
Illinois:		
Northern	20	22
Central	3	3
Southern	3	3
Indiana:		
Northern	4	5
Southern	5	5
Iowa:		
Northern	1	2
Southern	2	3
Northern and Southern	1	0
Kansas	5	5
Kentucky:		
Eastern	4	4

State	Former	New
Western	4	4
Eastern and Western	1	1
Louisiana:		
Eastern	13	13
Middle	2	2
Western	6	7
Maine	2	3
Maryland	10	10
Massachusetts	11	13
Michigan:		
Eastern	15	15
Western	4	4
Minnesota	7	7
Mississippi:		
Northern	3	3
Southern	5	6
Missouri:		
Eastern	5	6
Western	5	5
Eastern and Western	2	2
Montana	3	3
Nebraska	3	3
Nevada	4	4
New Hampshire	2	3
New Jersey	14	17
New Mexico	4	5
New York:		
Northern	4	4
Southern	27	28
Eastern	12	15
Western	3	4
North Carolina:		
Eastern	3	4
Middle	3	4
Western	3	3
North Dakota	2	2
Ohio:		
Northern	10	11
Southern	7	8
Oklahoma:		
Northern	2	3
Eastern	1	1
Western	4	6
Northern, Eastern, and Western	2	1
Oregon	5	6
Pennsylvania:		
Eastern	19	22
Middle	5	6
Western	10	10
Puerto Rico	7	7
Rhode Island	3	3
South Carolina	8	9
South Dakota	3	3
Tennessee:		
Eastern	4	5
Middle	3	4
Western	4	5
Texas:		
Northern	10	12
Southern	13	18
Eastern	6	7
Western	7	10
Utah	4	5
Vermont	2	2
Virginia:		
Eastern	9	9
Western	4	4
Washington:		
Eastern	3	4
Western	6	7
West Virginia:		
Northern	2	3
Southern	4	5
Wisconsin:		
Eastern	4	4
Western	2	2
Wyoming	2	3

1984—Pub. L. 98–353 altered number of permanent district judgeships in named districts as follows:

State	Former	New
Alabama:		
Northern	7	7
Middle	3	3
Southern	2	3
Alaska	2	3
Arizona	8	8
Arkansas:		
Eastern	3	3
Western	1	1
Eastern and Western	2	2
California:		
Northern	12	12
Eastern	6	6
Central	17	22
Southern	7	7
Colorado	6	7
Connecticut	5	6
Delaware	3	4
District of Columbia	15	15
Florida:		
Northern	3	3
Middle	9	9
Southern	12	15
Georgia:		
Northern	11	11
Middle	2	3
Southern	3	3
Hawaii	2	3
Idaho	2	2
Illinois:		
Northern	16	20
Central	3	3
Southern	2	3
Indiana:		
Northern	4	4
Southern	5	5
Iowa:		
Northern	1	1
Southern	2	2
Northern and Southern	1	1
Kansas	5	5
Kentucky:		
Eastern	4	4
Western	3	4
Eastern and Western	1	1
Louisiana:		
Eastern	13	13
Middle	2	2
Western	5	6
Maine	2	2
Maryland	9	10
Massachusetts	10	11
Michigan:		
Eastern	13	15
Western	4	4
Minnesota	5	7
Mississippi:		
Northern	2	3
Southern	3	5
Missouri:		
Eastern	4	5
Western	5	5
Eastern and Western	2	2
Montana	2	3
Nebraska	3	3
Nevada	3	4
New Hampshire	2	2
New Jersey	11	14
New Mexico	4	4
New York:		
Northern	3	4
Southern	27	27
Eastern	10	12
Western	3	3
North Carolina:		
Eastern	3	3
Middle	3	3
Western	3	3
North Dakota	2	2
Ohio:		
Northern	9	10
Southern	6	7
Oklahoma:		
Northern	2	2
Eastern	1	1
Western	3	4
Northern, Eastern, and Western	2	2
Oregon	5	5
Pennsylvania:		
Eastern	19	19
Middle	5	5
Western	10	10
Puerto Rico	7	7
Rhode Island	2	3

State	Former	New
South Carolina	8	8
South Dakota	3	3
Tennessee:		
Eastern	3	4
Middle	3	3
Western	3	4
Texas:		
Northern	9	10
Eastern	4	6
Southern	13	13
Western	6	7
Utah	3	4
Vermont	2	2
Virginia:		
Eastern	8	9
Western	4	4
Washington:		
Eastern	2	3
Western	5	6
West Virginia:		
Northern	2	2
Southern	4	4
Wisconsin:		
Eastern	4	4
Western	2	2
Wyoming	1	2

1983—Pub. L. 97–471 in item relating to West Virginia increased the number of judges for the Northern District from 1 to 2, increased the number of judges for the Southern District from 3 to 4, and struck out an item which had authorized a Northern and Southern District with 1 judge.

1978—Pub. L. 95–486 altered the number of permanent district judgeships in the named districts as follows:

State	Former	New
Alabama:		
Northern	4	7
Middle	2	3
Southern	2	2
Alaska	2	2
Arizona	5	8
Arkansas:		
Eastern	1	3
Western	1	1
Eastern and Western	2	2
California:		
Northern	11	12
Eastern	3	6
Central	16	17
Southern	5	7
Colorado	4	6
Connecticut	4	5
Delaware	3	3
District of Columbia	15	15
Florida:		
Northern	2	3
Middle	6	9
Southern	7	12
Georgia:		
Northern	6	11
Middle	2	2
Southern	2	3
Hawaii	2	2
Idaho	2	2
Illinois:		
Northern	13	16
Central	2	3
Southern	2	2
Indiana:		
Northern	3	4
Southern	4	5
Iowa:		
Northern	1	1
Southern	1	2
Northern and Southern	1	1
Kansas	4	5
Kentucky:		
Eastern	2	4
Western	3	3
Eastern and Western	1	1
Louisiana:		
Eastern	9	13
Middle	1	2
Western	4	5
Maine	1	2
Maryland	7	9
Massachusetts	6	10
Michigan:		
Eastern	10	13
Western	2	4
Minnesota	4	5
Mississippi:		
Northern	2	2
Southern	3	3
Missouri:		
Eastern	3	4
Western	3	5
Eastern and Western	2	2
Montana	2	2
Nebraska	3	3
Nevada	2	3
New Hampshire	1	2
New Jersey	9	11
New Mexico	3	4
New York:		
Northern	2	3
Southern	27	27
Eastern	9	10
Western	3	3
North Carolina:		
Eastern	2	3
Western	2	3
Middle	2	3
North Dakota	2	2
Ohio:		
Northern	8	9
Southern	5	6
Oklahoma:		
Northern	1	2
Eastern	1	1
Western	2	3
Northern, Eastern, and Western	2	2
Oregon	3	5
Pennsylvania:		
Eastern	19	19
Middle	3	5
Western	10	10
Puerto Rico	3	7
Rhode Island	2	2
South Carolina	5	8
South Dakota	2	3
Tennessee:		
Eastern	3	3
Middle	2	3
Western	3	3
Texas:		
Northern	6	9
Southern	8	13
Eastern	3	4
Western	5	6
Utah	2	3
Vermont	2	2
Virginia:		
Eastern	6	8
Western	2	4
Washington:		
Eastern	1	2
Western	3	5
West Virginia:		
Northern	1	1
Southern	2	3
Northern and Southern	1	1
Wisconsin:		
Eastern	3	4
Western	1	2
Wyoming	1	1

Pub. L. 95–408 substituted ''Central'' for ''Southern'' and ''Southern'' for ''Eastern'' in item relating to Illinois.

1971—Pub. L. 92–208 created a Middle District in the Louisiana listing with one judge and reduced from 10 to 9 the number of judges for the Eastern District of Louisiana.

1970—Pub. L. 91–272 altered the number of permanent district judgeships in the named districts as follows:

State	Former	New
Alabama:		
Northern	3	4
Middle	1	2

State	Former	New
Southern	1	2
Middle and Southern	1	0
Arizona	4	5
California:		
Northern	9	11
Central	13	16
Southern	2	5
Colorado	3	4
Florida:		
Middle	5	6
Southern	5	7
Georgia:		
Northern	3	6
Southern	1	2
Illinois: Northern	11	13
Kansas	3	4
Kentucky:		
Eastern	1	2
Western	2	3
Louisiana:		
Eastern	8	10
Western	3	4
Maryland	5	7
Michigan: Eastern	8	10
Missouri: Eastern	2	3
Nebraska	2	3
New Jersey	8	9
New Mexico	2	3
New York:		
Southern	24	27
Eastern	8	9
Ohio:		
Northern	7	8
Southern	4	5
Pennsylvania:		
Eastern	11	19
Western	8	10
Puerto Rico	2	3
South Carolina	4	5
Tennessee: Western	2	3
Texas:		
Northern	5	6
Southern	7	8
Eastern	2	3
Western	4	5
Virginia: Eastern	5	6
West Virginia: Southern	1	2
Wisconsin: Eastern	2	3

1966—Pub. L. 89–372 altered the number of permanent district judgeships in the named districts as follows:

State	Former	New
Alabama: Middle and Southern	0	1
Arizona	3	4
California:		
Northern	9	9
Eastern	0	3
Central	0	13
Southern	13	2
Florida:		
Northern	1	2
Middle	3	5
Southern	3	5
Northern, Middle, and Southern	1	0
Illinois: Northern	10	11
Indiana: Southern	3	4
Louisiana: Eastern	4	8
Maryland	4	5
Mississippi:		
Northern	1	2
Southern	2	3
New York: Western	2	3
Ohio:		
Northern	6	7
Southern	3	4
Rhode Island	1	2
Texas:		
Southern	5	7
Western	3	4
Vermont	1	2
Virginia: Eastern	3	5

1965—Pub. L. 89–242 changed the South Carolina listing by removing references to an Eastern and Western District, with 1 judge listed for the Eastern, 1 judge for the Western, and 2 judges for the Eastern and Western combined, and substituted therefor a single reference to a South Carolina District with 4 judges.

1962—Pub. L. 87–562 amended the Florida listing by adding the Middle District with its designation of 3 judges, substituted ''Northern, Middle, and Southern'' for ''Northern and Southern'', and reduced the number of judges in the Southern District from 6 to 3.

1961—Pub. L. 87–36 increased the number of permanent district judgeships in the named districts as follows:

State	Former	New
Alabama:		
Northern	2	3
Alaska	1	2
Arizona	2	3
Arkansas:		
Eastern and Western	1	2
California:		
Northern	7	9
Southern	11	13
Colorado	2	3
Connecticut	2	4
Florida:		
Southern	4	6
Georgia:		
Northern	2	3
Middle	1	2
Illinois:		
Northern	8	10
Indiana:		
Northern	2	3
Southern	2	3
Iowa:		
Northern and Southern	0	1
Kansas	2	3
Louisiana:		
Eastern	2	4
Western	2	3
Maryland	2	4
Massachusetts	5	6
Michigan:		
Eastern	6	8
Mississippi:		
Southern	1	2
Missouri:		
Western	2	3
Nevada	1	2
New Jersey	7	8
New Mexico	1	2
New York:		
Southern	18	24
Eastern	6	8
North Carolina:		
Eastern	1	2
Western	1	2
Middle	1	2
Ohio:		
Northern	5	6
Oklahoma:		
Northern, Eastern, and Western	1	2
Pennsylvania:		
Eastern	8	11
Middle	2	3
Western	5	8
Puerto Rico	1	2
South Carolina:		
Eastern and Western	1	2
Tennessee:		
Eastern	2	3
Middle	1	2
Western	1	2
Texas:		
Northern	3	5
Southern	4	5
Western	2	3
Utah	1	2
Washington:		
Western	2	3

1959—Pub. L. 86–3 struck out provisions that restricted eligibility for appointment as district judges for the district of Hawaii to citizens of the Territory of Hawaii who have resided therein for at least three years.

1958—Pub. L. 85–508 inserted ''Alaska ——— 1''.

1957—Pub. L. 85–310 increased the number of permanent judgeships in the district of South Dakota from 1 to 2.

1954—Act Feb. 10, 1954, increased the number of permanent judgeships in the named districts as follows:

State	*Former*	*New*
California:		
Southern	10	11
Delaware	2	3
Florida:		
Southern	3	4
Idaho	1	2
Indiana:		
Northern	1	2
Southern	1	2
Kentucky:		
Western	1	2
Massachusetts	4	5
Michigan:		
Eastern	5	6
Western	1	2
Missouri:		
Eastern and Western	1	2
New Jersey	6	7
New York:		
Southern	16	18
North Dakota	1	2
Ohio:		
Northern	4	5
Pennsylvania:		
Eastern	7	8
Western	4	5
Texas:		
Southern	3	4
Eastern	1	2
Virginia:		
Eastern	2	3
West Virginia:		
Northern and Southern	0	1
Wisconsin:		
Eastern	1	2

1950—Act Sept. 5, 1950, increased the number of permanent judgeships in the district of Delaware from 1 to 2.

Act Aug. 29, 1950, increased the number of permanent judgeships in the western district of Pennsylvania from 3 to 4.

Act Aug. 14, 1950, increased the number of permanent judgeships in the northern district of Illinois from 6 to 8.

1949—Act Aug. 3, 1949, increased the numbers of permanent judgeships in the named districts as follows:

State	*Former*	*New*
California:		
Northern	5	7
Southern	8	10
District of Columbia	12	15
Florida:		
Northern and Southern	0	1
Georgia:		
Northern	1	2
Kansas	1	2
New Jersey	5	6
New York:		
Southern	12	16
Ohio:		
Northern	3	4
Oklahoma:		
Western	1	2
Oregon	2	3
Pennsylvania:		
Eastern	5	7
Texas:		
Southern	2	3

EFFECTIVE DATE OF 1978 AMENDMENT; WAIVER OF STANDARDS AND GUIDELINES; FAILURE TO COMPLY

Section 7 of Pub. L. 95–486 provided that:

''(a) The first section and section 2 of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect immediately upon the President's promulgation and publication of standards and guidelines for the selection, on the basis of merit, of nominees for United States district court judgeships authorized by this Act [amending this section, sections 44, 46, 1337, and 1445 of this title, and section 5108 of Title 5, Government Organization and Employees, enacting provisions set out as notes under this section and sections 41 and 44 of this title, and amending provisions set out as a note under section 45 of this title].

''(b) The President may waive such standards and guidelines with respect to any nomination by notifying the Senate of the reasons for such waiver.

''(c) Following the promulgation and publication of such standards and guidelines, no nomination or appointment to a United States district court judgeship may be invalidated on the basis of the President's failure to comply with this section or with any standards or guidelines promulgated under this section.

''(d) This Act, other than the first section and section 2 [amending this section and enacting provisions set out as notes under this section] shall take effect on the date of enactment of this Act [Oct. 20, 1978].''

Section 11 of Pub. L. 95–486 provided that: ''Notwithstanding any other provision of this Act the first section and section 2 [amending this section and enacting provisions set out as notes under this section] shall not take effect before November 1, 1978.''

EFFECTIVE DATE OF 1978 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 95–408 effective 180 days after Oct. 2, 1978, with such amendment not to affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act, see section 5 of Pub. L. 95–408, set out as a note under section 89 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–208 effective 120 days after Dec. 18, 1971, see section 3(f) of Pub. L. 92–208, set out as a note under section 98 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–242 effective on first day of month following Oct. 7, 1965, see section 6 of Pub. L. 89–242, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–562 effective 90 days after July 30, 1962, see section 5 of Pub. L. 87–562, set out as a note under section 89 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 9 of Pub. L. 86–3 provided in part that the amendment of this section and section 134 of this title is effective on admission of the State of Hawaii into the Union. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. 74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. 16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

ADDITIONAL JUDGESHIPS

Section 203(a)–(c) of title II of Pub. L. 101–650, as amended by Pub. L. 104–60, §1, Nov. 28, 1995, 109 Stat. 635; Pub. L. 104–317, title III, §304, Oct. 19, 1996, 110 Stat. 3852; Pub. L. 105–53, §3, Oct. 6, 1997, 111 Stat. 1173, provided that:

''(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

''(1) 1 additional district judge for the western district of Arkansas;

''(2) 2 additional district judges for the northern district of California;

''(3) 5 additional district judges for the central district of California;

''(4) 1 additional district judge for the southern district of California;

''(5) 2 additional district judges for the district of Connecticut;

''(6) 2 additional district judges for the middle district of Florida;

''(7) 1 additional district judge for the northern district of Florida;

''(8) 1 additional district judge for the southern district of Florida;

''(9) 1 additional district judge for the middle district of Georgia;

''(10) 1 additional district judge for the northern district of Illinois;

''(11) 1 additional district judge for the southern district of Iowa;

''(12) 1 additional district judge for the western district of Louisiana;

''(13) 1 additional district judge for the district of Maine;

''(14) 1 additional district judge for the district of Massachusetts;

''(15) 1 additional district judge for the southern district of Mississippi;

''(16) 1 additional district judge for the eastern district of Missouri;

''(17) 1 additional district judge for the district of New Hampshire;

''(18) 3 additional district judges for the district of New Jersey;

''(19) 1 additional district judge for the district of New Mexico;

''(20) 1 additional district judge for the southern district of New York;

''(21) 3 additional district judges for the eastern district of New York;

''(22) 1 additional district judge for the middle district of North Carolina;

''(23) 1 additional district judge for the southern district of Ohio;

''(24) 1 additional district judge for the northern district of Oklahoma;

''(25) 1 additional district judge for the western district of Oklahoma;

''(26) 1 additional district judge for the district of Oregon;

''(27) 3 additional district judges for the eastern district of Pennsylvania;

''(28) 1 additional district judge for the middle district of Pennsylvania;

''(29) 1 additional district judge for the district of South Carolina;

''(30) 1 additional district judge for the eastern district of Tennessee;

''(31) 1 additional district judge for the western district of Tennessee;

''(32) 1 additional district judge for the middle district of Tennessee;

''(33) 2 additional district judges for the northern district of Texas;

''(34) 1 additional district judge for the eastern district of Texas;

''(35) 5 additional district judges for the southern district of Texas;

''(36) 3 additional district judges for the western district of Texas;

''(37) 1 additional district judge for the district of Utah;

''(38) 1 additional district judge for the eastern district of Washington;

''(39) 1 additional district judge for the northern district of West Virginia;

''(40) 1 additional district judge for the southern district of West Virginia; and

''(41) 1 additional district judge for the district of Wyoming.

''(b) EXISTING JUDGESHIPS.—(1) The existing district judgeships for the western district of Arkansas, the northern district of Illinois, the northern district of Indiana, the district of Massachusetts, the western district of New York, the eastern district of North Carolina, the northern district of Ohio, and the western district of Washington authorized by section 202(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98–353, 98 Stat. 347–348) [set out below] shall, as of the effective date of this title [Dec. 1, 1990], be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this title.

''(2)(A) The existing 2 district judgeships for the eastern and western districts of Arkansas (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be district judgeships for the eastern district of Arkansas only, and the incumbents of such judgeships shall hold the offices under section 133 of title 28, United States Code, as amended by this title.

''(B) The existing district judgeship for the northern and southern districts of Iowa (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) shall be a district judgeship for the northern district of Iowa only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

''(C) The existing district judgeship for the northern, eastern, and western districts of Oklahoma (provided by section 133 of title 28, United States Code, as in effect on the day before the effective date of this title) and the occupant of which has his or her official duty station at Oklahoma City on the date of the enactment of this title [Dec. 1, 1990], shall be a district judgeship for the western district of Oklahoma only, and the incumbent of such judgeship shall hold the office under section 133 of title 28, United States Code, as amended by this title.

''(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

''(1) 1 additional district judge for the eastern district of California;

''(2) 1 additional district judge for the district of Hawaii;

''(3) 1 additional district judge for the central district of Illinois;

''(4) 1 additional district judge for the southern district of Illinois;

''(5) 1 additional district judge for the district of Kansas;

''(6) 1 additional district judge for the western district of Michigan;

''(7) 1 additional district judge for the eastern district of Missouri;

''(8) 1 additional district judge for the district of Nebraska;

''(9) 1 additional district judge for the northern district of New York;

''(10) 1 additional district judge for the northern district of Ohio;

''(11) 1 additional district judge for the eastern district of Pennsylvania; and

''(12) 1 additional district judge for the eastern district of Virginia.

Except with respect to the western district of Michigan and the eastern district of Pennsylvania, the first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 10 years or more after the confirmation date of the judge named to fill the temporary judgeship created by this subsection, shall not be filled. The first vacancy in the office of district judge in the western district of Michigan, occurring after December 1, 1995, shall not be filled. The first vacancy in the office of district judge in the eastern district of Pennsylvania, occurring 5 years or more after the confirmation date of the judge

named to fill the temporary judgeship created for such district under this subsection, shall not be filled. For districts named in this subsection for which multiple judgeships are created by this Act, the last of those judgeships filled shall be the judgeships created under this section.''

Section 202(a)–(d) of Pub. L. 98–353 provided that:

''(a) Subject to the provisions of subsection (c), the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the southern district of Alabama, one additional district judge for the district of Alaska, five additional district judges for the central district of California, one additional district judge for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the district of Delaware, three additional district judges for the southern district of Florida, one additional district judge for the middle district of Georgia, one additional district judge for the district of Hawaii, four additional district judges for the northern district of Illinois, one additional district judge for the southern district of Illinois, one additional district judge for the western district of Kentucky, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the eastern district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Mississippi, two additional district judges for the southern district of Mississippi, one additional district judge for the eastern district of Missouri, one additional district judge for the district of Montana, one additional district judge for the district of Nevada, three additional district judges for the district of New Jersey, one additional district judge for the northern district of New York, two additional district judges for the eastern district of New York, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the district of Rhode Island, one additional district judge for the eastern district of Tennessee, one additional district judge for the western district of Tennessee, one additional district judge for the northern district of Texas, two additional district judges for the eastern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, one additional district judge for the eastern district of Virginia, one additional district judge for the eastern district of Washington, one additional district judge for the western district of Washington, and one additional district judge for the district of Wyoming.

''(b) Subject to the provisions of subsection (c) the President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the western district of Arkansas, one additional district judge for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the district of Massachusetts, one additional district judge for the western district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the northern district of Ohio, and one additional district judge for the western district of Washington. The first vacancy in each of the offices of district judge authorized by this subsection, occurring five years or more after the effective date of this Act [probably means July 10, 1984], shall not be filled.

''(c) For the judgeships created in subsections (a) and (b), the President shall appoint, by and with the advice and consent of the Senate, no more than twenty-nine of such judges prior to January 21, 1985.

''(d) The existing district judgeship for the district of Minnesota and the existing district judgeship for the northern district of Ohio, heretofore authorized by section 2 of the Act of October 20, 1978 (Public Law 95–486, 92 Stat. 1631) [set out below], shall, as of the effective date of this Act [probably means July 10, 1984], be authorized under section 133 of title 28, United States Code, and the incumbents of those offices shall henceforth hold their offices under section 133, as amended by this Act.''

Section 1(a) of Pub. L. 95–486 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the northern district of Alabama, one additional district judge for the middle district of Alabama, three additional district judges for the district of Arizona, two additional district judges for the eastern district of Arkansas, one additional district judge for the northern district of California, three additional district judges for the eastern district of California, one additional district judge for the central district of California, two additional district judges for the southern district of California, two additional district judges for the district of Colorado, one additional district judge for the district of Connecticut, one additional district judge for the northern district of Florida, three additional district judges for the middle district of Florida, five additional district judges for the southern district of Florida, five additional district judges for the northern district of Georgia, one additional district judge for the southern district of Georgia, three additional district judges for the northern district of Illinois, one additional district judge for the central district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the southern district of Indiana, one additional district judge for the southern district of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Kentucky, four additional district judges for the eastern district of Louisiana, one additional district judge for the middle district of Louisiana, one additional district judge for the western district of Louisiana, one additional district judge for the district of Maine, two additional district judges for the district of Maryland, four additional district judges for the district of Massachusetts, three additional district judges for the eastern district of Michigan, two additional district judges for the western district of Michigan, one additional district judge for the district of Minnesota, one additional district judge for the eastern district of Missouri, two additional district judges for the western district of Missouri, one additional district judge for the district of Nevada, one additional district judge for the district of New Hampshire, two additional district judges for the district of New Jersey, one additional district judge for the district of New Mexico, one additional district judge for the northern district of New York, one additional district judge for the eastern district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the western district of Oklahoma, one additional district judge for the northern district of Oklahoma, two additional district judges for the district of Oregon, two additional district judges for the middle district of Pennsylvania, four additional district judges for the district of Puerto Rico, three additional district judges for the district of South Carolina, one additional district judge for the district of South Dakota, one additional district judge for the middle district of Tennessee, three additional district judges for the northern district of Texas, one additional district judge for the eastern district of Texas, five additional district judges for the southern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the district of Utah, two additional district judges for the eastern district of Virginia, two additional district judges for the western district of Virginia, one additional district judge for

the eastern district of Washington, one additional district judge for the western district of Washington, one additional district judge for the southern district of West Virginia, one additional district judge for the eastern district of Wisconsin, and one additional district judge for the western district of Wisconsin.''

Section 2 of Pub. L. 95–486 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the eastern district of Kentucky, one additional district judge for the district of Minnesota, one additional district judge for the northern district of Ohio, and one additional district judge for the southern district of West Virginia. The first vacancy in the office of district judge in the judicial districts named in this section occurring five years or more after the effective date of this Act [Oct. 20, 1978] shall not be filled.''

Section 1(a) of Pub. L. 91–272 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the northern district of Alabama, one additional district judge for the middle district of Alabama, one additional district judge for the district of Arizona, two additional district judges for the northern district of California, three additional district judges for the central district of California, three additional district judges for the southern district of California, one additional district judge for the district of Colorado, one additional district judge for the middle district of Florida, two additional district judges for the southern district of Florida, three additional district judges for the northern district of Georgia, one additional district judge for the southern district of Georgia, two additional district judges for the northern district of Illinois, one additional district judge for the eastern district of Kentucky, one additional district judge for the western district of Kentucky, two additional district judges for the eastern district of Louisiana, one additional district judge for the western district of Louisiana, two additional district judges for the district of Maryland, two additional district judges for the eastern district of Michigan, one additional district judge for the eastern district of Missouri, one additional district judge for the district of Nebraska, one additional district judge for the district of New Jersey, one additional district judge for the district of New Mexico, one additional district judge for the eastern district of New York, three additional district judges for the southern district of New York, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, six additional district judges for the eastern district of Pennsylvania, two additional district judges for the western district of Pennsylvania, one additional district judge for the district of Puerto Rico, one additional district judge for the district of South Carolina, one additional district judge for the western district of Tennessee, one additional district judge for the northern district of Texas, one additional district judge for the eastern district of Texas, one additional district judge for the southern district of Texas, one additional district judge for the western district of Texas, one additional district judge for the eastern district of Virginia, and one additional district judge for the southern district of West Virginia.''

Section 2(a) of Pub. L. 89–372 provided that: The President shall appoint, by and with the advice and consent of the Senate, one district judge for the middle and southern districts of Alabama, one additional district judge for the district of Arizona, one additional district judge for the northern district of Florida, one additional district judge for the middle district of Florida, two additional district judges for the southern district of Florida, one additional district judge for the northern district of Illinois, one additional district judge for the southern district of Indiana, four additional district judges for the eastern district of Louisiana, one additional district judge for the district of Maryland, one additional district judge for the northern district of Mississippi, one additional district judge for the southern district of Mississippi, one additional district judge for the western district of New York, one additional district judge for the northern district of Ohio, one additional district judge for the southern district of Ohio, one additional district judge for the district of Rhode Island, two additional district judges for the southern district of Texas, one additional district judge for the western district of Texas, two additional district judges for the eastern district of Virginia, and one additional district judge for the district of Vermont.''

Section 2(a) of Pub. L. 87–36 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the northern district of Alabama, one additional district judge for the district of Alaska, one additional district judge for the district of Arizona, one additional district judge for the eastern and western districts of Arkansas, two additional district judges for the northern district of California, two additional district judges for the southern district of California, one additional district judge for the district of Colorado, two additional district judges for the district of Connecticut, two additional district judges for the southern district of Florida, one additional district judge for the northern district of Georgia, two additional district judges for the northern district of Illinois, one additional district judge for the northern district of Indiana, one additional district judge for the southern district of Indiana, one additional district judge for the northern and southern districts of Iowa, one additional district judge for the district of Kansas, two additional district judges for the eastern district of Louisiana, one additional district judge for the western district of Louisiana, two additional district judges for the district of Maryland, one additional district judge for the district of Massachusetts, two additional district judges for the eastern district of Michigan, one additional district judge for the southern district of Mississippi, one additional district judge for the western district of Missouri, one additional district judge for the district of Nevada, one additional district judge for the district of New Jersey, two additional district judges for the eastern district of New York, six additional district judges for the southern district of New York, one additional district judge for the eastern district of North Carolina, one additional district judge for the middle district of North Carolina, one additional district judge for the western district of North Carolina, one additional district judge for the northern district of Ohio, one additional district judge for the northern, eastern, and western districts of Oklahoma, three additional district judges for the eastern district of Pennsylvania, one additional district judge for the middle district of Pennsylvania, two additional district judges for the western district of Pennsylvania, one additional district judge for the district of Puerto Rico, one additional district judge for the eastern and western districts of South Carolina, one additional district judge for the eastern district of Tennessee, one additional district judge for the middle district of Tennessee, one additional district judge for the western district of Tennessee, two additional district judges for the northern district of Texas, one additional district judge for the southern district of Texas, one additional district judge for the western district of Texas and one additional district judge for the eastern and western districts of Washington.''

Subsec. (a)(1) of section 2 of act Feb. 10, 1954, subsec. (a)(3) of which section amended the table in this section, provided for the appointment by the President, by and with the advice and consent of the Senate, of the additional judges for the districts for which additional permanent judgeships were provided in the amendment.

Alabama.—Section 1(b) of Pub. L. 91–272 provided that: ''The existing district judgeship for the middle and southern districts of Alabama, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the southern district of Alabama only, and the present incumbent of such judgeship shall henceforth hold his office under

such section 133, as amended by subsection (d) of this section.''

California.—Section 3(h) of Pub. L. 89–372 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, three additional district judges for the central district of California, and two additional district judges for the northern district of California.''

Delaware.—Act July 24, 1946, ch. 602, 60 Stat. 654, which authorized the appointment of an additional judge for the district of Delaware was repealed by section 2 of act Sept. 5, 1950, which by section 1 of act Sept. 5, 1950, made the additional judgeship permanent. However, section 2 of act Sept. 5, 1950 also provided that the repeal in no way affected the tenure of the present incumbent.

Florida.—Section 2(b) of Pub. L. 89–372 provided that: ''The existing district judgeship for the northern, middle and southern districts of Florida heretofore provided for by section 133 of title 28, United States Code, shall hereafter be a district judgeship for the middle district of Florida only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act.''

Georgia.—Act Mar. 29, 1949, ch. 37, 63 Stat. 16, which authorized the appointment of an additional judge for the middle district, was repealed by section 2(b) of Pub. L. 87–36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Mar. 29, 1949, should henceforth hold his office under this section, as amended by Pub. L. 87–36, §2(d).

Kansas.—Section 5(a) of Pub. L. 89–372, Mar. 18, 1966, 80 Stat. 78, which authorized the appointment of an additional district judge for the eastern district of Kansas and which provided that the first vacancy which occurred in the office of district judge in such district not be filled was repealed by section 1(c) of Pub. L. 91–272, June 2, 1970, 84 Stat. 294, which provided, in part, that such judgeship be a permanent judgeship and that the present incumbent henceforth hold his office under this section, as amended by section 1(d) of Pub. L. 91–272.

Missouri.—The additional judgeship for the eastern and western districts, which was authorized by act Dec. 24, 1942, ch. 827, 56 Stat. 1083, was made permanent by section 2(a)(2) of act Feb. 10, 1954, which by section 2(b)(10) of act Feb. 10, 1954 provided that the incumbent of the judgeship created by act Dec. 24, 1942, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, §2(a)(3).

Nevada.—Section 2(b)(2) of act Feb. 10, 1954, provided: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of Nevada. The first vacancy occurring in the office of district judge in said district shall not be filled.''

New Jersey.—Section 2(a) of Pub. L. 91–272 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of New Jersey. The first vacancy occurring in the office of district judge in that district shall not be filled.''

New Mexico.—Act Feb. 10, 1954, ch. 6, §2(b)(1), 68 Stat. 10, which authorized the appointment of an additional judge for the district, was repealed by section 2(b) of Pub. L. 87–36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Feb. 10, 1954, should henceforth hold his office under this section, as amended by Pub. L. 87–36, §2(d).

North Carolina.—Section 2(c) of Pub. L. 91–272 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the eastern district of North Carolina. The first vacancy occurring in the office of district judge in that district shall not be filled.''

Ohio.—Act May 1, 1941, ch. 83, 55 Stat. 148, which provided for the appointment of an additional judge for the northern district was repealed by section 2(e) of act Aug. 3, 1949, which also provided that the incumbent of the judgeship created by act May 1, 1941, should henceforth hold his office under this section, as amended by act Aug. 3, 1949, §2(a).

Section 2(e)(1), (2) of Pub. L. 87–36 provided that:

''(1) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the southern district of Ohio. The first vacancy occurring in the office of district judge in said district shall not be filled.

''(2) The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the northern district of Ohio. The first vacancy occurring in the office of district judge in said district shall not be filled.''

Oklahoma.—Act May 24, 1940, ch. 209, §2(a), 54 Stat. 219, providing for additional judgeships was amended by section 2(b) of act Aug. 3, 1949, to strike out ''western district of Oklahoma'', and to make the incumbent of the judgeship created by act May 24, 1940, henceforth hold his office under this section, as amended by act Aug. 3, 1949, §2(a).

Pennsylvania.—Section 2(b) of Pub. L. 91–272 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the middle district of Pennsylvania. The first vacancy occurring in the office of district judge in that district shall not be filled.''

Section 5(b) of Pub. L. 89–372, Mar. 18, 1966, 80 Stat. 78, as amended by Pub. L. 90–90, Sept. 23, 1967, 81 Stat. 228, which authorized the appointment of three additional district judges for the eastern district of Pennsylvania and which provided that the second, third, and fourth vacancies occurring after Mar. 18, 1966, in the office of district judge in such district not be filled was repealed by section 1(c) of Pub. L. 91–272, June 2, 1970, 84 Stat. 294, which provided, in part, that such judgeships be permanent judgeships and that the present incumbents henceforth hold their offices under this section, as amended by section 1(d) of Pub. L. 81–272.

Act Feb. 10, 1954, ch. 6, §2(b)(5), 68 Stat. 10, which authorized the appointment of an additional judge for the western district, was repealed by section 2(b) of Pub. L. 87–36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Feb. 10, 1954, should henceforth hold his office under this section, as amended by Pub. L. 87–36, §2(d).

Section 2 of act July 24, 1946, ch. 600, 60 Stat. 654, as amended by section 6 of act Feb. 10, 1954, ch. 6, 68 Stat. 14, provided: ''The President is authorized to appoint, by and with the advice and consent of the Senate, one additional United States district judge, who shall be an additional district judge for the eastern, middle, and western districts of Pennsylvania. The judge so appointed shall at the time of his appointment be a resident and a citizen of the State of Pennsylvania: *Provided*, That when a vacancy occurs in said office it shall not be filled: *Provided further*, That unless the President shall submit a nomination to the Senate to fill the office hereby created within ninety days after the effective date of this Act [July 24, 1946], then in that event this Act shall be of no force and effect. If a vacancy arises in the office of district judge for the middle district of Pennsylvania while the judge appointed pursuant to this section is holding the office created by this section, such judge shall thereafter be a district judge for the middle district of Pennsylvania.''

Section 2(c) of act Aug. 3, 1949, which provided for an additional temporary judgeship for the western district of Pennsylvania was repealed by section 2 of act Aug. 29, 1950, which by section 1 of act Aug. 29, 1950, made the additional judgeship permanent. However, section 2 of act Aug. 29, 1950 also provided that the repeal in no way affected the tenure of the present incumbent.

South Carolina.—Section 1(b) of Pub. L. 89–242 provided that: ''The existing district judgeships for the Eastern District of South Carolina, the Western District of South Carolina, and the Eastern and Western Districts of South Carolina heretofore provided for by section 133 of title 28 of the United States Code [this section] shall hereafter be district judgeships for the District of South Carolina and the present incumbents

of such judgeships shall henceforth hold their offices under section 133, as amended by this Act.''

South Dakota.—Pub. L. 85–310 provided: ''The President is authorized to appoint, by and with the advice and consent of the Senate an additional district judge for the district of South Dakota as authorized by paragraph (3) of section 2(b) of the act of February 10, 1954 [set out as a note below].''

Section 2(b)(3) of act February 10, 1954, as amended by Pub. L. 85–310, provided: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of South Dakota.''

Tennessee.—Section 2(b)(4) of act Feb. 10, 1954, provided: ''The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the middle district of Tennessee. The first vacancy occurring in the office of district judge in said district shall not be filled.''

Texas.—Act Aug. 3, 1949, ch. 387, § 2(d), 63 Stat. 495, which authorized the appointment of an additional judge for the Southern district, was repealed by section 2(b)(11) of act Feb. 10, 1954, which by section 2(a)(2) of act Feb. 10, 1954, made the additional judgeship permanent. Section 2(b)(11) of act Feb. 10, 1954 also provided that the incumbent of the judgeship created by section 2(d) of act Aug. 3, 1949, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, § 2(a)(3).

Utah.—Act Feb. 10, 1954, ch. 6, § 2(b)(6), 68 Stat. 11, which authorized the appointment of an additional judge for the district, was repealed by section 2(b) of Pub. L. 87–36, which made the judgeship permanent and also provided that the incumbent of the judgeship created by act Feb. 10, 1954, should hence forth hold his office under this section, as amended by Pub. L. 87–36, § 2(d).

Virgin Islands.—Section 3(a) of Pub. L. 91–272 provided that: ''The President shall appoint, by and with the advice and consent of the Senate, one additional judge for the District Court of the Virgin Islands, who shall hold office for the term of eight years and until his successor is chosen and qualified, unless sooner removed by the President for cause.''

Washington.—Section 1(b) of Pub. L. 95–486 provided that: ''The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act.''

Section 2(c) of Pub. L. 87–36 provided that: ''The existing district judgeship for the eastern and western districts of Washington, heretofore provided for by section 133 of title 28 of the United States Code, shall hereafter be a district judgeship for the western district of Washington only, and the present incumbent of such judgeship shall henceforth hold his office under section 133, as amended by this Act [Pub. L. 87–36].''

West Virginia.—Section 2 of Pub. L. 97–471 provided that:

''(a) The existing district judgeship for the Southern District of West Virginia, authorized by section 2 of the Act entitled 'An Act to provide for the appointment of additional district and circuit judges and for other purposes', approved October 20, 1978 [Pub. L. 95–486] (92 Stat. 1632; 28 U.S.C. 133 note), shall, as of the date of enactment of this Act [Jan. 14, 1983], be authorized under section 133 of title 28 of the United States Code as a district judgeship for the Northern District of West Virginia, and the incumbent of that office shall henceforth hold office under section 133, as amended by this Act.

''(b) The existing district judgeship for the Northern and Southern Districts of West Virginia shall be authorized as the district judgeship for the Southern District.''

The additional judgeship for the northern and southern districts, which was authorized by act June 22, 1936, ch. 695, 49 Stat. 1805, was made permanent by section 2(a)(2) of act Feb. 10, 1954, which by section 2(b)(12) of act Feb. 10, 1954, provided that the incumbent of the judgeship created by act June 22, 1936, should henceforth hold his office under this section, as amended by act Feb. 10, 1954, § 2(a)(3).

Wisconsin.—Section 5(c) of Pub. L. 89–372, Mar. 18, 1966, 80 Stat. 78, which authorized the appointment of an additional district judge for the district of Wisconsin and which provided that the first vacancy occurring in the office of district judge in such district not be filled was repealed by section 1(c) of Pub. L. 91–272, June 2, 1970, 84 Stat. 294, which provided, in part, that such judgeship be a permanent judgeship and that the present incumbent henceforth hold his office under this section, as amended by section 1(d) of Pub. L. 91–272.

NOMINATION OF WOMEN AND BLACKS TO FEDERAL JUDGESHIPS

Section 8 of Pub. L. 95–486 provided that: ''The Congress—

''(1) takes notice of the fact that only 1 percent of Federal judges are women and only 4 percent are blacks; and

''(2) suggests that the President, in selecting individuals for nomination to the Federal judgeships created by this Act [for classification see Effective Date of 1978 Amendment note above], give due consideration to qualified individuals regardless of race, color, sex, religion, or national origin.''

RESIDENCE OF ADDITIONAL JUDGE FOR KANSAS

Section 2(b)(2) act Aug. 3, 1949, provided that: ''The judge first appointed for the district of Kansas under the authority contained in subsection (a) [amending this section] shall reside at Wichita.''

EXECUTIVE ORDER NO. 12084

Ex. Ord. No. 12084, Sept. 27, 1978, 43 F.R. 44815, as amended by Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which established the Judicial Nominating Commission for the District of Puerto Rico and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12097

Ex. Ord. No. 12097, Nov. 8, 1978, 43 F.R. 52455, which provided standards and guidelines for the selection of nominees for United States district court judgeships, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

CROSS REFERENCES

Assignment of district judges to other districts or courts, see section 292 et seq. of this title.

Guam and Virgin Islands, appointment and number of district judges, see sections 1424b and 1614 of Title 48, Territories and Insular Possessions.

Judges to hold office during good behavior, see Const., Art. 3, § 1 and section 134 of this title.

Oath of judge, see section 453 of this title.

§ 134. Tenure and residence of district judges

(a) The district judges shall hold office during good behavior.

(b) Each district judge, except in the District of Columbia, the Southern District of New York, and the Eastern District of New York, shall reside in the district or one of the districts for which he is appointed. Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.

(c) If the public interest and the nature of the business of a district court require that a dis-

trict judge should maintain his abode at or near a particular place for holding court in the district or within a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the district judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

(June 25, 1948, ch. 646, 62 Stat. 896; Aug. 3, 1949, ch. 387, §2(b)(1), 63 Stat. 495; Feb. 10, 1954, ch. 6, §2(b)(13)(a), 68 Stat. 12; Pub. L. 86–3, §9(c), Mar. 18, 1959, 73 Stat. 8; Pub. L. 87–36, §2(e)(3), May 19, 1961, 75 Stat. 83; Pub. L. 89–571, §1, Sept. 12, 1966, 80 Stat. 764; Pub. L. 92–208, §3(e), Dec. 18, 1971, 85 Stat. 742; Pub. L. 104–317, title VI, §607, Oct. 19, 1996, 110 Stat. 3860.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §1 and section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 12, 1900, ch. 191, §34, 31 Stat. 84; Mar. 3, 1911, ch. 231, §1, 36 Stat. 1087; Jan. 7, 1913; ch. 6, 37 Stat. 648; July 30, 1914, ch. 216, 38 Stat. 580; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; Sept. 14, 1922, ch. 306, §1, 42 Stat. 837; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118).

Section consolidates the last paragraph of section 1 of title 28, U.S.C., 1940 ed., with portions of section 863 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Provisions of section 1 of title 28, U.S.C., 1940 ed., relating to the number of judges in the various districts are incorporated in section 133 of this title.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of section 863, see Distribution Table.

The exception in subsection (b) ''except in the District of Columbia'' conforms with the recent decision in *U.S. ex. rel. Laughlin v. Eicher*, 1944, 56 F.Supp. 972, holding that residence requirement of section 1 of title 28, U.S.C., 1940 ed., did not apply to district judges in the District of Columbia. (See reviser's note under section 44 of this title.)

The clause in said last paragraph of section 1 of title 28 providing that any district judge, who violates the residence requirement, shall be deemed guilty of a high misdemeanor, was omitted. This penalty provision was attached to the residence requirement at the time of compilation of the Revised Statutes of 1878, although it is apparent that Congress only intended that the penalty should be invoked upon the unauthorized practice of law. See *U.S. ex. rel. Laughlin v. Eicher*, supra, in which an outline of the history of said section 1 of title 28 is given.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–317 inserted ''the Southern District of New York, and the Eastern District of New York,'' after ''the District of Columbia,'' and inserted ''Each district judge of the Southern District of New York and the Eastern District of New York may reside within 20 miles of the district to which he or she is appointed.'' at end.

1971—Subsec. (c). Pub. L. 92–208 struck out provision requiring that one of the district judges for the Eastern District of Louisiana reside in East Baton Rouge Parish, Louisiana.

1966—Subsec. (a). Pub. L. 89–571 struck out provisions which excepted district judges in Puerto Rico from tenure during good behavior and which instead set eight-year terms for them to be served until their successors were appointed and qualified.

1961—Subsec. (c). Pub. L. 87–36 required the residence of one of the district judges for the Eastern District of Louisiana to be in East Baton Rouge Parish, Louisiana.

1959—Subsec. (a). Pub. L. 86–3 struck out provisions which limited district judges in Hawaii to a term of six years.

1954—Subsecs. (a) and (b) reenacted without change by act Feb. 10, 1954.

Subsec. (c). Act Feb. 10, 1954, substituted entirely new provisions giving the judicial council of the circuit the authority to determine residence of district judges when it is in the public interest and the nature of the business of the district court necessitates the presence of a judge at or near a particular place for holding court in the district or within a particular part of the district, for former provisions relating to residence of one of the district judges for the District of Kansas.

Subsecs. (d), (e). Act Feb. 10, 1954, struck out subsecs. (d) and (e) which related to residence of one of the district judges for the Southern District of California and one of the district judges for the Southern District of Texas.

1949—Subsecs. (c) to (e). Act Aug. 3, 1949, added subsecs. (c) to (e).

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–208 effective 120 days after Dec. 18, 1971, see section 3(f) of Pub. L. 92–208, set out as a note under section 98 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–3 effective on admission of Hawaii into the Union, see Effective Date of 1959 Amendment note set out under section 133 of this title. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

TENURE AND SALARY RIGHTS OF JUDGES IN PUERTO RICO IN OFFICE ON SEPTEMBER 12, 1966

Section 4 of Pub. L. 89–571 provided that: ''The amendments made by this section to sections 134 and 373 of title 28, United States Code, shall not affect the tenure of office or right to continue to receive salary after resignation, retirement, or failure of reappointment of any district judge for the district of Puerto Rico who is in office on the date of enactment of this Act [Sept. 12, 1966].''

APPLICABILITY OF ORDERS UNDER 1954 AMENDMENT

Section 2(b)(13)(b) of act Feb. 10, 1954, provided: ''Orders made by the judicial councils of the circuits under the second sentence of subsection (c) of section 134 of Title 28, as amended by this section, determining that a specified district judge shall maintain his abode at or near a place or within an area which the council has theretofore designated for the abode of a district judge under the first sentence of such subsection, shall be applicable only to district judges appointed after the enactment of this act [Feb. 10, 1954].''

CROSS REFERENCES

Guam district judges, tenure and residence, see section 1424b of Title 48, Territories and Insular Possessions.

Judges to hold office during good behavior, see Const., Art. 3, §1.

Official station of district judges, see section 456 of this title.

Virgin Islands district judge, tenure, see section 1614 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 992 of this title.

§135. Salaries of district judges

Each judge of a district court of the United States shall receive a salary at an annual rate

determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 897; Mar. 2, 1955, ch. 9, § 1(c), 69 Stat. 10; Pub. L. 88–426, title IV, § 403(c), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94–82, title II, § 205(b)(3), Aug. 9, 1975, 89 Stat. 422.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 5, and District of Columbia Code, 1940 ed., § 11–302 (Mar. 3, 1911, ch. 231, § 2, 36 Stat. 1087; Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156; Dec. 13, 1926, ch. 6, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat. 158; July 31, 1946, ch. 704, § 1, 60 Stat. 716).

Section consolidates section 5 of title 28, U.S.C., 1940 ed., and section 11–302 of the District of Columbia Code, 1940 ed.

''Chief judge,'' in the District of Columbia, was substituted for ''Chief Justice'' which appeared in section 11–302 of the District of Columbia Code. (See reviser's note under section 136 of this title.)

Words ''to be paid in monthly installments'' were omitted, since the time of payment is a matter of administrative convenience. See 20 Comp. Gen. 834.

The provision of section 5 of title 28, U.S.C., 1940 ed., for salaries of judges of the district court of Alaska was omitted as covered by section 101 of Title 48, U.S.C., 1940 ed., Territories and Insular Possessions, as amended by a separate section in the bill to enact this revised title. The provision of said section for salary of the Virgin Islands district judge was omitted as covered by section 5a of title 28, U.S.C., 1940 ed., as amended by a separate section in the bill to enact this revised title. Such section 5a is recommended for transfer to title 48, U.S.C., 1940 ed., because of the dual nature of the Virgin Islands district court.

For salary of the district judge of Canal Zone district court, see section 1348 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90–206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

AMENDMENTS

1975—Pub. L. 94–82 substituted provision that each judge of a district court shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each such judge receive a salary of $30,000.

1964—Pub. L. 88–426 increased the salary of the district court judges from $22,500 to $30,000, and that of the chief judge of the District Court for the District of Columbia from $23,000 to $30,500.

1955—Act Mar. 2, 1955, increased the salaries of the district court judges from $15,000 to $22,500 a year and increased the salary of the chief judge of the District Court for the District of Columbia from $15,500 to $23,000 a year.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

SALARY INCREASES

1998—Salaries of district judges increased to $136,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1998, by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1997—Salaries of district judges continued at $133,600 per annum, by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

1996—Salaries of district judges continued at $133,600 per annum, by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

1995—Salaries of district judges continued at $133,600 per annum, by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

1993—Salaries of district judges increased to $133,600 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1993, by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

1992—Salaries of district judges increased to $129,500 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1992, by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

1991—Salaries of district judges increased to $125,100 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1991, by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

1990—Salaries of district judges continued at $89,500 per annum, and increased to $96,600, effective on first day of first pay period beginning on or after Jan. 31, 1990, by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

1989—Salaries of district judges increased in the amount of 25 percent of their rates (as last in effect before the increase), effective Jan. 1, 1991, see Pub. L. 101–194, title VII, § 703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5.

Salaries of district judges continued at $89,500 per annum by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

1988—Salaries of district judges continued at $89,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

1987—Salaries of district judges increased to $89,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of district judges increased to $81,100 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985—Salaries of district judges increased to $78,700 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984—Salaries of district judges increased to $76,000 effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of district judges increased to $73,100 effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 140 of Pub. L. 97–92 funds are not available to pay a salary at a rate which exceeds the rate in effect on Dec. 15, 1981, which was $70,300.

Maximum rate payable after Dec. 17, 1982, increased from $70,300 to $73,100, see Pub. L. 97–377, title I,

§ 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5.

1981—Salaries of district judges increased to $70,300 effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Salaries of district judges increased to $67,100 effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $57,497.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of Title 5.

1979—Salaries of district judges increased to $61,500 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $57,497.50 for district judges.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Salaries of district judges increased to $57,500 effective on first day of first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12087, further provided that pursuant to Legislative Branch Appropriation Act, 1979 [Pub. L. 95–391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1978, which was $54,500.

1977—Salaries of district judges increased to $54,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of district judges increased to $44,000 effective on first day of first pay period beginning on or after Oct. 1, 1976, by Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941, further provided that pursuant to Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1976, which was $42,000.

1975—Salaries of district judges increased to $42,000 effective on first day of first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, formerly set out as a note under section 5332 of Title 5.

1969—Salary of judge increased from $30,000 to $40,000 per annum, commencing Feb. 14, 1969, on recommendation of President of United States, see note set out under section 358 of Title 2, The Congress.

1946—Salary of chief judge of District Court for District of Columbia increased from $10,500 to $15,500 a year, and salaries of all other district court judges increased from $10,000 to $15,000 a year by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

1926—Salary of chief judge of District Court of District of Columbia increased from $7,500 to $10,500 a year, and salaries of all other district court judges increased from $7,500 to $10,000 a year by act Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919.

1919—Salaries of district court judges increased from $6,000 to $7,500 a year by act Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156.

Salaries of chief justice and associate justices of Supreme Court of District of Columbia, forerunner of District Court for District of Columbia, were set at $5,000 by act Mar. 3, 1901, ch. 854, § 1, 30 Stat. 1199, and increased to $7,500 a year by act Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156.

1911—Salaries of district court judges set at $6,000 a year by Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087.

CROSS REFERENCES

Compensation not to be diminished during continuance in office, see Const. Art. 3, § 1.

Guam district judge, salary, see section 1424b of Title 48, Territories and Insular Possessions.

Retirement of judges, see section 371 et seq. of this title.

Virgin Islands district judge, salary, see section 1614 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 634 of this title; title 26 section 7443.

§ 136. Chief judges; precedence of district judges

(a)(1) In any district having more than one district judge, the chief judge of the district shall be the district judge in regular active service who is senior in commission of those judges who—

(A) are sixty-four years of age or under;

(B) have served for one year or more as a district judge; and

(C) have not served previously as chief judge.

(2)(A) In any case in which no district judge meets the qualifications of paragraph (1), the youngest district judge in regular active service who is sixty-five years of age or over and who has served as district judge for one year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no district judge in regular active service who has served as a district judge for one year or more, the district judge in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided in subparagraph (C), the chief judge of the district appointed under paragraph (1) shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge of the district.

(B) Except as provided in subparagraph (C), a district judge acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge has been appointed who meets the qualifications under paragraph (1).

(C) No district judge may serve or act as chief judge of the district after attaining the age of seventy years unless no other district judge is qualified to serve as chief judge of the district under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session which he attends.

Other district judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) A judge whose commission extends over more than one district shall be junior to all district judges except in the district in which he resided at the time he entered upon the duties of his office.

(d) If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as district judge, he may so certify to the Chief Justice of the United States, and thereafter, the chief judge of the district shall be such other district judge who is qualified to serve or act as chief judge under subsection (a).

(e) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the district judge in active service, present in the district and able and qualified to act, who is next in precedence.

(June 25, 1948, ch. 646, 62 Stat. 897; Oct. 31, 1951, ch. 655, § 37, 65 Stat. 723; Pub. L. 85–593, § 2, Aug. 6, 1958, 72 Stat. 497; Pub. L. 97–164, title II, § 202, Apr. 2, 1982, 96 Stat. 52.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 375 and District of Columbia Code, 1940 ed., § 11–301 (Mar. 3, 1901, ch. 854, §§ 60, 61, 31 Stat. 1199; Mar. 3, 1911, ch. 231, § 260, 36 Stat. 1161; Mar. 3, 1911, ch. 231, § 289, 32 Stat. 1167; Feb. 25, 1919, ch. 29, § 6, 40 Stat. 1157; Dec. 20, 1928, ch. 41, 45 Stat. 1056; Mar. 1, 1929, ch. 419, 45 Stat. 1422; June 19, 1930, ch. 537, 46 Stat. 785; May 31, 1938, ch. 290, § 5, 52 Stat. 584).

Section consolidates portions of section 375 of title 28, U.S.C., 1940 ed., and section 11–301 of the District of Columbia Code, 1940 ed. The provisions of said section 375 relating to resignation and retirement of judges, and appointment of court officers, are incorporated in sections 294, 371, and 756 of this title. Other provisions of said section 11–301 of the District of Columbia Code are incorporated in section 133 of this title.

Subsection (a), providing for a ''chief judge'' is new. Such term replaces the terms ''senior district judge,'' and ''Chief Justice'' of the District Court in the District of Columbia. It is employed in view of the great increase of administrative duties of such judge. The use of the term ''chief judge'' with respect to the District of Columbia will result in uniform nomenclature for all district courts. The district judges of that court have expressed approval of such designation.

The provision in said section 11–301 of the District of Columbia Code, 1940 ed., that the ''Chief Justice'' shall be appointed by the President, by and with the advice and consent of the Senate, was omitted for the purpose of establishing a uniform method of creating the position of chief judge in all districts. The District of Columbia is expressly made a judicial district by section 88 of this title.

Subsection (b) is new and conforms with similar provisions respecting associate justices of the Supreme Court and circuit judges in sections 4 and 45 of this title.

Subsection (c) is from the proviso in the second paragraph of section 375 of title 28, U.S.C., 1940 ed., which applied only in cases of appointment of court officers. Here it is made applicable to all district judges.

Subsections (d) and (e) are new, and conform with section 44 of this title relating to precedence of circuit judges.

The official status of the Chief Justice of the District Court for the District of Columbia holding office at the effective date of this act is preserved by section 2 of the bill to enact revised title 28.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–164, § 202(a), designated existing first sentence of subsec. (a) as par. (1), substituted ''In any district having more than one district judge, the chief judge of the district shall be the district judge in regular active service who is senior in commission of those judges who—(A) are sixty-four years of age or under; (B) have served for one year or more as a district judge; and (C) have not served previously as chief judge'' for ''In each district having more than one judge the district judge in regular active service who is senior in commission and under seventy years of age shall be the chief judge of the district court'' in par. (1) as so designated, designated existing second sentence of subsec. (a) as par. (2)(A), substituted ''In any case in which no district judge meets the qualifications of paragraph (1), the youngest district judge in regular active service who is sixty-five years of age or over and who has served as district judge for one year or more shall act as the chief judge'' for ''If all the district judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a district judge for one year'' in par. (2)(A) as so designated, and added pars. (2)(B) and (3).

Subsec. (d). Pub. L. 97–164, § 202(b), substituted ''and thereafter, the chief judge of the district shall be such other district judge who is qualified to serve or act as chief judge under subsection (a)'' for ''and thereafter the district judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the district court''.

1958—Subsec. (a). Pub. L. 85–593 provided that chief judges of district courts cease to serve as such upon reaching the age of seventy, that the youngest district judge act as chief judge where all district judges in regular active service are seventy years or older until a judge under seventy has been appointed and qualified, and that district judge must have served one year before acting as chief judge.

1951—Subsec. (a). Act Oct. 31, 1951, inserted ''in active service who is''.

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 this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–593 effective at expiration of one year from Aug. 6, 1958, see section 3 of Pub. L. 85–593, as amended, set out as a note under section 45 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 97–164 not to apply or affect any person serving as chief judge on the effective date of Pub. L. 97–164 [Oct. 1, 1982], and the provisions of subsec. (a) of this section as in effect on the day before the effective date of part A of title II of Pub. L. 97–164 [Oct. 1, 1982] applicable to the chief judge of a district court serving on such effective date, see section 203 of Pub. L. 97–164, set out as a note under section 45 of this title.

§ 137. Division of business among district judges

The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the district judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

(June 25, 1948, ch. 646, 62 Stat. 897.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 27 (Mar. 3, 1911, ch. 231, § 23, 36 Stat. 1090).

Section was rewritten and the practice simplified. It provided for division of business and assignment of cases by agreement of judges and, in case of inability to agree, that the senior circuit judge of the circuit should make necessary orders.

The revised section is consistent with section 332 of this title, that the last paragraph of which requires the judicial council to make all necessary orders for the effective and expeditious administration of the business of the courts within the circuit.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 48 section 1614.

§ 138. Terms abolished

The district court shall not hold formal terms.

(June 25, 1948, ch. 646, 62 Stat. 897; Pub. L. 88–139, § 1, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

This section was substituted for a number of special provisions fixing stated times for holding terms of court in the several districts, in order to vest in the courts wider discretion and promote greater efficiency in the administration of the business of such courts.

AMENDMENTS

1963—Pub. L. 88–139 substituted ''The district court shall not hold formal terms'' for ''The times for holding regular terms of court at the places fixed by this chapter shall be determined by rule of the district court'' in text, and ''Terms abolished'' for ''Times for holding regular terms'' in section catchline.

§ 139. Times for holding regular sessions

The times for commencing regular sessions of the district court for transacting judicial business at the places fixed by this chapter shall be determined by the rules or orders of the court. Such rules or orders may provide that at one or more of such places the court shall be in continuous session for such purposes on all business days throughout the year. At other places a session of the court shall continue for such purposes until terminated by order of final adjournment or by commencement of the next regular session at the same place.

(June 25, 1948, ch. 646, 62 Stat. 897; Pub. L. 88–139, § 1, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

The purpose of this section is to remove all doubt as to whether the mere beginning of a new term at one place ends a prior term begun at another place. As revised, it conforms to a uniform course of judicial decisions. See *U.S. v. Perlstein*, 39 F.Supp. 965, 968 (D.C.N.J. 1941), and cases cited.

AMENDMENTS

1963—Pub. L. 88–139 substituted provisions requiring the times for commencing regular sessions of the district court to be determined by the rules or orders of the court, authorizing such rules or orders to provide that at one or more of the places fixed by this chapter, the court shall be in continuous session on all business days throughout the year, and that at other places, a session continues until terminated by order of final adjournment or by commencement of the next regular session at the same place, for provisions that a term continues until terminated by order of final adjournment or by commencement of the next term at the same place, in the text, and ''Times for holding regular sessions'' for ''Term continued until terminated'' in section catchline.

FEDERAL RULES OF CIVIL PROCEDURE

District courts always open, see rule 77, Appendix to this title.

CROSS REFERENCES

Virgin Islands district courts, times for holding sessions, see section 1615 of Title 48, Territories and Insular Possessions.

Courts always open, see section 452 of this title.

§ 140. Adjournment

(a) Any district court may, by order made anywhere within its district, adjourn or, with the consent of the judicial council of the circuit, pretermit any regular session of court for insufficient business or other good cause.

(b) If the judge of a district court is unable to attend and unable to make an order of adjournment, the clerk may adjourn the court to the next regular session or to any earlier day which he may determine.

(June 25, 1948, ch. 646, 62 Stat. 897; Pub. L. 88–139, § 1, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 16, 146, 182 (Mar. 3, 1911, ch. 231, §§ 12, 73, 101, 36 Stat. 1088, 1108, 1122; June 12, 1916, ch. 143, 39 Stat. 225; Feb. 20, 1917, ch. 102, 39 Stat. 927; June 13, 1918, ch. 98, 40 Stat. 604; Feb. 26, 1919, ch. 54, 40 Stat. 1184; May 29, 1924, ch. 209, 43 Stat. 243; June 5, 1924, ch. 259, 43 Stat. 387; Jan. 10, 1925, chs. 68, 69, 43 Stat. 730, 731; Feb. 16, 1925, ch. 233, § 1, 43 Stat. 945; May 7, 1926, ch. 255, 44 Stat. 408; Apr. 21, 1928, ch. 395, 45 Stat. 440; Mar. 2, 1929, ch. 539, 45 Stat. 1518; June 28, 1930, ch. 714, 46 Stat. 829; May 13, 1936, ch. 386, 49 Stat. 1271; Aug. 12, 1937, ch. 595, 50 Stat. 625).

Section consolidates section 16 with the third sentence of section 146, and the final proviso in the third paragraph of section 182, all of title 28, U.S.C., 1940 ed.

Said section 16 of title 28 provided for adjournment by the marshal, or clerk, on written order of the judge, in case of inability of the district judge to attend at the commencement of any regular, adjourned or special term, or any time during such term. Said sections 146 and 182 thereof, related to the district courts of Colorado and Oklahoma, only, and contained special provisions for adjournment. Subsection (b) omits the requirement of written order where the judge is unable to make such order.

The revised section broadens these provisions, and vests discretionary power in the court, by order made anywhere within the district, to adjourn any term of court ''for insufficient business or other good cause.'' To establish uniformity, the special provisions relating to Colorado and Oklahoma were omitted.

Other provisions of said sections 146 and 182 of title 28, U.S.C., 1940 ed., are incorporated in sections 85 and 116 of this title.

The provision of subsection (a) authorizing the district court, with the consent of the judicial council of the circuit, to pretermit any term of court for insufficient business or other good cause, is inserted to obvi-

ate the expense and inconvenience of convening and adjourning a term for which no need exists.

AMENDMENTS

1963—Subsecs. (a), (b). Pub. L. 88–139 substituted ''session'' for ''term''.

§ 141. Special sessions; places; notice

Special sessions of the district court may be held at such places in the district as the nature of the business may require, and upon such notice as the court orders.

Any business may be transacted at a special session which might be transacted at a regular session.

(June 25, 1948, ch. 646, 62 Stat. 897; Pub. L. 88–139, § 1, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 15 (Mar. 3, 1911, ch. 231, § 11, 36 Stat. 1089).

Section was rewritten to include provision that notice of special terms should conform to rules approved by the judicial council of the circuit, thus insuring a uniform practice among the courts for convening special terms.

Changes of phraseology were made.

AMENDMENTS

1963—Pub. L. 88–139 substituted ''sessions'' for ''terms'' and ''session'' for ''term'' wherever appearing in text and section catchline, and struck out ''pursuant to rules approved by the judicial council of the circuit'' after ''court orders'' in text.

CROSS REFERENCES

Virgin Islands district courts, times for holding sessions, see section 1615 of Title 48, Territories and Insular Possessions.

[§ 142. Repealed. Pub. L. 97–164, title I, § 115(c)(3), Apr. 2, 1982, 96 Stat. 32]

Section, acts June 25, 1948, ch. 646, 62 Stat. 898; Oct. 9, 1962, Pub. L. 87–764, 76 Stat. 762; Nov. 19, 1977, Pub. L. 95–196, 91 Stat. 1420, related to the providing of accommodations at places for holding court. See section 462 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

WAIVER OF LIMITATIONS AND RESTRICTIONS

The limitations and restrictions contained in this section prior to its repeal were waived with respect to the holding of court at certain places by the following Acts:

Pub. L. 87–833, Oct. 15, 1962, 76 Stat. 959, related to Akron, Ohio.

Pub. L. 87–699, Sept. 25, 1962, 76 Stat. 598, related to Richland, Washington.

Pub. L. 87–562, § 4, July 30, 1962, 76 Stat. 248, related to Fort Myers, Saint Petersburg, Fort Pierce, and West Palm Beach, Florida.

Pub. L. 87–560, July 27, 1962, 76 Stat. 247, related to Marshall, Texas.

Pub. L. 87–559, July 27, 1962, 76 Stat. 246, related to Decatur, Alabama.

Pub. L. 87–553, July 27, 1962, 76 Stat. 222, related to Winchester, Tennessee.

Pub. L. 87–551, July 27, 1962, 76 Stat. 221, related to Bridgeport, Connecticut.

Pub. L. 87–337, Oct. 3, 1961, 75 Stat. 750, related to Lafayette, Louisiana.

Pub. L. 87–36, § 3(g), May 19, 1961, 75 Stat. 83, related to Kalamazoo, Michigan; Fayetteville, North Carolina; and Dyersburg, Tennessee.

Pub. L. 86–366, Sept. 22, 1959, 73 Stat. 647, related to Durant, Oklahoma.

Act July 20, 1956, ch. 657, 70 Stat. 594, related to Bryson City, North Carolina.

Act Sept. 23, 1950, ch. 1006, 64 Stat. 982, related to Klamath Falls, Oregon.

Act Aug. 21, 1950, ch. 767, 64 Stat. 469, related to Newnan, Georgia.

Act Aug. 10, 1950, ch. 675, § 2, 64 Stat. 438, related to Rock Island, Illinois.

Act Oct. 26, 1949, ch. 744, 63 Stat. 923, related to Thomasville, Georgia.

Act Oct. 26, 1949, ch. 740, 63 Stat. 921, related to Brunswick, Georgia.

§ 143. Vacant judgeship as affecting proceedings

When the office of a district judge becomes vacant, all pending process, pleadings and proceedings shall, when necessary, be continued by the clerk until a judge is appointed or designated to hold such court.

(June 25, 1948, ch. 646, 62 Stat. 898.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 26 (Mar. 3, 1911, ch. 231, § 22, 36 Stat. 1090).

The last clause of section 26 of title 28, U.S.C., 1940, ed., prescribing the powers of a designated judge was omitted as covered by section 296 of this title.

Minor changes were made in phraseology.

§ 144. Bias or prejudice of judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

(June 25, 1948, ch. 646, 62 Stat. 898; May 24, 1949, ch. 139, § 65, 63 Stat. 99.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 25 (Mar. 3, 1911, ch. 231, § 21, 36 Stat. 1090).

The provision that the same procedure shall be had when the presiding judge disqualifies himself was omitted as unnecessary. (See section 291 et seq. and section 455 of this title.)

Words, ''at which the proceeding is to be heard,'' were added to clarify the meaning of words, ''before the beginning of the term.'' (See *U.S. v. Costea*, D.C.Mich. 1943, 52 F.Supp. 3.)

Changes were made in phraseology and arrangement.

1949 ACT

This amendment clarifies the intent in section 144 of title 28, U.S.C., to conform to the law as it existed at the time of the enactment of the revision limiting the filing of affidavits of prejudice to one such affidavit in any case.

AMENDMENTS

1949—Act May. 24, 1949, substituted ''in any case'' for ''as to any judge'' in second sentence of second par.

ABOLITION OF TERMS

For abolition of formal terms of the court and replacement by sessions, see sections 138 and 139 of this title.

CHAPTER 6—BANKRUPTCY JUDGES

Sec.
151. Designation of bankruptcy courts.
152. Appointment of bankruptcy judges.
153. Salaries; character of service.
154. Division of business; chief judge.[1]
155. Temporary transfer of bankruptcy judges.
156. Staff; expenses.
157. Procedures.
158. Appeals.

PRIOR PROVISIONS

A prior chapter 6, consisting of sections 151 to 160, which was added by Pub. L. 95–598, title II, §201(a), Nov. 6, 1978, 92 Stat. 2657, as amended by Pub. L. 97–164, title I, §110(d), Apr. 2, 1982, 96 Stat. 29, and which related to bankruptcy courts, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

COURTS DURING TRANSITION

Pub. L. 95–598, title IV, §404, Nov. 6, 1978, 92 Stat. 2683, as amended by Pub. L. 98–249, §1(b), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98–271, §1(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98–299, §1(b), May 25, 1984, 98 Stat. 214; Pub. L. 98–325, §1(b), June 20, 1984, 98 Stat. 268; Pub. L. 98–353, title I, §121(b), July 10, 1984, 98 Stat. 345, which provided that, for purposes of Pub. L. 95–598, which enacted Title 11, Bankruptcy, and the amendments made by Pub. L. 95–598, the courts of bankruptcy as defined under section 1(10) of former Title 11, created under section 11(a) of former Title 11, and existing on Sept. 30, 1979, continue to be courts of bankruptcy during the transition period beginning Oct. 1, 1979, and ending July 9, 1984, made provision for extension of the term of office of referees in bankruptcy serving on Nov. 6, 1978, and for such a referee to have the title of United States bankruptcy judge, established for each State a merit screening committee to pass on qualifications of such a referee and determine if the term of such a referee should be extended, and set forth the rules and provisions applicable to United States bankruptcy judges during the transition period, was repealed by Pub. L. 98–353, title I, §§114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

TRANSITION STUDY

Pub. L. 95–598, title IV, §406, Nov. 6, 1978, 92 Stat. 2686, as amended by Pub. L. 98–249, §1(c), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98–271, §1(c), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98–299, §1(c), May 25, 1984, 98 Stat. 214; Pub. L. 98–325, §1(c), June 20, 1984, 98 Stat. 268; Pub. L. 98–353, title I, §121(c), July 10, 1984, 98 Stat. 346, which provided that during the transition period, Oct. 1, 1979, to July 9, 1984, the Director of the Administrative Office of the United States Courts make continuing studies and surveys in the judicial districts to determine the number of bankruptcy judges needed after July 9, 1984, to provide for the expeditious and effective administration of justice, their regular places of offices, and the places where the court was to be held, and that the Director report to the judicial councils of the circuits and the Judicial Conference of the United States his recommendations, the judicial councils advise the Conference of their recommendations, and the Conference recommend to the Congress and the President, before Jan. 3, 1983, the number of bankruptcy judges needed after July 9, 1984, and the locations at which they were to serve, was repealed by Pub. L. 98–353, title I, §§114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

JUDICIAL ADMINISTRATION DURING TRANSITION

Pub. L. 95–598, title IV, §407, Nov. 6, 1978, 92 Stat. 2686, which provided that the Director of the Administrative Office of the United States Courts appoint a committee of not fewer than seven United States bankruptcy judges to advise the Director with respect to matters arising during the transition period or that are relevant to the purposes of the transition period, and directed that during the transition period, the chief judge of each circuit summon at least one bankruptcy judge from each judicial district within the circuit to the judicial conference of such circuit called and held under section 332 of this title, was repealed by Pub. L. 98–353, title I, §§114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE SERVING ON JUNE 27, 1984

Section 121(e) of Pub. L. 98–353 provided that: ''The term of office of any bankruptcy judge who was serving on June 27, 1984, is extended to and shall expire at the end of the day of enactment of this Act [July 10, 1984].''

[Section 121(e) of Pub. L. 98–353 effective June 27, 1984, see section 122(c) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.]

For prior extensions of the term of office of bankruptcy judges see:

Pub. L. 98–325, §2, June 20, 1984, 98 Stat. 268.
Pub. L. 98–299, §2, May 25, 1984, 98 Stat. 214.
Pub. L. 98–271, §2, Apr. 30, 1984, 98 Stat. 163.
Pub. L. 98–249, §2, Mar. 31, 1984, 98 Stat. 116.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 375 of this title; title 11 section 105; title 18 section 6001.

§151. Designation of bankruptcy courts

In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

(Added Pub. L. 98–353, title I, §104(a), July 10, 1984, 98 Stat. 336.)

EFFECTIVE DATE

Section 122 of title I of Pub. L. 98–353 provided that:

''(a) Except as otherwise provided in this section, this title and the amendments made by this title [enacting this chapter and sections 1408 to 1412 and 1452 of this title, amending sections 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, and 8344 of Title 5, Government Organization and Employees, and section 105 of Title 11, Bankruptcy, enacting provisions set out as notes preceding section 151 of this title and under sections 151 to 153, 634, and 1334 of this title and section 8331 of Title 5, amending provisions set out as notes preceding sections 151 and 1471 of this title and section 101 of Title 11, and repealing provisions set out as notes preceding sections 151 and 1471 of this title] shall take effect on the date of the enactment of this Act [July 10, 1984].

''(b) Section 1334(c)(2) of title 28, United States Code, and section 1411(a) of title 28, United States Code, as

[1] So in original. Does not conform to section catchline.

added by this Act, shall not apply with respect to cases under title 11 of the United States Code that are pending on the date of enactment of this Act [July 10, 1984], or to proceedings arising in or related to such cases.

''(c) Sections 108(b) [enacting provisions set out as a note under section 634 of this title], 113 [amending provisions set out as a note preceding section 101 of Title 11, Bankruptcy], and 121(e) [enacting provisions set out as a note preceding section 151 of this title] shall take effect on June 27, 1984.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–353 provided: ''That this Act [enacting this chapter and sections 1408 to 1412 and 1452 of this title and sections 557 to 559 and 1113 of Title 11, Bankruptcy, amending sections 44, 98, 131, 133, 371, 372, 634, 957, 1334, 1360, and 1930 of this title, sections 8331, 8334, 8336, 8339, 8341, 8344, 8701, 8706, 8714a, and 8714b of Title 5, Government Organization and Employees, and sections 101 to 103, 105, 108, 109, 303, 321, 322, 326 to 330, 342, 343, 345, 346, 349, 350, 361 to 363, 365, 366, 501 to 503, 505 to 507, 509, 510, 521 to 525, 541 to 550, 552 to 555, 702 to 704, 707, 723 to 728, 741, 745, 752, 761, 763 to 766, 901 to 903, 921, 922, 927, 943, 945, 1102, 1103, 1105 to 1108, 1112, 1121, 1123 to 1127, 1129, 1141, 1142, 1144 to 1146, 1166, 1168 to 1171, 1173, 1301, 1302, 1304, 1307, 1322, 1324 to 1326, 1328, 1329, 15103, and 151302 of Title 11, enacting provisions set out as notes preceding section 151 of this title and under sections 44, 133, 151 to 153, 371, 634, 1334, and 2075 of this title, sections 8331 and 8706 of Title 5, and preceding section 101 of Title 11 and under sections 101, 365, and 1113 of Title 11, amending provisions set out as notes preceding sections 151, 581, and 1471 of this title and section 101 of Title 11, repealing provisions set out as notes preceding sections 151 and 1471 of this title, amending Rules 2002 and 3001 of the Bankruptcy Rules, set out in the Appendix to this title, and amending Official Bankruptcy Form No. 1 in the Appendix of Forms] may be cited as the 'Bankruptcy Amendments and Federal Judgeship Act of 1984'.''

SEPARABILITY

Section 119 of Pub. L. 98–353 provided that: ''If any provision of this Act [see Short Title of 1984 Amendment note above] or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby.''

§ 152. Appointment of bankruptcy judges

(a)(1) The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	3
California:	
Northern	9
Eastern	6
Central	21
Southern	4
Colorado	5
Connecticut	3
Delaware	1
District of Columbia	1
Florida:	
Northern	1
Middle	8
Southern	5
Georgia:	
Northern	8
Middle	2
Southern	2
Middle and Southern	1
Hawaii	1
Idaho	2
Illinois:	
Northern	10
Central	3
Southern	1
Indiana:	
Northern	3
Southern	4
Iowa:	
Northern	2
Southern	2
Kansas	4
Kentucky:	
Eastern	2
Western	3
Louisiana:	
Eastern	2
Middle	1
Western	3
Maine	2
Maryland	4
Massachusetts	5
Michigan:	
Eastern	4
Western	3
Minnesota	4
Mississippi:	
Northern	1
Southern	2
Missouri:	
Eastern	3
Western	3
Montana	1
Nebraska	2
Nevada	3
New Hampshire	1
New Jersey	8
New Mexico	2
New York:	
Northern	2
Southern	9
Eastern	6
Western	3
North Carolina:	
Eastern	2

Districts	Judges
Middle	2
Western	2
North Dakota	1
Ohio:	
Northern	8
Southern	7
Oklahoma:	
Northern	2
Eastern	1
Western	3
Oregon	5
Pennsylvania:	
Eastern	5
Middle	2
Western	4
Puerto Rico	2
Rhode Island	1
South Carolina	2
South Dakota	2
Tennessee:	
Eastern	3
Middle	3
Western	4
Texas:	
Northern	6
Eastern	2
Southern	6
Western	4
Utah	3
Vermont	1
Virginia:	
Eastern	5
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	1
Wisconsin:	
Eastern	4
Western	2
Wyoming	1.

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of a bankruptcy judge, the chief judge of such court shall make such appointment.

(4) The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts. The United States court of appeals for the circuit within which such a territorial district court is located may appoint bankruptcy judges under this chapter for such district if authorized to do so by the Congress of the United States under this section.

(b)(1) The Judicial Conference of the United States shall, from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of bankruptcy judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of bankruptcy judges needed and the districts in which such judges are needed.

(3) Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death.

(c) Each bankruptcy judge may hold court at such places within the judicial district, in addition to the official duty station of such judge, as the business of the court may require.

(d) With the approval of the Judicial Conference and of each of the judicial councils involved, a bankruptcy judge may be designated to serve in any district adjacent to or near the district for which such bankruptcy judge was appointed.

(e) A bankruptcy judge may be removed during the term for which such bankruptcy judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability and only by the judicial council of the circuit in which the judge's official duty station is located. Removal may not occur unless a majority of all of the judges of such council concur in the order of removal. Before any order of removal may be entered, a full specification of charges shall be furnished to such bankruptcy judge who shall be accorded an opportunity to be heard on such charges.

(Added Pub. L. 98–353, title I, §104(a), July 10, 1984, 98 Stat. 336; amended Pub. L. 99–554, title I, §101, Oct. 27, 1986, 100 Stat. 3088; Pub. L. 100–587, Nov. 3, 1988, 102 Stat. 2982; Pub. L. 101–650, title III, §304, Dec. 1, 1990, 104 Stat. 5105; Pub. L. 102–361, §§2, 4, Aug. 26, 1992, 106 Stat. 965, 966.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–361, §2, in item relating to district of Arizona substituted ''7'' for ''5'', in item relating to central district of California substituted ''21'' for ''19'', in item relating to district of Connecticut substituted ''3'' for ''2'', in item relating to middle district of Florida substituted ''8'' for ''4'', in item relating to southern district of Florida substituted ''5'' for ''3'', in item relating to northern district of Georgia substituted ''8'' for ''6'', inserted item relating to middle and southern districts of Georgia, in item relating to district of Maryland substituted ''4'' for ''3'', in item relating to district of Massachusetts substituted ''5'' for ''4'', in item relating to district of New Jersey substituted ''8'' for ''7'', in item relating to southern district of New York substituted ''9'' for ''7'', in item relating to eastern district of Pennsylvania substituted ''5'' for ''3'', in item relating to middle district of Tennessee substituted ''3'' for ''2'', in item relating to western district of Tennessee substituted ''4'' for ''3'', in item relating to northern district of Texas substituted ''6'' for ''5'', and in item relating to eastern district of Virginia substituted ''5'' for ''4''.

Subsec. (b)(3). Pub. L. 102–361, §4, added par. (3).

1990—Subsec. (a)(1). Pub. L. 101–650 inserted after third sentence ''However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor.''

1988—Subsec. (a)(2). Pub. L. 100–587 in item relating to district of Alaska substituted ''2'' for ''1'', in item relating to district of Colorado substituted ''5'' for ''4'', in item relating to district of Kansas substituted ''4'' for

''3'', in item relating to eastern district of Kentucky substituted ''2'' for ''1'', in item relating to eastern district of Texas substituted ''2'' for ''1'', in item relating to western district of Texas substituted ''4'' for ''3'', and in item relating to district of Arizona substituted ''5'' for ''4''.

1986—Subsec. (a)(2). Pub. L. 99–554 in item relating to eastern district and western district of Arkansas substituted ''3'' for ''2'', in item relating to northern district of California substituted ''9'' for ''7'', in item relating to eastern district of California substituted ''6'' for ''4'', in item relating to central district of California substituted ''19'' for ''12'', in item relating to southern district of California substituted ''4'' for ''3'', in item relating to middle district of Florida substituted ''4'' for ''2'', in item relating to northern district of Georgia substituted ''6'' for ''4'', in item relating to southern district of Georgia substituted ''2'' for ''1'', in item relating to district of Idaho substituted ''2'' for ''1'', in item relating to northern district of Illinois substituted ''10'' for ''8'', in item relating to central district of Illinois substituted ''3'' for ''2'', in item relating to northern district of Indiana substituted ''3'' for ''2'', in item relating to northern district of Iowa substituted ''2'' for ''1'', in item relating to southern district of Iowa substituted ''2'' for ''1'', in item relating to western district of Kentucky substituted ''3'' for ''2'', in item relating to western district of Louisiana substituted ''3'' for ''2'', in item relating to district of Maryland substituted ''3'' for ''2'', in item relating to western district of Michigan substituted ''3'' for ''2'', in item relating to district of Nebraska substituted ''2'' for ''1'', in item relating to district of Nevada substituted ''3'' for ''2'', in item relating to district of New Jersey substituted ''7'' for ''5'', in item relating to western district of North Carolina substituted ''2'' for ''1'', in item relating to northern district of Oklahoma substituted ''2'' for ''1'', in item relating to western district of Oklahoma substituted ''3'' for ''2'', in item relating to district of Oregon substituted ''5'' for ''4'', in item relating to western district of Pennsylvania substituted ''4'' for ''3'', in item relating to district of South Carolina substituted ''2'' for ''1'', in item relating to district of South Dakota substituted ''2'' for ''1'', in item relating to eastern district of Tennessee substituted ''3'' for ''2'', in item relating to western district of Tennessee substituted ''3'' for ''2'', in item relating to northern district of Texas substituted ''5'' for ''4'', in item relating to southern district of Texas substituted ''6'' for ''3'', in item relating to western district of Texas substituted ''3'' for ''2'', in item relating to district of Utah substituted ''3'' for ''2'', in item relating to eastern district of Virginia substituted ''4'' for ''3'', in item relating to eastern district of Washington substituted ''2'' for ''1'', in item relating to western district of Washington substituted ''5'' for ''4'', and in item relating to eastern district of Wisconsin substituted ''4'' for ''3''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective Oct. 27, 1986, see section 302(b) of Pub. L. 99–554, set out as a note under section 581 of this title.

TEMPORARY APPOINTMENT OF ADDITIONAL JUDGES

Section 3 of Pub. L. 102–361, as amended by Pub. L. 104–317, title III, § 307, Oct. 19, 1996, 110 Stat. 3852, provided that:

''(a) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code:

''(1) 1 additional bankruptcy judge for the northern district of Alabama.

''(2) 1 additional bankruptcy judge for the district of Colorado.

''(3) 1 additional bankruptcy judge for the district of Delaware.

''(4) 1 additional bankruptcy judge for the southern district of Illinois.

''(5) 1 additional bankruptcy judge for the district of New Hampshire.

''(6) 1 additional bankruptcy judge for the middle district of North Carolina.

''(7) 1 additional bankruptcy judge for the district of Puerto Rico.

''(8) 1 additional bankruptcy judge for the district of South Carolina.

''(9) 1 additional bankruptcy judge for the eastern district of Tennessee.

''(10) 1 additional bankruptcy judge for the western district of Texas.

''(b) VACANCIES.—The first vacancy in the office of bankruptcy judge in each of the judicial districts set forth in subsection (a), resulting from the death, retirement, resignation, or removal of a bankruptcy judge, and occurring 5 years or more after the appointment date of the judge named to fill the temporary judgeship position, shall not be filled. In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in the preceding sentence, that judge shall be eligible for reappointment as a bankruptcy judge in that district.''

EXTENSION AND TERMINATION OF TERM OF OFFICE OF PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 2, 1986, IN DISTRICT OF OREGON, WESTERN DISTRICT OF MICHIGAN, AND EASTERN DISTRICT OF OKLAHOMA

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 718, provided that: ''Notwithstanding the provisions of section 106(b)(1) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [section 106(b)(1) of Pub. L. 98–353, set out below], a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 2, 1986] may continue to serve as a part-time judge for such district until December 31, 1986, or until such time as a full-time bankruptcy judge for such district is appointed, whichever is earlier: *Provided*, That these provisions shall apply only to part-time bankruptcy judges serving in the district of Oregon, the western district of Michigan, and the eastern district of Oklahoma.''

EXTENSION AND TERMINATION OF TERM OF OFFICE OF BANKRUPTCY JUDGE AND PART-TIME BANKRUPTCY JUDGE SERVING ON JULY 10, 1984; PRACTICE OF LAW BY PART-TIME BANKRUPTCY JUDGE

Section 106 of Pub. L. 98–353 provided that:

''(a) Notwithstanding section 152 of title 28, United States Code, as added by this Act, the term of office of a bankruptcy judge who is serving on the date of enactment of this Act [July 10, 1984] is extended to and expires four years after the date such bankruptcy judge was last appointed to such office or on October 1, 1986, whichever is later.

''(b)(1) Notwithstanding section 153(a) of title 28, United States Code, as added by this Act, and notwithstanding subsection (a) of this section, a bankruptcy judge serving on a part-time basis on the date of enactment of this Act [July 10, 1984] may continue to serve on such basis for a period not to exceed two years from the date of enactment of this Act [July 10, 1984].

''(2) Notwithstanding the provisions of section 153(b) of title 28, United States Code, a bankruptcy judge serving on a part-time basis may engage in the practice of law but may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Judicial Conference of the United States may promulgate appropriate rules and regulations to implement this paragraph.''

APPOINTMENT TO FILL VACANCIES; NOMINATIONS; QUALIFICATIONS

Section 120 of Pub. L. 98–353, as amended by Pub. L. 99–554, title I, § 102, Oct. 27, 1986, 100 Stat. 3089; Pub. L. 104–317, title III, § 303, Oct. 19, 1996, 110 Stat. 3852, provided that:

''(a)(1) Whenever a court of appeals is authorized to fill a vacancy that occurs on a bankruptcy court of the

United States, such court of appeals shall appoint to fill that vacancy a person whose character, experience, ability, and impartiality qualify such person to serve in the Federal judiciary.

''(2) It is the sense of the Congress that the courts of appeals should consider for appointment under section 152 of title 28, United States Code, to the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment.

''(3) When filling vacancies, the court of appeals may consider reappointing incumbent bankruptcy judges under procedures prescribed by regulations issued by the Judicial Conference of the United States.

''(b) The judicial council of the circuit involved shall assist the court of appeals by evaluating potential nominees and by recommending to such court for consideration for appointment to each vacancy on the bankruptcy court persons who are qualified to be bankruptcy judges under regulations prescribed by the Judicial Conference of the United States. In the case of the first vacancy which arises after the date of the enactment of this Act [July 10, 1984] in the office of each bankruptcy judge, such potential nominees shall include the bankruptcy judge who holds such office immediately before such vacancy arises, if such bankruptcy judge requests to be considered for such appointment and the judicial council determines that such judge is qualified under subsection (c) of this section to continue to serve. Such potential nominees shall receive consideration equal to that given all other potential nominees for such position. All incumbent nominees seeking reappointment thereafter may be considered for such a reappointment, pursuant to a majority vote of the judges of the appointing court of appeals, under procedures authorized under subsection (a)(3).

''(c) Before transmitting to the court of appeals the names of the persons the judicial council for the circuit deems best qualified to fill any existing vacancy, the judicial council shall have determined that—

''(1) public notice of such vacancy has been given and an effort has been made, in the case of each such vacancy, to identify qualified candidates, without regard to race, color, sex, religion, or national origin,

''(2) such persons are members in good standing of at least one State bar, the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members,

''(3) such persons possess, and have a reputation for, integrity and good character,

''(4) such persons are of sound physical and mental health,

''(5) such persons possess and have demonstrated commitment to equal justice under law,

''(6) such persons possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes, and

''(7) such persons demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States bankruptcy judge.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 372, 377 of this title; title 5 section 8331.

§ 153. Salaries; character of service

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the district court of the United States as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States determines.

(b) A bankruptcy judge may not engage in the practice of law and may not engage in any other practice, business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of such bankruptcy judge's duties as a judicial officer. The Conference may promulgate appropriate rules and regulations to implement this subsection.

(c) Each individual appointed under this chapter shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of the office of bankruptcy judge.

(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

(Added Pub. L. 98–353, title I, § 104(a), July 10, 1984, 98 Stat. 338; amended Pub. L. 100–202, § 101(a), [title IV, § 408(a)], Dec. 22, 1987, 101 Stat. 1329, 1329–26; Pub. L. 100–702, title X, § 1003(a)(1), Nov. 19, 1988, 102 Stat. 4665.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–702 added subsec. (d).

1987—Subsec. (a). Pub. L. 100–202 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361) as adjusted by section 461 of this title, to be paid at such times as the Judicial Conference of the United States determines.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(a) [title IV, § 408(d)] of Pub. L. 100–202 provided that: ''This section [amending this section, section 634 of this title, and section 356 of Title 2, The Congress] shall become effective October 1, 1988, and any salary affected by the provisions of this section shall be adjusted at the beginning of the first applicable pay period commencing on or after such date of enactment [probably should read ''such date'', meaning Oct. 1, 1988].''

TRANSITION PROVISIONS

Section 1003(b) of Pub. L. 100–702 provided that:

''(1) If an individual who is exempted from the Leave Act by operation of amendments under this section [amending this section and sections 156, 631, 634, 712, 752, and 794 of this title] and who was previously subject to the provisions of subchapter I of chapter 63 of title 5, United States Code, without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit when he was exempted from this subchapter is deemed to have remained to his credit.

''(2) In computing an annuity under section 8339 of title 5, United States Code, the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of section 8339 of title 5, United States Code, the days of unused sick leave standing to his credit when he was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.''

CONTINUATION OF SALARIES OF BANKRUPTCY JUDGES IN EFFECT ON JUNE 27, 1984

Section 105(a) of Pub. L. 98–353 provided that: ''The salary of a bankruptcy judge in effect on June 27, 1984,

shall remain in effect until changed as a result of a determination or adjustment made pursuant to section 153(a) of title 28, United States Code, as added by this Act.''

PART-TIME BANKRUPTCY JUDGES

For provision that notwithstanding subsecs. (a) and (b) of this section, a bankruptcy judge serving on a part-time basis on July 10, 1984, may continue to serve on such basis for two years from such date, and may engage in the practice of law, see section 106 of Pub. L. 98–353, set out as a note under section 152 of this title.

SALARY INCREASES

1988—Salaries of bankruptcy judges continued at $72,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1987—Salaries of bankruptcy judges increased to $72,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of bankruptcy judges increased to $70,500 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985—Salaries of bankruptcy judges increased to $68,400 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984—Salaries of bankruptcy judges (full-time) and bankruptcy judges (part-time) (maximum rate) increased to $66,100 and $33,100, respectively, effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $63,600 and $31,800, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $58,500 for bankruptcy judges and referees in bankruptcy (full-time), and $30,600 for referees in bankruptcy (part-time) (maximum rate).

Maximum rate payable to bankruptcy judges after Dec. 17, 1982, increased from $58,500 to $63,600, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

1981—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $61,200 and $30,600, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and $25,583.75 for referees in bankruptcy (part-time) (maximum rate).

1980—Salaries of bankruptcy judges and referees in bankruptcy (full-time), or referees in bankruptcy (part-time) (maximum rate) increased to $58,400 and $29,200, respectively, effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to section 101(c) of Pub. L. 96–369 funds are not available to pay a salary which exceeds the rate in effect on Sept. 30, 1980, which was $51,167.50 for bankruptcy judges and referees in bankruptcy (full-time), and $25,583.75 for referees in bankruptcy (part-time) (maximum rate).

For limitations on use of funds for period Oct. 1, 1980 through June 5, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–369 and section 101(c) of Pub. L. 96–536, set out as notes under section 5318 of Title 5.

1979—Salaries of bankruptcy judges increased to $53,500 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $51,167.50 for bankruptcy judges.

§ 154. Division of businesses; chief judge

(a) Each bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court.

(b) In each district court having more than one bankruptcy judge the district court shall designate one judge to serve as chief judge of such bankruptcy court. Whenever a majority of the judges of such district court cannot agree upon the designation as chief judge, the chief judge of such district court shall make such designation. The chief judge of the bankruptcy court shall ensure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.

(Added Pub. L. 98–353, title I, § 104(a), July 10, 1984, 98 Stat. 339.)

§ 155. Temporary transfer of bankruptcy judges

(a) A bankruptcy judge may be transferred to serve temporarily as a bankruptcy judge in any judicial district other than the judicial district for which such bankruptcy judge was appointed upon the approval of the judicial council of each of the circuits involved.

(b) A bankruptcy judge who has retired may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a bankruptcy judge may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference of the United States, subject to the restrictions on the payment of an annuity in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such judge.

(Added Pub. L. 98–353, title I, § 104(a), July 10, 1984, 98 Stat. 339; amended Pub. L. 99–651, title II, § 202(a), Nov. 14, 1986, 100 Stat. 3648; Pub. L. 100–659, § 4(a), Nov. 15, 1988, 102 Stat. 3918.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–659 inserted ''section 377 of this title or in'' after ''annuity in'' and ''which are applicable to such judge'' after ''title 5''.

1986—Subsec. (b). Pub. L. 99–651 inserted reference to chapter 84 of title 5.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 203 of title II of Pub. L. 99–651 provided that: ''This title and the amendments made by this title [enacting section 375 of this title and amending this section and sections 374, 631, 633, 636, and 797 of this title] take effect on January 1, 1987.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 375, 376, 377 of this title.

§ 156. Staff; expenses

(a) Each bankruptcy judge may appoint a secretary, a law clerk, and such additional assistants as the Director of the Administrative Office of the United States Courts determines to be necessary. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(b) Upon certification to the judicial council of the circuit involved and to the Director of the Administrative Office of the United States Courts that the number of cases and proceedings pending within the jurisdiction under section 1334 of this title within a judicial district so warrants, the bankruptcy judges for such district may appoint an individual to serve as clerk of such bankruptcy court. The clerk may appoint, with the approval of such bankruptcy judges, and in such number as may be approved by the Director, necessary deputies, and may remove such deputies with the approval of such bankruptcy judges.

(c) Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

(d) No office of the bankruptcy clerk of court may be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress.

(e) In a judicial district where a bankruptcy clerk has been appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records and dockets of the bankruptcy court.

(f) For purposes of financial accountability in a district where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other monies collected by such clerk except uncollected fees not required by an Act of Congress to be prepaid. Such clerk shall make returns thereof to the Director of the Administrative Office of the United States Courts and the Director of the Executive Office For United States Trustees, under regulations prescribed by such Directors.

(Added Pub. L. 98–353, title I, § 104(a), July 10, 1984, 98 Stat. 339; amended Pub. L. 99–554, title I, §§ 103, 142, 144(a), Oct. 27, 1986, 100 Stat. 3090, 3096; Pub. L. 100–702, title X, § 1003(a)(3), Nov. 19, 1988, 102 Stat. 4665.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–702 inserted at end ''A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.''

1986—Subsec. (d). Pub. L. 99–554, § 103, added subsec. (d).

Subsecs. (e), (f). Pub. L. 99–554, §§ 142, 144(a), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 103 of Pub. L. 99–554 effective Oct. 27, 1986, and amendment by sections 142 and 144 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a), (b) of Pub. L. 99–554, set out as a note under section 581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1930 of this title.

§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

(Added Pub. L. 98–353, title I, § 104(a), July 10, 1984, 98 Stat. 340; amended Pub. L. 99–554, title I, §§ 143, 144(b), Oct. 27, 1986, 100 Stat. 3096; Pub. L. 103–394, title I, § 112, Oct. 22, 1994, 108 Stat. 4117.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–394 added subsec. (e).

1986—Subsec. (b)(2). Pub. L. 99–554, in subpar. (B) substituted ''interests'' for ''interest'' and inserted reference to chapter 12, and in subpar. (G) inserted a comma after ''annul''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 158 of this title; title 11 section 524.

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[1]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph

[1] So in original. Probably should be followed by a dash.

(1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(Added Pub. L. 98–353, title I, §104(a), July 10, 1984, 98 Stat. 341; amended Pub. L. 101–650, title III, §305, Dec. 1, 1990, 104 Stat. 5105; Pub. L. 103–394, title I, §§102, 104(c), (d), Oct. 22, 1994, 108 Stat. 4108–4110.)

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subsec. (c)(2), are set out in the Appendix to Title 11, Bankruptcy.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–394, §102, which directed the amendment of subsec. (a) by striking ''from'' the first place it appears and all that follows through ''decrees,'' and inserting pars. (1) to (3), was executed by making the insertion and striking after ''appeals'' ''from final judgments, orders, and decrees,'', which is through ''decrees,'' the first place appearing, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 103–394, §104(c)(3), added par. (1) and struck out former par. (1) which read as follows: ''The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.''

Subsec. (b)(2). Pub. L. 103–394, §104(c)(3), added par. (2). Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 103–394, §104(c)(1), (3), added par. (3) and struck out former par. (3) which read as follows: ''No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.''

Subsec. (b)(4). Pub. L. 103–394, §104(c)(1), (2), redesignated par. (2) as (4) and struck out former par. (4) which read as follows: ''A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.''

Subsec. (b)(5), (6). Pub. L. 103–394, §104(c)(4), added pars. (5) and (6).

Subsec. (c). Pub. L. 103–394, §104(d), designated existing provisions as par. (2) and added par. (1).

1990—Subsec. (b)(2) to (4). Pub. L. 101–650 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 1334, 1452 of this title; title 11 section 305.

CHAPTER 7—UNITED STATES COURT OF FEDERAL CLAIMS

Sec.
171. Appointment and number of judges; character of court; designation of chief judge.
172. Tenure and salaries of judges.
173. Times and places of holding court.
174. Assignment of judges; decisions.
175. Official duty station; residence.
176. Removal from office.
177. Disbarment of removed judges.
178. Retirement of judges of the Court of Federal Claims.
179. Insurance and annuities programs.[1]
180. Military retirement pay for retired judges.

AMENDMENTS

1992—Pub. L. 102–572, title IX, §§902(a), 903(b), Oct. 29, 1992, 106 Stat. 4516, 4517, substituted ''UNITED STATES COURT OF FEDERAL CLAIMS'' for ''UNITED STATES CLAIMS COURT'' as chapter heading, substituted ''Court of Federal Claims'' for ''Claims Court'' in item 178, and added items 179 and 180.

1990—Pub. L. 101–650, title III, §306(a)(2), Dec. 1, 1990, 104 Stat. 5109, added item 178.

[1] Item 179 added without enactment of corresponding section.

1982—Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 26, substituted ''UNITED STATES CLAIMS COURT'' for ''COURT OF CLAIMS'' as chapter heading, inserted ''; designation of chief judge'' in item 171, substituted ''Tenure and salaries of judges'' for ''Precedence of judges'' in item 172, substituted ''Times and places of holding court'' for ''Tenure and salaries of judges'' in item 173, substituted ''Assignment of judges; decisions'' for ''Terms'' in item 174, substituted ''Official duty station; residence'' for ''Assignment of judges; divisions; hearings; quorum; decisions'' in item 175, and added items 176 and 177.

1966—Pub. L. 89–425, § 3, May 11, 1966, 80 Stat. 140, substituted ''Assignment of judges; divisions; hearings; quorum; decisions'' for ''Quorum'' in item 175.

1954—Act Sept. 3, 1954, ch. 1263, § 38, 68 Stat. 1240, inserted ''; character of court'' in item 171.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

See Appendix to this title.

CROSS REFERENCES

Jurisdiction of United States Court of Federal Claims, see section 1491 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8331.

§ 171. Appointment and number of judges; character of court; designation of chief judge

(a) The President shall appoint, by and with the advice and consent of the Senate, sixteen judges who shall constitute a court of record known as the United States Court of Federal Claims. The court is declared to be a court established under article I of the Constitution of the United States.

(b) The President shall designate one of the judges of the Court of Federal Claims who is less than seventy years of age to serve as chief judge. The chief judge may continue to serve as such until he reaches the age of seventy years or until another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court for the balance of the term to which appointed.

(June 25, 1948, ch. 646, 62 Stat 898; July 28, 1953, ch. 253, § 1, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 39(a), 68 Stat. 1240; Pub. L. 89–425, § 1(b), May 11, 1966, 80 Stat. 140; Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 27; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed. § 241 (Mar. 3, 1911, ch. 231, § 136, 36 Stat. 1135; Feb. 25, 1919, ch. 29, § 4, 40 Stat. 1157; Dec. 13, 1926, ch. 6, § 1 44 Stat. 919).

This section contains a part of section 241 of title 28, U.S.C., 1940 ed. The remainder of such section, relating to tenure, salaries and oath, is incorporated in sections 173 and 453 of this title.

The term ''chief judge'' was substituted for ''Chief Justice.'' (See reviser's note under section 136 of this title.)

Words ''a court of record known as'' were added. For similar provision covering other Federal courts, see sections 132, 211, and 251 of this title.

The official status of the Chief Justice of the Court of Claims holding office on the effective date of this act is preserved by section 2 of the bill to enact revised title 28.

Minor changes were made in arrangement and phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in subsec. (a) and ''Court of Federal Claims'' for ''Claims Court'' in subsec. (b).

1982—Pub. L. 97–164 designated existing provisions as subsec. (a), substituted ''sixteen judges who shall constitute a court of record known as the United States Claims Court'' for ''a chief judge and six associate judges who shall constitute a court of record known as the United States Court of Claims'' and ''The court is declared to be a court established under article I of the Constitution of the United States'' for ''Such court is hereby declared to be a court established under article III of the Constitution of the United States'' in subsec. (a) as so designated, and added subsec. (b).

1966—Pub. L. 89–425 increased the number of associate judges from four to six.

1954—Act Sept. 3, 1954, inserted ''; character or court'' in section catchline.

1953—Act July 28, 1953, inserted second sentence.

CHANGE OF NAME

Section 902(b) of Pub. L. 102–572 provided that: ''Reference in any other Federal law [meaning any Federal law other than chapters 7, 51, 91, and 165 of this title] or any document to—

''(1) the 'United States Claims Court' shall be deemed to refer to the 'United States Court of Federal Claims'; and

''(2) the 'Claims Court' shall be deemed to refer to the 'Court of Federal Claims'.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 911 of title IX of Pub. L. 102–572 provided that: ''This title [see Tables for classification] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 29, 1992].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 402 of Pub. L. 97–164 provided that: ''Unless otherwise specified, the provisions of this Act [see Short Title of 1982 Amendment note set out under section 1 of this title] shall take effect on October 1, 1982.''

CONTINUED SERVICE OF COMMISSIONERS OF COURT OF CLAIMS AS JUDGES

Section 167 of Pub. L. 97–164 provided that Commissioners of United States Court of Claims serving immediately prior to Oct. 1, 1982, became judges of United States Claims Court [now United States Court of Federal Claims] on such date, with initial terms expiring 15 years after date of employment or on Oct. 1, 1986, whichever occurred earlier, and with salaries equal to salaries of Commissioners of Court of Claims.

TENNESSEE VALLEY AUTHORITY LEGAL REPRESENTATION

Section 169 of Pub. L. 97–164 provided that: ''Nothing in this Act [see Short Title of 1982 Amendment note set out under section 1 of this title] affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831 et seq.] to represent itself by attorneys of its choosing.''

TRANSITION PROVISIONS: TRANSFER OF PENDING CASES

Section 403 of Pub. L. 97–164 provided for transfer of cases or matters pending on Oct. 1, 1982, before Court of Claims or United States Court of Customs and Patent Appeals to United States Court of Appeals for the Federal Circuit, directed that petitions for rehearing, reconsideration, or other changes in decisions of Court of Claims or United States Court of Customs and Patent Appeals rendered prior to such date be determined by United States Court of Appeals for the Federal Circuit, directed that matters pending before Commissioners of United States Court of Claims on such date be determined by United States Claims Court [now United

States Court of Federal Claims], and directed that any case in which notice of appeal had been filed in district court of United States prior to such date would be decided by court of appeals to which the appeal was taken.

CONGRESSIONAL STATEMENT REGARDING APPOINTMENT OF JUDGES

For Congressional suggestion that the President select nominees for judgeships on the Claims Court [now Court of Federal Claims] and the Court of Appeals for the Federal Circuit from a broad range of qualified individuals, see section 168 of Pub. L. 97–164, set out as a note under section 44 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 797 of this title.

§ 172. Tenure and salaries of judges

(a) Each judge of the United States Court of Federal Claims shall be appointed for a term of fifteen years.

(b) Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

(June 25, 1948, ch. 646, 62 Stat. 898; Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 27; Pub. L. 100–702, title X, § 1023, Nov. 19, 1988, 102 Stat. 4673; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

This section applies to the judges of the Court of Claims the same rule of precedence applicable to judges of other courts. (See sections 45, 136, 212, and 253 of this title.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1988—Subsec. (b). Pub. L. 100–702 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.''

1982—Pub. L. 97–164 amended section generally, substituting provisions relating to tenure and salaries of judges (formerly contained in section 173) for provisions relating to precedence of judges. See section 171 of this title.

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 this title.

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 this title.

SALARY INCREASES

1998—Salaries of judges increased to $136,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1998, by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1997—Salaries of judges continued at $133,600 per annum, by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

1996—Salaries of judges continued at $133,600 per annum, by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

1995—Salaries of judges continued at $133,600 per annum, by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

1993—Salaries of judges increased to $133,600 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1993, by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

1992—Salaries of judges increased to $129,500 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1992, by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

1991—Salaries of judges increased to $125,100 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1991, by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

1990—Salaries of judges continued at $89,500 per annum, and increased to $96,600, effective on first day of first pay period beginning on or after Jan. 31, 1990, by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

1989—Salaries of judges increased in the amount of 25 percent of their rates (as last in effect before the increase), effective Jan. 1, 1991, see Pub. L. 101–194, title VII, § 703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5.

Salaries of judges increased to § 89,500 per annum by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

1988—Salaries of judges continued at $82,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

1987—Salaries of judges increased to $82,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of judges increased to $72,300 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985—Salaries of judges increased to $70,200 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984—Salaries of judges set at $67,800 effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of judges set at $65,200 effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $57,500.

Maximum rate payable after Dec. 17, 1982, increased from $57,500 to $65,200, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5.

1981—Salaries of judges increased to $74,300 effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the sal-

ary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Salaries of judges increased to $70,900 effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $60,662.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of Title 5.

1979—Salaries of judges increased to $65,000 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $60,662.50.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Salaries of judges increased to $60,700 effective on first day of first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12087 further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95–391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

1977—Salaries of judges increased to $57,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of judges increased to $46,800 effective on first day of first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $44,600.

1969—Salaries of judges increased from $33,000 to $42,500 per annum, commencing Feb. 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1946—Salaries of chief judge and associate judges increased from $12,500 to $17,500 a year by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

1926—Salary of Chief Justice, now chief judge, increased from $8,000 to $12,500 a year, and salaries of associate justices, now judges, increased from $7,500 to $12,500 a year by act Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919.

1919—Salary of Chief Justice increased from $6,500 to $8,000 a year, and salaries of associate justices increased from $6,000 to $7,500 a year by act Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156.

1911—Salary of chief justice set at $6,500, and salaries of associate justices set at $6,000 by Judicial Code of 1911, act Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1135.

§ 173. Times and places of holding court

The principal office of the United States Court of Federal Claims shall be in the District of Columbia, but the Court of Federal Claims may hold court at such times and in such places as it may fix by rule of court. The times and places of the sessions of the Court of Federal Claims shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of Federal Claims with as little inconvenience and expense to citizens as is practicable.

(June 25, 1948, ch. 646, 62 Stat. 898; Mar. 2, 1955, ch. 9, § 1(d), 69 Stat. 10; Pub. L. 88–426, title IV, § 403(d), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94–82, title II, § 205(b)(4), Aug. 9, 1975, 89 Stat. 422; Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 27; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., § 241 (Mar. 3, 1911, ch. 231, § 136, 36 Stat. 1135; Feb. 25, 1919, ch. 29, § 4, 40 Stat. 1157; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919; July 31, 1946, ch. 704, § 1, 60 Stat. 716).

This section is based on part of section 241 of title 28, U.S.C., 1940 ed. That portion relating to number, appointment of judges and their oaths, is incorporated in sections 171 and 453 of this title.

A provision for monthly salary payments was omitted since time of payment is a matter for administrative determination. (See 20 Comp. Gen. 834.)

The term ''chief judge'' was substituted for ''Chief Justice.'' (See reviser's note under section 136 of this title.)

Minor changes were made in phraseology.

Amendments

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court'' in three places.

1982—Pub. L. 97–164 amended section generally, substituting provisions relating to times and places of holding court (formerly contained in section 174) for provisions relating to the tenure and salaries of judges of the Court of Claims. See section 172 of this title.

1975—Pub. L. 94–82 substituted provision that the chief judge and associate judges receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision granting each such judge a salary of $33,000 a year.

1964—Pub. L. 88–426 increased salaries of judges from $25,500 to $33,000 a year.

1955—Act Mar. 2, 1955, increased salaries of judges from $17,500 to $25,500 a year.

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 this title.

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 this title.

Effective Date of 1964 Amendment

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

Effective Date of 1955 Amendment

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Court always open; term, see rule 77, Appendix to this title.

CROSS REFERENCES

Courts always open, see section 452 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 798 of this title.

§ 174. Assignment of judges; decisions

(a) The judicial power of the United States Court of Federal Claims with respect to any action, suit, or proceeding, except congressional reference cases, shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

(b) All decisions of the Court of Federal Claims shall be preserved and open to inspection.

(June 25, 1948, ch. 646, 62 Stat. 898; Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 27; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 243 (Mar. 3, 1911, ch. 231, § 138, 36 Stat. 1136).

This section is based on the first sentence of section 243 of title 28, U.S.C., 1940 ed. The remainder of said section is incorporated in section 175 of this title.

Words ''the seat of government'' were substituted for ''the city of Washington'' to conform to similar language respecting the Supreme Court. (See section 2 of this title.)

Words ''to be fixed by rule of court'' were added to provide greater flexibility in administering the business of the court. For similar provisions covering the district courts, see section 138 of this title.

Word ''term'' was substituted for ''session'' for uniformity.

Minor changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in subsec. (a) and ''Court of Federal Claims'' for ''Claims Court'' in subsec. (b).

1982—Pub. L. 97–164 amended section generally, substituting provisions relating to assignment of judges (formerly contained in section 175) for provisions relating to terms of court. See section 173 of this title.

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 this title.

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 this title.

§ 175. Official duty station; residence

(a) The official duty station of each judge of the United States Court of Federal Claims is the District of Columbia.

(b) After appointment and while in active service, each judge shall reside within fifty miles of the District of Columbia.

(Added Pub. L. 89–425, § 2, May 11, 1966, 80 Stat. 140; amended Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 27; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

PRIOR PROVISIONS

A prior section 175, act June 25, 1948, ch. 646, 62 Stat. 898, required three judges of the Court of Claims to constitute a quorum and the concurrence of three judges for any decision, prior to repeal by section 2 of Pub. L. 89–425.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 amended section generally, substituting provisions relating to the official duty station and residence of Claims Court judges for provisions relating to assignment of judges, divisions, hearings, quorums and decisions. See section 174 of this title.

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 this title.

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 this title.

CROSS REFERENCES

Official duty stations, see section 456 of this title.

§ 176. Removal from office

(a) Removal of a judge of the United States Court of Federal Claims during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability. Removal shall be by the United States Court of Appeals for the Federal Circuit, but removal may not occur unless a majority of all the judges of such court of appeals concur in the order of removal.

(b) Before any order of removal may be entered, a full specification of the charges shall be furnished to the judge involved, and such judge shall be accorded an opportunity to be heard on the charges.

(c) Any cause for removal of any judge of the United States Court of Federal Claims coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by him to the chief judge of the United States Court of Appeals for the Federal Circuit, and a copy of the report shall at the same time be transmitted to the judge.

(Added Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 28; amended Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsecs. (a), (c). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

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 this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 177 of this title.

§ 177. Disbarment of removed judges

A judge of the United States Court of Federal Claims removed from office in accordance with section 176 of this title shall not be permitted at any time to practice before the Court of Federal Claims.

(Added Pub. L. 97–164, title I, § 105(a), Apr. 2, 1982, 96 Stat. 28; amended Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court''.

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 this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§ 178. Retirement of judges of the Court of Federal Claims

(a) A judge of the United States Court of Federal Claims who retires from office after attaining the age and meeting the service requirements, whether continuously or otherwise, of this subsection shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime, an annuity equal to the salary payable to Court of Federal Claims judges in regular active service. The age and service requirements for retirement under this subsection are as follows:

Attained Age:	Years of Service:
65	15
66	14
67	13
68	12
69	11
70	10.

(b) A judge of the Court of Federal Claims who is not reappointed following the expiration of the term of office of such judge, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, during the remainder of such judge's lifetime, an annuity equal to the salary payable to Court of Federal Claims judges in regular active service, if—

(1) such judge has served at least 1 full term as judge of the Court of Federal Claims, and

(2) not earlier than 9 months before the date on which the term of office of such judge expired, and not later than 6 months before such date, such judge advised the President in writing that such judge was willing to accept reappointment as a judge of the Court of Federal Claims.

(c) A judge of the Court of Federal Claims who has served at least 5 years, whether continuously or otherwise, as such a judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's lifetime—

(1) an annuity equal to 50 percent of the salary payable to Court of Federal Claims judges in regular active service, if before retirement such judge served less than 10 years, or

(2) an annuity equal to the salary payable to Court of Federal Claims judges in regular active service, if before retirement such judge served at least 10 years.

(d) A judge who retires under subsection (a) or (b) may, at or after such retirement, be called upon by the chief judge of the Court of Federal Claims to perform such judicial duties with the Court of Federal Claims as may be requested of the retired judge for any period or periods specified by the chief judge, except that in the case of any such judge—

(1) the aggregate of such periods in any one calendar year shall not (without his or her consent) exceed 90 calendar days; and

(2) he or she shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a Court of Federal Claims judge in regular active service. Any individual performing judicial duties pursuant to this subsection shall receive the allowances for official travel and other expenses of a judge in regular active service.

(e)(1) Any judge who retires under the provisions of subsection (a) or (b) of this section shall be designated ''senior judge''.

(2) Any judge who retires under this section shall not be counted as a judge of the Court of Federal Claims for purposes of the number of judgeships authorized by section 171 of this title.

(f)(1) A judge shall be entitled to an annuity under this section if the judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts in writing. Such an election—

(A) may be made only while an individual is a judge of the Court of Federal Claims (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, such election may be made at any time before the day after the day on which his or her successor takes office); and

(B) once made, shall, subject to subsection (k), be irrevocable.

(2) A judge who elects to receive an annuity under this section shall not be entitled to receive—

(A) any annuity to which such judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as a judge or otherwise;

(B) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

(C) retired pay under section 7447 of the Internal Revenue Code of 1986; or

(D) retired pay under section 7296 of title 38.

(g) For purposes of calculating the years of service of an individual under subsections (a) and (c), only those years of service as a judge of the Court of Federal Claims or a commissioner of the United States Court of Claims shall be credited, and that portion of the aggregate number of years of such service that is a fractional part of 1 year shall not be credited if it is less than 6 months, and shall be credited if it is 6 months or more.

(h) An annuity under this section shall be payable at the times and in the same manner as the salary of a Court of Federal Claims judge in regular active service. Such annuity shall begin to accrue on the day following the day on which the annuitant's salary as a judge in regular active service ceases to accrue.

(i)(1) Payments under this section which would otherwise be made to a judge of the Court of Federal Claims based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

(3) As used in this subsection, the term ''court'' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

(j)(1) Subject to paragraph (4), any judge of the Court of Federal Claims who retires under this section and who thereafter in the practice of law represents (or supervises or directs the representation of) a client in making any civil claim against the United States or any agency thereof shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he engages in any such activity.

(2) Subject to paragraph (4), if a judge of the Court of Federal Claims who retires under this section fails during any calendar year to perform judicial duties required of such judge by subsection (d), such judge shall forfeit all rights to an annuity under this section for the 1-year period which begins on the first day on which he or she so fails to perform such duties.

(3) If a judge of the Court of Federal Claims who retires under this section accepts compensation for civil office or employment under the Government of the United States (other than for the performance of judicial duties under subsection (d)), such judge shall forfeit all rights to an annuity under this section for the period for which such compensation is received.

(4)(A) If a judge makes an election under this paragraph—

(i) paragraphs (1) and (2) (and subsection (d)) shall not apply to such judge beginning on the date such election takes effect, and

(ii) the annuity payable under this section to such judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such judge is entitled on the day before such effective date.

(B) An election under subparagraph (A)—

(i) may be made by a judge only if such judge meets the age and service requirements for retirement under subsection (a),

(ii) may be made only during the period during which such judge may make an election to receive an annuity under this section or while the judge is receiving an annuity under this section, and

(iii) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

(C) Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

(k)(1) Notwithstanding subsection (f)(1)(B), an individual who has filed an election under subsection (f) to receive an annuity may revoke such election at any time before the first day on which such annuity would (but for such revocation) begin to accrue with respect to such individual.

(2) Any revocation under this subsection shall be made by filing a notice thereof in writing with the Director of[1] Administrative Office of the United States Courts.

(3) In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election under subsection (f) to receive an annuity,

(B) for purposes of section 376 of this title—

(i) the individual shall be treated as not having filed an election under section 376(a)(1), and

(ii) section 376(g) shall not apply, and the amount credited to such individual's account (together with interest at 3 percent per annum, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

(C) no credit shall be allowed for any service as a judge of the Court of Federal Claims or as a commissioner of the United States Court of Claims unless with respect to such service either there has been deducted and withheld the amount required by chapter 83 or 84 (as the case may be) of title 5 or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

(D) the Court of Federal Claims shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such

[1] So in original. Probably should be ''of the''.

Fund but for the election under subsection (f), and

(E) if subparagraph (D) is complied with, service on the Court of Federal Claims or as a commissioner of the United States Court of Claims shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(*l*)(1) There is established in the Treasury a fund which shall be known as the ''Court of Federal Claims Judges Retirement Fund''. The Fund is appropriated for the payment of annuities and other payments under this section.

(2) The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Court of Federal Claims Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3)(A) There are authorized to be appropriated to the Court of Federal Claims Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term ''unfunded liability'' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Court of Federal Claims Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(Added Pub. L. 101–650, title III, § 306(a)(1), Dec. 1, 1990, 104 Stat. 5105; amended Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–198, § 7(a), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Section 7447 of the Internal Revenue Code of 1986, referred to in subsec. (f)(2)(C), is classified to section 7447 of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in subsec. (a) and ''Court of Federal Claims'' for ''Claims Court'' in section catchline and wherever appearing in text.

1991—Subsec. (f)(2)(A). Pub. L. 102–198, § 7(a)(1), inserted ''(except for subchapters III and VII)'' after ''chapter 84''.

Subsec. (f)(2)(D). Pub. L. 102–40 substituted ''section 7296 of title 38'' for ''section 4096 of title 38''.

Subsec. (j)(1). Pub. L. 102–198, § 7(a)(2)(A), substituted ''paragraph (4)'' for ''paragraph (2)'' and ''engages in any such activity'' for ''so practices law''.

Subsec. (j)(2). Pub. L. 102–198, § 7(a)(2)(B), substituted ''Subject to paragraph (4), if'' for ''If''.

Subsec. (j)(3). Pub. L. 102–198, § 7(a)(2)(C), inserted ''for'' after ''(other than''.

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 this title.

EFFECTIVE DATE

Section applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, as amended, set out as an Effective Date of 1990 Amendment note under section 8331 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 376, 604 of this title; title 5 sections 8334, 8402, 8440c.

§ 180.[1] Military retirement pay for retired judges

Section 371(e) of this title applies to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined in section 451 of this title.

(Added Pub. L. 102–572, title IX, § 903(a), Oct. 29, 1992, 106 Stat. 4517.)

EFFECTIVE DATE

Section effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as an Effective Date of 1992 Amendment note under section 171 of this title.

[CHAPTER 9—REPEALED]

[§§ 211 to 216. Repealed. Pub. L. 97–164, title I, § 106, Apr. 2, 1982, 96 Stat. 28]

Section 211, acts June 25, 1948, ch. 646, 62 Stat. 899; Aug. 25, 1958, Pub. L. 85–755, § 1, 72 Stat. 848, provided for creation of United States Court of Customs and Patent Appeals under article III of the United States Constitution and for appointment of a chief judge and four associate judges for that court.

Section 212, act June 25, 1948, ch. 646, 62 Stat. 899, provided for order of precedence of chief judge and associate judges of court.

Section 213, acts June 25, 1948, ch. 646, 62 Stat. 899; Mar. 2, 1955, ch. 9, § 1(e), 69 Stat. 10; Aug. 14, 1964, Pub. L. 88–426, title IV, § 403(e), 78 Stat. 434; Aug. 9, 1975, Pub. L. 94–82, title II, § 205(b)(5), 89 Stat. 422, provided for tenure and salaries of judges.

Section 214, act June 25, 1948, ch. 646, 62 Stat. 899, authorized court to hold court at such times and places as it might fix by rule.

Section 215, act June 25, 1948, ch. 646, 62 Stat. 899, provided that three judges of court constituted a quorum and that concurrence of three judges was necessary to any decision.

Section 216, act June 25, 1948, ch. 646, 62 Stat. 899, provided for filing of written opinions by Court of Customs and Patent Appeals on appeals from decisions of Patent Office and recording of those opinions in Patent Office.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

TRANSFER OF MATTERS AND PETITIONS PENDING IN UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS ON OCTOBER 1, 1982

For provisions that any matter pending before the United States Court of Customs and Patent Appeals on

[1] So in original. No section 179 has been enacted.

Oct. 1, 1982, and that any petition for rehearing, reconsideration, alteration, modification, or other change in any decision of the United States Court of Customs and Patent Appeals rendered prior to Oct. 1, 1982, that has not been determined on that date or that is filed after that date, be determined by the United States Court of Appeals for the Federal Circuit, see section 403(b), (c) of Pub. L. 97–164, formerly set out as a note under section 171 of this title.

CHAPTER 11—COURT OF INTERNATIONAL TRADE

Sec.
251. Appointment and number of judges; offices.
252. Tenure and salaries of judges.
253. Duties of chief judge.
254. Single-judge trial.
255. Three-judge trials.
256. Trials at ports other than New York.
257. Publication of decisions.
258. Chief judges; precedence of judges.

HISTORICAL AND REVISION NOTES

The ''Board of General Appraisers'' was designated ''United States Customs Court'' by act May 28, 1926, ch. 411, §1, 44 Stat. 669. General provisions concerning such court were incorporated in section 1518 of title 19, U.S.C., 1940 ed., Customs Duties, until amended by act October 10, 1940, ch. 843, §1, 54 Stat. 1101, adding a new section to the Judicial Code of 1911, when they were transferred to section 296 of title 28, U.S.C., 1940 ed. They are retained in title 28 by this revision.

In this connection former Congressman Walter Chandler said, ''Among the major subjects needing study and revision are special courts, such as the Customs Court, which should be fitted into the judicial system.'' (See U.S. Law Weekly, Nov. 7, 1939.)

HISTORY OF COURT

The United States Customs Court [now Court of International Trade] as ''constituted on June 17, 1930'', consisted of nine members as provided by act Sept. 21, 1922, ch. 356, title IV, §518, 42 Stat. 972, which established the Board of General Appraisers, designated the ''United States Customs Court'' by act May 28, 1926, ch. 411, §1, 44 Stat. 669.

Provisions similar to these were contained in act Sept. 21, 1922, ch. 356, title IV, §518, 42 Stat. 972. That section was superseded by section 518 of the Tariff Act of 1930, and was repealed by section 651 (a)(1) of said 1930 act.

The sentence in the former first paragraph as to sitting in a case previously participated in, is from act Aug. 5, 1909, ch. 6, §28, 36 Stat. 98, which combined and amended Customs Administrative Act June 10, 1890, ch. 407, §12, 26 Stat. 136, and section 31, as added by act May 27, 1908, ch. 205, 35 Stat. 406. Section 12 of the act of 1890 was expressly saved from repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989, and prior acts, but its provisions, other than the sentence above mentioned, were omitted from the Code.

Provisions for the review of decisions of Boards of General Appraisers by the Circuit Courts, made by section 15 of the Customs Administrative Act of June 10, 1890, ch. 407, were superseded by provisions for such review by the Court of Customs Appeals created by section 29 added to that act by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6. The provisions of said new section 29 were incorporated in and superseded by chapter 8 of the Judicial Code of March 3, 1911, incorporated into the Code as former chapter 8 of Title 28, Judicial Code and Judiciary.

R.S. §2608 provided for the appointment of four appraisers of merchandise, to be employed in visiting ports of entry under the direction of the Secretary of the Treasury, and to assist in the appraisement of merchandise as might be deemed necessary by the Secretary to protect and insure uniformity in the collection of the revenue from customs. It was repealed by act June 10, 1890, ch. 407, §29, 26 Stat. 141.

R.S. §2609 provided for the appointment of merchant appraisers. R.S. §2610 made every merchant refusing to serve as such appraiser liable to a penalty. Both sections were superseded by the provisions relating to appraisers and appraisements of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 131, and subsequent acts, and were repealed by act Sept. 21, 1922, ch. 356, title IV, §642, 42 Stat. 989.

R.S. §2945, which contained a provision similar to that of R.S. §2610, was repealed, without mention of section 2610, by said Customs Administrative Act of June 10, 1890, ch. 407, §29, 26 Stat. 141, and was again repealed by section 642 of act Sept. 21, 1922.

R.S. §2725, which prescribed the compensation of merchant appraisers, and section 2726, which prescribed the salary of the general appraiser at New York, were superseded by the provisions relating to general appraisers and appraisers made by the Customs Administrative Act of June 10, 1890, ch. 407, §§12, 13, 26 Stat. 136, as amended by the Payne-Aldrich Act of Aug. 5, 1909, ch. 6, §28.

R.S. §2727 fixed the salary of the four general appraisers at the sum of $2,500 a year each, and their actual traveling expenses. It was repealed by act Feb. 27, 1877, ch. 69, 19 Stat. 246.

AMENDMENTS

1996—Pub. L. 104–317, title V, §501(b)(3), Oct. 19, 1996, 110 Stat. 3856, substituted ''Duties of chief judge'' for ''Duties of chief judge; precedence of judges'' in item 253 and added item 258.

1980—Pub. L. 96–417, title V, §501(2), Oct. 10, 1980, 94 Stat. 1742, substituted ''COURT OF INTERNATIONAL TRADE'' for ''CUSTOMS COURT'' in chapter heading.

1970—Pub. L. 91–271, title I, §123(a), June 2, 1970, 84 Stat. 282, substituted ''Single-judge trial'' for ''Divisions; powers and assignments'' in item 254 and ''Three-judge trials'' for ''Publication of decisions'' in item 255 and added items 256 and 257.

RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

See Appendix to this title.

CROSS REFERENCES

Jurisdiction of Court of International Trade, see section 1581 et seq. of this title.

§251. Appointment and number of judges; offices

(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. Not more than five of such judges shall be from the same political party. The court is a court established under article III of the Constitution of the United States.

(b) The offices of the Court of International Trade shall be located in New York, New York.

(June 25, 1948, ch. 646, 62 Stat. 899; July 14, 1956, ch. 589, §1, 70 Stat. 532; Pub. L. 96–417, title I, §101, Oct. 10, 1980, 94 Stat. 1727; Pub. L. 104–317, title V, §501(b)(1), Oct. 19, 1996, 110 Stat. 3856.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §296 (Mar. 3, 1911, ch. 231, §187(a), as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101).

This section contains only a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 252, 253, 254, 455, 1581, 2071, 2639, and 2640 of this title.

The provision that vacancies should be filled by appointment of the President and confirmed by the Sen-

ate was omitted as unnecessary in view of the language of the revised section.

Words ''a court of record known as'' were added. (See Reviser's Note under section 171 of this title.)

The term ''chief judge'' was substituted for ''presiding judge.'' (See reviser's note under section 136 of this title.)

The provisions of such section 296 of title 28, U.S.C., 1940 ed., relating to assignment and powers of retired judges were omitted as covered by sections 294 and 296 of this title.

Changes in phraseology were made.

AMENDMENTS

1996—Subsecs. (b), (c). Pub. L. 104–317 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.''

1980—Subsec. (a). Pub. L. 96–417 incorporated first par. in provisions designated subsec. (a), redesignated the United States Customs Court as the United States Court of International Trade, and deleted ''appointed'' before ''shall be''.

Subsec. (b). Pub. L. 96–417 added subsec. (b) and struck out a second paragraph requiring the President to designate from time to time one of the judges to act as chief judge.

Subsec. (c). Pub. L. 96–417 designated third par. as subsec. (c) and substituted ''Court of International Trade'' for ''court'' and ''located in New York, New York'' for ''located at the port of New York''.

1956—Act July 14, 1956, declared the Customs Court to be a court established under article III of the Constitution of the United States.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 701 of Pub. L. 96–417, as amended by Pub. L. 96–542, §1, Dec. 17, 1980, 94 Stat. 3209, provided that:

''(a) Except as otherwise provided in this section, the provisions of and amendments made by this Act [see section 1 of Pub. L. 96–417, set out as a Short Title of 1980 Amendment note under section 1 of this title] shall take effect on November 1, 1980 and shall apply with respect to civil actions pending on or commenced on or after such date.

''(b)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the effective date of this Act [Nov. 1, 1980]:

''(A) Sections 1581(d), 1581(g), 1581(h), 1581(i), and 1583, as amended by section 201 of this Act.

''(B) Sections 2631(d), 2631(g), 2631(h), 2631(i), 2631(j), 2632(a), 2635, 2636, 2637(c), 2639(b), 2640(a)(5), 2640(c), 2640(d), 2643(a), 2643(c)(2), 2643(c)(4), and 2644, as amended by section 301 of this Act.

''(C) Section 1876, as added by section 302(a) of this Act.

''(D) Sections 2601 and 2602, as amended by section 403 of this Act.

''(E) Section 1919, as amended by section 510 of this Act.

''(F) Section 1963A, as added by section 511(a) of this Act.

''(2) Sections 337(c) and 641(b) of the Tariff Act of 1930 [19 U.S.C. 1337(c) and 1641(b)], as amended by sections 604 and 611 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act.

''(3) Section 284 of the Trade Act of 1974 [19 U.S.C. 2395], as added by section 613 of this Act, shall apply with respect to civil actions commenced on or after the effective date of this Act.

''(c)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the effective date of this Act [Nov. 1, 1980]:

''(A) Sections 1582, 2639(a)(2), and 2640(a)(6), as amended by sections 201 and 301 of this Act.

''(B) Sections 1352, 1355, and 1356, as amended by sections 506, 507, and 508 of this Act.

''(2) Section 592(e) of the Tariff Act of 1930 [19 U.S.C. 1592(e)], as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the effective date of this Act.''

[Amendment of section 701 of Pub. L. 96–417, set out above, by Pub. L. 96–542 effective as of Nov. 1, 1980, see section 3 of Pub. L. 96–542, set out as a note under section 1516a of Title 19, Customs Duties.]

REFERENCES TO CERTAIN COURTS DEEMED REFERENCES TO THE UNITED STATES COURT OF INTERNATIONAL TRADE

Section 702 of Pub. L. 96–417 provided that: ''Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade.''

EFFECT ON CUSTOMS COURT JUDGES

Section 703 of Pub. L. 96–417 provided that:

''(a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act [amending this section and section 293 of this title] shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act [Oct. 10, 1980].

''(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act [amending this section], shall apply to any individual serving as chief judge on or after the date of enactment of this Act [Oct. 10, 1980].''

EFFECT ON PENDING CASES

Section 704 of Pub. L. 96–417 provided that: ''Nothing in this Act [see section 1 of Pub. L. 96–417, set out as a Short Title of 1980 Amendment note under section 1 of this title] shall cause the dismissal of any action commenced prior to the date of enactment of this Act [Oct. 10, 1980] under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment [Oct. 10, 1980].''

TENNESSEE VALLEY AUTHORITY LEGAL REPRESENTATION

Section 705 of Pub. L. 96–417 provided that: ''Nothing in this Act [see section 1 of Pub. L. 96–417, set out as a Short Title of 1980 Amendment note under section 1 of this title] affects the authority of the Tennessee Valley Authority under the Tennessee Valley Authority Act of 1933 [16 U.S.C. 831 et seq.] to represent itself by attorneys of its choosing.''

LIMITATION OR ALTERATION OF JURISDICTION

Section 4 of act July 14, 1956, provided that: ''Nothing contained in this Act [amending this section and sections 292, 293, and 295 of this title] shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Customs Court [now Court of International Trade] by any provision of law.''

CONTINUATION OF ORGANIZATION OF COURT

Section 2(b) of act June 25, 1948, provided in part that the provisions of this title as set out in section 1 of act June 25, 1948, with respect to the organization of the court, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employ-

ees, in office on Sept. 1, 1948, shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of this title, pursuant to his prior appointment.

CROSS REFERENCES

Oath of judge, see sections 453 of this title.

Official station of Court of International Trade judges, see section 456 of this title.

§ 252. Tenure and salaries of judges

Judges of the Court of International Trade shall hold office during good behavior. Each shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361), as adjusted by section 461 of this title.

(June 25, 1948, ch. 646, 62 Stat. 899; Mar. 2, 1955, ch. 9, § 1(f), 69 Stat. 10; Pub. L. 88–426, title IV, § 403(f), Aug. 14, 1964, 78 Stat. 434; Pub. L. 94–82, title II, § 205(b)(6), Aug. 9, 1975, 89 Stat. 423; Pub. L. 96–417, title V, § 502, Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 296 (Mar. 3, 1911, ch. 231, § 187(a), as added Oct. 10, 1940, ch. 843, § 1, 54 Stat. 1101; July 31, 1946, ch. 704, § 1, 60 Stat. 716).

This section contains a part of section 296 of title 28, U.S.C., 1940 ed., Other provisions of such section are incorporated in sections 251, 253, 254, 456, 1581, 2071, 2639, and 2640 of this title.

A provision exempting judge's salaries from section 1790 of the Revised Statutes was omitted, as such section was repealed by act Aug. 26, 1935, ch. 689, § 1, 49 Stat. 864.

A provision for monthly salary payments was omitted since time of payment is a matter for administrative determination.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 225 of the Federal Salary Act of 1967, referred to in text, is section 225 of Pub. L. 90–206, Dec. 16, 1967, 81 Stat. 642, as amended, which is classified to chapter 11 (§ 351 et seq.) of Title 2, The Congress.

AMENDMENTS

1980—Pub. L. 96–417 substituted "Judges of the Court of International Trade" for "Judge of the Customs Court".

1975—Pub. L. 94–82 substituted provision that each judge shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of this title, for provision that each judge shall receive a salary of $30,000 a year.

1964—Pub. L. 88–426 increased salaries of judges from $22,500 to $30,000 a year.

1955—Act Mar. 2, 1955, increased salaries of judges from $15,000 to $22,500 a year.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501 of Pub. L. 88–426.

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Mar. 2, 1955, effective Mar. 1, 1955, see section 5 of act Mar. 2, 1955, set out as a note under section 31 of Title 2, The Congress.

SALARY INCREASES

1998—Salaries of judges increased to $136,700 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1998, by Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1997—Salaries of judges continued at $133,600 per annum, by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, formerly set out as a note under section 5332 of Title 5.

1996—Salaries of judges continued at $133,600 per annum, by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

1995—Salaries of judges continued at $133,600 per annum, by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

1993—Salaries of judges increased to $133,600 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1993, by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

1992—Salaries of judges increased to $129,500 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1992, by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

1991—Salaries of judges increased to $125,100 per annum, effective on first day of first pay period beginning on or after Jan. 1, 1991, by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

1990—Salaries of judges continued at $89,500 per annum, and increased to $96,600, effective on first day of first pay period beginning on or after Jan. 31, 1990, by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

1989—Salaries of judges increased in the amount of 25 percent of their rates (as last in effect before the increase), effective Jan. 1, 1991, see Pub. L. 101–194, title VII, § 703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5.

Salaries of judges continued at $89,500 per annum by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

1988—Salaries of judges continued at $89,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

1987—Salaries of judges increased to $89,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of judges increased to $81,100 effective on first day of first pay period beginning on or after Jan. 1, 1987, by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

1985—Salaries of judges increased to $78,700 effective on first day of first pay period beginning on or after Jan. 1, 1985, by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out as a note under section 5332 of Title 5.

1984—Salaries of judges increased to $76,000 effective on first day of first pay period beginning on or after Jan. 1, 1984, by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

1982—Salaries of judges increased to $73,100 effective on first day of first pay period beginning on or after Oct. 1, 1982, by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12387 further provided that pursuant to section 140 of Pub. L. 97–92 funds are not available to pay a salary at a rate which exceeds rate in effect on Dec. 15, 1981, which was $70,300.

Maximum rate payable after Dec. 17, 1982, increased from $70,300 to $73,100, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5.

1981—Salaries of judges increased to $70,300 effective on first day of first pay period beginning on or after Oct. 1, 1981, by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Salaries of judges increased to $67,100 effective on first day of first pay period beginning on or after Oct. 1, 1980, by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12248 further provided that pursuant to Pub. L. 96–369 funds are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1980, which was $57,497.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of Title 5.

1979—Salaries of judges increased to $61,500 effective on first day of first pay period beginning on or after Oct. 1, 1979, by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12165 further provided that pursuant to Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over applicable rate payable for such position or office in effect on Sept. 30, 1978, which was $57,497.50.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Salaries of judges increased to $57,500 effective on first day of first pay period beginning on or after Oct. 1, 1978, by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out as a note under section 5332 of Title 5. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979 [Pub. L. 95–391, title III, § 304, Sept. 30, 1978, 92 Stat. 788, set out as a note under section 5318 of Title 5], funds are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1978, which was $54,500.

1977—Salaries of judges increased to $54,500 per annum, on recommendation of President of United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of judges increased to $44,000 effective on first day of first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941, further provided that pursuant to Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds rate in effect on Sept. 30, 1976, which was $42,000.

1969—Salaries of judges increased from $30,000 to $40,000 per annum, commencing Feb. 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1946—Salaries of presiding judge and associate judges increased from $10,000 to $15,000 a year by act July 31, 1946, ch. 704, § 1, 60 Stat. 716.

1930—Salaries of presiding judge and associate judges increased from $9,000 to $10,000 a year by the Tariff Act of 1930, act June 17, 1930, ch. 497, title IV, § 518, 46 Stat. 737.

CROSS REFERENCES

Retirement of judges, see section 371 et seq. of this title.

§ 253. Duties of chief judge

(a) The chief judge of the Court of International Trade, with the approval of the court, shall supervise the fiscal affairs and clerical force of the court;[1]

(b) The chief judge shall promulgate dockets.

(c) The chief judge, under rules of the court, may designate any judge or judges of the court to try any case and, when the circumstances so warrant, reassign the case to another judge or judges.

(June 25, 1948, ch. 646, 62 Stat. 900; Pub. L. 86–243, § 3, Sept. 9, 1959, 73 Stat. 474; Pub. L. 91–271, title I, § 105, June 2, 1970, 84 Stat. 276; Pub. L. 96–417, title V, § 501(3), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 104–317, title V, § 501(b)(2), Oct. 19, 1996, 110 Stat. 3856.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 296 (Mar. 3, 1911, ch. 231, § 187(a), as added Oct. 10, 1940, ch. 843, § 1, 54 Stat. 1101).

This section contains a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 251, 252, 254, 456, 1581, 2071, 2639, and 2640 of this title.

Provision respecting recommendations for appointment, promotions, or otherwise affecting such clerical force, was omitted as unnecessary in view of section 871 of this title.

The second paragraph is partly new and conforms with similar provisions of section 136(e) of this title, relating to the chief judges of district courts.

The term ''chief judge'' was substituted for ''presiding judge.'' (See Reviser's Note under section 136 of this title.)

Changes were made in phraseology and arrangement.

AMENDMENTS

1996—Pub. L. 104–317 struck out ''; precedence of judges'' after ''chief judge'' in section catchline and struck out subsecs. (d) and (e) which read as follows:

''(d) Whenever the chief judge is unable to perform the duties of his office or the office is vacant, his powers and duties shall devolve upon the judge next in precedence who is able to act, until such disability is removed or another chief judge is appointed and duly qualified.

''(e) The chief judge shall have precedence and shall preside at any session which he attends. Other judges shall have precedence and shall preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.''

1980—Subsec. (a). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91–271 reorganized existing provisions into lettered subsecs. (a) to (e) and made minor changes in phraseology.

1959—Pub. L. 86–243 required the chief judge to supervise the fiscal affairs and clerical force of the court, with the approval of the court.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on

[1] So in original. The semicolon probably should be a period.

or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–271 effective Oct. 1, 1970, see section 122 of Pub. L. 91–271, set out as a note under section 256 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 86–243 not to deprive Customs Court [now Court of International Trade] officers or employees of any rights, privileges, or civil service status, see section 4 of Pub. L. 86–243, set out as a note under section 871 of this title.

§ 254. Single-judge trials

Except as otherwise provided in section 255 of this title, the judicial power of the Court of International Trade with respect to any action, suit or proceeding shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

(June 25, 1948, ch. 646, 62 Stat. 900; May 24, 1949, ch. 139, § 66, 63 Stat. 99; Pub. L. 91–271, title I, § 106, June 2, 1970, 84 Stat. 277; Pub. L. 96–417, title V, § 501(4), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 296 (Mar. 3, 1911, ch. 231, 187(a), as added Oct. 10, 1940, ch. 843, § 1, 54 Stat. 1101).

This section contains a part of section 296 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in sections 251, 252, 253, 456, 1581, 2071, 2639, and 2640 of this title.

Words ''when in the opinion of such division or judge the ends of justice so require,'' which followed the phrase ''grant a rehearing or retrial,'' were omitted as surplusage.

The term ''chief judge'' was substituted for ''presiding judge.'' (See reviser's note under section 136 of this title.)

The phrase ''petitions for remission of additional duties'' was added to the first paragraph at the suggestion of the court to conform to existing practice.

Reappraisement appeals are heard by a single judge and reviewed by a division. (See sections 2631 and 2636 of this title.)

The provision of section 296 of title 28, U.S.C., 1940 ed., that the presiding judge shall designate one of the three judges of a division to preside over such division was omitted as in conflict with section 253 of this title (also taken from section 296 of title 28 U.S.C., 1940 ed.), which provides that judges shall preside according to the seniority of their commissions. The latter provision is in accord with present practice.

Changes were made in arrangement and phraseology.

1949 ACT

This amendment clarifies section 254 of title 28, U.S.C., by restoring language of the original law.

PRIOR PROVISIONS

Provisions similar to those relating to the assignment of judges to hear and determine cases, and provisions similar to those authorizing the chief judge to designate judges to hear and determine cases within the jurisdiction of the United States, formerly contained in this section, are covered by sections 255 and 256 of this title, respectively.

AMENDMENTS

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91–271 substituted in section catchline ''Single-judge trials'' for ''Divisions; powers and assignments'' and substituted provisions in text requiring the judicial power of the Customs Court with respect to any action, suit, or proceeding to be exercised by a single judge, for provisions setting forth the powers of the chief judge of the Customs Court with respect to the organization of such Court into divisions, and the assignment of judges to hear and determine pending cases.

1949—Act May 24, 1949, inserted ''to hear or'' before ''to hear and determine'' in third par.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–271 effective Oct. 1, 1970, see section 122 of Pub. L. 91–271, set out as a note under section 256 of this title.

§ 255. Three-judge trials

(a) Upon application of any party to a civil action, or upon his own initiative, the chief judge of the Court of International Trade shall designate any three judges of the court to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

(b) A majority of the three judges designated may hear and determine the civil action and all questions pending therein.

(Added Pub. L. 91–271, title I, § 108, June 2, 1970, 84 Stat. 277; amended Pub. L. 96–417, title V, § 501(5), Oct. 10, 1980, 94 Stat. 1742.)

PRIOR PROVISIONS

A prior section 255 was renumbered section 257 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1970, see section 122 of Pub. L. 91–271, set out as a note under section 256 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254 of this title.

§ 256. Trials at ports other than New York

(a) The chief judge may designate any judge or judges of the court to proceed, together with necessary assistants, to any port or to any place within the jurisdiction of the United States to preside at a trial or hearing at the port or place.

(b) Upon application of a party or upon his own initiative, and upon a showing that the in-

terests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing a judge of the court to preside in an evidentiary hearing in a foreign country whose laws do not prohibit such a hearing: *Provided, however*, That an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(1) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.

(Added Pub. L. 91–271, title I, § 109, June 2, 1970, 84 Stat. 277; amended Pub. L. 97–164, title I, § 107, Apr. 2, 1982, 96 Stat. 28.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–164 substituted ''section 1292(d)(1) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal'' for ''section 1541(b) of this title, subject to the discretion of the Court of Customs and Patent Appeals as set forth in that section''.

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 this title.

EFFECTIVE DATE

Section 122 of title I of Pub. L. 91–271 provided that:

''(a) This title [see Short Title of 1970 Amendment note set out under section 1 of this title] shall become effective on October 1, 1970, and shall thereafter apply to all actions and proceedings in the Customs Court and the Court of Customs and Patent Appeals except those involving merchandise entered before the effective date for which trial has commenced by such effective date.

''(b) An appeal for reappraisement timely filed with the Bureau of Customs before the effective date, but as to which trial has not commenced by such date, shall be deemed to have had a summons timely and properly filed under this title. When the judgment or order of the United States Customs Court has become final in this appeal, the papers shall be returned to the appropriate customs officer to decide any remaining matters relating to the entry in accordance with section 500 of the Tariff Act of 1930, as amended [section 1500 of Title 19, Customs Duties]. A protest or summons filed after final decision on an appeal for reappraisement shall not include issues which were raised or could have been raised on the appeal for reappraisement.

''(c) A protest timely filed with the Bureau of Customs before the effective date of enactment of this Act [June 2, 1970], which is disallowed before that date, and as to which trial has not commenced by such date, shall be deemed to have had a summons timely and properly filed under this title.

''(d) All other provisions of this Act [see Short Title notes set out under section 1 of this title and section 1500 of Title 19] shall apply to appeals and disallowed protests deemed to have had summonses timely and properly filed under this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1292 of this title.

§ 257. Publication of decisions

All decisions of the Court of International Trade shall be preserved and open to inspection. The court shall forward copies of each decision to the Secretary of the Treasury or his designee and to the appropriate customs officer for the district in which the case arose. The Secretary shall publish weekly such decisions as he or the court may designate and abstracts of all other decisions.

(June 25, 1948, ch. 646, 62 Stat. 900, § 255; renumbered § 257 and amended Pub. L. 91–271, title I, § 107, June 2, 1970, 84 Stat. 277; Pub. L. 96–417, title V, § 501(6), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on section 1519 of title 19, U.S.C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 519, 46 Stat. 739).

Changes in phraseology were made.

AMENDMENTS

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1970—Pub. L. 91–271 inserted ''or his designee'' after ''Secretary of the Treasury,'' and substituted ''to the appropriate customs officer'' for ''the collector''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–271 effective Oct. 1, 1970, see section 122 of Pub. L. 91–271, set out as an Effective Date note under section 256 of this title.

RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

Opinions and judgments, see rules 54 and 58, Appendix to this title.

§ 258. Chief judges; precedence of judges

(a)(1) The chief judge of the Court of International Trade shall be the judge of the court in regular active service who is senior in commission of those judges who—

(A) are 64 years of age or under;

(B) have served for 1 year or more as a judge of the court; and

(C) have not served previously as chief judge.

(2)(A) In any case in which no judge of the court meets the qualifications under paragraph (1), the youngest judge in regular active service who is 65 years of age or over and who has served as a judge of the court for 1 year or more shall act as the chief judge.

(B) In any case under subparagraph (A) in which there is no judge of the court in regular active service who has served as a judge of the court for 1 year or more, the judge of the court in regular active service who is senior in commission and who has not served previously as chief judge shall act as the chief judge.

(3)(A) Except as provided under subparagraph (C), the chief judge serving under paragraph (1) shall serve for a term of 7 years and shall serve after expiration of such term until another judge is eligible under paragraph (1) to serve as chief judge.

(B) Except as provided under subparagraph (C), a judge of the court acting as chief judge under subparagraph (A) or (B) of paragraph (2) shall serve until a judge meets the qualifications under paragraph (1).

(C) No judge of the court may serve or act as chief judge of the court after attaining the age

of 70 years unless no other judge is qualified to serve as chief judge under paragraph (1) or is qualified to act as chief judge under paragraph (2).

(b) The chief judge shall have precedence and preside at any session of the court which such judge attends. Other judges of the court shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) If the chief judge desires to be relieved of the duties as chief judge while retaining active status as a judge of the court, the chief judge may so certify to the Chief Justice of the United States, and thereafter the chief judge of the court shall be such other judge of the court who is qualified to serve or act as chief judge under subsection (a).

(d) If a chief judge is temporarily unable to perform the duties as such, such duties shall be performed by the judge of the court in active service, able and qualified to act, who is next in precedence.

(Added Pub. L. 104–317, title V, § 501(a), Oct. 19, 1996, 110 Stat. 3855.)

CONTINUANCE OF POSITION OF CHIEF JUDGE

Section 501(c) of Pub. L. 104–317 provided that:

''(1) Notwithstanding the provisions of section 258(a) of title 28, United States Code (as added by subsection (a) of this section), the chief judge of the United States Court of International Trade who is in office on the day before the date of enactment of this Act [Oct. 19, 1996] shall continue to be such chief judge on or after such date until any one of the following events occurs:

''(A) The chief judge is relieved of his duties under section 258(c) of title 28, United States Code.

''(B) The regular active status of the chief judge is terminated.

''(C) The chief judge attains the age of 70 years.

''(D) The chief judge has served for a term of 7 years as chief judge.

''(2) When the chief judge vacates the position of chief judge under paragraph (1), the position of chief judge of the Court of International Trade shall be filled in accordance with section 258(a) of title 28, United States Code.''

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

Sec.
291. Circuit judges.
292. District judges.
293. Judges of the Court of International Trade.
294. Assignment of retired justices or judges to active duty.[1]
295. Conditions upon designation and assignment.
296. Powers upon designation and assignment.
297. Assignment of judges to courts of the freely associated compact states.

AMENDMENTS

1988—Pub. L. 100–702, title X, § 1022(2), Nov. 19, 1988, 102 Stat. 4673, added item 297.

1982—Pub. L. 97–164, title I, § 110(c), Apr. 2, 1982, 96 Stat. 29, substituted ''the Court of International Trade'' for ''other courts'' in item 293.

1958—Pub. L. 85–755, § 8, Aug. 25, 1958, 72 Stat. 850, substituted ''Judges of other courts'' for ''Circuit or district judges to Court of Customs and Patent Appeals'' in item 293.

[1] Section catchline amended by Pub. L. 85–755 without corresponding amendment of analysis.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 175, 456, 1407 of this title.

§ 291. Circuit judges

(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

(b) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district court in any district within the circuit.

(June 25, 1948, ch. 646, 62 Stat. 900; July 28, 1953, ch. 253, § 2, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 39(b), 68 Stat. 1240; July 9, 1956, ch. 517, § 1(a), 70 Stat. 497; Pub. L. 85–755, § 2, Aug. 25, 1958, 72 Stat. 848; Pub. L. 95–598, title II, § 202, Nov. 6, 1978, 92 Stat. 2660; Pub. L. 97–164, title I, § 108, Apr. 2, 1982, 96 Stat. 28; Pub. L. 102–572, title I, § 104, Oct. 29, 1992, 106 Stat. 4507.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 17, 22 (Mar. 3, 1911, ch. 231, §§ 13, 18, 36 Stat. 1089; Oct. 3, 1913, ch. 18, 38 Stat. 203; Sept. 14, 1922, ch. 306, §§ 3, 5, 42 Stat. 839; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 24, 1937, ch. 754, § 4, 50 Stat. 753; Dec. 29, 1942, ch. 835, § 1, 56 Stat. 1094).

Section consolidates all provisions of sections 17 and 22 of title 28, U.S.C., 1940 ed., relating to designation and assignment of circuit judges.

The revised section omits a reference to the Chief Justice contained in said section 22, since in exercising the powers under subsection (b), he acts as a circuit justice.

Paragraph (d) of said section 17, making the section applicable to the United States Court of Appeals for the District of Columbia, is omitted since such court is included in this revision because the District of Columbia is made a separate circuit. (See section 41 of this title.)

Provisions of said sections 17 and 22 authorizing the senior Associate Justice to act in the absence of the Chief Justice of the United States were omitted as surplusage in view of specific authority to so act in section 3 of this title.

The words in said section 17 ''for such time as the business of such district court may require,'' were omitted as inconsistent with the language of said section 22 of title 28, U.S.C., 1940 ed., which employed the words ''the public interest requires'' and ''from time to time and until he shall otherwise direct.'' The revised section and sections 294 and 296 of this title make clear the power to make designation and assignment without any limitation of time, to revoke such designation and assignment and to make, from time to time, new designations and assignments.

The term ''chief judge'' of the circuit was substituted for ''senior circuit judge.'' (See reviser's note under section 136 of this title.)

References in said sections 17 and 22 to retired judges were omitted as covered by section 294 of this title.

Other provisions of said section 17 of title 28, U.S.C., 1940 ed., are incorporated in sections 292, 295 and 296 of this title.

Other provisions of said section 22 of title 28, U.S.C., 1940 ed., are incorporated in section 296 of this title.

Changes were made in phraseology and arrangement.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as fol-

lows: ''The Chief Justice of the United States may designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit where the need arises.''

1982—Subsecs. (b), (c). Pub. L. 97–164 redesignated subsec. (c) as (b). Former subsec. (b), which authorized the Chief Justice of the United States to designate and temporarily assign any circuit judge to serve as a judge of the Court of Claims or the Court of Customs and Patent Appeals upon presentation to him of a certificate of necessity by the chief judge of the court in which the need arose, was struck out.

1978—Subsec. (c). Pub. L. 95–598 directed the amendment of subsec. (c) by inserting ''or bankruptcy'' after ''to hold a district'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Subsec. (a). Pub. L. 85–755 struck out provision for assignment of any judge of the Court of Claims to serve as circuit judge in any circuit. See section 293(a) of this title.

Subsec. (b). Pub. L. 85–755 redesignated subsec. (c) as (b) and incorporated in it provision for assignment of circuit judges to Court of Customs and Patent Appeals formerly contained in section 293 of this title. Former subsec. (b), which provided for assignment of judges of the Court of Customs and Patent Appeals to serve as judges of the Court of Appeals or the District Court for the District of Columbia, was struck out. See section 293(a) of this title.

Subsecs. (c), (d). Pub. L. 85–755 redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

1956—Subsec. (a). Act July 9, 1956, inserted ''or any judge of the Court of Claims to serve as a circuit judge in any circuit''.

1954—Subsec. (c). Act Sept. 3, 1954, struck out ''United States'' from name of Court of Claims.

1953—Subsecs. (c), (d). Act July 28, 1953, added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

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 this title.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Section 7 of Pub. L. 85–755 provided that: ''Nothing contained in this Act [amending this section and sections 211 and 292 to 295 of this title] shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit] by any provision of law.''

CROSS REFERENCES

Assignment of circuit judge to serve as judge in District Court of Guam by Chief Justice of the United States, see section 1424b of Title 48, Territories and Insular Possessions.

Assignment of judge to serve temporarily as a judge of the District Court of the Virgin Islands, see section 1614 of Title 48.

§ 292. District judges

(a) The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

(b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

(c) The chief judge of the United States Court of Appeals for the District of Columbia Circuit may, upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia pursuant to section 11–908(c) of the District of Columbia Code, designate and assign temporarily any district judge of the circuit to serve as a judge of such Superior Court, if such assignment (1) is approved by the Attorney General of the United States following a determination by him to the effect that such assignment is necessary to meet the ends of justice, and (2) is approved by the chief judge of the United States District Court for the District of Columbia.

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(e) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of International Trade upon presentation to him of a certificate of necessity by the chief judge of the court.

(June 25, 1948, ch. 646, 62 Stat. 901; July 28, 1953, ch. 253, § 3, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 39(c), 68 Stat. 1240; July 9, 1956, ch. 517, § 1(b), 70 Stat. 497; July 14, 1956, ch. 589, § 2, 70 Stat. 532; Pub. L. 85–755, § 3, Aug. 25, 1958, 72 Stat. 848; Pub. L. 91–358, title I, § 172(e), July 29, 1970, 84 Stat. 591; Pub. L. 95–598, title II, §§ 203, 204, Nov. 6, 1978, 92 Stat. 2660; Pub. L. 96–417, title V, § 501(7), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97–164, title I, § 109, Apr. 2, 1982, 96 Stat. 28.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 17, 21 and 216 (Mar. 3, 1911, ch. 231, §§ 13, 17, 120, 36 Stat. 1089, 1132; Sept. 14, 1922, ch. 306, § 3, 42 Stat. 839; Aug. 24, 1937, ch. 754, § 4, 50 Stat. 753; Dec. 29, 1942, ch. 835, § 1, 56 Stat. 1094).

Section consolidates and simplifies all provisions of sections 17, 21 and 216 of title 28, U.S.C., 1940 ed., relating to designation and assignment of district judges.

Term ''chief judge'' was substituted for ''senior circuit judge.'' (See Reviser's Note under section 136 of this title.)

Sections 17 and 21 of title 28, U.S.C., 1940 ed., were inconsistent insofar as the words ''or in his absence, the circuit judges thereof,'' appearing in said section 17 were not in section 21, and the words ''senior circuit judge then present in the circuit,'' appearing in section 21 were not in section 17. The revised section omits all such words and leaves designation of assignment to the chief judge of the circuit. If the chief judge is unable to perform his duties they devolve, under section 45 of this title, upon the circuit judge next in seniority of commission.

The provision of said section 17, that designation of a district judge to another circuit should be from an adjacent circuit if practicable, was omitted as an unnecessary restriction on the discretion of the Chief Justice.

Section 19 of title 28, U.S.C., 1940 ed., is omitted as unnecessary. It authorized the Chief Justice of the United States to designate and assign any district

judge to a district upon receiving a certificate from the clerk of the district that all circuit judges and the circuit justice were absent from the circuit, or were unable to appoint a substitute judge for the district,or where the district judge actually designated was disabled or neglected to hold court.

For omission of reference in said section 17 to senior Associate Justice, see reviser's note under section 291 of this title.

Reference in said section 17 to retired judges were omitted as covered by section 294 of this title.

Other provisions of said section 17 of title 28, U.S.C., 1940 ed., are incorporated in sections 291, 295, and 296 of this title. Other provisions of said section 216 of such title are incorporated in sections 45 and 47 of this title.

Words ''either in a district court or court of appeals'' were inserted in subsection (c) as suggested by Hon. Learned Hand, Senior Circuit Judge of the Second Circuit. The revised section permits a district judge to be assigned directly to the circuit court of appeals of another circuit. Under existing law it has been assumed that he must be assigned to serve as a district judge on the other circuit and then designated to serve on the circuit court of appeals by that court in which his services are required.

Many changes were made in phraseology.

AMENDMENTS

1982—Subsec. (e). Pub. L. 97–164 struck out ''the Court of Claims, the Court of Customs and Patent Appeals or'' after ''to serve as a judge of'' and ''in which the need arises'' after ''chief judge of the court''.

1980—Subsec. (e). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Subsecs. (b), (d). Pub. L. 95–598 directed the amendment of subsec. (b) by substituting ''to hold a district court or a bankruptcy court'' for ''to hold a district court'' and the amendment of subsec. (d) by substituting ''in a bankruptcy court, district court, or court of appeals'' for ''either in a district court or court of appeals'', which amendments did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1970—Subsecs. (c) to (e). Pub. L. 91–358 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1958—Subsecs. (a) to (c). Pub. L. 85–755 reenacted subsecs. (a) to (c) without change.

Subsec. (d). Pub. L. 85–755 incorporated provisions for assignment of district judges to the Court of Customs and Patent Appeals and the Customs Court, formerly contained in section 293 of this title and subsec. (f) of this section.

Subsec. (e). Pub. L. 85–755 struck out subsec. (e) which provided for assignment of judges of the Court of Claims to district courts. See section 293(a) of this title.

Subsec. (f). Pub. L. 85–755 struck out subsec. (f) which provided for assignment of district judges to the Customs Court. See subsec. (d) of this section.

1956—Subsec. (e). Act July 9, 1956, added subsec. (e).

Subsec. (f). Act July 14, 1956, added subsec. (f).

1954—Subsec. (d). Act Sept. 3, 1954, struck out ''United States'' from name of Court of Claims.

1953—Subsec. (d). Act July 28, 1953, added subsec. (d).

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective on first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as a note under section 1257 of this title.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Amendment by Pub. L. 85–755 not limiting or altering the jurisdiction of the United States Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], see section 7 of Pub. L. 85–755, set out as a note under section 291 of this title.

LIMITATION OR ALTERATION OF JURISDICTION

Amendment by act July 14, 1956, not to be construed as limiting or altering the jurisdiction heretofore conferred upon the Customs Court [now United States Court of International Trade], see section 4 of act July 14, 1956, set out as a note under section 251 of this title.

CROSS REFERENCES

Assignment of district judge to serve as judge in District Court of Guam by Chief Justice of the United States, see section 1424b of Title 48, Territories and Insular Possessions.

Assignment of judge to serve temporarily as a judge of the District Court of the Virgin Islands, see section 1614 of Title 48.

§ 293. Judges of the Court of International Trade

(a)[1] The Chief Justice of the United States may designate and assign temporarily any judge of the Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.

(June 25, 1948, ch. 646, 62 Stat. 901; July 14, 1956, ch. 589, § 3(a), 70 Stat. 532; Pub. L. 85–755, § 4, Aug. 25, 1958, 72 Stat. 848; Pub. L. 95–598, title II, § 205, Nov. 6, 1978, 92 Stat. 2660; Pub. L. 96–417, title I, § 102, title V, § 501(8), Oct. 10, 1980, 94 Stat. 1727, 1742; Pub. L. 97–164, title I, § 110(a), (b), Apr. 2, 1982, 96 Stat. 29.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 301 (Mar. 3, 1911, ch. 231, § 188, 36 Stat. 1143; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475).

Section simplifies last sentence of section 301 of title 28, U.S.C., 1940 ed., and is in conformity with other designation and assignment provisions of this chapter.

Other provisions of said section 301 of title 28, U.S.C., 1940 ed., are incorporated in sections 211–213, 215, and 296 of this title.

This section transfers from the President to the Chief Justice of the United States the authority to designate and assign which is in conformity with sections 201 and 292 of this title.

The words ''he is willing to undertake'' were added to make clear that such service is voluntary.

The term ''chief judge'' was substituted for ''presiding judge.'' (See reviser's note under section 136 of this title.)

Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–164, § 110(b), substituted ''the Court of International Trade'' for ''other courts'' in section catchline.

Subsec. (a). Pub. L. 97–164, § 110(a)(1), (2), redesignated subsec. (b) as (a). Former subsec. (a), which authorized the Chief Justice to designate and assign judges of the Court of Claims or the Court of Customs and Patent

[1] So in original. No subsec. (b) has been enacted.

Appeals to serve temporarily on the other of these two courts or in a court of appeals or district court of any circuit in times of necessity, was struck out.

Subsec. (b). Pub. L. 97–164, § 110(a)(2), (3), redesignated subsec. (e), as that subsec. was to have become effective pursuant to Pub. L. 95–598, as subsec. (b). Former subsec. (b) redesignated (a). See 1978 Amendment note below.

Subsecs. (c), (d). Pub. L. 97–164, § 110(a)(1), struck out subsecs. (c) and (d) which related, respectively, to the authority of the chief judge of the Court of Customs and Patent Appeals to designate and assign temporarily any judge of the Court of Customs and Patent Appeals to serve as a judge of the Court of International Trade and to the authority of the chief judge of the Court of International Trade to designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Customs and Patent Appeals or the Court of Claims.

Subsec. (e). Pub. L. 97–164, § 110(a)(3), redesignated subsec. (e), as that subsec. was to have become effective pursuant to Pub. L. 95–598, as subsec. (b). See 1978 Amendment note below.

1980—Subsec. (b). Pub. L. 96–417, § 102(a), redesignated the Customs Court as the Court of International Trade and authorized performance of judicial functions in a court of appeals.

Subsec. (c). Pub. L. 96–417, § 501(8), redesignated the Customs Court as the Court of International Trade.

Subsec. (d). Pub. L. 96–417, § 102(b), redesignated the Customs Court as the Court of International Trade and authorized temporary assignments to the Court of Claims of judges of the Court of International Trade upon presentation of a certificate of necessity by the chief judge of the Court of Claims.

1978—Subsec. (e). Pub. L. 95–598 directed the amendment of this section by adding subsec. (e) relating to temporary assignments of bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Pub. L. 85–755 substituted ''Judges of other courts'' for ''Circuit or district judges to court of customs and patent appeals'' in section catchline.

Subsec. (a). Pub. L. 85–755 added subsec. (a). It incorporates provisions of former sections 291(a), (b) and 292(e) of this title respecting assignment of any judge of the Court of Claims to serve as circuit judge in any circuit, assignment of judges of the Court of Customs and Patent Appeals to serve as judges of the Court of Appeals or the District Court of Appeals or the District Court for the District of Columbia, and assignment of judges of the Court of Claims to district courts, respectively.

Subsec. (b). Pub. L. 85–755 designated existing second par. as subsec. (b).

Subsecs. (c), (d). Pub. L. 85–755 added subsecs. (c) and (d).

1956—Act July 14, 1956, authorized the Chief Justice of the United States to designate and assign temporarily a judge of the Customs Court to perform judicial duties in a district court in any circuit.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Amendment by Pub. L. 85–755 not limiting or altering the jurisdiction of the United States Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], see section 7 of Pub. L. 85–755, set out as a note under section 291 of this title.

LIMITATION OR ALTERATION OF JURISDICTION

Amendment by act July 14, 1956, not to be construed as limiting or altering the jurisdiction heretofore conferred upon the Customs Court [now United States Court of International Trade], see section 4 of act July 14, 1956, set out as a note under section 251 of this title.

§ 294. Assignment of retired Justices or judges to active duty

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster or senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

(June 25, 1948, ch. 646, 62 Stat. 901; July 9, 1956, ch. 517, § 1(c), 70 Stat. 497; Pub. L. 85–219, Aug. 29, 1957, 71 Stat. 495; Pub. L. 85–755, § 5, Aug. 25, 1958, 72 Stat. 849; Pub. L. 95–598, title II, § 206, Nov. 6, 1978, 92 Stat. 2660.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 375, 375a, and 375f (Mar. 3, 1911, ch. 231, § 260, 36 Stat. 1161; Feb. 25, 1919, ch.

29, § 6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422; Mar. 1, 1937, ch. 21, 50 Stat. 24; Feb. 11, 1938, ch. 25, 52 Stat. 28; Aug. 5, 1939, ch. 433, § 5, as added May 11, 1944, ch. 192, §§ 1–3, 58 Stat. 218, 219).

Section consolidates those parts of sections 375, 375a, and 375f of title 28, U.S.C., 1940 ed., relating to designation and assignment of retired justices and judges. Other provisions of said sections 375 and 375a, appear in sections 136, 371, and 756 of this title.

The term ''chief judge'' was substituted for ''presiding judge or senior judge.'' (See Reviser's Note under section 136 of this title.)

Changes were made in phraseology.

AMENDMENTS

1978—Subsecs. (c), (d). Pub. L. 95–598 directed the amendment of subsec. (c) by substituting ''district or bankruptcy judge'' for ''or district'' and the amendment of subsec. (d) by substituting '', district judge or bankruptcy judge'' for ''or district judge'', which amendments did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Subsec. (a). Pub. L. 85–755 reenacted subsec. (a) without change.

Subsecs. (b) to (d). Pub. L. 85–755 revised and rearranged subject matter to apply ''senior judge'' to all judges who retire from regular active service under sections 371(b) and 372(a) of this title, while retaining their commissions, rather than merely to those who ask to be placed on the Chief Justice's roster, to lodge solely in the chief judge and judicial council of the circuit concerned the intracircuit assignment power, and in the Chief Justice the power to assign retired judges beyond their circuits or special courts.

Subsec. (e). Pub. L. 85–755 reenacted subsec. (e) without change.

1957—Subsec. (d). Pub. L. 85–219 added subsec. (d).

1956—Subsec. (b). Act July 9, 1956, inserted provisions relating to assignment of retired judges of the Court of Claims.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Amendment by Pub. L. 85–755 not limiting or altering the jurisdiction of the United States Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], see section 7 of Pub. L. 85–755, set out as a note under section 291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 46 of this title; title 26 section 3121; title 42 section 409.

§ 295. Conditions upon designation and assignment

No designation and assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States in active service shall be made without the consent of the chief judge of such court.

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made.

The Chief Justice of the United States, a circuit justice or a chief judge of a circuit may make new designation and assignments in accordance with the provisions of this chapter and may revoke those previously made by him.

(June 25, 1948, ch. 646, 62 Stat. 901; Sept. 3, 1954, ch. 1263, § 39(d), 68 Stat. 1240; July 14, 1956, ch. 589, § 3(b), 70 Stat. 532; Pub. L. 85–755, § 6, Aug. 25, 1958, 72 Stat. 850; Pub. L. 95–598, title II, § 207, Nov. 6, 1978, 92 Stat. 2660.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 17, 20 (Mar. 3, 1911, ch. 231, §§ 13, 16, 36 Stat. 1089; Sept. 14, 1922, ch. 306, § 3, 42 Stat. 839; Aug. 24, 1937, ch. 754, § 4, 50 Stat. 753; Dec. 29, 1942, ch. 835, §§ 1, 4, 56 Stat. 1094, 1095).

This section consolidates and simplifies provisions of sections 17 and 20 of title 28, U.S.C., 1940 ed., relating to conditions upon designation and assignment as well as those applicable to filing, revoking and making new designations.

Other provisions of section 17 of title 28, U.S.C., 1940 ed., are incorporated in section 291, 292, and 296 of this title.

The reference in said section 20 to senior Associate Judge was omitted. (See Reviser's Note under section 291 of this title.)

The terms ''chief judge'' and ''chief judge of a circuit'' were substituted for ''senior circuit judge''. (See Reviser's Note under section 136 of this title.)

The alternative provision for approval by the judicial council of the circuit was inserted to conform with section 332 of this title.

Changes were made in phraseology.

AMENDMENTS

1978—Pub. L. 95–598 directed the amendment of section by substituting ''district, or bankruptcy'' for ''or district'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Pub. L. 85–755 substituted ''of any other court of the United States'' for ''of the Customs Court'' in first par.

1956—Act July 14, 1956, provided that no designation and assignment of a judge of the Customs Court in active service shall be made without the consent of the chief judge of the court.

1954—Act Sept. 3, 1954, made it clear that the section applies only to the assignment of circuit and district judges in active service.

JURISDICTION OF UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

Amendment by Pub. L. 85–755 not limiting or altering the jurisdiction of the United States Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], see section 7 of Pub. L. 85–755, set out as a note under section 291 of this title.

LIMITATION OR ALTERATION OF JURISDICTION

Amendment by act July 14, 1956, not to be construed as limiting or altering the jurisdiction heretofore conferred upon the Customs Court [now United States Court of International Trade], see section 4 of act July 14, 1956, set out as a note under section 251 of this title.

§ 296. Powers upon designation and assignment

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned.

Such justice or judge shall have all the powers of a judge of the court, circuit or district to which he is designated and assigned, except the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices.

A justice or judge who has sat by designation and assignment in another district or circuit may, notwithstanding his absence from such district or circuit or the expiration of the period of his designation and assignment, decide or join in the decision and final disposition of all matters submitted to him during such period and in the consideration and disposition of applications for rehearing or further proceedings in such matters.

(June 25, 1948, ch. 646, 62 Stat. 901.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§17, 18, 22, 23, 301 (Mar. 3, 1911, ch. 231, §§13, 14, 18, 19, 188, 36 Stat. 1089, 1143; Oct. 3, 1913, ch. 18, 38 Stat. 203; Feb. 25, 1919, ch. 29, §§2, 5, 40 Stat. 1156, 1157; Sept. 14, 1922, ch. 306, §§3, 4, 5, 42 Stat. 839; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 24, 1937, ch. 754, §4, 50 Stat. 753; Dec. 29, 1942, ch. 835, §§1, 2, 5, 6, 56 Stat. 1094, 1095).

Section simplifies provisions of sections 17, 18, paragraphs (b) and (c) of section 22, and sections 23 and 301 of title 28, U.S.C., 1940 ed., relating to powers and duties of designated judges.

Other provisions of said sections 17 and 22 of title 28, U.S.C., 1940 ed., are incorporated in sections 291, 292, and 295 of this title.

Other provisions of said section 301 of title 28, U.S.C., 1940 ed., are incorporated in sections 211–213, 215, and 293 of this title.

Section is made applicable to retired justices of the Supreme Court by inclusion of reference to ''justice,'' on the theory that a justice should have the same powers and duties and be subject to the same limitations as designated and assigned circuit and district judges.

The second sentence of the revised section was substituted for the provision of section 18 of title 28, U.S.C., 1940 ed., which subjected circuit judges to the same assignments of duty as the circuit judges of the circuit to which they are designated and assigned. The revised section extends this requirement and makes it applicable to all designated and assigned judges.

The provision in the last paragraph of said section 22 that the action of the assigned judge in writing filed with the clerk of court where the trial or hearing was held shall be valid as if such action had been taken by him within the district and within the period of his designation, was omitted as surplusage. See section 295 of this title.

§ 297. Assignment of judges to courts of the freely associated compact states

(a) The Chief Justice or the chief judge of the United States Court of Appeals for the Ninth Circuit may assign any circuit or district judge of the Ninth Circuit, with the consent of the judge so assigned, to serve temporarily as a judge of any duly constituted court of the freely associated compact states whenever an official duly authorized by the laws of the respective compact state requests such assignment and such assignment is necessary for the proper dispatch of the business of the respective court.

(b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) of all necessary travel expenses, including transportation, and of subsistence, or of a reasonable per diem allowance in lieu of subsistence. The judge shall report to the Administrative Office of the United States Courts any amount received pursuant to this subsection.

(Added Pub. L. 100–702, title X, §1022(1), Nov. 19, 1988, 102 Stat. 4672.)

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

Sec.
331. Judicial Conference of the United States.
332. Judicial councils of circuits.
333. Judicial conferences of circuits.
334. Institutes and joint councils on sentencing.
335. Judicial Conference of the Court of International Trade.

AMENDMENTS

1986—Pub. L. 99–466, §2(b), Oct. 14, 1986, 100 Stat. 1190, added item 335.

1980—Pub. L. 96–458, §2(d)(2), Oct. 15, 1980, 94 Stat. 2036, inserted ''of circuits'' in item 332.

1958—Pub. L. 85–752, §2, Aug. 25, 1958, 72 Stat. 845, added item 334.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2109 of this title.

§ 331. Judicial Conference of the United States

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the Conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit and shall serve as a member of the Judicial Conference of the United States for a term of not less than 3 successive years nor more than 5 successive years, as established by majority vote of all circuit and district judges of the circuit. A district judge serving as a member of the Judicial Conference may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title.

If the chief judge of any circuit, the chief judge of the Court of International Trade, or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other judge of the Court of International Trade, as the case may be. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in section 372(c) of

this title as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review shall be reviewed by that committee. The Conference or the standing committee may hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the Supreme Court or by the clerk of any court of appeals, at the direction of the Chief Justice or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or any agency thereof. The Conference may also prescribe and modify rules for the exercise of the authority provided in section 372(c) of this title. All judicial officers and employees of the United States shall promptly carry into effect all orders of the Judicial Conference or the standing committee established pursuant to this section.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.

The Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

(June 25, 1948, ch. 646, 62 Stat. 902; July 9, 1956, ch. 517, §1(d), 70 Stat. 497; Pub. L. 85–202, Aug. 28, 1957, 71 Stat. 476; Pub. L. 85–513, July 11, 1958, 72 Stat. 356; Pub. L. 87–253, §§1, 2, Sept. 19, 1961, 75 Stat. 521; Pub. L. 95–598, title II, §208, Nov. 6, 1978, 92 Stat. 2660; Pub. L. 96–458, §4, Oct. 15, 1980, 94 Stat. 2040; Pub. L. 97–164, title I, §111, Apr. 2, 1982, 96 Stat. 29; Pub. L. 99–466, §1, Oct. 14, 1986, 100 Stat. 1190; Pub. L. 100–702, title IV, §402(b), Nov. 19, 1988, 102 Stat. 4650; Pub. L. 104–317, title VI, §601(a), Oct. 19, 1996, 110 Stat. 3857.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §218 (Sept. 14, 1922, ch. 306, §2, 42 Stat. 838; July 5, 1937, ch. 427, 50 Stat. 473).

Provisions as to associate justice acting when Chief Justice is disabled are omitted as unnecessary in view of section 3 of this title giving senior associate justice power to act upon the disability of the Chief Justice.

The provision of section 218 of title 28, U.S.C., 1940 ed., as to traveling expenses is incorporated in section 456 of this title.

Provision as to time and place for holding conference was omitted as unnecessary since the Chief Justice is vested with discretionary power to designate the time and place under the language retained.

The references to ''chief judge'' are in harmony with other sections of this title. (See Reviser's Note under section 136 of this title.)

Provision for stated annual reports by the chief judge of the district was omitted as obsolete and unnecessary in view of sections 332 and 333 of this title.

The last paragraph is new and is inserted to authorize the communication to Congress of information which now reaches that body only because incorporated in the annual report of the Attorney General.

Numerous changes were made in phraseology and arrangement.

REFERENCES IN TEXT

Rule 45(c) of the Federal Rules of Civil Procedure, referred to in fourth paragraph, is set out in the Appendix to this title.

AMENDMENTS

1996—Pub. L. 104–317 added second par. and struck out former second par. which read as follows: ''The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth, and District of Columbia circuits shall choose a district judge to serve for three years.''

1988—Pub. L. 100–702 inserted paragraph requiring Judicial Conference review of section 2071 rules prescribed by courts other than Supreme court or district courts for consistency with Federal law.

1986—Pub. L. 99–466, §1(a), inserted '', the chief judge of the Court of International Trade,'' and substituted ''Conference may'' for ''conference may'' in first par.

Pub. L. 99–466, §1(b), inserted '', the chief judge of the Court of International Trade,'' and ''or any other judge of the Court of International Trade, as the case may be'' in first sentence of third par.

Pub. L. 99–466, §1(c), substituted ''Conference'' for ''conference'' in sixth par.

1982—Pub. L. 97–164, in first par., struck out references to the chief judge of the Court of Claims and to the chief judge of the Court of Customs and Patent Appeals in the enumeration of judges which the Chief Justice must summon each year for a conference and, in third par., struck out provision that authorized the Chief Justice to summon an associate judge of the Court of Claims or the Court of Customs and Patent Appeals if the chief judge of either of those courts could not attend.

1980—Pub. L. 96–458, in fourth par., substituted ''It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business.'' for ''and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.'', and inserted provisions relating to exercise of authority under section 372(c) as the Conference or through standing committee, the holding of hearings, taking of testimony, and the issuance of subpoenas pursuant to rule 45(c) of the Federal Rules of Civil Procedure.

1978—Pub. L. 95–598 directed the amendment of section by inserting references to bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1961—Pub. L. 87–253 provided for the summoning to the judicial conference of the chief judge of the Court of Customs and Patent Appeals, and if he is unable to attend, for the summoning of an associate judge of such court.

1958—Pub. L. 85–513 inserted paragraph requiring a continuous study of the operation and effect of the general rules of practice and procedure.

1957—Pub. L. 85–202 provided generally in first three paragraphs for the representation of district judges on the Judicial Conference.

1956—Act July 9, 1956, inserted provisions relating to participation of Court of Claims judges.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4 of Pub. L. 99–466 provided that: ''This Act and the amendments made by this Act [enacting section 335 of this title, amending this section and section 569 of this title, renumbering section 873 of this title as 872, and repealing former section 872 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 14, 1986].''

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–458 provided that: ''This Act [amending this section and sections 332, 372, and 604 of this title and enacting provisions set out as notes under this section and section 1 of this title] shall become effective on October 1, 1981.''

POLICIES, PROCEDURES, AND METHODOLOGIES USED IN RECOMMENDATION FOR CREATION OF ADDITIONAL FEDERAL JUDGESHIPS; STUDY BY GENERAL ACCOUNTING OFFICE AND REPORT TO CONGRESS

Pub. L. 101–650, title II, § 205, Dec. 1, 1990, 104 Stat. 5103, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall review the policies, procedures, and methodologies used by the Judicial Conference of the United States in recommending to the Congress the creation of additional Federal judgeships. In conducting such review the Comptroller General shall, at a minimum, determine the extent to which such policies, procedures, and methodologies—

''(1) provide an accurate measure of the workload of existing judges;

''(2) are applied consistently to the various circuit courts of appeals and district courts; and

''(3) provide an accurate indicator of the need for additional judgeships.

''(b) REPORT TO CONGRESS.—The Comptroller General shall, not later than 18 months after the date of the enactment of this Act [Dec. 1, 1990], report the results of the review conducted under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate. The report shall include such recommendations as the Comptroller General considers appropriate for revisions of the policies, procedures, and methodologies used by the Judicial Conference that were reviewed in the report.''

FEDERAL COURTS STUDY COMMITTEE

Title I of Pub. L. 100–702 provided that:

TITLE I—FEDERAL COURTS STUDY COMMITTEE

''SEC. 101. SHORT TITLE.

''This title may be cited as the 'Federal Courts Study Act'.

''SEC. 102. ESTABLISHMENT AND PURPOSES.

''(a) ESTABLISHMENT.—There is hereby established within the Judicial Conference of the United States, a Federal Courts Study Committee on the future of the Federal Judiciary (hereafter referred to as the 'Committee').

''(b) PURPOSES.—The purposes of the Committee are to—

''(1) examine problems and issues currently facing the courts of the United States;

''(2) develop a long-range plan for the future of the Federal Judiciary, including assessments involving—

''(A) alternative methods of dispute resolution;

''(B) the structure and administration of the Federal court system;

''(C) methods of resolving intracircuit and intercircuit conflicts in the courts of appeals; and

''(D) the types of disputes resolved by the Federal courts; and

''(3) report to the Judicial Conference of the United States, the President, the Congress, the Conference of Chief Justices, and the State Justice Institute on the revisions, if any, in the laws of the United States which the Committee, based on its study and evaluation, deems advisable.

''SEC. 103. MEMBERSHIP OF THE COMMITTEE.

''(a) APPOINTMENTS.—The Committee shall be composed of fifteen members to be appointed by the Chief Justice of the United States, within ten days after the effective date of this title.

''(b) SELECTION.—The membership of the Committee shall be selected in such a manner as to be representative of the various interests, needs and concerns which may be affected by the jurisdiction of the Federal courts. The Chief Justice shall designate one of the members of the Committee to serve as Chairman.

''(c) TERM OF OFFICE.—The Committee members shall serve at the pleasure of the Chief Justice.

''(d) RULES OF PROCEDURE.—Rules of procedure shall be promulgated by vote of a majority of the Committee.

''SEC. 104. POWERS OF THE COMMITTEE.

''(a) HEARINGS.—The Committee or, on the authorization of the Committee, any subcommittee thereof may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, as the Committee or any such subcommittee may deem advisable.

''(b) INFORMATION AND ASSISTANCE.—The Administrative Office of the United States Courts, the Federal Judicial Center, and each department, agency, and instrumentality of the executive branch of the Government, including the National Institute of Justice and independent agencies, shall furnish to the Committee, upon request made by the Chairman, such information and assistance as the Committee may reasonably deem necessary to carry out its functions under this title, consistent with other applicable provisions of law governing the release of such information.

''(c) PERSONNEL.—(1) Subject to such rules and regulations as may be adopted by the Committee, the Director of the Administrative Office shall furnish to the Committee necessary staff and technical assistance in response to needs specified.

''(2) [Amended section 5108(c)(1) of Title 5, Government Organization and Employees.]

''(d) ADVISORY PANELS.—The Committee is authorized, for the purpose of carrying out its functions and duties pursuant to the provisions of this title, to establish advisory panels consisting of Committee members or members of the public. Such panels shall be established to provide expertise and assistance in specific areas, as the Committee deems necessary.

''SEC. 105. FUNCTIONS AND DUTIES.

''The Committee shall—

''(1) make a complete study of the courts of the United States and of the several States and transmit a report to the President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute on such study, within fifteen months after the effective date of this title;

''(2) recommend revisions to be made to laws of the United States as the Committee, on the basis of such study, deems advisable;

''(3) develop a long-range plan for the judicial system; and

''(4) make such other recommendations and conclusions it deems advisable.

''SEC. 106. COMPENSATION OF MEMBERS.

''(a) EMPLOYEES OF THE GOVERNMENT.—A member of the Committee who is an officer or full-time employee of the United States shall receive no additional compensation for his or her services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Committee, not to exceed the maximum amounts authorized under section 456 of title 28.

''(b) PRIVATE SECTOR.—A member of the Committee who is from the private sector shall receive $200 per diem for each day (including travel time) during which he or she is engaged in the actual performance of duties vested in the Committee, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties, not to exceed the maximum amounts authorized under section 456 of title 28.

''SEC. 107. EXPIRATION OF THE COMMITTEE.

''The Committee shall cease to exist on the date 60 days after it transmits the report pursuant to section 105.

''SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

''To carry out the purposes of this title there are authorized to be appropriated $300,000 for each of the fiscal years 1989 and 1990.

''SEC. 109. EFFECTIVE DATE.

''This title shall become effective on January 1, 1989.''

AUTHORIZATION OF APPROPRIATIONS

Section 6 of Pub. L. 96–458 provided that: ''There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [amending this section and sections 332, 372, and 604 of this title and enacting provisions set out as notes under this section and section 1 of this title].''

CROSS REFERENCES

Annuities to widows and surviving dependent children of judges, review by Judicial Conference of the United States of questions of dependency and disability, see section 376 of this title.

Pretermission of regular term or session of court of appeals with consent of Judicial Conference of the United States, see section 48 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 372 of this title; title 42 section 10608.

§ 332. Judicial councils of circuits

(a)(1) The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit, as such number is determined by majority vote of all such judges of the circuit in regular active service.

(2) Members of the council shall serve for terms established by a majority vote of all judges of the circuit in regular active service.

(3) Only circuit and district judges in regular active service shall serve as members of the council.

(4) No more than one district judge from any one district shall serve simultaneously on the council, unless at least one district judge from each district within the circuit is already serving as a member of the council.

(5) In the event of the death, resignation, retirement, or disability of a member of the council, a replacement member shall be designated to serve the remainder of the unexpired term by the chief judge of the circuit.

(6) Each member of the council shall attend each council meeting unless excused by the chief judge of the circuit.

(b) The council shall be known as the Judicial Council of the circuit.

(c) The chief judge shall submit to the council the semiannual reports of the Director of the Administrative Office of the United States Courts. The council shall take such action thereon as may be necessary.

(d)(1) Each judicial council shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public. Each council is authorized to hold hearings, to take sworn testimony, and to issue subpoenas and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be issued by the clerk of the court of appeals, at the direction of the chief judge of the circuit or his designee and under the seal of the court, and shall be served in the manner provided in rule 45(c) of the Federal Rules of Civil Procedure for subpoenas and subpoenas duces tecum issued on behalf of the United States or an officer or agency thereof.

(2) All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council. In the case of failure to comply with an order made under this subsection or a subpoena issued under section 372(c) of this title, a judicial council or a special committee appointed under section 372(c)(4) of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.

(3) Unless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council.

(4) Each judicial council shall periodically review the rules which are prescribed under sec-

tion 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.

(e) The judicial council of each circuit may appoint a circuit executive. In appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated to him by the circuit council. The duties delegated to the circuit executive of each circuit may include but need not be limited to:

(1) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.

(2) Administering the personnel system of the court of appeals of the circuit.

(3) Administering the budget of the court of appeals of the circuit.

(4) Maintaining a modern accounting system.

(5) Establishing and maintaining property control records and undertaking a space management program.

(6) Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.

(7) Collecting, compiling, and analyzing statistical data with a view to the preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council, and the Administrative Office of the United States Courts.

(8) Representing the circuit as its liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.

(9) Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.

(10) Preparing an annual report to the circuit and to the Administrative Office of the United States Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

All duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit.

(f)(1) Each circuit executive shall be paid at a salary to be established by the Judicial Conference of the United States not to exceed the annual rate of level IV of the Executive Schedule pay rates under section 5315 of title 5.

(2) The circuit executive shall serve at the pleasure of the judicial council of the circuit.

(3) The circuit executive may appoint, with the approval of the council, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

(4) The circuit executive and his staff shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 87 (relating to Federal employees' life insurance program), and chapter 89 (relating to Federal employees' health benefits program) of title 5, United States Code.

(g) No later than January 31 of each year, each judicial council shall submit a report to the Administrative Office of the United States Courts on the number and nature of orders entered under this section during the preceding calendar year that relate to judicial misconduct or disability.

(June 25, 1948, ch. 646, 62 Stat. 902; Pub. L. 88–176, § 3, Nov. 13, 1963, 77 Stat. 331; Pub. L. 91–647, Jan. 5, 1971, 84 Stat. 1907; Pub. L. 95–598, title II, § 209, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 96–458, § 2(a)–(d)(1), Oct. 15, 1980, 94 Stat. 2035, 2036; Pub. L. 100–459, title IV, § 407, Oct. 1, 1988, 102 Stat. 2213; Pub. L. 100–702, title IV, § 403(a)(2), (b), title X, §§ 1018, 1020(a)(1), Nov. 19, 1988, 102 Stat. 4651, 4670, 4671; Pub. L. 101–650, title III, §§ 323, 325(b)(1), title IV, § 403, Dec. 1, 1990, 104 Stat. 5120, 5121, 5124; Pub. L. 102–198, § 1, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 104–317, title II, § 208, Oct. 19, 1996, 110 Stat. 3851.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., § 448 (Mar. 3, 1911, ch. 231, § 306, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

The final sentence of section 448 of title 28, U.S.C., 1940 ed., excepting from the operation of said section the provisions of existing law as to assignment of district judges outside their districts, was omitted as surplusage, since there is nothing in this section in conflict with section 292 of this title providing for such assignments.

The requirement for attendance of circuit judges, unless excused by the chief judge, was included in conformity with a similar provision of section 331 of this title.

Changes in phraseology were made.

References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (d)(1), are set out in the Appendix to this title.

Amendments

1996—Subsec. (g). Pub. L. 104–317 added subsec. (g).

1991—Subsec. (a)(1). Pub. L. 102–198 substituted "such number" for "such member" and "service" for "services".

1990—Subsec. (a)(1). Pub. L. 101–650, § 323(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he may designate, a meeting of the judicial council of the circuit, consisting of—

"(A) the chief judge of the circuit, who shall preside;

"(B) that number of circuit judges fixed by majority vote of all such judges in regular active service; and

"(C) that number of district judges of the circuit fixed by majority vote of all circuit judges in regular active service, except that—

"(i) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is less than six, the number of district judges fixed in accordance with this subparagraph shall be no less than two; and

"(ii) if the number of circuit judges fixed in accordance with subparagraph (B) of this paragraph is

six or more, the number of district judges fixed in accordance with this subparagraph shall be no less than three.''

Subsec. (a)(3) to (7). Pub. L. 101–650, § 323(b), redesignated pars. (4) to (7) as (3) to (6), respectively, and struck out former par. (3) which read as follows: ''The number of circuit and district judges fixed in accordance with paragraphs (1)(B) and (1)(C) of this subsection shall be set by order of the court of appeals for the circuit no less than six months prior to a scheduled meeting of the council so constituted.''

Subsec. (d)(2). Pub. L. 101–650, § 403, inserted at end ''In the case of failure to comply with an order made under this subsection or a subpoena issued under section 372(c) of this title, a judicial council or a special committee appointed under section 372(c)(4) of this title may institute a contempt proceeding in any district court in which the judicial officer or employee of the circuit who fails to comply with the order made under this subsection shall be ordered to show cause before the court why he or she should not be held in contempt of court.''

Subsec. (f)(1). Pub. L. 101–650, § 325(b)(1), substituted ''under section 5315 of title 5'' for ''(5 U.S.C. 5316)''.

1988—Subsec. (c). Pub. L. 100–702, § 1020(a)(1), substituted ''semiannual'' for ''semi-annually''.

Subsec. (d)(1). Pub. L. 100–702, § 403(b), inserted after first sentence ''Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.''

Subsec. (d)(4). Pub. L. 100–702, § 403(a)(2), added par. (4).

Subsec. (e). Pub. L. 100–702, § 1018(1), substituted ''executive. In appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training.'' for ''executive from among persons who shall be certified by the Board of Certification.'' in first sentence.

Subsec. (f). Pub. L. 100–702, § 1018(2), designated last four undesignated pars. as pars. (1) to (4), respectively, and struck out former first undesignated par. which related to establishment, functions, and staffing of Board of Certification and setting standards for certification as qualified to be circuit executive.

Pub. L. 100–459 substituted ''level IV'' for ''level V''.

1980—Pub. L. 96–458, § 2(d)(1), substituted ''Judicial councils of circuits'' for ''Judicial councils'' in section catchline.

Subsec. (a). Pub. L. 96–458, § 2(a), in par. (1) designated existing provisions as introductory provision and in such introductory provision substituted ''each judicial circuit'' for ''each circuit'', substituted ''a meeting of the judicial council of the circuit, consisting of—'' for ''a council of the circuit judges for the circuit, in regular active service, at which he shall preside. Each circuit judge, unless excused by the chief judge, shall attend all sessions of the council.'', and added subpars. (A) to (C) and pars. (2) to (7).

Subsec. (c). Pub. L. 96–458, § 2(b), substituted ''semiannually'' for ''quarterly''.

Subsec. (d). Pub. L. 96–458, § 2(c), amended subsec. (d) generally, designating existing provisions as par. (1), inserting ''and appropriate'' after ''all necessary'', substituting ''justice within its circuit'' for ''the business of the courts within its circuit'', striking out ''The district judges shall promptly carry into effect all orders of the judicial council.'' after ''within its circuit.'', inserting provisions relating to the holding of hearings, taking of testimony, the issuance of subpoenas and service thereof under the Federal Rules of Civil Procedure, and adding pars. (2) and (3).

1978—Subsec. (d). Pub. L. 95–598 directed the amendment of subsec. (d) by inserting ''and bankruptcy judges'' after ''The district judges'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1971—Pub. L. 91–647 designated existing four paragraphs as subsecs. (a), (b), (c), and (d), respectively, and added subsecs. (e) and (f).

1963—Pub. L. 88–176 inserted ''regular'' before ''active service'' in first sentence.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 407 of Pub. L. 101–650 provided that: ''The amendments made by this subtitle [subtitle I (§§ 402–407) of title IV of Pub. L. 101–650, amending this section, sections 372, 453, and 2077 of this title, and provisions set out in the Appendix to Title 5, Government Organization and Employees] shall take effect 90 days after the date of the enactment of this Act [Dec. 1, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 403(a)(2), (b) of Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–458 effective Oct. 1, 1981, see section 7 of Pub. L. 96–458, set out as a note under section 331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 372 of this title.

§ 333. Judicial conferences of circuits

The chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit. The judges of the District Court of Guam, the District Court of the Virgin Islands, and the District Court of the Northern Mariana Islands may also be summoned biennially, and may be summoned annually, to the conferences of their respective circuits.

Every judge summoned may attend.

The court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit.

(June 25, 1948, ch. 646, 62 Stat. 903; Dec. 29, 1950, ch. 1185, 64 Stat. 1128; Oct. 31, 1951, ch. 655, § 38, 65 Stat. 723; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 95–598, title II, § 210, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 101–650, title III, § 320, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–134, title I, § 101[(a)] [title III, § 305], Apr. 26, 1996, 110 Stat. 1321, 1321–36; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 449, 450 (Mar. 3, 1911, ch. 231, §§ 307, 308, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

Section consolidates parts of sections 449 and 450 of title 28, U.S.C., 1940 ed.

Said section 450 contained definitions of ''courts'' and ''continental United States,'' and directions that sections 444–450 of title 28, U.S.C., 1940 ed., relating to the

administration of United States courts, should apply to the courts of appeals, the United States Court of Appeals for the District of Columbia and to the several enumerated district courts of the United States, including those in the Territories and Possessions as well as the Court of Claims, Court of Customs and Patent Appeals, and Customs Court. It also provided that the Chief Justice and associate justices of the Court of Appeals for the District of Columbia should have the powers of the senior judge and circuit judges, respectively, of a circuit court of appeals.

The revised section omits, as surplusage, the definition of ''continental United States.'' Other provisions of section 450 of title 28, U.S.C., 1940 ed., referred to were omitted as unnecessary in view of section 604 of this title which provides for the powers and duties of the Director of the Administrative Office of the United States Courts. Remaining provisions of said section 450 are incorporated in said section 604 and section 610 of this title.

The provision as to travel and subsistence which was contained in said section 449 of title 28, U.S.C., 1940 ed., is incorporated in section 456 of this title.

AMENDMENTS

1996—Pub. L. 104–134, § 101[(a)] [title III, § 305(1)], in first par. substituted ''may'' for ''shall'' before ''summon biennially'', ''preside at such'', and ''also be summoned''.

Pub. L. 104–134, § 101[(a)] [title III, § 305(2)], in second par. substituted ''may'' for ''shall'' before ''attend'' and struck out '', and unless excused by the chief judge, shall remain throughout the conference'' before period at end.

1990—Pub. L. 101–650 substituted ''biennially, and may summon annually,'' for ''annually'', struck out ''the United States District Court for the District of the Canal Zone,'' after ''The judges of'', and substituted ''the District Court of the Virgin Islands, and the District Court of the Northern Mariana Islands shall also be summoned biennially, and may be summoned annually,'' for ''and the District Court of the Virgin Islands shall also be summoned annually''.

1978—Pub. L. 95–598 inserted reference to bankruptcy judges.

1958—Pub. L. 85–508 struck out provisions which required judge of District Court for Territory of Alaska to be summoned annually to the conference of his circuit. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted reference to judge of District Court of Guam in first par.

1950—Act Dec., 29, 1950, provided for the presence of judges of District Courts of Alaska, Canal Zone, and the Virgin Islands at annual conferences within their respective circuits.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

§ 334. Institutes and joint councils on sentencing

(a) In the interest of uniformity in sentencing procedures, there is hereby authorized to be established under the auspices of the Judicial Conference of the United States, institutes and joint councils on sentencing. The Attorney General and/or the chief judge of each circuit may at any time request, through the Director of the Administrative Office of the United States Courts, the Judicial Conference to convene such institutes and joint councils for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States. The agenda of the institutes and joint councils may include but shall not be limited to: (1) The development of standards for the content and utilization of presentence reports; (2) the establishment of factors to be used in selecting cases for special study and observation in prescribed diagnostic clinics; (3) the determination of the importance of psychiatric, emotional, sociological and physiological factors involved in crime and their bearing upon sentences; (4) the discussion of special sentencing problems in unusual cases such as treason, violation of public trust, subversion, or involving abnormal sex behavior, addiction to drugs or alcohol, and mental or physical handicaps; (5) the formulation of sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States.

(b) After the Judicial Conference has approved the time, place, participants, agenda, and other arrangements for such institutes and joint councils, the chief judge of each circuit is authorized to invite the attendance of district judges under conditions which he thinks proper and which will not unduly delay the work of the courts.

(c) The Attorney General is authorized to select and direct the attendance at such institutes and meetings of United States attorneys and other officials of the Department of Justice and may invite the participation of other interested Federal officers. He may also invite specialists in sentencing methods, criminologists, psychiatrists, penologists, and others to participate in the proceedings.

(d) The expenses of attendance of judges shall be paid from applicable appropriations for the judiciary of the United States. The expenses connected with the preparation of the plans and agenda for the conference and for the travel and other expenses incident to the attendance of officials and other participants invited by the Attorney General shall be paid from applicable appropriations of the Department of Justice.

(Added Pub. L. 85–752, § 1, Aug. 25, 1958, 72 Stat. 845.)

SENTENCING PROCEDURES

Section 7 of Pub. L. 85–752 provided that: ''This Act [enacting this section, sections 4208 and 4209 of Title 18, Crimes and Criminal Procedure, and provisions set out as a note under section 4208 of Title 18] does not apply to any offense for which there is provided a mandatory penalty.''

§ 335. Judicial Conference of the Court of International Trade

(a) The chief judge of the Court of International Trade is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.

(b) The Court of International Trade shall provide by its rules for representation and active participation at such conference by members of the bar.

(Added Pub. L. 99–466, § 2(a), Oct. 14, 1986, 100 Stat. 1190.)

EFFECTIVE DATE

Section effective 60 days after Oct. 14, 1986, see section 4 of Pub. L. 99–466, set out as an Effective Date of 1986 Amendment note under section 331 of this title.

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

Sec.
371. Retirement on salary; retirement in senior status.
372. Retirement for disability; substitute judge on failure to retire; judicial discipline.
373. Judges in Territories and Possessions.[1]
374. Residence of retired judges; official station.
375. Recall of certain judges and magistrates.
376. Annuities for survivors of certain judicial officials of the United States.
377. Retirement of bankruptcy judges and magistrates.

AMENDMENTS

1988—Pub. L. 100–702, title X, § 1020(a)(9), Nov. 19, 1988, 102 Stat. 4672, substituted ''Annuities for survivors of certain judicial officials of the United States'' for ''Annuities to widows and surviving dependent children of justices and judges of the United States'' in item 376.

Pub. L. 100–659, § 2(b), Nov. 15, 1988, 102 Stat. 3916, added item 377.

1986—Pub. L. 99–651, title II, § 201(b)(2), Nov. 14, 1986, 100 Stat. 3648, amended item 375 generally.

1984—Pub. L. 98–353, title II, § 204(b), July 10, 1984, 98 Stat. 350, substituted ''Retirement on salary; retirement in senior status'' for ''Resignation or retirement for age'' in item 371.

1980—Pub. L. 96–458, § 3(c), Oct. 15, 1980, 94 Stat. 2040, inserted reference to ''judicial discipline'' in item 372.

1972—Pub. L. 92–397, § 3(a), (b), Aug. 22, 1972, 86 Stat. 579, substituted ''JUSTICES AND JUDGES'' for ''JUDGES'' in chapter heading, and substituted ''justices and judges of the United States'' for ''judges'' in item 376.

1959—Pub. L. 86–312, § 2, Sept. 21, 1959, 73 Stat. 587, inserted ''; official station'' in item 374.

1956—Act Aug. 3, 1956, ch. 944, § 1(a), 70 Stat. 1021, substituted ''Annuities to widows of justices'' for ''Annuities to widows on the Chief Justice and Associate Justices of the Supreme Court of the United States'' in item 375 and added item 376.

1954—Act Aug. 28, 1954, ch. 1053, § 2, 68 Stat. 918, added item 375.

Act Feb. 10, 1954, ch. 6, § 4(b), 68 Stat. 13, transferred ''; substitute judge on failure to retire'' from item 371 to item 372.

CROSS REFERENCES

Tax Court Judges, retirement, see section 7447 of Title 26, Internal Revenue Code.

[1] Section catchline amended by Pub. L. 99–396 without corresponding amendment of analysis.

§ 371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (f).

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (f), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (f) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e) Notwithstanding subsection (c) of section 5532 of title 5, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.

(f)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge

who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

(June 25, 1948, ch. 646, 62 Stat. 903; Oct. 31, 1951, ch. 655, § 39, 65 Stat. 724; Feb. 10, 1954, ch. 6, § 4(a), 68 Stat. 12; Pub. L. 98–353, title II, § 204(a), July 10, 1984, 98 Stat. 350; Pub. L. 100–702, title X, § 1005(a), Nov. 19, 1988, 102 Stat. 4666; Pub. L. 101–194, title VII, § 705(a), Nov. 30, 1989, 103 Stat. 1770; Pub. L. 104–317, title III, § 301, Oct. 19, 1996, 110 Stat. 3851.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 375 and 375a (Mar. 3, 1911, ch. 231, § 260, 36 Stat. 1161; Feb. 25, 1919, ch. 29, § 6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422; Mar. 1, 1937, ch. 21, §§ 1, 2, 50 Stat. 24; Feb. 11, 1938, ch. 25, § 1, 52 Stat. 28; May 11, 1944, ch. 192, § 1, 58 Stat. 218).

This section consolidates provisions of sections 375 and 375a of title 28, U.S.C., 1940 ed., relating to resignation and retirement. Remaining provisions of said section 375 now appear in sections 136, 294, and 756 of this title, and remaining provisions of said section 375a now appear in section 294 of this title.

Words ''may resign, or may retain his office but retire from regular active service'' were used to clarify the difference between resignation and retirement. Resignation results in loss of the judge's office, while retirement does not. (*Booth v. U.S.*, 1933, 54 S. Ct. 379, 291 U.S. 339, 78 L. Ed. 836; *U.S. v. Moore*, 1939, 101 F. 2d 56, certiorari denied 59 S. Ct. 788, 306 U.S. 664, 83 L. Ed. 1060.)

Terms ''judge of the United States'' and ''justice of the United States'' are defined in section 451 of this title.

The revised section continues the provision respecting the salary of a resigned judge but changes such provision for retired judges and makes them eligible to receive any increases provided by Congress for the office from which they retired. This change is in harmony with the clear line of distinction drawn by Congress between retirement and resignation.

AMENDMENTS

1996—Subsec. (f)(1)(D). Pub. L. 104–317, § 301(b), inserted at end ''In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.''

Subsec. (f)(3). Pub. L. 104–317, § 301(a), substituted ''may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work

performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.'' for ''is thereafter ineligible to receive such a certification.''

1989—Subsec. (b). Pub. L. 101–194, §705(a)(1), designated existing provisions as par. (1), inserted ''or her'' after ''his'', substituted ''of the office if he or she meets the requirements of subsection (f)'' for ''of the office'', and added par. (2).

Subsec. (f). Pub. L. 101–194, §705(a)(2), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–702 added subsec. (e).

1984—Pub. L. 98–353 substituted ''Retirement on salary; retirement in senior status'' for ''Resignation or retirement for age'' in section catchline.

Subsec. (a). Pub. L. 98–353 amended subsec. (a) generally, substituting ''may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired'' for ''who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned''.

Subsec. (b). Pub. L. 98–353 amended subsec. (b) generally, substituting ''may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office'' for ''may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office. The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires''.

Subsecs. (c), (d). Pub. L. 98–353 added subsecs. (c) and (d).

1954—Act Feb. 10, 1954, struck out ''; substitute judge on failure to retire'' in section catchline.

Subsec. (a). Act Feb. 10, 1954, reenacted subsec. (a) without change.

Subsec. (b). Act Feb. 10, 1954, in first sentence, inserted provision for retirement after attaining the age of 65 years and after serving 15 years continuously or otherwise.

Subsec. (c). Act Feb. 10, 1954, in general amendment of section, omitted subsec. (c) which related to appointment of substitute judges for disabled judges eligible to resign or retire where the latter fail to resign or retire, and to precedence of such disabled judges who remain on the active list after the appointment of substitutes.

1951—Act Oct. 31, 1951, subdivided section into subsections, and limited second par. of subsec. (c) (as so designated) to judges who remain on the active list but whose disabilities cause the appointment of additional judges as authorized by first par. of such subsec.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 705(b) of Pub. L. 101–194 provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall first apply with respect to work performed on or after January 1, 1990, by a justice or judge of the United States who has retired under section 371(b) of title 28, United States Code.

''(2) CALENDAR YEAR 1990.—In the case of certifications required by section 371(f) of title 28, United States Code, for calendar year 1990—

''(A) such certifications shall be based on the 10-month period beginning on January 1, 1990, and ending on October 31, 1990, and shall be completed not later than December 15, 1990;

''(B) determinations of work performed under section 371(f) of title 28, United States Code, shall be made pro rata on the basis of such 10-month period; and

''(C) such certifications shall be deemed to be certifications made in calendar year 1991.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1005(b) of Pub. L. 100–702 provided that: ''The amendment made by this section [amending this section] shall apply to a justice or judge who retires, or has retired, from the judicial office or from regular active service (into senior status) as such justice or judge of the United States on or after the effective date of section 5532(c) of title 5 [effective 90 days after Oct. 13, 1978, see Effective Date of 1978 Amendment note under section 5532 of Title 5, Government Organization and Employees], and to whom section 5532(c) would otherwise be applicable.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 204(c) of Pub. L. 98–353 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act [July 10, 1984].''

COMPUTATION OF JUDICIAL SERVICE, DISTRICT OF ALASKA

Pub. L. 89–70, July 8, 1965, 79 Stat. 213, provided: ''That, notwithstanding any other provision of law, any service as a judge of the District Court for the Territory of Alaska shall be included in computing under sections 371 and 372 of Title 28, United States Code, the aggregate years of judicial service of a United States district judge for the district of Alaska.''

JUDICIAL SERVICE IN HAWAII INCLUDED WITHIN COMPUTATION OF AGGREGATE YEARS OF JUDICIAL SERVICE

Pub. L. 86–3, §14(d), Mar. 18, 1959, 73 Stat. 10, provided in part: ''That service as a judge of the District Court for the Territory of Hawaii or as a judge of the United States District Court for the District of Hawaii or as a justice of the Supreme Court of the Territory of Hawaii or as a judge of the circuit courts of the Territory of Hawaii shall be included in computing under section 371, 372, or 373 of title 28, United States Code, the aggregate years of judicial service of any person who is in office as a district judge for the District of Hawaii on the date of enactment of this Act [Mar. 18, 1959].''

CROSS REFERENCES

Assignment of retired justices or judges to active duty, see section 294 of this title.

Justices and judges appointed to hold office during good behavior—

Court of International Trade, see section 252 of this title.

Courts of Appeals, see Const., Art. 3, §1.

District Courts, see Const., Art. 3, §1.

Supreme Court, see Const., Art. 3, §1.

Tax court judges, retirement, see section 7447 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 180, 294, 331, 372, 375, 376, 377, 621 of this title; title 5 sections 8440a, 8701, 8714a, 8714b; title 26 section 3121; title 42 section 409.

§372. Retirement for disability; substitute judge on failure to retire; judicial discipline

(a) Any justice or judge of the United States appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular ac-

tive service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States desiring to retire under this section shall certify to the President his disability in writing.

Whenever an associate justice of the Supreme Court, a chief judge of a circuit or the chief judge of the Court of International Trade, desires to retire under this section, he shall furnish to the President a certificate of disability signed by the Chief Justice of the United States.

A circuit or district judge, desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his circuit.

A judge of the Court of International Trade desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his court.

Each justice or judge retiring under this section after serving ten years continuously or otherwise shall, during the remainder of his lifetime, receive the salary of the office. A justice or judge retiring under this section who has served less than ten years in all shall, during the remainder of his lifetime, receive one-half the salary of the office.

(b) Whenever any judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a majority of the members of the Judicial Council of his circuit in the case of a circuit or district judge, or by the Chief Justice of the United States in the case of the Chief Judge of the Court of International Trade, or by the chief judge of his court in the case of a judge of the Court of International Trade, is presented to the President and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the circuit, district, or court.

(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term ''chief judge''). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may—

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph (1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.

(5) Each committee appointed under paragraph (4) of this subsection shall conduct an investigation as extensive as it considers necessary, and shall expeditiously file a comprehensive written report thereon with the judicial council of the circuit. Such report shall present both the findings of the investigation and the committee's recommendations for necessary and appropriate action by the judicial council of the circuit.

(6) Upon receipt of a report filed under paragraph (5) of this subsection, the judicial council—

(A) may conduct any additional investigation which it considers to be necessary;

(B) shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit, including, but not limited to, any of the following actions:

(i) directing the chief judge of the district of the magistrate whose conduct is the subject of the complaint to take such action as the judicial council considers appropriate;

(ii) certifying disability of a judge appointed to hold office during good behavior whose conduct is the subject of the complaint, pursuant to the procedures and standards provided under subsection (b) of this section;

(iii) requesting that any such judge appointed to hold office during good behavior voluntarily retire, with the provision that the length of service requirements under section 371 of this title shall not apply;

(iv) ordering that, on a temporary basis for a time certain, no further cases be assigned to any judge or magistrate whose conduct is the subject of a complaint;

(v) censuring or reprimanding such judge or magistrate by means of private communication;

(vi) censuring or reprimanding such judge or magistrate by means of public announcement; or

(vii) ordering such other action as it considers appropriate under the circumstances, except that (I) in no circumstances may the council order removal from office of any judge appointed to hold office during good behavior, and (II) any removal of a magistrate shall be in accordance with section 631 of this title and any removal of a bankruptcy judge shall be in accordance with section 152 of this title;

(C) may dismiss the complaint; and

(D) shall immediately provide written notice to the complainant and to such judge or magistrate of the action taken under this paragraph.

(7)(A) In addition to the authority granted under paragraph (6) of this subsection, the judicial council may, in its discretion, refer any complaint under this subsection, together with the record of any associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States.

(B) In any case in which the judicial council determines, on the basis of a complaint and an investigation under this subsection, or on the basis of information otherwise available to the council, that a judge appointed to hold office during good behavior may have engaged in conduct—

(i) which might constitute one or more grounds for impeachment under article II of the Constitution; or

(ii) which, in the interest of justice, is not amenable to resolution by the judicial council,

the judicial council shall promptly certify such determination, together with any complaint and a record of any associated proceedings, to the Judicial Conference of the United States.

(C) A judicial council acting under authority of this paragraph shall, unless contrary to the interests of justice, immediately submit written notice to the complainant and to the judge or magistrate whose conduct is the subject of the action taken under this paragraph.

(8)(A) Upon referral or certification of any matter under paragraph (7) of this subsection, the Judicial Conference, after consideration of the prior proceedings and such additional investigation as it considers appropriate, shall by majority vote take such action, as described in paragraph (6)(B) of this subsection, as it considers appropriate. If the Judicial Conference concurs in the determination of the council, or makes its own determination, that consideration of impeachment may be warranted, it shall so certify and transmit the determination and the record of proceedings to the House of Representatives for whatever action the House of Representatives considers to be necessary. Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.

(B) If a judge or magistrate has been convicted of a felony and has exhausted all means of obtaining direct review of the conviction, or the time for seeking further direct review of the conviction has passed and no such review has been sought, the Judicial Conference may, by majority vote and without referral or certification under paragraph (7), transmit to the House of Representatives a determination that consideration of impeachment may be warranted, together with appropriate court records, for whatever action the House of Representatives considers to be necessary.

(9)(A) In conducting any investigation under this subsection, the judicial council, or a special committee appointed under paragraph (4) of this subsection, shall have full subpoena powers as provided in section 332(d) of this title.

(B) In conducting any investigation under this subsection, the Judicial Conference, or a standing committee appointed by the Chief Justice under section 331 of this title, shall have full subpoena powers as provided in that section.

(10) A complainant, judge, or magistrate aggrieved by a final order of the chief judge under paragraph (3) of this subsection may petition the judicial council for review thereof. A complainant, judge, or magistrate aggrieved by an action of the judicial council under paragraph (6) of this subsection may petition the Judicial Conference of the United States for review thereof. The Judicial Conference, or the standing committee established under section 331 of this title, may grant a petition filed by a complainant, judge, or magistrate under this paragraph. Except as expressly provided in this paragraph, all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

(11) Each judicial council and the Judicial Conference may prescribe such rules for the conduct of proceedings under this subsection, including the processing of petitions for review, as each considers to be appropriate. Such rules shall contain provisions requiring that—

(A) adequate prior notice of any investigation be given in writing to the judge or mag-

istrate whose conduct is the subject of the complaint;

(B) the judge or magistrate whose conduct is the subject of the complaint be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing; and

(C) the complainant be afforded an opportunity to appear at proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any rule promulgated under this subsection shall be a matter of public record, and any such rule promulgated by a judicial council may be modified by the Judicial Conference. No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.

(12) No judge or magistrate whose conduct is the subject of an investigation under this subsection shall serve upon a special committee appointed under paragraph (4) of this subsection, upon a judicial council, upon the Judicial Conference, or upon the standing committee established under section 331 of this title, until all related proceedings under this subsection have been finally terminated.

(13) No person shall be granted the right to intervene or to appear as amicus curiae in any proceeding before a judicial council or the Judicial Conference under this subsection.

(14) Except as provided in paragraph (8), all papers, documents, and records of proceedings related to investigations conducted under this subsection shall be confidential and shall not be disclosed by any person in any proceeding except to the extent that—

(A) the judicial council of the circuit in its discretion releases a copy of a report of a special investigative committee under paragraph (5) to the complainant whose complaint initiated the investigation by that special committee and to the judge or magistrate whose conduct is the subject of the complaint;

(B) the judicial council of the circuit, the Judicial Conference of the United States, or the Senate or the House of Representatives by resolution, releases any such material which is believed necessary to an impeachment investigation or trial of a judge under article I of the Constitution; or

(C) such disclosure is authorized in writing by the judge or magistrate who is the subject of the complaint and by the chief judge of the circuit, the Chief Justice, or the chairman of the standing committee established under section 331 of this title.

(15) Each written order to implement any action under paragraph (6)(B) of this subsection, which is issued by a judicial council, the Judicial Conference, or the standing committee established under section 331 of this title, shall be made available to the public through the appropriate clerk's office of the court of appeals for the circuit. Unless contrary to the interests of justice, each such order issued under this paragraph shall be accompanied by written reasons therefor.

(16) Upon the request of a judge or magistrate whose conduct is the subject of a complaint under this subsection, the judicial council may, if the complaint has been finally dismissed under paragraph (6)(C), recommend that the Director of the Administrative Office of the United States Courts award reimbursement, from funds appropriated to the Federal judiciary, for those reasonable expenses, including attorneys' fees, incurred by that judge or magistrate during the investigation which would not have been incurred but for the requirements of this subsection.

(17) Except as expressly provided in this subsection, nothing in this subsection shall be construed to affect any other provision of this title, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, or the Federal Rules of Evidence.

(18) The United States Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit shall each prescribe rules, consistent with the foregoing provisions of this subsection, establishing procedures for the filing of complaints with respect to the conduct of any judge of such court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, each such court shall have the powers granted to a judicial council under this subsection.

(June 25, 1948, ch. 646, 62 Stat. 903; May 24, 1949, ch. 139, § 67, 63 Stat. 99; Feb. 10, 1954, ch. 6, § 4(a), 68 Stat. 12; Pub. L. 85–261, Sept. 2, 1957, 71 Stat. 586; Pub. L. 96–417, title V, § 501(9), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 96–458, § 3(a), (b), Oct. 15, 1980, 94 Stat. 2036, 2040; Pub. L. 97–164, title I, § 112, Apr. 2, 1982, 96 Stat. 29; Pub. L. 98–353, title I, § 107, July 10, 1984, 98 Stat. 342; Pub. L. 100–702, title IV, § 403(c), Nov. 19, 1988, 102 Stat. 4651; Pub. L. 101–650, title IV, § 402, Dec. 1, 1990, 104 Stat. 5122; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 375b, 375c, and 375d (Aug. 5, 1939, ch. 433, §§ 1–3, 53 Stat. 1204, 1205).

This section consolidates sections 375b, 375c, and 375d of title 28, U.S.C., 1940 ed.

Section 375e of title 28, U.S.C., 1940 ed. providing that term "senior circuit judge" includes the Chief Justice of the United States Court of Appeals for the District of Columbia, and the term "judicial circuit" includes the District of Columbia, was omitted from this revision as unnecessary. Such district is included as a judicial circuit by section 41 of this title.

Words "justice or judge of the United States" were used to describe members of all courts who hold office during good behavior. (See reviser's note under section 371 of this title.)

Term "chief judge" was substituted for "Chief Justice" of the Court of Claims, "presiding judge" of the Court of Customs and Patent Appeals and "senior circuit judge." (See Reviser's Note under section 136 of this title.)

For clarity and convenience the requirement that certificates of disability be submitted ''to the President,'' was made explicit.

The revised section requires a judge of the Customs Court to furnish a certificate of disability signed by the chief judge of his court, instead of by the chief judge of the Court of Customs and Patent Appeals as in said section 375c of title 28, U.S.C., 1940 ed. This change insures signing of the certificate of disability by the chief judge possessing knowledge of the facts.

Changes were made in phraseology and arrangement.

1949 ACT

Subsection (a) of this section amends section 372 of title 28, U.S.C., to express the requirement that appointment of successors to justices or judges must be made with confirmation by the Senate. Subsection (b) of this section clarifies the intent of section 372 of title 28, U.S.C., and conforms with the language of section 371 of such title.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, and the Federal Rules of Evidence, referred to in subsec. (c)(17), are set out in the Appendix to this title.

The Federal Rules of Criminal Procedure, referred to in subsec. (c)(17), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1992—Subsec. (c)(18). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (c)(1). Pub. L. 101–650, §402(a), inserted at end ''In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.''

Subsec. (c)(3)(B). Pub. L. 101–650, §402(f), inserted before period at end ''or that action on the complaint is no longer necessary because of intervening events''.

Subsec. (c)(4). Pub. L. 101–650, §402(b), inserted at end ''A judge appointed to a special committee under this paragraph may continue to serve on that committee after becoming a senior judge or, in the case of the chief judge of the circuit, after his or her term as chief judge terminates under subsection (a)(3) or (c) of section 45 of this title. If a judge appointed to a committee under this paragraph dies, or retires from office under section 371(a) of this title, while serving on the committee, the chief judge of the circuit may appoint another circuit or district judge, as the case may be, to the committee.''

Subsec. (c)(6). Pub. L. 101–650, §402(g), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(7)(B). Pub. L. 101–650, §402(i)(1), substituted ''may have engaged in conduct'' for ''has engaged in conduct'' in introductory provisions and ''article II'' for ''article I'' in cl. (i).

Subsec. (c)(8). Pub. L. 101–650, §402(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–650, §402(c)(1), inserted at end ''Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination.''

Subsec. (c)(11). Pub. L. 101–650, §402(e), inserted at end ''No rule promulgated under this subsection may limit the period of time within which a person may file a complaint under this subsection.''

Subsec. (c)(14). Pub. L. 101–650, §402(c)(2)(A), (B), substituted ''Except as provided in paragraph (8), all'' for ''All'' and ''except to the extent that'' for ''unless'' in introductory provisions.

Subsec. (c)(14)(A). Pub. L. 101–650, §402(c)(2)(E), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (c)(14)(B). Pub. L. 101–650, §402(c)(2)(D), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Pub. L. 101–650, §402(c)(2)(C), inserted ''such disclosure is'' before ''authorized''.

Subsec. (c)(14)(C). Pub. L. 101–650, §402(c)(2)(D), (i)(2), redesignated subpar. (B) as (C) and substituted ''subject of the complaint'' for ''subject to the complaint''.

Subsec. (c)(16) to (18). Pub. L. 101–650, §402(h), added par. (16) and redesignated former pars. (16) and (17) as (17) and (18), respectively.

1988—Subsec. (c)(11). Pub. L. 100–702 inserted before last sentence ''Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.''

1984—Subsec. (c)(6)(B)(vii). Pub. L. 98–353 substituted ''section 152'' for ''section 153''.

1982—Subsec. (a). Pub. L. 97–164, §112(a), struck out ''Court of Claims, Court of Customs and Patent Appeals, or'' before ''Court of International Trade'' in third and fifth pars.

Subsec. (b). Pub. L. 97–164, §112(b), struck out ''Court of Claims, Court of Customs and Patent Appeals, or'' before ''Court of International Trade'' wherever appearing.

Subsec. (c)(17). Pub. L. 97–164, §112(c), substituted ''United States Claims Court, the Court of International Trade, and the Court of Appeals for the Federal Circuit'' for ''Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court''.

1980—Pub. L. 96–458, §3(b), inserted ''judicial discipline'' in section catchline.

Subsecs. (a), (b). Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

Subsec. (c). Pub. L. 96–458, §3(a), added subsec. (c).

1957—Subsec. (b). Pub. L. 85–261 added subsec. (b).

1954—Act Feb. 10, 1954, inserted ''; substitute judge on failure to retire'' in section catchline (but without adding any provisions on such subject to the text of the section, see 1957 amendment), and inserted ''under this section'' after ''retire'' in third, fourth, and fifth pars.

1949—Act May 24, 1949, amended section to include provision that appointment of successors to justices or judges must be made with consent of Senate, and inserted ''continuously or otherwise'' after ''Each justice or judge'' in last par.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

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 this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101–650, set out as a note under section 332 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–458 effective Oct. 1, 1981, see section 7 of Pub. L. 96–458, set out as a note under section 331 of this title.

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Pub. L. 102–368, title I, Sept. 23, 1992, 106 Stat. 1118, provided in part that: ''Notwithstanding the requirement of section 415 of Public Law 101–650 [set out below] to submit the report mandated by said section not later than one year after the date of the Commission's first meeting, the National Commission on Judicial Discipline and Removal shall submit to each House of Congress, the Chief Justice of the United States, and the President, the report mandated in said section no later than August 1, 1993.''

Subtitle II of title IV of Pub. L. 101–650, as amended by Pub. L. 102–198, § 8(a), (b)(2), Dec. 9, 1991, 105 Stat. 1625, 1626, provided that:

''SEC. 408. SHORT TITLE.

''This subtitle may be cited as the 'National Commission on Judicial Discipline and Removal Act'.

''SEC. 409. ESTABLISHMENT.

''There is hereby established a commission to be known as the 'National Commission on Judicial Discipline and Removal' (hereinafter in this subtitle referred to as the 'Commission').

''SEC. 410. DUTIES OF COMMISSION.

''The duties of the Commission are—

''(1) to investigate and study the problems and issues involved in the tenure (including discipline and removal) of an article III judge;

''(2) to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for discipline or removal of judges that would require amendment to the Constitution; and

''(3) to prepare and submit to the Congress, the Chief Justice of the United States, and the President a report in accordance with section 415.

''SEC. 411. MEMBERSHIP.

''(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 13 members as follows:

''(1) Three appointed by the President pro tempore of the Senate.

''(2) Three appointed by the Speaker of the House of Representatives.

''(3) Three appointed by the Chief Justice of the United States.

''(4) Three appointed by the President.

''(5) One appointed by the Conference of Chief Justices of the States of the United States.

''(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

''(c) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

''(d) CHAIRMAN.—The members of the Commission shall select one of the members to be the Chairman.

''(e) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

''(f) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

''SEC. 412. COMPENSATION OF THE COMMISSION.

''(a) PAY.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

''(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

''(b) TRAVEL.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

''SEC. 413. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

''(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

''(b) STAFF.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for GS–18 of the General Schedule under section 5332 of such title.

''(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

''SEC. 414. POWERS OF COMMISSION.

''(a) HEARINGS AND SESSIONS.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

''(b) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

''(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

''(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

''(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

''SEC. 415. REPORT.

''The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

''SEC. 416. TERMINATION.

''The Commission shall cease to exist on the date 30 days after the date it submits its report to the President and the Congress under section 415.

''SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated the sum of $750,000 to carry out the provisions of this subtitle.

''SEC. 418. EFFECTIVE DATE.

''This subtitle shall take effect on the date of the enactment of this Act [Dec. 1, 1990].''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

COMPUTATION OF JUDICIAL SERVICE, DISTRICT OF ALASKA

Inclusion of service as judge of the District Court for the Territory of Alaska in the computation of years of judicial service for judges of the United States District Court for the District of Alaska, see Pub. L. 89–70, set out as a note under section 371 of this title.

JUDICIAL SERVICE IN HAWAII

Certain judicial service in Hawaii included within computation of aggregate years of judicial service, see section 14(d) of Pub. L. 86–3, set out as a note under section 371 of this title.

CROSS REFERENCES

Assignment of retired justices or judges to active duty, see section 294 of this title.

Justices and judges appointed to hold office during good behavior—

Court of International Trade, see section 252 of this title.

Courts of Appeals, see Const., Art. 3, § 1.

District Courts, see Const., Art. 3, § 1.

Supreme Court, see Const., Art. 3, § 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 294, 331, 332, 375, 376, 377, 604, 621 of this title; title 5 sections 8440a, 8701; title 38 section 7253.

§ 373. Judges in territories and possessions

(a) Any judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who retires from office after attaining the age and meeting the service requirements whether continuous or otherwise, of subsection (b) shall, during the remainder of his lifetime, receive an annuity equal to the salary he is receiving at the time he retires.

(b) The age and service requirements for retirement under subsection (a) of this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(c)(1) Any judge or former judge who is receiving an annuity pursuant to this section may elect to become a senior judge of the court upon which he served before retiring.

(2) The chief judge of a judicial circuit may recall any such senior judge, with the judge's consent, to perform, for the court from which he retired, such judicial duties for such periods of time as the chief judge may specify.

(3) Any act or failure to act by a senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall have the same force and effect as if it were an act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving as a recalled annuitant for purposes of the number of judgeships authorized for that court.

(4) Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall be paid, while performing such duties, the same compensation (in lieu of the annuity payable under subsection (a) of this section) and the same allowances for travel and other expenses as a judge on active duty with the court being served.

(5) Any senior judge performing judicial duties pursuant to recall under paragraph (2) of this subsection shall at all times be governed by the code of judicial conduct for United States judges approved by the Judicial Conference of the United States.

(d) Any judge who elects to become a senior judge under subsection (c) of this section and who thereafter—

(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to recall under subsection (c) of this section);

(2) engages in the practice of law; or

(3) materially violates the code of judicial conduct for United States judges,

shall cease to be a senior judge and to be eligible for recall pursuant to subsection (c) of this section.

(e) Any judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands who is removed by the President of the United States upon the sole ground of mental or physical disability, or who is not reappointed (as judge of such court), shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (1) if his judicial service, continuous or otherwise, aggregates fifteen years or more, to receive during the remainder of his life an annuity equal to the salary he received when he left office, or (2) if his judicial service, continuous or otherwise, aggregated less than fifteen years but not less than ten years, to receive during the remainder of his life an annuity equal to that proportion of such salary which the aggregate number of his years of his judicial service bears to fifteen.

(f) Service at any time as a judge of the courts referred to in subsection (a) or of any other court of the United States, as defined by section 451 of this title, shall be included in the computation of aggregate years of judicial service for purposes of this section.

(g) Any retired judge who is entitled to receive an annuity under subsection (a) shall be entitled to a cost of living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, except that in no case may the annuity payable to such retired judge, as increased under this subsection, exceed 95 per centum of the salary of a United States district judge in regular active service.

(June 25, 1948, ch. 646, 62 Stat. 904; Oct. 31, 1951, ch. 655, § 40, 65 Stat. 724; Feb. 10, 1954, ch. 6, § 5, 68 Stat. 13; Pub. L. 85–508, § 12(d), July 7, 1958, 72 Stat. 348; Pub. L. 86–3, § 14(d), Mar. 18, 1959, 73 Stat. 10; Pub. L. 89–571, § 2, Sept. 12, 1966, 80 Stat. 764; Pub. L. 94–470, Oct. 11, 1976, 90 Stat. 2052; Pub. L. 99–396, § 21(a), Aug. 27, 1986, 100 Stat. 844.)

HISTORICAL AND REVISION NOTES

Based on section 634b and 634c of title 48, U.S.C., 1940 ed., Territories and Insular Possessions. [title 28, U.S.C., 1940 ed., §§ 375g, 375g note, 375h] (May 31, 1938, ch. 301, §§ 1, 2, 52 Stat. 591; Apr. 16, 1946, ch. 139, §§ 1, 2, 3, 60 Stat. 90, 91).

Section consolidates sections 634b and 634c of title 48, U.S.C., 1940 ed., as amended and transferred to title 28, U.S.C., 1940 ed., as sections 375g and 375h thereof, with changes of phraseology necessary to effect consolidation.

AMENDMENTS

1986—Pub. L. 99–396 amended section generally. Prior to amendment, section read as follows:

''Any judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, who resigns after attaining the age of seventy years and after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, shall continue during the remainder of his life to receive the salary he received when he relinquished office.

''Any judge of any such courts who is removed by the President of the United States upon the sole ground of mental or physical disability, or who fails of reappointment, shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (a) if his judicial service aggregated sixteen years or more, to receive during the remainder of his life the salary he received when he relinquished office, or (b) if his judicial service aggregated less than sixteen years but not less than ten years, to receive during the remainder of his life that proportion of such salary which the aggregate number of years of his judicial service bears to sixteen.

''Service at any time in any of the courts referred to in the first paragraph, or in any other court under appointment by the President, shall be included in the computation of aggregate years of judicial service for the purposes of this section.

''Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this Act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code: *Provided, however*, That in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 per centum of the salary of a United States district court judge in regular active service.''

1976—Pub. L. 94–470 inserted cost-of-living adjustment provision, including limitation of payment to amount no greater than 95 per centum of salary of a United States district court judge in regular active service.

1966—Pub. L. 89–571 removed the United States District Court for District of Puerto Rico from list of courts to which the provisions of section are applicable.

1959—Pub. L. 86–3 struck out references to judges of United States District Court for District of Hawaii and to justices of Supreme Court of Territory of Hawaii. See section 91 of this title and notes thereunder.

1958—Pub. L. 85–508 struck out provisions which related to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954—Act Feb. 10, 1954, among other changes, inserted provisions for retirement after attaining the age of 65 years and after serving at least fifteen years continuously or otherwise, changed period of service in connection with retirement at age 70, and reduced from 70 to 65 years the age requirement in connection with payment of salary after removal for mental or physical disability or failure of reappointment.

1951—Act Oct. 31, 1951, inserted reference to judge of District Court of Guam in first par.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 21(c) of Pub. L. 99–396 provided that: ''The amendments made by this section [amending this section and section 376 of this title] shall not affect the amount payable to a judge who retired in accordance with the provisions of section 373 of title 28, United States Code, in effect on the day before the date of enactment of this Act [Aug. 27, 1986].''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–3 effective on admission of State of Hawaii into the Union, see note set out under section 91 of this title. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

ELECTION, RECALL, STATUS, COMPENSATION, CONDUCT, AND TERMINATION OF SENIOR JUDGES

Pub. L. 98–454, title X, § 1002, Oct. 5, 1984, 98 Stat. 1745, provided that:

''(a) Any judge or former judge who is receiving, or will upon attaining the age of sixty-five years be entitled to receive, payments pursuant to section 373 of title 28, United States Code[,] may elect to become a senior judge of the court on which he served while on active duty.

''(b) The chief judge of a judicial circuit may recall any such senior judge of his circuit, with the judge's consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the chief judge may specify.

''(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty; but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

''(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation

(in lieu of payments pursuant to section 373 of title 28, United States Code) and the same allowances for travel and other expenses as a judge in active service.

''(e) Senior judges under subsection (a) of this section shall at all times be governed by the code of judicial conduct for the United States judges, approved by the Judicial Conference of the United States.

''(f) Any person who has elected to be a senior judge under subsection (a) of this section and who thereafter—

''(1) accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (b) of this section);

''(2) engages in the practice of law; or

''(3) materially violated the code of judicial conduct for the United States judges,

shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section.''

TENURE AND SALARY RIGHTS OF JUDGES IN PUERTO RICO IN OFFICE ON SEPTEMBER 12, 1966

Amendment by Pub. L. 89–571 not to affect tenure of office or right to continue to receive salary after resignation, retirement, or failure of reappointment of any district judge for the District of Puerto Rico in office on Sept. 12, 1966, see section 4 of Pub. L. 89–571, set out as a note under section 134 of this title.

PRESERVATION OF RIGHTS OF RETIRED JUDGES OF THE DISTRICT COURT FOR THE DISTRICT OF HAWAII AND JUSTICES OF THE SUPREME COURT OF THE TERRITORY OF HAWAII

Section 14(d) of Pub. L. 86–3 provided in part: ''That the amendments made by this subsection shall not affect the rights of any judge or justice who may have retired before the effective date of this subsection''. See Effective Date of 1959 Amendment note above.

PRESERVATION OF RIGHTS OF RETIRED JUDGES OF THE DISTRICT COURT FOR THE TERRITORY OF ALASKA

Section 12(d) of Pub. L. 85–508 provided in part: ''That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect''. See Effective Date of 1958 Amendment note above.

JUDICIAL SERVICE IN HAWAII

Certain judicial service in Hawaii included within computation of aggregate years of judicial service, see section 14(d) of Pub. L. 86–3, set out as a note under section 371 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 376 of this title.

§ 374. Residence of retired judges; official station

Retired judges of the United States are not subject to restrictions as to residence. The place where a retired judge maintains the actual abode in which he customarily lives shall be deemed to be his official station for the purposes of section 456 of this title. The place where a judge or magistrate recalled under section 155, 375, 636, or 797 of this title maintains the actual abode in which the judge or magistrate customarily lives shall be deemed to be the official station of such judge or magistrate for purposes of section 604(a)(7) of this title.

(June 25, 1948, ch. 646, 62 Stat. 904; Pub. L. 86–312, § 1, Sept. 21, 1959, 73 Stat. 587; Pub. L. 99–651, title II, § 202(b), Nov. 14, 1986, 100 Stat. 3648.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 402 (Feb. 11, 1938, ch. 23, 52 Stat. 28).

Sections 44 and 133 of this title require that active circuit and district judges shall reside in the circuit or district to which appointed.

Changes were made in phraseology.

AMENDMENTS

1986—Pub. L. 99–651 inserted last sentence.

1959—Pub. L. 86–312 inserted sentence to provide that place where retired judge maintains actual abode shall be deemed to be his official station and inserted ''; official station'' in section catchline.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–651 effective Jan. 1, 1987, see section 203 of Pub. L. 99–651, set out as a note under section 155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 456 of this title.

§ 375. Recall of certain judges and magistrates

(a)(1) A bankruptcy judge or a United States magistrate appointed under chapter 43 of this title, who has retired under the provisions of section 377 of this title or under the applicable provisions of title 5 upon attaining the age and years of service requirements established in section 371(c) of this title, may agree to be recalled to serve under this section for a period of five years as a bankruptcy judge or magistrate, as the case may be, upon certification that substantial service is expected to be performed by such retired judge or magistrate during such 5-year period. With the agreement of the judge or magistrate involved, a certification under this subsection may be renewed for successive 5-year periods.

(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.

(3) For purposes of this section, the term ''bankruptcy judge'' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984.

(b) A judge or magistrate recalled under this section may exercise all of the powers and duties of the office of judge or magistrate held at the time of retirement, including the ability to serve in any other judicial district to the extent applicable, but may not engage in the practice of law or engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of duties as a judicial officer.

(c) During the 5-year period in which a certification under subsection (a) is in effect, the judge or magistrate involved shall receive, in addition to the annuity provided under the provisions of section 377 of this title or under the applicable provisions of title 5, an amount equal to the difference between that annuity and the current salary of the office to which the judge or magistrate is recalled. The annuity of a bankruptcy

judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.

(d) A certification under subsection (a) may be terminated in accordance with section 372(c) of this title, and such a certification shall be terminated upon the death of the recalled judge or magistrate involved.

(e) Except as provided in subsection (b), nothing in this section shall affect the right of judges or magistrates who retire under the provisions of chapter 83 or chapter 84 of title 5 to serve as reemployed annuitants in accordance with the provisions of title 5. A judge or magistrate to whom this section applies may be recalled under section 155, 636(h), or 797 of this title, as the case may be, other than during a 5-year period in which a certification under subsection (a) is in effect with respect to that judge or magistrate.

(f) For purposes of determining the years of service requirements in order to be eligible for recall under this section, any service as a bankruptcy judge or a United States magistrate, and any prior service as a referee in bankruptcy or a United States commissioner, may be credited.

(g) Except as provided in subsection (c), a judge or magistrate recalled under this section who retired under the applicable provisions of title 5 shall be considered to be a reemployed annuitant under chapter 83 or chapter 84, as the case may be, of title 5.

(h) The Judicial Conference of the United States may promulgate regulations to implement this section.

(Added Pub. L. 99–651, title II, § 201(b)(1), Nov. 14, 1986, 100 Stat. 3647; amended Pub. L. 100–659, § 4(b), Nov. 15, 1988, 102 Stat. 3918; Pub. L. 101–650, title III, § 325(b)(2), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 102–572, title IX, § 904(a), Oct. 29, 1992, 106 Stat. 4517.)

PRIOR PROVISIONS

A prior section 375, added Aug. 28, 1954, ch. 1053, § 1, 68 Stat. 918; amended Aug. 3, 1956, ch. 944, § 1(b), 70 Stat. 1021; Aug. 22, 1972, Pub. L. 92–397, § 1, 86 Stat. 579, provided for annuities to widows of justices, prior to repeal by Pub. L. 96–504, § 5, Dec. 5, 1980, 94 Stat. 2742.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–572, § 904(a)(1), struck out ", a judge of the Claims Court," after "A bankruptcy judge" and ", judge of the Claims Court," after "a bankruptcy judge".

Subsec. (a)(2). Pub. L. 102–572, § 904(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of paragraph (1) of this subsection, a certification may be made—

"(A) in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located; and

"(B) in the case of a judge of the Claims Court, by the chief judge of the United States Claims Court."

Subsec. (a)(3). Pub. L. 102–572, § 904(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For purposes of this section—

"(A) the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984; and

"(B) the term 'judge of the Claims Court' means a judge of the United States Claims Court who is appointed under chapter 7 of this title or who has served under section 167 of the Federal Courts Improvement Act of 1982."

Subsec. (f). Pub. L. 102–572, § 904(a)(4), struck out ", a judge of the Claims Court," after "bankruptcy judge" and ", a commissioner of the Court of Claims," after "referee in bankruptcy".

1990—Subsec. (a)(1). Pub. L. 101–650 substituted "section 377 of this title" for "section 377 of title".

1988—Subsec. (a)(1). Pub. L. 100–659, § 4(b)(1), inserted "under the provisions of section 377 of title or" after "has retired".

Subsec. (c). Pub. L. 100–659, § 4(b)(2), inserted "under the provisions of section 377 of this title or" after "annuity provided" and inserted at end "The annuity of a bankruptcy judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired."

Subsec. (g). Pub. L. 100–659, § 4(b)(3), inserted "who retired under the applicable provisions of title 5" after "section".

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

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 this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 203 of Pub. L. 99–651, set out as an Effective Date of 1986 Amendment note under section 155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 376, 377, 631, 636 of this title.

§ 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) "judicial official" means:

(A) a Justice or judge of the United States, as defined by section 451 of this title;

(B) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands;

(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title;

(E) an administrative assistant to the Chief Justice of the United States, after he or she has filed a waiver in accordance with

both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) a full-time bankruptcy judge or a full-time United States magistrate; or

(G) a judge of the United States Court of Federal Claims;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, (iii) January 1, 1977, (iv) October 1, 1986, (v) the date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date, (vi) the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, in the case of a full-time judge of the Court of Federal Claims in active service on that date, or (vii) the date of the enactment of the Federal Courts Administration Act of 1992;

(2) ''retirement salary'' means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

(B) in the case of a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, (i) an annuity paid under subsection (a) of section 373 of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title;

(E) in the case of an administrative assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title; and

(G) in the case of a judge of the United States Court of Federal Claims, an annuity paid under section 178 of this title;

(3) ''widow'' means the surviving wife of a ''judicial official'', who:

(A) has been married to him for at least one year on the day of his death; or

(B) is the mother of issue by that marriage;

(4) ''widower'' means the surviving husband of a ''judicial official'', who:

(A) has been married to her for at least one year on the day of her death; or

(B) is the father of issue by that marriage;

(5) ''child'' means:

(A) an unmarried child under eighteen years of age, including (i) an adopted child and (ii) a stepchild or recognized natural child who lived with the judicial official in a regular parent-child relationship;

(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under paragraph (5)(B) of this subsection, before the termination of that annuity;

(6) ''former spouse'' means a former spouse of a judicial official if the former spouse was married to such judicial official for at least 9 months; and

(7) ''assassinated'' and ''assassination'' mean the killing of a judicial official described in paragraph (1)(A), (B), (F), or (G) of this subsection that is motivated by the performance by that judicial official of his or her official duties.

(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

(A) of a justice or judge of the United States retired from regular active service under section 371(b) or section 372(a) of this title,

(B) of a judge of the United States Court of Federal Claims retired under section 178 of this title, or

(C) of a judicial official on recall under section 155(b), 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary.

(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section.

(3) The amounts deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the ''Judicial Survivors' Annuities Fund'' established by section 3 of the Judicial Survivors' Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions (and any deductions made under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5) shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section (and under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5).

(c)(1) There shall also be deposited to the credit of the Judicial Survivors' Annuities Fund, in accordance with such procedures as the Comptroller General of the United States may prescribe, amounts required to reduce to zero the unfunded liability of the Judicial Survivors' Annuities Fund: *Provided*, That such amounts shall not exceed the equivalent of 9 percent of salary or retirement salary. Such deposits shall, subject to appropriations Acts, be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the Judicial Survivors' Annuities Fund for any use required under this section.

(2) For purposes of paragraph (1), the term ''unfunded liability'' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Judicial Survivors' Annuities Fund, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of judicial officials; plus

(B) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this paragraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, United States Code, with respect to the judicial survivors' annuities plan established by this section.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the ''Judicial Survivors' Annuities Fund'':

(1) a sum equal to 3.5 percent of that salary, including ''retirement salary'', which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

(2) a sum equal to 3.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an ''employee'', as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: *Provided*, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this

section: *Provided*, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the ''Judicial Survivors' Annuities Fund''.

(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the ''Judicial Survivors' Annuities Fund'' which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (*o*), (p), and (q) of this section.

(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a ''reasonable period of time'' shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.

(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section (A) after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made—

(i) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (*l*) of this section; or

(ii) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (*l*) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

(I) 10 percent of the average annual salary determined under subsection (*l*)(1) of this section; or

(II) 20 percent of such average annual salary, divided by the number of children;

whichever is smallest; or

(iii) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

(I) the amount of the annuity to which the judicial official's widow or widower would have been entitled under clause (i) of this paragraph, had such widow or widower survived the judicial official, divided by the number of children; or

(II) 20 percent of the average annual salary determined under subsection (*l*)(1) of this section; or

(III) 40 percent of such average annual salary amount, divided by the number of children;

whichever is smallest.

(2) An annuity payable to a widow or widower under clause (i) or (ii) of paragraph (1) of this subsection shall be terminated upon his or her death or remarriage before attaining age 55.

(3) An annuity payable to a child under this subsection shall terminate:

(A) if such child is receiving an annuity based upon his or her status under paragraph (5)(A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

(B) if such child is receiving an annuity based upon his or her status under paragraph (5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with paragraph (5)(B) of subsection (a) of this section, whichever occurs first: *Provided*, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of paragraph (5)(C) of subsection (a) of this section;

(C) if such child is receiving an annuity based upon his or her status under paragraph

(5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

(D) on the last day of the month during which such child dies or marries.

(4) An annuity payable to a child or children under paragraph (1)(ii) of this subsection shall be recomputed and paid as provided in paragraph (1)(iii) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under paragraph (1)(ii) of this subsection.

(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.

(i)(1) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.

(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (*l*) of this section shall include—

(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under section 371 or subsection (a) of section 372 of this title;

(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: *Provided*, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section;

(4) those years during which such judicial official served as an ''employee'', as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section,[1] and

(5) those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.

For the purposes of this subsection the term ''years'' shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

(*l*) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

(1) 1.5 percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the

[1] So in original. Comma probably should be a semicolon.

offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary was greatest, or (ii) if such judicial official has so served less than three years, then during the total period of such service prior to his or her death, multiplied by the total of:

(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b)(1) or (2) of this section; plus

(E) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection;

except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary. Any annuity determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, and by the amount of any annuity payable to a former spouse under subsection (t).

(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors' Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.

(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, except as provided in subsections (s) and (t), or subject to execution, levy, attachment, garnishment, or other legal process.

(*o*)(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section, and;

(A) subject to paragraph (2) of this subsection, before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

(B) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section; or

(C) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) or (t) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

Second, if there be no such beneficiary, to the widow or widower of such judicial official;

Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.

(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate be-

fore the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (*o*) of this section.

(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: *Provided*, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.

(s) A judicial official who has a former spouse may elect, under procedures prescribed by the Director of the Administrative Office of the United States Courts, to provide a survivor annuity for such former spouse under subsection (t). An election under this subsection shall be made at the time of retirement, or, if later, within 2 years after the date on which the marriage of the former spouse to the judicial official is dissolved. An election under this subsection—

(1) shall not be effective to the extent that it—

(A) conflicts with—

(i) any court order or decree referred to in subsection (t)(1), which was issued before the date of such election, or

(ii) any agreement referred to in such subsection which was entered into before such date; or

(B) would cause the total of survivor annuities payable under subsections (h) and (t) based on the service of the judicial official to exceed 55 percent of the average annual salary (as such term is used in subsection (*l*)) of such official; and

(2) shall not be effective, in the case of a judicial official who is then married, unless it is made with the spouse's written consent.

The Director of the Administrative Office of the United States Courts shall provide by regulation that paragraph (2) of this subsection may be waived if the judicial official establishes to the satisfaction of the Director that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, requiring the judicial official to seek the spouse's consent would otherwise be inappropriate.

(t)(1) Subject to paragraphs (2) through (4) of this subsection, a former spouse of a deceased judicial official is entitled to a survivor annuity under this section if and to the extent expressly provided for in an election under subsection (s), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(A) the maximum amount that would be payable as an annuity to a widow or widower under subsection (*l*), determined without taking into account any reduction of such annuity caused by payment of an annuity to a former spouse; and

(B) the amount of any annuity payable under this subsection to any other former spouse of the judicial official, based on an election previously made under subsection (s), or a court order previously issued.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the judicial official dies, or

(ii) the first day of the second month beginning after the date on which the Director of the Administrative Office of the United States Courts receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Director may prescribe,

whichever is later, and

(B) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(4) For purposes of this section, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement of the judicial official concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a sur-

viving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.

(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(w) The Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials under subsection (b) during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors' Annuities Fund and if not, then what adjustments in the contribution rates under subsection (b) should be made to achieve that 50 percent figure. The Comptroller General shall report the results of each determination under this subsection to the Congress.

(Added Aug. 3, 1956, ch. 944, §2, 70 Stat. 1021; amended Pub. L. 85–508, §12(n), July 7, 1958, 72 Stat. 348; Pub. L. 90–219, title II, §202, Dec. 20, 1967, 81 Stat. 668; Pub. L. 90–466, §1(a), Aug. 8, 1968, 82 Stat. 662; Pub. L. 92–397, §§2, 3(c), Aug. 22, 1972, 86 Stat. 579, 580; Pub. L. 94–554, §2, Oct. 19, 1976, 90 Stat. 2603; Pub. L. 95–598, title II, §211, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 99–336, §2(a), (d)(1)–(3), (e), June 19, 1986, 100 Stat. 633, 635–637; Pub. L. 99–396, §21(b), Aug. 27, 1986, 100 Stat. 846; Pub. L. 100–659, §3(a), Nov. 15, 1988, 102 Stat. 3917; Pub. L. 100–702, title X, §1017(a), Nov. 19, 1988, 102 Stat. 4670; Pub. L. 101–650, title III, §§306(b), 322(a)–(f), (g)[(h)], Dec. 1, 1990, 104 Stat. 5109, 5117–5120; Pub. L. 102–572, title II, §201(a)–(i), title IX, §902(b), Oct. 29, 1992, 106 Stat. 4508–4510, 4516; Pub. L. 104–317, title III, §§302, 308, Oct. 19, 1996, 110 Stat. 3851, 3853.)

REFERENCES IN TEXT

The date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (a)(1)(v), is the date of the enactment of Pub. L. 100–659, which was approved Nov. 15, 1988.

The date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, referred to in subsec. (a)(1)(vi), is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

The date of the enactment of the Federal Courts Administration Act of 1992, referred to in subsec. (a)(1)(vii), is the date of enactment of Pub. L. 102–572, which was approved Oct. 29, 1992.

Section 3 of the Judicial Survivors' Annuities Reform Act, referred to in subsec. (b)(3), is section 3 of Pub. L. 94–554, which is set out as a note below.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–317, §308, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

"(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,

"(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,

"(C) of a judge of the United States Court of Federal Claims retired under section 178(a) or (b) of this title who meets the requirements of section 178(d) of this title, or

"(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary."

Subsec. (*o*)(1). Pub. L. 104–317, §302, substituted "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section," for "or while receiving 'retirement salary'," in introductory provisions.

1992—Subsec. (a)(1). Pub. L. 102–572, §§201(a), 902(b)(2), in concluding provisions substituted "Court of Federal Claims" for "Claims Court" in cl. (vi) and added cl. (vii).

Subsec. (a)(1)(G), (2)(G). Pub. L. 102–572, §902(b)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (b). Pub. L. 102–572, §201(b), designated first sentence as par. (1), substituted "a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary." and second sentence for "including any 'retirement salary', a sum equal to 5 percent of that salary.", added par. (2), designated last 3 sentences as par. (3), and substituted "deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection" for "so deducted and withheld from the salary of each such judicial official".

Subsec. (d)(1), (2). Pub. L. 102–572, §201(c), substituted "3.5 percent" for "5 percent".

Subsec. (g). Pub. L. 102–572, §201(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "If any judicial official resigns from office without receiving any 'retirement salary,' all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a 'reasonable period of time' shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office."

Subsec. (h)(1). Pub. L. 102–572, §201(e), substituted "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section" for "or while receiving 'retirement salary,' ".

Subsec. (k)(5). Pub. L. 102–572, §201(f), added par. (5).

Subsec. (*l*)(1). Pub. L. 102–572, §201(g), substituted ", or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary" for "in which his or her annual sal-

ary'' in cl. (i) of introductory provisions, added subpar. (D), and redesignated former subpar. (D) as (E).

Subsec. (v). Pub. L. 102–572, § 201(h), added subsec. (v).

Subsec. (w). Pub. L. 102–572, § 201(i), added subsec. (w).

1990—Subsec. (a)(1). Pub. L. 101–650, § 306(b)(1), added subpar. (G) and cl. (vi) before semicolon at end.

Subsec. (a)(2)(G). Pub. L. 101–650, § 306(b)(2), added subpar. (G).

Subsec. (a)(5)(C). Pub. L. 101–650, § 322(g)(2), substituted ''paragraph'' for ''subparagraph''.

Subsec. (a)(7). Pub. L. 101–650, § 322(b), added par. (7).

Subsec. (b). Pub. L. 101–650, § 306(b)(3), substituted ''section 178 or 377'' for ''section 377'' in two places.

Subsec. (h)(1). Pub. L. 101–650, § 322(a)(1)–(4), inserted ''(A)'' before ''after having completed'', inserted '', or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made'' after ''have actually been made'', redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, in cl. (ii) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in cl. (iii) redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, and in subcl. (I) substituted ''clause (i) of this paragraph'' for ''subparagraph (1)(A) of this subsection''.

Subsec. (h)(2). Pub. L. 101–650, § 322(g)(1)(A), substituted ''clause (i) or (ii) of paragraph (1)'' for ''subparagraphs (1)(A) or (1)(B)''.

Subsec. (h)(3). Pub. L. 101–650, § 322(g)(1)(B), substituted ''paragraph'' for ''subparagraph'' wherever appearing.

Subsec. (h)(4). Pub. L. 101–650, § 322(g)(1)(C), substituted ''paragraph (1)(ii)'' for ''subparagraph (1)(B)'' in two places and ''paragraph (1)(iii)'' for ''subparagraph (1)(C)''.

Subsec. (h)(6). Pub. L. 101–650, § 322(a)(5), added par. (6).

Subsec. (i). Pub. L. 101–650, § 322(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (*l*)(1)(ii). Pub. L. 101–650, § 322(d), struck out ''but more than eighteen months,'' after ''less than three years,''.

Subsec. (*o*). Pub. L. 101–650, § 322(e), inserted ''(1)'' after ''(*o*)'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted ''subject to paragraph (2) of this subsection,'' before ''before having completed'' in subpar. (A), and added par. (2).

Subsec. (u). Pub. L. 101–650, § 322(f), added subsec. (u).

1988—Subsec. (a)(1). Pub. L. 100–659, § 3(a)(1), added subpar. (F) and substituted '', (iv) October 1, 1986, or (v) the date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date;'' for ''; or (iv) October 1, 1986;'' in concluding provisions.

Subsec. (a)(2)(F). Pub. L. 100–659, § 3(a)(2), added subpar. (F).

Subsec. (b). Pub. L. 100–659, § 3(a)(3), inserted ''(and any deductions made under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)'' after ''deductions'' and ''(and under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)'' before period at end of last sentence.

Subsec. (m). Pub. L. 100–702 amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: ''Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the 'Judicial Survivors' Annuities Fund', which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.''

1986—Subsec. (a)(1). Pub. L. 99–336, § 2(a)(1), substituted ''she marries, (iii) January 1, 1977; or (iv) October 1, 1986'' for ''she marries, or (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective'' in concluding provision.

Subsec. (a)(1)(B). Pub. L. 99–396, § 21(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;''.

Subsec. (a)(2)(B). Pub. L. 99–396, § 21(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years' judicial service;''.

Subsec. (a)(6). Pub. L. 99–336, § 2(d)(1), added par. (6).

Subsec. (b). Pub. L. 99–336, § 2(a)(2), substituted ''5 percent'' for ''4.5 percent''.

Subsec. (c). Pub. L. 99–336, § 2(a)(3), in amending subsec. (c) generally, designated existing provisions as par. (1), substituted provisions which related to amounts deposited to credit of Judicial Survivors' Annuities Fund to reduce unfunded liability of Fund to zero, for provisions which related to deposit of amounts matching those deducted and withheld in accordance with subsec. (b), and added pars. (2) and (3).

Subsec. (d). Pub. L. 99–336, § 2(a)(2), substituted ''5 percent'' for ''4.5 percent'' in pars. (1) and (2).

Subsec. (h)(1)(B). Pub. L. 99–336, § 2(a)(4)(A), substituted ''10 percent of the average annual salary determined under subsection (*l*)(1) of this section'' for ''$1,548'' in cl. (i) and ''20 percent of such average annual salary'' for ''$4,644'' in cl. (ii).

Subsec. (h)(1)(C). Pub. L. 99–336, § 2(a)(4)(B), substituted ''20 percent of the average annual salary determined under subsection (*l*)(1) of this section'' for ''$1,860'' in cl. (ii) and ''40 percent of such average annual salary amount'' for ''$5,580'' in cl. (iii).

Subsec. (h)(2). Pub. L. 99–336, § 2(a)(4)(C), inserted ''before attaining age 55'' after ''or remarriage''.

Subsec. (k)(1). Pub. L. 99–336, § 2(e), struck out ''under subsection (b) of'' before ''section 371''.

Subsec. (*l*). Pub. L. 99–336, § 2(a)(5)(C), (d)(3)(A), substituted provisions which set annuity limit not to exceed 50 percent of, nor be less than 25 percent of, average annual salary, for provisions which set annuity limit not to exceed 40 percent of average annual salary, and inserted provision that annuity determined in accordance with provisions of subsec. (*l*) be reduced by the amount of any annuity payable to a former spouse under subsection (t).

Subsec. (*l*)(1). Pub. L. 99–336, § 2(a)(5)(A), substituted ''1.5 percent'' for ''1¼ percent''.

Subsec. (*l*)(2). Pub. L. 99–336, § 2(a)(5)(B), substituted ''of this subsection;'' for ''of this subsection:''.

Subsec. (n). Pub. L. 99–336, § 2(d)(3)(B), inserted ''except as provided in subsections (s) and (t),'' after ''in equity,'' in last sentence.

Subsec. (*o*)(2), (3). Pub. L. 99–336, § 2(d)(3)(C), inserted ''or (t)'' after ''subsection (h)''.

Subsecs. (s), (t). Pub. L. 99–336, § 2(d)(2), added subsecs. (s) and (t).

1978—Subsec. (a)(2)(A). Pub. L. 95–598 directed the amendment of subpar. (A) by adding cl. (iii) relating to bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Pub. L. 94–554 amended section generally so as to reform and update the existing judicial survivors' annuity program providing benefits for surviving spouses and children of all Federal Justices and judges

who elect to join the program by placing the program in an actuarially sound fiscal condition, providing more liberal eligibility standards and reasonable increases in existing annuity amounts made necessary by increases in the cost of living since existing annuities were commenced, and by establishing a method for providing future periodic increases in annuity amounts by keying them into increases in judicial salaries.

1972—Subsecs. (a) to (c), (e) to (g), (i) to (k), (n), (*o*). Pub. L. 92–397 substituted ''of justices and judges of the United States'' for ''of judges'' in section catchline and substituted ''justice or judge'' for ''judge'' and ''justice's or judge's'' for ''judge's'' wherever appearing.

1968—Subsec. (a). Pub. L. 90–466 struck out ''(or within six months after the enactment of this section)'' after ''takes office'' and authorized Federal judges to elect within six months of marriage to participate in the judicial survivors annuity system.

1967—Subsecs. (r), (s). Pub. L. 90–219 added subsecs. (r) and (s).

1958—Subsec. (q). Pub. L. 85–508 struck out provisions which related to the judge of the District Court for the Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 202 of title II of Pub. L. 102–572 provided that: ''This title [amending this section and enacting provisions set out below] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 29, 1992].''

Amendment by section 902(b) of 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 this title.

EFFECTIVE DATE OF 1990 AMENDMENT; TRANSITION PROVISIONS

Amendment by section 306(b) of Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, as amended, set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 322(g) of Pub. L. 101–650 provided that:

''(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act [probably should be ''section'', which amended this section] shall apply to all judicial officials assassinated on or after May 28, 1979.

''(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act [Dec. 1, 1990], if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (*o*) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

''(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions [had] been made for 18 months before the judicial official's death, plus interest as described in subparagraph (A).

''(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors' Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

''(3) DEFINITION.—For purposes of this subsection, the term—

''(A) 'assassinated' has the meaning given that term in section 376(a)(7) of title 28, United States Code, as added by this section; and

''(B) 'judicial official' has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 1017(c) of title X of Pub. L. 100–702 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to increases in annuities which are made under section 8340(b) of title 5, United States Code, on or after the date of enactment of this title [Nov. 19, 1988].''

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–396 not to affect the amount payable to a judge who retired in accordance with the provisions of section 373 of this title in effect on the day before Aug. 27, 1986, see section 21(c) of Pub. L. 99–396, set out as a note under section 373 of this title.

Section 2(f) of Pub. L. 99–336 provided that: ''This section [amending this section and enacting provisions set out below] shall take effect on October 1, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 8 of Pub. L. 94–554 provided: ''That this Act [amending this section and enacting provisions set out below] shall become effective on the first day of the third month following the month in which it is enacted [Jan. 1, 1977], or on October 1, 1976, whichever occurs last.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

RETROACTIVE EFFECT OF 1967 AMENDMENT

The provisions of section 611(a) of this title, the first paragraph of section 611(b) of this title, and subsec. (s) of this section, as added by Pub. L. 90–219, applicable to a Director or former Director of the Administrative Office of the United States Courts who was first appointed prior to Dec. 20, 1967 if at the time such Director or former Director left or leaves such office he had, or shall have, attained the age of sixty-five years and completed fifteen years of service as Director of the Administrative Office of the United States Courts and if, on or before the expiration of six months following Dec. 20, 1967, he makes the election referred to in section 611(a) of this title or subsec. (s) of this section, or

both, as the case may be, see section 205(b) of Pub. L. 90–219, set out as a Retroactive Effect note under section 611 of this title.

SAVINGS PROVISION

Section 6 of Pub. L. 94–554 provided: ''That the benefits conferred by this Act shall, on the date upon which this Act becomes effective [Jan. 1, 1977], immediately become available to any individual then receiving an annuity under section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended: *Provided*, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individuals having contributed to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) as amended, before the date upon which this Act becomes effective.''

CREDIT FOR CONTRIBUTIONS PRIOR TO 1992 AMENDMENT AT HIGHER RATE

Section 201(j) of title II of Pub. L. 102–572 provided that: ''Notwithstanding any other provision of law, the contribution under section 376(b)(1) or (2) of title 28, United States Code (as amended by this section), of any judicial official who is within the purview of such section 376 on the effective date of this title [Oct. 29, 1992] shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act [Oct. 29, 1992] to the credit of the Judicial Survivors' Annuities Fund or for 18 months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term 'years' shall mean full years and twelfth parts thereof.''

REDEPOSIT OF CONTRIBUTIONS PRIOR TO 1992 AMENDMENT

Section 201(k) of Pub. L. 102–572 provided that: ''Any judicial official as defined in section 376(a)(1) of title 28, United States Code, who makes an election under section 376(b) of title 28, United States Code, may make a redeposit, as required by section 7 of Public Law 94–554 [set out below] and section 2(c)(2) of Public Law 99–336 [set out below], to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

''(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last 18 months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

''(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment.''

AUDIT BY GENERAL ACCOUNTING OFFICE

Section 201(*l*) of Pub. L. 102–572 provided that: ''The Comptroller General shall—

''(1) conduct an audit of the judicial survivors['] annuities program under section 376 of title 28, United States Code, for the 3-year period beginning on the date of the enactment of this Act [Oct. 29, 1992]; and

''(2) report to the Congress, not later than 60 days after the end of that 3-year period, on the results of such audit, comparing such program to other survivors['] annuities programs within the Federal Government.''

INCREASE FOR EXISTING ANNUITANTS

Section 1017(b) of title X of Pub. L. 100–702 provided that: ''Each annuity payable from the Judicial Survivors' Annuities Fund under section 376 of title 28, United States Code, on the date of the enactment of this title [Nov. 19, 1988] shall be increased by 10 percent, effective on such date of enactment.''

SURVIVORS' ANNUITIES FOR INCUMBENTS

Section 3(b) of Pub. L. 100–659 provided that: ''In the case of a bankruptcy judge or magistrate [now United States magistrate judge] who elects an annuity under section 2(c) [28 U.S.C. 377 note], only service for which an annuity under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.''

COVERED BENEFICIARIES UNDER PUB. L. 99–336

Section 2(b) of Pub. L. 99–336 provided that: ''The benefits conferred by section 376 of title 28, United States Code, by reason of the amendments made by this section shall apply only to individuals who become eligible for annuities under such section on or after the effective date of this section [Oct. 1, 1986], except that—

''(1) such annuities shall be computed in accordance with the provisions of section 376 of title 28, United States Code, as amended by this section, notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

''(2) no additional liability shall be created with respect to deposits made in accordance with applicable law before the effective date of this section, or after such effective date pursuant to an agreement entered into before such effective date.''

REVOCATION OF ELECTION; ELIGIBILITY SUBSEQUENT TO REVOCATION

Section 2(c) of Pub. L. 99–336 provided that:

''(1) Within 180 days after the effective date of this section [Oct. 1, 1986], any judicial official who, before such effective date, made an election under section 376 of title 28, United States Code, to come within the purview of that section, shall be entitled to revoke that election. Such revocation shall constitute a complete withdrawal from the judicial survivors' annuities program provided for in such section 376. No such revocation shall be effective unless it is submitted in writing to the Director of the Administrative Office of the United States Courts, and until such writing is received by the Director. Upon receipt by the Director of such writing, any rights to survivorship benefits for the survivors of such judicial official shall terminate, and all amounts credited to the individual account of such judicial official under section 376(e), together with interest at 3 percent per annum, compounded on December 31 of each year to such date of revocation, shall be returned to that judicial official in a lump-sum payment.

''(2) Any judicial official who makes a revocation under paragraph (1) of this subsection and who thereafter becomes eligible to make an election under section 376(b) of title 28, United States Code, may make such election only if such judicial official redeposits, to the credit of the Judicial Survivors' Annuities Fund, the full amount of the lump-sum payment made to such judicial official under paragraph (1) of this subsection, together with interest at 3 percent per annum, compounded on December 31 of each year from the date of such revocation until the date upon which that amount is so redeposited.

''(3) Any judicial official who fails to revoke an election in accordance with paragraph (1) of this subsection shall be deemed to have irrevocably waived the right to make that revocation.''

PAYMENT OF RETIREMENT SALARY PURSUANT TO COURT DECREE OF DIVORCE, ETC.

Section 2(d)(4) of Pub. L. 99–336 provided that: ''Payments of retirement salary as defined in section

376(a)(2) of title 28, United States Code, which would otherwise be made to the judicial official upon whose service the retirement salary is based, shall be paid (in whole or in part) to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person. This paragraph shall apply only to payments made after the date of receipt by the Director of the Administrative Office of [the] United States Courts of written notice of such decree, order, or agreement, and such additional information and documentation as the Director may prescribe. As used in this paragraph, 'court' means any court of any State or the District of Columbia.''

ANNUITY PAYMENT TO SURVIVING SPOUSES OF JUDGES WHO DIED BEFORE OCTOBER 19, 1976

Pub. L. 96–504, § 3, Dec. 5, 1980, 94 Stat. 2741, provided that:

''(a) As of the first pay period beginning after the effective date of this Act [Dec. 5, 1980], a surviving spouse, other than a surviving spouse who has remarried, of any Justice of the United States (as defined by section 451 of title 28, United States Code), who died before October 19, 1976, shall be paid an annuity in accordance with the provisions of section 376 of title 28, United States Code, at a rate of $20,000 per year as if such Justice had elected to come within the provisions of, and having made the full deposit required by, section 376(d) of title 28, United States Code.

''(b) Notwithstanding the provisions of section 376(h) of title 28, United States Code, such annuity shall be payable as provided in section 376(m) of title 28, United States Code, until the date of the death of any such spouse.''

JUDICIAL SURVIVORS' ANNUITY FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 96–504, § 4, Dec. 5, 1980, 94 Stat. 2742, required the Secretary of the Treasury in consultation with the Director of the Administrative Office of the United States Courts to determine as of Dec. 5, 1980, and deposit as soon as possible thereafter, the amount necessary to offset any actuarial deficiency in the Judicial Survivors Annuities Fund.

JUDICIAL SURVIVORS' ANNUITIES FUND

Section 3 of Pub. L. 94–554 provided: ''That on the date upon which this Act becomes effective [Jan. 1, 1977] there shall be established on the books of the Treasury a fund which shall be known as 'The Judicial Survivors' Annuities Fund, and all money credited to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be transferred to the credit of the Judicial Survivors' Annuities Fund established by this section.''

COMPENSATION FOR ACTUARIAL DEFICIENCY IN THE ANNUITIES FUND

Section 4 of Pub. L. 94–554 provided: ''That on the date upon which this Act becomes effective [Jan. 1, 1977] the Secretary of the Treasury shall ascertain from the Director of the Administrative Office of the United States Courts the amount of the actuarial deficiency in the fund transferred by section 3 of this Act [see Judicial Survivors' Annuities Fund note above] on the date of that fund's transfer and, at the earliest time thereafter at which appropriated funds in that amount shall become available, the Secretary shall deposit such funds, in a single payment, into the Judicial Survivors' Annuities Fund established by section 3 of this Act. Such funds as are necessary to carry out this section are hereby authorized to be appropriated.''

INCREASES IN WIDOWS' ANNUITIES PAID UNDER SECTION 2 OF ACT AUGUST 3, 1956

Section 5 of Pub. L. 94–554 provided: ''That on the date upon which this Act becomes effective [Jan. 1, 1977] each annuity then being paid to a widow from the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be increased by an amount equal to one-fifth of 1 percent of the amount of such annuity multiplied by the number of months which have passed since the commencement of that annuity. For the purposes of this section, any fractional part of a month which numbers less than fifteen full days shall be excluded from the Computation of the number of months and any fractional part of a month which numbers fifteen full days or more shall be included in the computation as one full month. Such funds as are necessary to carry out this section are authorized to be appropriated and, upon appropriation, shall be deposited by the Secretary of the Treasury, in a single payment, to credit of the Judicial Survivors' Annuities Fund established by section 3 of this Act [see Judicial Survivors' Annuities Fund note above].''

REVOCATION OF ELECTION TO PARTICIPATE IN ANNUITIES PROGRAM

Section 7 of Pub. L. 94–554 provided: ''That, at any time within one hundred and eighty days after the date upon which this Act becomes effective [Jan. 1, 1977], any judicial official who has, prior to that date, already participated in the judicial survivors annuity program created by the Act of August 3, 1956 (70 Stat. 1021) [enacting this section] as amended, shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the judicial survivors' annuities program created by this Act: *Provided*, That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation.''

JUDGE TAKING OFFICE ON AUGUST 8, 1968

Section 1(b) of Pub. L. 90–466 provided that: ''For the purpose of the amendment made by subsection (a) [amending subsec. (a) of this section], a judge who is in office on the date of enactment of this Act [Aug. 8, 1968] shall be deemed to have taken office on that date.''

PRESERVATION OF RIGHTS OF JUDGES OF THE DISTRICT COURT FOR THE TERRITORY OF ALASKA

Section 12(n) of Pub. L. 85–508 provided in part that the amendment of subsec. (q) of this section by Pub. L. 85–508 shall not affect the rights under this section of any present or former judge of the District Court for the Territory of Alaska or his survivors.

APPROPRIATIONS

Section 5 of act Aug. 3, 1956, provided that: ''Funds necessary to carry out the provisions of this Act [enacting this section and provisions set out as notes below, and amending sections 375, 604, and 605 of this title] may be appropriated out of any money in the Treasury not otherwise appropriated.''

RESIGNED, REMOVED, AND RETIRED JUDGES

Section 6 of act Aug. 3, 1956, provided that: ''A judge who resigned prior to the date of enactment of this Act [Aug. 3, 1956] and who on that date is receiving salary under section 371(a) of title 28, United States Code, or who resigned, was removed or failed of reappointment prior to the date of enactment of this Act and who on that date is receiving salary under section 373 of title 28, United States Code, shall be considered a judge within the meaning of section 376 of title 28, United States Code, as added by section 2 of this Act, and as such shall be entitled within six months after the date of enactment of this Act to make the election authorized by and to receive the benefits of that section. A judge who retired from regular active service under section 260 of the Judicial Code of 1911 or the Act of August 5, 1939, chapter 433, and who is living on the date of enactment of this Act shall be deemed for the purposes of this Act to have retired from regular active service under section 371(b) or 372(a), as the case may be, of title 28, United States Code.''

PRIOR DEATH OF JUDGE

Section 7 of act Aug. 3, 1956, provided that: ''In the case of a living widow of a judge of the United States as defined in section 451 of title 28, United States Code, who died prior to the date of enactment of this Act [Aug. 3, 1956], an annuity shall be paid as provided in section 376 of title 28, United States Code, as added by section 2 of this Act, as if such judge had died on such date and had elected to bring himself within the purview of such section 376, but had not made the deposit provided for by subsection (c) of the said section: *Provided*, (a) That such widow has not remarried; and (b) that the amount of such annuity and the reduction therein because of such deposit not having been made shall be computed on the basis of the actual length of judicial and other allowable service of such judge: *And provided further*, That notwithstanding the provisions of subsection (g) of such section 376 such annuity shall be payable even though such judge had not rendered five years of civilian service prior to his death. In the case of a judge of the United States as defined in section 451 of title 28, United States Code, who dies within 6 months after the date of enactment of this Act after having rendered at least 5 years of civilian service computed as prescribed in subsection (*o*) of section 376 of title 28, United States Code, as added by section 2 of this Act, but without having made an election as provided in such section 376 to bring himself within the purview of that section, an annuity shall be paid to his widow and surviving dependent children as provided in such section 376 as if such judge had elected on the day of his death to bring himself within the purview of such section 376 but had not made the deposit provided for by subsection (c) of the said section. An annuity shall be payable under this section computed on the basis of the actual length of judicial and other allowable service of the judge and subject to the reduction required by subsection (c) of such section 376 even though no deposit has been made, as required by subsection (g) of such section 376, with respect to any of such service.''

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 375, 377 of this title; title 5 section 8334; title 38 section 7297.

§ 377. Retirement of bankruptcy judges and magistrates

(a) RETIREMENT BASED ON YEARS OF SERVICE.—A bankruptcy judge or magistrate to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate leaves office.

(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A bankruptcy judge or magistrate to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

(1) such judge or magistrate has served at least 1 full term as a bankruptcy judge or magistrate, and

(2) not earlier than 9 months before the date on which the term of office of such judge or magistrate expires, and not later than 6 months before such date, such judge or magistrate notified the appointing authority in writing that such judge or magistrate was willing to accept reappointment to the position in which such judge or magistrate was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate, such notice shall be given to the chief judge of the district court in which the magistrate is serving.

(c) SERVICE OF AT LEAST 8 YEARS.—A bankruptcy judge or magistrate to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such bankruptcy judge or magistrate was under the age of 65 at the time the judge or magistrate left office, except that such reduction shall not exceed 20 percent.

(d) RETIREMENT FOR DISABILITY.—A bankruptcy judge or magistrate to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate, and who retires or is re-

moved from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

(e) COST-OF-LIVING ADJUSTMENTS.—A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive[1]

(1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate or otherwise;

(2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;

(3) retired pay under section 7447 of the Internal Revenue Code of 1986; or

(4) retired pay under section 7296 of title 38.

(g) CALCULATION OF SERVICE.—(1) For purposes of calculating an annuity under this section—

(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

(B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(B) In the case of an individual who is a magistrate to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(h) COVERED POSITIONS AND SERVICE.—This section applies to—

(1) any bankruptcy judge appointed under—

(A) section 152 of this title;

(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2682); or

(C) section 404 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549); and

(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.

(i) PAYMENTS PURSUANT TO COURT ORDER.—(1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

(3) As used in this subsection, the term ''court'' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

(1) DEDUCTIONS.—Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate shall terminate upon the retirement of the bankruptcy

[1] So in original. Probably should be ''receive—''.

judge or magistrate or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each bankruptcy judge or magistrate who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate is entitled under this section (and section 376).

(k) DEPOSITS FOR PRIOR SERVICE.—Each bankruptcy judge or magistrate who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(*l*) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate from whom such amounts are received, for credit to the Judicial Officers' Retirement Fund.

(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

(1) PRACTICING LAW AFTER RETIREMENT.—

(A) FORFEITURE OF ANNUITY.—Subject to subparagraph (B), any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

(B) FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—(i) If a bankruptcy judge or magistrate makes an election to practice law after retirement under this section—

(I) subparagraph (A) shall not apply to such bankruptcy judge or magistrate beginning on the date such election takes effect, and

(II) the annuity payable under this section to such bankruptcy judge or magistrate, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate is entitled on the day before such effective date.

(ii) An election under clause (i)—

(I) may be made by a bankruptcy judge or magistrate eligible for retirement under this section, and

(II) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

(iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.

(2) RECALL NOT PERMITTED.—Any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall not be eligible for recall under section 155(b), 375, or 636(h) of this title.

(3) ACCEPTING OTHER EMPLOYMENT.—Any bankruptcy judge or magistrate who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a bankruptcy judge or magistrate under section 155(b), 375, or 636(h) of this title) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term ''compensation'' includes retired pay or salary received in retired status.

(n) LUMP-SUM PAYMENTS.—

(1) ELIGIBILITY.—(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate and—

(i) who leaves office and is not reappointed as a bankruptcy judge or magistrate for at least 31 consecutive days;

(ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;

(iii) is not serving as a bankruptcy judge or magistrate at the time of filing of the application; and

(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate.

(B) Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate and alive on the date title to the payment arises, in the order of precedence set forth in subsection (*o*) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the term ''judicial official'' as used in subsection (*o*) of section 376 shall be deemed to mean ''bankruptcy judge or magistrate''.

(C) If a bankruptcy judge or magistrate dies before receiving an annuity under this section, the lump-sum credit shall be paid.

(D) If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(E) If a bankruptcy judge or magistrate who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.

(F) Annuity accrued and unpaid on the termination, except by death, of the annuity of a

bankruptcy judge or magistrate shall be paid to that individual.

(G) Subject to paragraph (2), a bankruptcy judge or magistrate who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

(2) SPOUSES AND FORMER SPOUSES.—(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

(i) may be made only if any current spouse and any former spouse of the bankruptcy judge or magistrate are notified of the bankruptcy judge's or magistrate's application; and

(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court or court approved property settlement agreement incident to such decree, if—

(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and

(II) payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge's or magistrate's spouse or former spouse to any portion of an annuity under subsection (i).

(B) Notification of a spouse or former spouse under this paragraph shall be made in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(C) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).

(3) DEFINITION.—For purposes of this subsection, the term ''lump-sum credit'' means the unrefunded amount consisting of—

(A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate;

(B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate covering earlier service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (*o*);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service.

(*o*) JUDICIAL OFFICERS' RETIREMENT FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the ''Judicial Officers' Retirement Fund''. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

(2) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3) UNFUNDED LIABILITY.—(A) There are authorized to be appropriated to the Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term ''unfunded liability'' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers' Retirement Fund over the sum of—

(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrates; plus

(ii) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(Added Pub. L. 100–659, §2(a), Nov. 15, 1988, 102 Stat. 3910; amended Pub. L. 101–650, title III, §325(b)(3), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239.)

REFERENCES IN TEXT

Section 7447 of the Internal Revenue Code, referred to in subsec. (f)(3), is classified to section 7447 of Title 26, Internal Revenue Code.

Section 34 of the Bankruptcy Act, referred to in subsec. (h)(1)(B), was classified to section 62 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Section 404 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549), referred to in subsec. (h)(1)(C), was set out as a note preceding section 151 of this title prior to repeal by Pub. L. 98–353, title I, §114, July 10, 1984, 98 Stat. 343.

AMENDMENTS

1991—Subsec. (f)(4). Pub. L. 102–40 substituted ''section 7296 of title 38'' for ''section 4096 of title 38''.

1990—Subsec. (f). Pub. L. 101–650, §325(b)(3)(A), substituted pars. (1) to (4) for ''any annuity to which such judge or magistrate would otherwise have been entitled

under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5.''

Subsec. (h). Pub. L. 101–650, § 325(b)(3)(B), substituted ''on or after'' for ''in or after'' in concluding provisions.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE

Section 9 of Pub. L. 100–659 provided that:

''(a) IN GENERAL.—Subject to subsection (b), this Act [enacting this section and section 8440a [now 8440b] of Title 5, Government Organization and Employees, amending sections 155, 375, 376, 604, 631, and 636 of this title and sections 8334 and 8402 of Title 5, and enacting provisions set out as notes under this section and sections 1 and 376 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Nov. 15, 1988] and shall apply to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after the date of the enactment of this Act.

''(b) EXCEPTION FOR JUDGES AND MAGISTRATES RETIRING ON OR AFTER JULY 31, 1987.—A bankruptcy judge or magistrate who left office on or after July 31, 1987, and before the date of the enactment of this Act [Nov. 15, 1988] may elect to receive an annuity, or to participate in the Judicial Survivors' Annuity System, under the amendments made by this Act if such bankruptcy judge or magistrate, within 60 days after so leaving office, accepted office or employment with the United States Government or a State government or was eligible at the time he or she left office for an immediate annuity under title 5, United States Code. Any election under this subsection shall not be valid unless it is made within 6 months after the date of the enactment of this Act and under the same conditions as other persons who may make elections under the amendments made by this Act, except that any such person who makes an election under this subsection shall not receive a lump-sum credit under section 8342 or 8424 of title 5, United States Code, for prior service and shall not be required to make contributions for prior years of creditable service.''

RETIREMENT ANNUITIES FOR INCUMBENT BANKRUPTCY JUDGES AND MAGISTRATES

Section 2(c) of Pub. L. 100–659 provided that:

''(1) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 377 OF TITLE 28.—A bankruptcy judge or United States magistrate [now United States magistrate judge] in active service on the effective date of this Act [see Effective Date note above] shall, subject to paragraph (2), be entitled, in lieu of the annuity otherwise provided under the amendments made by this section [enacting this section] to—

''(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

''(B) an annuity calculated under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)) for which deductions and deposits are made under subsections (j) and (k) of such section 377, as applicable, without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

''(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (c) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 377 if the bankruptcy judge or magistrate is under age 65 at the time he or she leaves office, and

''(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate which is in effect on the day before the retirement becomes effective.

''(2) FILING OF NOTICE OF ELECTION.—A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

''(3) LUMP-SUM CREDIT UNDER TITLE 5.—A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

''(4) RECALL.—With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

''(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this subsection; and

''(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted by subsection (e) of section 375 of such title.

Section 377(m)(3) of title 28, United States Code, as added by subsection (a) of this section, shall not apply with respect to service as a reemployed annuitant described in subparagraph (B).''

REPORT TO CONGRESS ON FINANCIAL OPERATION OF RETIREMENT ANNUITY PROGRAM

Section 8 of Pub. L. 100–659 provided that: ''The Director of the Administrative Office of the United States Courts shall, not later than 5 years after the date of the enactment of this Act [Nov. 15, 1988], submit a report to the Congress on the financial operation of the retirement annuity program established under this Act and the amendments made by this Act [see Effective Date note above]. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 375, 376, 604, 636 of this title; title 5 sections 8334, 8402, 8440b.

CHAPTER 19—DISTRIBUTION OF REPORTS AND DIGESTS

Sec.
411. Supreme Court reports; printing, binding, and distribution.
412. Sale of Supreme Court reports.
413. Publications; distribution to courts.
414. Transmittal of books to successors.
[415. Repealed.]

AMENDMENTS

1982—Pub. L. 97–164, title I, § 113, Apr. 2, 1982, 96 Stat. 29, struck out item 415 ''Court of Claims decisions''.

1952—Act July 10, 1952, ch. 632, § 3, 66 Stat. 540, amended analysis to conform it to amendments of sections 411 to 413 of this title.

§411. Supreme Court reports; printing, binding, and distribution

(a) The decisions of the Supreme Court of the United States shall be printed, bound, and distributed in the preliminary prints and bound volumes of the United States Reports as soon as practicable after rendition, to be charged to the proper appropriation for the judiciary. The number and distribution of the copies shall be under the control of the Joint Committee on Printing.

(b) Reports printed prior to June 12, 1926, shall not be furnished the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

(c) The Public Printer, or other printer designated by the Supreme Court of the United States, upon request, shall furnish to the Superintendent of Documents the reports required to be distributed under the provisions of this section.

(June 25, 1948, ch. 646, 62 Stat. 904; May 24, 1949, ch. 139, §68, 63 Stat. 99; Oct. 31, 1951, ch. 655, §41, 65 Stat. 725; July 10, 1952, ch. 632, §4, 66 Stat. 540.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §334 (Mar. 3, 1911, ch. 231, §227, 36 Stat. 1154; Mar. 4, 1911, ch. 285, §1, 36 Stat. 1419; July 1, 1922, ch. 267, §3, 42 Stat. 816; June 12, 1926, ch. 568, 44 Stat. 736; Jan. 29, 1929, ch. 113, 45 Stat. 1143; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; July 3, 1930, ch. 863, §1, 46 Stat. 1016; Feb. 23, 1931, ch. 276, §30, 46 Stat. 1214; May 17, 1932, ch. 190, 47 Stat. 158; June 30, 1932, ch. 314, §501, 47 Stat. 415; May 10, 1934, ch. 277, §512, 48 Stat. 758; Ex. Ord. No. 6166, §§12, 14, June 10, 1933; June 7, 1934, ch. 426, 48 Stat. 926; May 27, 1936, ch. 463, §1, 49 Stat. 1380; June 20, 1936, ch. 630, §5, 49 Stat. 1549; June 25, 1936, ch. 804, 49 Stat. 1921).

Requirements for printing, binding, and issuing Supreme Court decisions ''within eight months after said decisions have been rendered by the Supreme Court'' and provision for distribution ''within said period'' were omitted. The phrase ''as soon as practicable after rendition'' was made the time for publishing such decisions as more flexible and practicable.

The words ''the United States Court for China'' were omitted inasmuch as that court is no longer functioning. The Secretary of State by an arrangement with China has relinquished the extraterritorial jurisdiction previously exercised by the United States in China. The 1944 Legislative and Judiciary Appropriation Act approved June 28, 1943, made no appropriation for the United States Court for China. Appropriations for other courts were made in title II of chapter 173 (57 Stat. 241). The last appropriation for the United States Court for China was in the act of July 2, 1942 (ch. 472, title IV, 56 Stat. 502).

The words ''to the Secretary of War for the use of the proper courts and officers of the Philippine Islands, seven copies'' were omitted in view of the independence of the Philippines, effective July 4, 1946.

The phrase ''justice or judge of the United States'' obviated repetition of names of courts. (See definitive section 451 of this title.)

Last sentence, fourth paragraph, of section 334 of title 28, U.S.C., 1940 ed., requiring that books should remain the property of the United States and should be preserved and turned over to successors in office, was omitted as covered by section 414 of this title.

A reference to the United States attorney for the District of Columbia was omitted as covered by ''each United States attorney.''

Provision authorizing distribution of volumes under this section to each place where a court of appeals is held was added for purposes of uniformity. See similar provision in section 413 of this title.

The revised section substitutes the Director of the Administrative Office of the United States Courts in lieu of the Attorney General insofar as distribution of volumes to the judiciary is concerned. This change is consistent with the duties of the former under section 601 et seq. of this title.

Provision of section 334 of title 28, U.S.C., 1940 ed., as to the custody, use and delivery to successors was omitted as obsolete on advice of the Administrative Office of the United States Courts.

The limitation of 10 copies to the library of the Supreme Court and 6 copies to the marshal of the Supreme Court for use of the justices, was omitted and the provision for distribution in such number ''specified by the Chief Justice of the United States'' was substituted therefor.

Authority for making an appropriation to carry into effect the provisions of this section is contained in section 336 of title 28, U.S.C., 1940 ed., Acts July 1, 1922, ch. 267, §5, 42 Stat. 818; May 29, 1926, ch. 425, §3, 44 Stat. 678 which is omitted, but not repealed, as unnecessary in this revision.

Changes were made in phraseology and arrangement.

1949 ACT

Subsection (a) of this section substitutes, in section 411(a) of title 28, U.S.C., ''Secretary of the Army'' and ''Department of the Army'' for ''Secretary of War'' and ''War Department,'' in view of such redesignation by act of July 26, 1947 (ch. 343, title II, §205(a), 61 Stat. 501). It substitutes, in section 411(a), ''Commissioner of Customs; Commandant of the Coast Guard'' for ''Chief of the Bureau of Marine Inspection and Navigation,'' in view of the abolishment of the Bureau of Marine Inspection and Navigation, and the transfer of its functions to, and the division thereof between, the Commissioner of Customs and the Commandant of the Coast Guard, by 1946 Reorganization Plan No. 3, §§101–104, effective July 16, 1946 (11 F.R. 7875, 60 Stat. 1097).

It substitutes, in such section 411(a), ''Director of the Bureau of Land Management'' for ''Commissioner of the General Land Office,'' in view of section 403 of such plan which abolished the General Land Office and created the Bureau of Land Management, headed by a Director. It inserts as new, in such section 411(a), references to the Secretary of Defense, Secretary of the Air Force, and Judge Advocate General of the Air Force, in view of the creation of the National Military Establishment, headed by the Secretary of Defense, and the establishment of the Department of the Air Force in 1947.

Subsection (b) of this section redesignates, in section 411(b) of title 28, U.S.C., the Secretary of War as ''Secretary of the Army,'' for the reasons stated above, and corrects a typographical error in the word ''court-martial''.

AMENDMENTS

1952—Act July 10, 1952, amended section generally to provide for flexibility in the printing and distribution of the reports under congressional control.

1951—Subsec. (c). Act Oct. 31, 1951, in second par., substituted ''Secretary of the Army'' for ''Secretary of War''.

1949—Subsec. (a). Act May 24, 1949, §68(a), inserted ''Secretary of Defense'', ''Secretary of the Air Force'', and ''Judge Advocate General of the Air Force'' where appearing, and substituted ''Secretary of the Army'' for ''Secretary of War'', ''Department of the Army'' for ''War Department'', ''Director of the Bureau of Land Management'' for ''Commissioner of the General Land Office'', ''Commissioner of Customs, Commandant of the Coast Guard'' for ''Chief of the Bureau of Marine Inspection'', and ''Chief of Forest Service, Department of Agriculture'' for ''Chief Forester, National Park Service, Department of the Interior''.

Subsec. (b). Act May 24, 1949, §68(b), substituted ''Secretary of the Army'' for ''Secretary of War'' and ''Court-martial'' for ''courtmartial''.

CROSS REFERENCES

Printing and binding for Supreme Court, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676 of this title.

§ 412. Sale of Supreme Court reports

The Public Printer, or other printer designated by the Supreme Court of the United States shall print such additional bound volumes and preliminary prints of such reports as may be required for sale to the public. Such additional copies shall be sold by the Superintendent of Documents, as provided by law.

(June 25, 1948, ch. 646, 62 Stat. 906; July 10, 1952, ch. 632, § 5, 66 Stat. 541.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 335 (Mar. 3, 1911, ch. 231, § 228, 36 Stat. 1155; July 1, 1922, ch. 267, § 4, 42 Stat. 818; May 29, 1926, ch. 425, § 2, 44 Stat. 677).

Authority for making an appropriation to carry into effect the provisions of this section is contained in section 336 of title 28, U.S.C., 1940 ed., acts July 1, 1922, ch. 267, § 5, 42 Stat. 818; May 29, 1926, ch. 425, § 3, 44 Stat. 678, which is omitted, but not repealed, as unnecessary in this revision.

Reference to digests was omitted to conform to administrative practice. (See section 604(a)(9) of this title.)

Changes were made in phraseology.

AMENDMENTS

1952—Act July 10, 1952, permitted Superintendent of Documents to sell reports under same terms as other Government publications.

CROSS REFERENCES

Prices for bound volumes of its decisions, printed by a private printer, to be fixed by Supreme Court or Chief Justice, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676 of this title.

§ 413. Publications; distribution to courts

Distribution of publications to Federal courts in accordance with the provisions of this chapter shall not be made to any place where such court is held in a building not owned or controlled by the United States unless such publications are committed to the custody of an officer of the United States at such building.

The Attorney General and the Director in the procurement of law books, books of reference or periodicals may exchange or sell similar items and apply the allowance or proceeds to payment in whole or in part of the cost of the items procured.

(June 25, 1948, ch. 646, 62 Stat. 906; May 24, 1949, ch. 139, § 69, 63 Stat. 100; July 10, 1952, ch. 632, § 6, 66 Stat. 541.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 1131 of title 26, U.S.C., 1940 ed., Internal Revenue Code, title 28, U.S.C., 1940 ed., §§ 337, 530 (Mar. 3, 1911, ch. 231, § 229, 36 Stat. 1155; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; May 10, 1934, ch. 277, § 512, 48 Stat. 758; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921; Feb. 10, 1939, ch. 2, § 1131, 53 Stat. 163; May 14, 1940, ch. 189, title IV, 54 Stat. 210; July 2, 1942, ch. 472, title IV, 56 Stat. 504; June 28, 1943, ch. 173, title II, § 201, 57 Stat. 243; June 26, 1944, ch. 277, § 203, 58 Stat. 358; May 21, 1945, ch. 129, title IV, 59 Stat. 200; July 5, 1946, ch. 541, title IV, 60 Stat. 480.)

Section consolidates provisions of section 1131 of title 26, U.S.C., 1940 ed., relating to expenditures for ''lawbooks'' for the Tax Court of the United States, with sections 337 and 530 of title 28, U.S.C., 1940 ed., relating to purchase and distribution of reporter and digest volumes.

Other provisions of section 1131 of title 26, U.S.C., 1940 ed., are incorporated in section 604 of this title.

Provisions of section 530 of title 28, U.S.C., 1940 ed., limiting the price to be paid for volumes of the Federal Reporter and other similar reports were omitted after consultation with the Administrative Office of United States Courts as more properly covered by current appropriation acts. Similar provisions relating to the Federal Digest and the United States Code Annotated were omitted as covered in current appropriation acts. (See Act June 29, 1944, ch. 286, title II, § 212, 58 Stat. 361, 387.)

Provisions of said section 337 of title 28, U.S.C., 1940 ed., that books are to remain United States property, so marked, and transmitted to successors in office of persons receiving them, were omitted as covered by section 414 of this title.

Similar provisions in said section 530 of title 28, U.S.C., 1940 ed., are incorporated in section 414 of this title.

Provision in section 337 of title 28, U.S.C., 1940 ed., for distribution to the Court of Appeals and District Court for the District of Columbia was omitted as covered by the phrase ''Each place where a circuit court of appeals or district court is regularly held.''

The revised section is extended to include the Customs Court as well as the Court of Claims and Court of Customs and Patent Appeals. All judges receive the Supreme Court reports and digests under section 411 of this title. Presumably the Congress did not intend to deny distribution of the Federal Reporter and digests to the Customs Court while providing for all other courts under said section 337.

The revised section provides for distribution of volumes to the judiciary by the Director of the Administrative Office of the United States Courts. (See reviser's note under section 411 of this title.)

Similar publications are purchased by the Marshal of Supreme Court for the use of the Court. (See section 672(5) of this title.)

The provisions of section 337 of title 28, U.S.C., 1940 ed., requiring annual estimates and disbursement of moneys for the volumes under this section were omitted. Such provisions are covered by appropriate sections of title 31, U.S.C., 1940 ed., Money and Finance.

Provision of section 337 of title 28, U.S.C., 1940 ed., as to custody, use, and delivery to successors was omitted as obsolete on advice of the Administrative Office of the United States Courts.

Numerous changes were made in phraseology and superfluous language was omitted.

SENATE REVISION AMENDMENT

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 306, which was classified to Title 28, U.S.C., 1946 ed., § 530, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

Although section 1131 of Title 26, U.S.C. (Internal Revenue Code) is one of the sources of this section, it was struck out of the schedule of repeals by Senate amendment and accordingly remains in Title 26. See 80th Congress Senate Report No. 1559.

1949 ACT

Subsection (a) of this section eliminates from section 413 of title 28, U.S.C., the provision for furnishing books

to the Tax Court, which procures books under section 1131 of the Internal Revenue Code (26 U.S.C., 1946 ed., § 1131).

Subsection (b) of this section incorporates in section 413 of title 28, U.S.C., with changes in phraseology, the provisions of act of June 3, 1948 (ch. 400, title II, § 204, 62 Stat. 321), which was not incorporated in title 18 when the revision was enacted. As amended, section 413 is expanded to give like authority with respect to procurement of books to the Director of the Administrative Office of the United States Courts, as well as to the Attorney General, to prevent an obvious inconsistency.

AMENDMENTS

1952—Act July 10, 1952, amended section generally, and permitted delivery of publication to buildings controlled by the Government as well as to buildings owned by it.

1949—Act May 24, 1949, struck out reference to the Tax Court in former provisions enumerating judges and courts to receive certain publications, and inserted provisions set out as second par.

§ 414. Transmittal of books to successors

All government publications and law books furnished to justices, judges, clerks of courts, and United States attorneys of the United States and its territories and possessions, and other officers of the United States or an agency thereof shall be transmitted to their successors in office. All permanent or bound books and publications furnished under this chapter except those books furnished to the Library of Congress for international exchange shall remain the property of the United States and shall be marked plainly, ''The Property of the United States''.

(June 25, 1948, ch. 646, 62 Stat. 906; Pub. L. 87–845, § 7, Oct. 18, 1962, 76A Stat. 699.)

HISTORICAL AND REVISION NOTES

Based on section 90 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, section 530 of title 28, U.S.C., 1940 ed., and section 92 of title 44, U.S.C., 1940 ed., Public Printing and Documents (Aug. 7, 1882, ch. 433, § 1, 22 Stat. 336; Jan. 12, 1895, ch. 23, § 74, 28 Stat. 620; June 20, 1936, ch. 630, §§ 11, 12, 49 Stat. 1552, 1553; May 14, 1940, ch. 189, title IV, 54 Stat. 210; June 28, 1941, ch. 258, title IV, 55 Stat. 301; July 2, 1942, ch. 472, title IV, 56 Stat. 504; June 28, 1943, ch. 173, title II, § 201, 57 Stat. 243; June 26, 1944, ch. 277, § 203, 58 Stat. 358; May 21, 1945, ch. 129, title IV, 59 Stat. 200; July 5, 1946, ch. 541, title IV, 60 Stat. 480).

Section consolidates section 90 of title 5, U.S.C., 1940 ed., providing that ''statutes'' shall be delivered to successors of United States attorneys and clerks and provisions of section 530 of title 28, U.S.C., 1940 ed., requiring that all lawbooks for judges and others shall be marked as property of the United States and shall be transmitted to their successors, with section 92 of title 44, U.S.C., 1940 ed., relating to transmittal of ''Government publications.''

Words ''All Government publications and lawbooks'' and ''furnished under this chapter'' were used to cover ''all statutes'' and ''The Federal Reporter and continuations thereto.''

Words ''justices and judges of the United States'' were substituted for ''United States judges'' in conformity with uniform use of the phrase to describe all members of the Federal judiciary. Similar provisions in sections 334 and 377 of title 28, U.S.C., 1940 ed., were therefore omitted as covered by this revised section.

Other provisions of said section 530 of title 28, U.S.C., 1940 ed., were omitted. (See reviser's note under section 413 of this title.)

The words ''permanent or bound'' were inserted in the last sentence of the revised section to obviate the wasteful practice under existing law of marking temporary pamphlets.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 306, which was classified to Title 28, U.S.C., 1946 ed., § 530, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1962—Pub. L. 87–845 substituted ''furnished to justices, judges, clerks of courts, and United States attorneys of the United States and its territories and possessions, and other officers of the United States or an agency thereof'' for ''furnished to justices and judges of the United States and of the Territorial Courts, United States attorneys, clerks of courts, and other officers of the United States''.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–845 effective Jan. 2, 1963, see section 25 of Pub. L. 87–845, set out as a note set out under section 14 of Title 18, Crimes and Criminal Procedure.

[§ 415. Repealed. Pub. L. 97–164, title I, § 113, Apr. 2, 1982, 96 Stat. 29]

Section, acts June 25, 1948, ch. 646, 62 Stat. 906; May 24, 1949, ch. 139, § 70, 63 Stat. 100, provided for distribution of copies of decisions of Court of Claims. See section 174(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

Sec.
451. Definitions.
452. Courts always open; power unrestricted by expiration of sessions.[1]
453. Oath of justices and judges.[1]
454. Practice of law by justices and judges.
455. Disqualification of justice, judge, or magistrate.
456. Traveling expenses of justices and judges; official duty stations.
457. Records; obsolete papers.
458. Relative of justice or judge ineligible to appointment.
459. Administration of oaths and acknowledgments.
460. Application to other courts.
461. Adjustments in certain salaries.
462. Court accommodations.
463. Expenses of litigation.

AMENDMENTS

1982—Pub. L. 97–164, title I, §§ 115(a)(2), (b)(2), (c)(2), 116(b), Apr. 2, 1982, 96 Stat. 31, 32, inserted ''; official duty stations'' in item 456, substituted ''other courts'' for ''Canal Zone, Guam and Virgin Islands'' in item 460, and added items 462 and 463.

1978—Pub. L. 95–598, title II, §§ 214(c), 217(b), Nov. 6, 1978, 92 Stat. 2661, struck out ''Alaska,'' after ''Application to'' in item 460 and struck out reference to referees in bankruptcy in item 455.

[1] So in original. Does not conform to section catchline.

1975—Pub. L. 94–82, title II, § 205(a)(2), Aug. 9, 1975, 89 Stat. 422, added item 461.

1974—Pub. L. 93–512, § 2, Dec. 5, 1974, 88 Stat. 1610, substituted ''Disqualification of justice, judge, magistrate, or referee in bankruptcy'' for ''Interest of justice or judge'' in item 455.

1963—Pub. L. 88–139, § 3(b), Oct. 16, 1963, 77 Stat. 248, substituted ''power unrestricted by expiration of sessions'' for ''powers unrestricted by terms'' in item 452.

1951—Act Oct. 31, 1951, ch. 655, § 42, 65 Stat. 725, inserted '', Guam'' in item 460.

§ 451. Definitions

As used in this title:

The term ''court of the United States'' includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms ''district court'' and ''district court of the United States'' mean the courts constituted by chapter 5 of this title.

The term ''judge of the United States'' includes judges of the courts of appeals, district courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

The term ''justice of the United States'' includes the Chief Justice of the United States and the associate justices of the Supreme Court.

The terms ''district'' and ''judicial district'' means the districts enumerated in Chapter 5 of this title.

The term ''department'' means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term ''agency'' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 86–3, § 10, Mar. 18, 1959, 73 Stat. 9; Pub. L. 89–571, § 3, Sept. 12, 1966, 80 Stat. 764; Pub. L. 95–598, title II, § 213, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 96–417, title V, § 501(10), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97–164, title I, § 114, Apr. 2, 1982, 96 Stat. 29.)

Historical and Revisions Notes

This section was inserted to make possible a greater simplification in consolidation of the provisions incorporated in this title.

The definitions of agency and department conform with such definitions in section 6 of revised title 18, U.S.C. (H.R. 3190, 80th Cong.).

Senate Revision Amendment

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

References in Text

Section 1 of Title 5, referred to in text, is section 1 of former Title 5, Executive Departments and Government Officers and Employees, the provisions of which are covered by section 101 of Title 5, Government Organization and Employees.

Amendments

1982—Pub. L. 97–164 struck out references to the Court of Claims and to the Court of Customs and Patent Appeals in the definitions of ''court of the United States'' and ''judge of the United States''.

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Pub. L. 95–598 directed the amendment of section by inserting references to bankruptcy courts and bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1966—Pub. L. 89–571 removed the United States District Court for the District of Puerto Rico from the definition of ''court of the United States''.

1959—Pub. L. 86–3 substituted ''including the United States District for the District of Puerto Rico'' for ''including the district courts of the United States for the districts of Hawaii and Puerto Rico'' in provisions defining ''court of the United States''.

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 this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

Effective Date of 1959 Amendment

Section 10 of Pub. L. 86–3 provided that the amendment made by section 10 of Pub. L. 86–3 shall be effective on admission of the State of Hawaii into the Union. Admission of Hawaii into the Union was accomplished Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding 491 of Title 48, Territories and Insular Possessions.

''Circuit Court of Appeals;'' ''Senior Circuit Judge,'' Etc. Defined

Section 32 of act June 25, 1948, as amended by act May 24, 1949, ch. 139, § 127, 63 Stat. 107, provided that:

''(a) All laws of the United States in force on September 1, 1948, in which reference is made to a 'circuit court of appeals'; 'senior circuit judge'; 'senior district judge'; 'presiding judge'; 'chief justice', except when reference to the Chief Justice of the United States is intended; or 'justice', except when used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice, are hereby amended by substituting 'court of appeals' for 'circuit court of appeals'; 'chief judge of the circuit' for 'senior circuit judge'; 'chief judge of the district court' for 'senior district judge'; 'chief judge' for 'presiding judge'; 'chief judge' for 'chief justice', except when reference to the Chief Justice of the United States is intended; and 'judge' for 'justice', except when the latter term is used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice.

''(b) All laws of the United States in force on September 1, 1948, in which reference is made to the Supreme Court of the District of Columbia or to the District Court of the United States for the District of Columbia are amended by substituting 'United States District Court for the District of Columbia' for such designations.

''(c) All laws of the United States in force on September 1, 1948, in which reference is made to the 'Conference of Senior Circuit Judges,' or to the 'Judicial Conference of Senior Circuit Judges' are amended by

substituting 'Judicial Conference of the United States' for such designations.

''(d) This section shall not be construed to amend historical references to courts or judicial offices which have no present or future application to such courts or offices.''

JUDGES OF THE UNITED STATES

Section 2(a) of act June 25, 1948, as amended by act Sept. 3, 1954, ch. 1263, § 51(a), 68 Stat. 1245, provided that: ''The Chief Justices of the United States Court of Appeals for the District of Columbia, the District Court of the United States for the District of Columbia, and the Court of Claims [now United States Court of Federal Claims], and the presiding judge of the Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], in office on the effective date of this Act shall be the chief judges of their respective courts. The Chief Justice of the United States Court of Appeals for the District of Columbia and the Associate Justices thereof, the Chief Justice of the District Court of the United States for the District of Columbia (formerly named the Supreme Court of the District of Columbia) and the Associate Justices thereof, the Chief Justice of the Court of Claims [now United States Court of Federal Claims], and the presiding judge of the Court of Customs and Patent Appeals [now United States Court of Appeals for the Federal Circuit], in office on the effective date of this Act, shall be judges of the United States within the meaning of Section 451 of Title 28, Judiciary and Judicial Procedure, of the United States Code, set out in Section 1 of this Act. The Chief Justice of the United States Court of Appeals for the District of Columbia and the Associate Justices thereof, in office on the effective date of this Act, shall be circuit judges of the District of Columbia Circuit and vested with all the rights, powers, and duties thereof, and the said Chief Justice of the United States Court of Appeals for the District of Columbia shall be Chief Judge of said Circuit. The Chief Justice of the District Court of the United States for the District of Columbia (formerly named the Supreme Court of the District of Columbia) and the Associate Justices thereof, in office on the effective date of this Act, shall be district judges for the District of Columbia and vested with all the rights, powers, and duties thereof.''

Section 51(b) of act Sept. 3, 1954, provided that this amendment should take effect as of Sept. 1, 1948.

CROSS REFERENCES

District Court of Guam as having jurisdiction, in all courses arising under the laws of the United States, of a district court of United States as defined in this section, see section 1424 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 180, 371, 373, 376, 581, 1821 of this title; title 2 section 130b; title 5 sections 5532, 5537, 8331, 8344, 8440a, 8468; title 10 section 1408; title 18 sections 351, 4107, 4108; title 46 section 31301.

§ 452. Courts always open; powers unrestricted by expiration of sessions

All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a session of a court in no way affects the power of the court to do any act or take any proceeding.

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 88–139, § 2, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 13 and 302 (Mar. 3, 1911, ch. 231, §§ 9, 189, 36 Stat. 1088, 1143; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475).

Sections 13 and 302 of title 28, U.S.C., 1940 ed., related only to district courts and the Court of Customs and Patent Appeals, and this section has been written to cover all other courts of the United States.

Other provisions of said section 302 of title 28, U.S.C., 1940 ed., are incorporated in sections 214, 456, and 604 of this title.

The phrase ''always open'' means ''never closed'' and signifies the time when a court can exercise its functions. With respect to matters enumerated by statute or rule as to which the court is ''always open,'' there is no time when the court is without power to act. (Ex parte Branch, 63 Ala. 383, 387.)

Section 13 of title 28, U.S.C., 1940 ed., provided that ''The district courts, as courts of admiralty and as courts of equity, shall be deemed always open * * *'' for enumerated purposes, and that the judge ''at chambers or in the clerk's office, and in vacation as well as in term,'' may make orders and issue process. The revised section omits all reference to the nature of the action or proceeding and enumeration of the acts which may be performed by the court. This is in accord with Rules 45(c) and 56 of the new Federal Rules of Criminal Procedure which contain similar provisions with respect to criminal procedure both in the courts of appeals and in the district courts.

Rules 6(c) and 77(a) of the Federal Rules of Civil Procedure contain provisions similar to the second and first paragraphs, respectively, of this section with respect to civil actions in district courts.

AMENDMENTS

1963—Pub. L. 88–139 substituted ''expiration of sessions'' for ''terms'' in section catchline, and ''session'' for ''term'' in text.

FEDERAL RULES OF CIVIL PROCEDURE

District courts always open, see rule 77, Appendix to this title.

One form of action, see rule 2.

Time unaffected by expiration of term, see rule 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460 of this title.

§ 453. Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: ''I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.''

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 101–650, title IV, § 404, Dec. 1, 1990, 104 Stat. 5124.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 241, 372, and District of Columbia Code, 1940 ed., §§ 11–203, 11–303 (R.S.D.C., § 752, 18 Stat. pt. II, 90; Feb. 9, 1893, ch. 74, § 3, 27 Stat. 435; Mar. 3, 1901, ch. 854, § 223, 31 Stat. 1224; Mar. 3, 1911, ch. 231, §§ 136, 137, 257, 36 Stat. 1135, 1161; Feb. 25, 1919, ch. 29, § 4, 40 Stat. 1157).

This section consolidates sections 11–203 and 11–303 of District of Columbia Code, 1940 ed., and section 372 of title 28, U.S.C., 1940 ed., with that portion of section 241 of said title 28 providing that judges of the Court of Claims shall take an oath of office. The remainder of said section 241 comprises sections 171 and 173 of this title.

The phrase ''justice or judge of the United States'' was substituted for ''justices of the Supreme Court, the circuit judges, and the district judges'' appearing in

said section 372, in order to extend the provisions of this section to judges of the Court of Claims, Customs Court, and Court of Customs and Patent Appeals and to all judges of any court which may be created by enactment of Congress. See definition in section 451 of this title.

The Attorney General has ruled that the expression ''any judge of any court of the United States'' applied to the Chief Justice and all judges of the Court of Claims. (21 Op. Atty. Gen. 449.)

AMENDMENTS

1990—Pub. L. 101–650 substituted ''under the Constitution'' for ''according to the best of my abilities and understanding, agreeably to the Constitution''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101–650, set out as a note under section 332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 460, 631, 656 of this title.

§ 454. Practice of law by justices and judges

Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

(June 25, 1948, ch. 646, 62 Stat. 908.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 373 (Mar. 3, 1911, ch. 231, § 258, 36 Stat. 1161).

Changes in phraseology were made.

RULES OF THE SUPREME COURT

Clerks to justices not to practice, see rule 7, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460 of this title.

§ 455. Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) ''proceeding'' includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) ''fiduciary'' includes such relationships as executor, administrator, trustee, and guardian;

(4) ''financial interest'' means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a ''financial interest'' in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a ''financial interest'' in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a ''financial interest'' in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a ''financial interest'' in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her

spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 93–512, § 1, Dec. 5, 1974, 88 Stat. 1609; Pub. L. 95–598, title II, § 214(a), (b), Nov. 6, 1978, 92 Stat. 2661; Pub. L. 100–702, title X, § 1007, Nov. 19, 1988, 102 Stat. 4667.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 24 (Mar. 3, 1911, ch. 231, § 20, 36 Stat. 1090).

Section 24 of title 28, U.S.C., 1940 ed., applied only to district judges. The revised section is made applicable to all justices and judges of the United States.

The phrase ''in which he has a substantial interest'' was substituted for ''concerned in interest in any suit.''

The provision of section 24 of title 28, U.S.C., 1940 ed., as to giving notice of disqualification to the ''senior circuit judge,'' and words ''and thereupon such proceedings shall be had as are provided in sections 17 and 18 of this title,'' were omitted as unnecessary and covered by section 291 et seq. of this title relating to designation and assignment of judges. Such provision is not made by statute in case of disqualification or incapacity, for other cause. See sections 140, 143, and 144 of this title. If a judge or clerk of court is remiss in failing to notify the chief judge of the district or circuit, the judicial council of the circuit has ample power under section 332 of this title to apply a remedy.

Relationship to a party's attorney is included in the revised section as a basis of disqualification in conformity with the views of judges cognizant of the grave possibility of undesirable consequences resulting from a less inclusive rule.

Changes were made in phraseology.

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–702 added subsec. (f).

1978—Pub. L. 95–598 struck out references to referees in bankruptcy in section catchline and in subsecs. (a) and (e).

1974—Pub. L. 93–512 substituted ''Disqualification of justice, judge, magistrate, or referee in bankruptcy'' for ''Interest of justice or judge'' in section catchline, reorganized structure of provisions, and expanded applicability to include magistrates and referees in bankruptcy and grounds for which disqualification may be based, and inserted provisions relating to waiver of disqualification.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. For procedures relating to Bankruptcy matters during transition period see note preceding section 151 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Pub. L. 93–512 provided that: ''This Act [amending this section] shall not apply to the trial of any proceeding commenced prior to the date of this Act [Dec. 5, 1974], nor to appellate review of any proceeding which was fully submitted to the reviewing court prior to the date of this Act.''

CROSS REFERENCES

Disqualification of trial judge to hear appeal, see section 47 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 460, 656 of this title; title 38 section 7264.

§ 456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the District of Columbia shall be the District of Columbia.

(c) The official duty station of the judges of the United States Court of International Trade shall be New York City.

(d) The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit or district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs

a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(f) The official duty station of a retired judge shall be established in accordance with section 374 of this title.

(g) Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

(June 25, 1948, ch. 646, 62 Stat. 908; Aug. 8, 1953, ch. 376, 67 Stat. 488; Pub. L. 86–138, Aug. 7, 1959, 73 Stat. 285; Pub. L. 95–598, title II, § 215, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 96–417, title V, § 501(11), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97–164, title I, § 115(a)(1), Apr. 2, 1982, 96 Stat. 30; Pub. L. 99–234, title I, § 107(d), Jan. 2, 1986, 99 Stat. 1759.)

HISTORICAL AND REVISION NOTES

Based on section 1102(d) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and title 28, U.S.C., 1940 ed., §§ 218, 270, 296, 296a, 302, 374, 449 (Mar. 3, 1911, ch. 231, §§ 189, 259, 36 Stat. 1143, 1161, and § 187(a) as added Oct. 10, 1940, ch. 843, § 1, 54 Stat. 1101; and section 307 as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1224; Sept. 14, 1922, ch. 306, § 2, 42 Stat. 838; Feb. 24, 1925, ch. 301, § 2, 43 Stat. 965; May 29, 1928, ch. 852, § 711, 45 Stat. 882; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; June 23, 1930, ch. 573, § 1, 46 Stat. 799; Feb. 10, 1939, ch. 2, § 1102(d), 53 Stat. 159; Apr. 22, 1940, ch. 126, 54 Stat. 149; May 3, 1945, ch. 106, title I, § 1, 59 Stat. 127; May 21, 1945, ch. 129, title IV, 59 Stat. 197; July 5, 1946, ch. 541, title IV, 60 Stat. 477).

Section 270 of title 28, U.S.C., 1940 ed., related to the Chief Justice and each judge of the Court of Claims and provided for payment of expenses on order of court.

Sections 296, 296a of title 28, U.S.C., 1940 ed., provided for payment of such expenses of the Customs Court judges.

Section 302 of title 28, U.S.C., 1940 ed., provided for the payment of expenses of a judge of the Court of Customs and Patent Appeals upon his certificate. It contained no $10 limitation upon his daily subsistence expense and in addition authorized the necessary expenses for travel and attendance of one stenographic clerk who accompanied him. This latter provision is the basis for section 834 of this title. Other provisions of said section 302 of title 28, U.S.C., 1940 ed., are incorporated in sections 214 and 452 of this title.

Section 374 of title 28, U.S.C., 1940 ed., related to circuit justices, circuit judges and district judges, including district judges in Alaska, Hawaii, and Puerto Rico. References to these territories is omitted as unnecessary. Provision for Alaska judges is covered by section 460 of this title, and section 114 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, as amended by a separate section in the bill to enact this revision. Hawaii and Puerto Rico are included as districts by sections 91 and 119 of this title, and judges thereof are ''judges of the United States'' as defined in section 451 of this title.

The inconsistent provision of said section 270 of title 28, U.S.C., 1940 ed., with reference to payment on order of court was omitted to permit payment to every judge on his certificate.

The $10 per day subsistence limitation applicable to all other judges was extended to the judges of the Court of Customs and Patent Appeals.

The provision of said section 270 of title 28, U.S.C., 1940 ed., relating to traveling expenses of commissioners and stenographers is incorporated in sections 792 and 794 of this title.

The provisions of said section 296 of title 28, U.S.C., 940 ed., relating to organization of the Customs Court are the basis of sections 251, 252, 253, and 254 of this title. Other provisions of said section 296 are incorporated in sections 1581, 2071, 2639, and 2640 of this title, and the retirement provisions of that section are covered by sections 371 and 372 of this title.

The provision of section 296 of title 28, U.S.C., 1940 ed., expenses of retired judges was made applicable to all judges.

The provision of section 218 of title 28, U.S.C., 1940 ed., for payment of travel expenses of judges attending the Judicial Conference of the United States was omitted as covered by the first paragraph of the revised section.

The provision in section 218 of title 28, U.S.C., 1940 ed., requiring the marshal of the Supreme Court to pay the expenses of attending the Judicial Conference of the United States is omitted as covered in part by section 550 [see 571] of this title under which United States marshals pay the travel allowances of circuit, district, and certain other judges. The expenses of the Chief Justice of the United States in attending such Conference were required also under said section 218 to be paid by the Supreme Court marshal. Such requirement is also omitted upon advice of the Director of the Administrative Office of the United States Courts that the matter of payment is one of administrative convenience. As to manner of payment of salaries to active and retired Justices of the Supreme Court, see reviser's note under section 550 [see 571] of this title.

Words ''justice or judge of the United States'' were used to describe members of all courts. See definitive section 451 of this title.

The remaining provisions of sections 218 of title 28, U.S.C., 1940 ed., relating to the Judicial Conference of the United States and 449 of title 28, U.S.C., 1940 ed., relating to judicial conferences of circuits, are incorporated in sections 331 and 333, respectively.

Said section 1102(d) of title 26, U.S.C., 1940 ed., related to traveling and subsistence expenses of judges of The Tax Court of the United States, successor to the Board of Tax Appeals.

Numerous changes were made in phraseology.

SENATE REVISION AMENDMENTS

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment, therefore section 1102(d) of title 26, U.S.C., was not one of the sources of this section as finally enacted.

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 303, which was classified to title 28, U.S.C., 1946 ed., § 296a, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–234 substituted ''payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5'' for ''a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5''.

1982—Pub. L. 97–164 inserted ''; official duty stations'' in section catchline.

Subsec. (a). Pub. L. 97–164 designated existing undesignated first par. as subsec. (a), substituted ''The Director of the Administrative Office of the United States

Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) a per diem allowance for travel at the rate which the Director establishes not to exceed the maximum per diem allowance fixed by section 5702(a) of title 5, or in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States, reimbursement for his actual and necessary expenses of subsistence not in excess of the maximum amount fixed by section 5702 of title 5'' for ''Each Justice or judge of the United States and each retired Justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official station, shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses, and also a per diem allowance in lieu of actual expenses of subsistence (as defined in the Travel Expense Act of 1949, as amended, 63 Stat. 166; 5 U.S.C. 835) at the per diem rate provided for by the Travel Expense Act of 1949, as amended, or, in accordance with regulations prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, reimbursement for his actual expenses of subsistence not in excess of the maximum amount fixed by the Travel Expense Act of 1949, as amended'', and inserted ''The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.''

Subsec. (b). Pub. L. 97–164 designated existing undesignated second par. as subsec. (b), and in subsec. (b) as so designated, substituted ''official duty station'' for ''official station'', struck out references to the judges of the Court of Claims and the Court of Customs and Patent Appeals, and inserted reference to the judges of the United States Court of Appeals for the Federal Circuit.

Subsec. (c). Pub. L. 97–164 designated existing undesignated third par. as subsec. (c) and substituted ''official duty station'' for ''official station''.

Subsec. (d). Pub. L. 97–164 designated existing undesignated fourth par. as subsec. (d) and substituted ''The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives'' for ''The official station of each circuit and district judge, including each district judge in the Territories and possessions, shall be that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives''.

Subsecs. (e), (f). Pub. L. 97–164 added subsecs. (e) and (f).

Subsec. (g). Pub. L. 97–164 designated existing undesignated fifth par. as subsec. (g) and substituted ''Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change'' for ''Each circuit judge and each district judge whose official station is not fixed expressly in the second paragraph of this section shall upon his appointment and from time to time thereafter as his official station may change, notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and his official station''.

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Pub. L. 95–598 directed the amendment of section by inserting references to the United States Bankruptcy Court for the District of Columbia and bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1959—Pub. L. 86–138 authorized payment to justices and judges of a per diem allowance or a maximum amount for actual expenses of subsistence in place of reasonable maintenance expenses actually incurred, not exceeding $15 per day.

1953—Act Aug. 8, 1953, increased limit of reimbursable maintenance from $10 to $15 per day.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

REPORT ON TRANSPORTATION NEEDS

Pub. L. 99–550, § 3, Oct. 27, 1986, 100 Stat. 3070, directed Director of Administrative Office of United States Courts, within one year after Oct. 27, 1986, to prepare, in consultation with Marshal of Supreme Court of United States, Clerk of United States Court of Military Appeals, and Court Administrator of United States Tax Court, and transmit to Congress, appropriate recommendations concerning transportation needs of judicial branch and of courts established pursuant to Article I of the Constitution.

PROMULGATION OF REGULATIONS BY DIRECTOR

Director to promulgate regulations effectuating increases in reimbursement for expenses, see section 6 of Pub. L. 87–139, Aug. 14, 1961, 75 Stat. 340, set out as a note under section 604 of this title.

CROSS REFERENCES

Payment of expenses by Director of Administrative Office of United States Courts, see section 604 of this title.

Retired judges not subject to residence restrictions, see section 374 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 460, 604 of this title; title 5 section 5702; title 20 section 4502.

§ 457. Records; obsolete papers

The records of district courts and of courts of appeals shall be kept at one or more of the

places where court is held. Such places shall be designated by the respective courts except when otherwise directed by the judicial council of the circuit.

Papers of any court established by Act of Congress which have become obsolete and are no longer necessary or useful, may be disposed of with the approval of the court concerned in the manner provided by sections 366–380 of Title 44 and in accordance with the rules of the Judicial Conference of the United States.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 95–598, title II, § 216, Nov. 6, 1978, 92 Stat. 2661.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 10, 523a, 523b, (Mar. 3, 1911, ch. 231, § 6, 36 Stat. 1088; June 3, 1930, ch. 396, §§ 1, 2, 46 Stat. 496).

Section consolidates and simplifies sections 10, 523a and 523b of title 28, U.S.C., 1940 ed., relating to filing district court records and destroying obsolete papers and bankruptcy proofs of claims.

The revised section enlarges scope of section 10 of title 28, U.S.C., 1940 ed., to include places of keeping records of courts of appeals which was not covered by existing law.

The provisions in section 10 of title 28, U.S.C., 1940 ed., that where court is held ''at more than one place'' and the place of keeping the records ''is not specially provided by law, they shall be kept at either of the places'' designated by the court, was changed to permit the judicial councils of the circuits to make the determination without requiring special enactment of Congress. See section 332 of this title as to purpose and duties of the judicial councils.

The provision of section 523a of title 28, U.S.C., 1940 ed., authorizing destruction of records by the Attorney General was rewritten in the second paragraph to give such authority, respecting court records, to the Director of the Administrative Office of the United States Courts. Such Director, under section 604 of this title, now exercises administrative authority over clerks and commissioners.

A similar provision with respect to records of United States attorneys and marshals was omitted as superseded by sections 366 and 380 of title 44, U.S.C., 1940 ed., Public Printing and Documents, which prescribe the exclusive method for disposition of such papers.

Substantial changes were made in phraseology and arrangement.

REFERENCES IN TEXT

Sections 366–380 of Title 44, referred to in text, were repealed and the provisions thereof reenacted as chapter 33 (§ 3301 et seq.) of Title 44, Public Printing and Documents, by Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1238.

AMENDMENTS

1978—Pub. L. 95–598 directed the amendment of section by inserting ''of bankruptcy courts,'' after ''The record'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460 of this title.

§ 458. Relative of justice or judge ineligible to appointment

No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to any justice or judge of such court.

(June 25, 1948, ch. 646, 62 Stat. 908.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 126 (Mar. 3, 1887, ch. 373, § 7, 24 Stat. 555; Aug. 13, 1888, ch. 866, § 7, 25 Stat. 437; Mar. 3, 1911, ch. 231, § 67, 36 Stat. 1105; Dec. 21, 1911, ch. 4, 37 Stat. 46).

A provision referring to circuit court employees as of December 21, 1911, was omitted as obsolete.

Changes in phraseology were made.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee, see section 1910 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460 of this title.

§ 459. Administration of oaths and acknowledgments

Each justice or judge of the United States may administer oaths and affirmations and take acknowledgments.

(June 25, 1948, ch. 646, 62 Stat. 908.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 264, 385, section 1509 of title 19, U.S.C., 1940 ed., Customs Duties, and section 1114(a) of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, §§ 158, 268, 36 Stat. 1139, 1163; June 17, 1930, ch. 497, title IV, § 509, 46 Stat. 733; Feb. 10, 1939, ch. 2, § 1114(a), 53 Stat. 160; Oct. 21, 1942, ch. 619, title V, § 504(a), (c), 56 Stat. 957; Feb. 25, 1944, ch. 63, title V, § 503, 58 Stat. 72).

Section consolidates provisions of sections 264 and 385 of title 28, U.S.C., 1940 ed., section 1509 of title 19, U.S.C., 1940 ed., and section 1114(a) of title 26, U.S.C., 1940 ed., relating to administration of oaths and acknowledgments by judges and courts.

The provision of section 385 of title 28, U.S.C., 1940 ed., giving to ''all courts of the United States'' power to impose and administer all necessary oaths is the only part of such section in this title. The remainder is incorporated in section 401 of revised title 18, U.S.C. (H.R. 1600, 80th Cong.), Crimes and Criminal Procedure.

Section 264 of title 28, U.S.C., 1940 ed., related only to the Court of Claims and provision of such section relating to clerks and deputies is incorporated in section 953 of this title.

Section 1509 of title 19, U.S.C., 1940 ed., related only to the Customs Court.

Section 1114(a) of title 26, U.S.C., 1940 ed., related only to The Tax Court. That portion of such section authorizing certain employees of The Tax Court to administer oaths and acknowledgments is incorporated in section 953 of this title. For distribution of other provisions thereof, see Distribution Table.

The revised section clarifies what was apparently a statutory omission in that no provision was made with reference to the Court of Customs and Patent Appeals, the judges of which now will have the same power respecting administering oaths as judges of other courts.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated, therefore, as finally enacted, section 1114(a) of Title 26, U.S.C., Internal Revenue Code, did not constitute part of the source of this section. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460 of this title.

§ 460. Application to other courts

(a) Sections 452 through 459 and section 462 of this chapter shall also apply to the United

States Court of Federal Claims, to each court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, and to the judges thereof.

(b) The official duty station of each judge referred to in subsection (a) which is not otherwise established by law shall be that place where the court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(June 25, 1948, ch. 646, 62 Stat. 908; Oct. 31, 1951, ch. 655, §43(a), 65 Stat. 725; Pub. L. 85–508, §12(e), July 7, 1958, 72 Stat. 348; Pub. L. 95–598, title II, §217(a), Nov. 6, 1978, 92 Stat. 2661; Pub. L. 97–164, title I, §115(b)(1), Apr. 2, 1982, 96 Stat. 31; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

This section was included to make clear that the provisions of this chapter are equally applicable in Alaska, the Canal Zone and the Virgin Islands in view of definitive section 451 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''Application to other courts'' for ''Application to Canal Zone, Guam and Virgin Islands'' in section catchline, designated existing provisions as subsec. (a), substituted ''Sections 452 through 459 and section 462 of this chapter shall also apply to the United States Claims Court, to each court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, and to the judges thereof'' for ''Sections 452–459 of this chapter shall also apply to the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and the judges thereof'', and added subsec. (b).

1978—Pub. L. 95–598 struck out ''Alaska,'' after ''Application to'' in section catchline.

1958—Pub. L. 85–508 struck out provisions which made sections 452 to 459 applicable to the District Court for the Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted '', Guam'' in section catchline, and inserted reference to the District Court of Guam in text.

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 this title.

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 this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, upon admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Convention on the Settlement of Investment Disputes, exclusive jurisdiction of district courts of the United States, including the courts enumerated in this section, over actions and proceedings for enforcement of arbitration awards under the Convention, regardless of amount in controversy, see section 1650a of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 9 section 203; title 16 sections 1540, 3375, 4912; title 19 section 3473; title 20 section 290i–7; title 22 sections 283gg, 285f, 290g–6, 290k–9, 290k–11, 290m, 1650a; title 33 section 1479.

§461. Adjustments in certain salaries

(a)(1) Subject to paragraph (2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay under the General Schedule (except as provided in subsection (b)), each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.

(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.

(b) Subsection (a) shall not apply to the extent it would reduce the salary of any individual whose compensation may not, under section 1 of article III of the Constitution of the United States, be diminished during such individual's continuance in office.

(Added Pub. L. 94–82, title II, §205(a)(1), Aug. 9, 1975, 89 Stat. 422; amended Pub. L. 101–194, title VII, §704(a)(2)(A), Nov. 30, 1989, 103 Stat. 1769; Pub. L. 101–509, title V, §529 [title I, §101(b)(4)(J)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 103–356, title I, §101(4), Oct. 13, 1994, 108 Stat. 3411.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 704(a)(1) of the Ethics Reform Act of 1989, referred to in subsec. (a)(1), is section 704(a)(1) of Pub. L. 101–194, which is set out as a note under section 5318 of Title 5.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–356 designated existing provisions as par. (1), substituted ''Subject to paragraph (2), effective'' for ''Effective'', and added par. (2).

1990—Subsec. (a). Pub. L. 101–509 substituted ''5303'' for ''5305''.

1989—Subsec. (a). Pub. L. 101–194 substituted ''corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect'' for ''corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustments in the rates of pay under such Schedule.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101 of Pub. L. 101–356 provided that the amendment made by that section is effective as of Dec. 31, 1994.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 704(b) of Pub. L. 101–194, set out as a note under section 5318 of Title 5, Government Organization and Employees.

SALARY ADJUSTMENTS

Pub. L. 105–119, title III, § 306, Nov. 26, 1997, 111 Stat. 2493, provided in part that: ''Pursuant to section 140 of Public Law 97–92 [set out below], justices and judges of the United States are authorized during fiscal year 1998, to receive a salary adjustment in accordance with 28 U.S.C. 461''.

Pub. L. 102–395, title III, § 304, Oct. 6, 1992, 106 Stat. 1859, provided that: ''Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during fiscal year 1993, to receive a salary adjustment in accordance with 28 U.S.C. 461.''

Pub. L. 102–140, title III, § 305, Oct. 28, 1991, 105 Stat. 810, provided that: ''Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during fiscal year 1992, to receive a salary adjustment in accordance with 28 U.S.C. 461.''

Pub. L. 101–520, title III, § 321, Nov. 5, 1990, 104 Stat. 2285, provided that: ''Pursuant to section 140 of Public Law 97–92 [set out below], Justices and judges of the United States are authorized during calendar year 1991 to receive a salary adjustment in accordance with 28 U.S.C. section 461.''

Pub. L. 101–194, title VII, § 703(a)(3), Nov. 30, 1989, 103 Stat. 1768, set out as a note under section 5318 of Title 5, Government Organization and Employees, provided that effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for the Chief Justice of the United States, an associate justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, and a judge of the United States Court of International Trade shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

For purposes of section 140 of Pub. L. 97–92 (set out below), appropriate salary increases were authorized for Federal judges and Justices of the Supreme Court pursuant to section 702(a) of Pub. L. 101–194 which provided that effective for pay periods beginning on or after Nov. 30, 1989, the rate of basic pay for any office or position in the judicial branch of the Government shall be determined as if section 620(b) of Pub. L. 100–440 (5 U.S.C. 5303 note) and section 619(b) of Pub. L. 101–136 (5 U.S.C. 5303 note) had never been enacted, see section 702 of Pub. L. 101–194, set out as a note under section 5303 of Title 5.

Pub. L. 100–202, § 101(a) [title IV, § 406], Dec. 22, 1987, 101 Stat. 1329, 1329–26, provided that: ''Pursuant to section 140 of Public Law 97–92 [set out below], during fiscal year 1988, justices and judges of the United States shall receive the same percentage increase in salary accorded to employees paid under the General Schedule (pursuant to 5 U.S.C. 5305).''

Pub. L. 99–500, § 101(b) [title IV, § 406], Oct. 18, 1986, 100 Stat. 1783–39, 1783–64, and Pub. L. 99–591, § 101(b) [title IV, § 406], Oct. 30, 1986, 100 Stat. 3341–39, 3341–64, provided that: ''Pursuant to section 140 of Public Law 97–92 [set out below], during fiscal year 1987, justices and judges of the United States shall receive the same percentage increase in salary accorded to employees paid under the General Schedule (pursuant to 5 U.S.C. 5305).''

Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 310, provided in part that: ''Effective on the first day of the first applicable pay period commencing on or after January 1, 1985, each rate of pay subject to adjustment by section 461 of title 28, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1985.''

Pub. L. 98–369, div. B, title II, § 2207, July 18, 1984, 98 Stat. 1060, provided that: ''Effective on the first day of the first applicable pay period commencing on or after January 1, 1984, each rate of pay subject to adjustment by section 461 of title 28, United States Code, shall be increased by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1984.''

SPECIFIC CONGRESSIONAL AUTHORIZATION REQUIRED FOR SALARY INCREASES FOR FEDERAL JUDGES AND JUSTICES OF THE SUPREME COURT

Pub. L. 97–92, § 140, Dec. 15, 1981, 95 Stat. 1200, provided that: ''Notwithstanding any other provision of law or of this joint resolution [Pub. L. 97–92], none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution [Dec. 15, 1981], any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted: *Provided*, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court.''

SALARY RATE LIMITATIONS ON USE OF FUNDS

1982—Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of Title 5, Government Organization and Employees.

1981—Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the

salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of Title 5.

1980—Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of Title 5.

1979—Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of Title 5.

1978—Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of Title 5.

1977 COMPARABILITY ADJUSTMENT NOT EFFECTIVE FOR JUSTICES, JUDGES, COMMISSIONERS, AND REFEREES

Pub. L. 95–66, § 1(3), July 11, 1977, 91 Stat. 270, set out as a note under section 5318 of Title 5, Government Organization and Employees, provided that the first adjustment which, but for the enactment of Pub. L. 95–66, would have been made in the salary and rate of pay of justices, judges, commissioners, and referees under this section after July 11, 1977, would not take effect.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 44, 135, 213, 252, 371, 792 of this title.

§ 462. Court accommodations

(a) Sessions of courts of the United States (except the Supreme Court) shall be held only at places where the Director of the Administrative Office of the United States Courts provides accommodations, or where suitable accommodations are furnished without cost to the judicial branch.

(b) The Director of the Administrative Office of the United States Courts shall provide accommodations, including chambers and courtrooms, only at places where regular sessions of court are authorized by law to be held, but only if the judicial council of the appropriate circuit has approved the accommodations as necessary.

(c) The limitations and restrictions contained in subsection (b) of this section shall not prevent the Director from furnishing chambers to circuit judges at places within the circuit other than where regular sessions of court are authorized by law to be held, when the judicial council of the circuit approves.

(d) The Director of the Administrative Office of the United States Courts shall provide permanent accommodations for the United States Court of Appeals for the Federal Circuit and for the United States Court of Federal Claims only at the District of Columbia. However, each such court may hold regular and special sessions at other places utilizing the accommodations which the Director provides to other courts.

(e) The Director of the Administrative Office of the United States Courts shall provide accommodations for probation officers, pretrial service officers, and Federal Public Defender Organizations at such places as may be approved by the judicial council of the appropriate circuit.

(f) Upon the request of the Director, the Administrator of General Services is authorized and directed to provide the accommodations the Director requests, and to close accommodations which the Director recommends for closure with the approval of the Judicial Conference of the United States.

(Added Pub. L. 97–164, title I, § 115(c)(1), Apr. 2, 1982, 96 Stat. 31; amended Pub. L. 100–702, title X, § 1015, Nov. 19, 1988, 102 Stat. 4669; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1988—Subsec. (c). Pub. L. 100–702 substituted "within the circuit other than where regular sessions of court are authorized by law to be held," for "where Federal facilities are available".

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 this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460 of this title.

§ 463. Expenses of litigation

Whenever a Chief Justice, justice, judge, officer, or employee of any United States court is sued in his official capacity, or is otherwise required to defend acts taken or omissions made in his official capacity, and the services of an attorney for the Government are not reasonably available pursuant to chapter 31 of this title, the Director of the Administrative Office of the United States Courts may pay the costs of his defense. The Director shall prescribe regulations for such payments subject to the approval of the Judicial Conference of the United States.

(Added Pub. L. 97–164, title I, § 116(a), Apr. 2, 1982, 96 Stat. 32.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Sec.
471. Requirement for a district court civil justice expense and delay reduction plan.
472. Development and implementation of a civil justice expense and delay reduction plan.
473. Content of civil justice expense and delay reduction plans.
474. Review of district court action.
475. Periodic district court assessment.
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Sec.
478. Advisory groups.
479. Information on litigation management and cost and delay reduction.
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§ 471. Requirement for a district court civil justice expense and delay reduction plan

There shall be implemented by each United States district court, in accordance with this chapter, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

(Added Pub. L. 101–650, title I, § 103(a), Dec. 1, 1990, 104 Stat. 5090; amended Pub. L. 102–198, § 2(1), Dec. 9, 1991, 105 Stat. 1623.)

AMENDMENTS

1991—Pub. L. 102–198 substituted ''this chapter'' for ''this title''.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 102 of Pub. L. 101–650 provided that: ''The Congress makes the following findings:

''(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

''(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

''(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

''(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

''(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

''(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

''(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

''(C) regular communication between a judicial officer and attorneys during the pretrial process; and

''(D) utilization of alternative dispute resolution programs in appropriate cases.

''(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.''

IMPLEMENTATION OF PLANS

Section 103(b), (c) of Pub. L. 101–650, as amended by Pub. L. 102–572, title V, § 505, Oct. 29, 1992, 106 Stat. 4513; Pub. L. 105–53, § 2, Oct. 6, 1997, 111 Stat. 1173, provided that:

''(b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act [set out below], each United States district court shall, within three years after the date of the enactment of this title [Dec. 1, 1990], implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

''(2)(A) The requirements set forth in sections 472, 473, 474, 475, 477, and 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

''(B) The requirements set forth in section 476 of title 28, United States Code, as added by subsection (a), shall remain in effect permanently.

''(c) EARLY IMPLEMENTATION DISTRICT COURTS.—

''(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

''(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a) [Pub. L. 101–650, title I, Dec. 1, 1990, 104 Stat. 5098].

''(3) Within 18 months after the date of the enactment of this title [Dec. 1, 1990], the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

''(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

''(A) copies of the plans developed and implemented by the Early Implementation District Courts;

''(B) summaries of the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

''(C) the report prepared in accordance with paragraph (3) of this subsection.''

DEMONSTRATION PROGRAM

Section 104 of Pub. L. 101–650, as amended by Pub. L. 104–33, § 1, Oct. 3, 1995, 109 Stat. 292; Pub. L. 104–317, title VI, § 608(a), Oct. 19, 1996, 110 Stat. 3860, provided that:

''(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

''(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c) [set out above].

''(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for

the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

''(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

''(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

''(d) REPORT.—Not later than June 30, 1997, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.''

PILOT PROGRAM

Section 105 of Pub. L. 101–650, as amended by Pub. L. 103–420, §4, Oct. 25, 1994, 108 Stat. 4345; Pub. L. 104–317, title VI, §608(b), Oct. 19, 1996, 110 Stat. 3860, provided that:

''(a) IN GENERAL.—(1) During the 5-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

''(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c) [set out above].

''(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as 'Pilot Districts') designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

''(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

''(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 4 years. At the end of that 4-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

''(c) PROGRAM STUDY REPORT.—(1) Not later than June 30, 1997, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

''(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

''(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

''(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.''

§472. Development and implementation of a civil justice expense and delay reduction plan

(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

(1) an assessment of the matters referred to in subsection (c)(1);

(2) the basis for its recommendation that the district court develop a plan or select a model plan;

(3) recommended measures, rules and programs; and

(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

(A) determine the condition of the civil and criminal dockets;

(B) identify trends in case filings and in the demands being placed on the court's resources;

(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report pre-

pared in accordance with subsection (b) of this section to—

(1) the Director of the Administrative Office of the United States Courts;

(2) the judicial council of the circuit in which the district court is located; and

(3) the chief judge of each of the other United States district courts located in such circuit.

(Added Pub. L. 101–650, title I, § 103(a), Dec. 1, 1990, 104 Stat. 5090.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 473, 474, 478, 479 of this title.

§ 473. Content of civil justice expense and delay reduction plans

(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5091.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a)(3)(B), are set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 472, 477 of this title.

§474. Review of district court action

(a)(1) The chief judge of each district court in a circuit and the chief judge of the circuit shall, as a committee—

(A) review each plan and report submitted pursuant to section 472(d) of this title; and

(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

(2) The chief judge of a circuit may designate another judge of the court of appeals of that circuit, and the chief judge of a district court may designate another judge of such court, to perform that chief judge's responsibilities under paragraph (1) of this subsection.

(b) The Judicial Conference of the United States—

(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5093; amended Pub. L. 102–198, §2(2), Dec. 9, 1991, 105 Stat. 1623.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–198, §2(2)(A), substituted ''chief judge'' for ''chief judges'' and struck out ''court of appeals for such'' after ''judge of the'' in introductory provisions.

Subsec. (a)(2). Pub. L. 102–198, §2(2)(B), substituted ''circuit may designate another judge of the court of appeals of that circuit,'' for ''court of appeals'' and ''court, to perform that'' for ''court to perform the''.

§475. Periodic district court assessment

After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5093.)

§476. Enhancement of judicial information dissemination

(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer—

(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

(3) the number and names of cases that have not been terminated within three years after filing.

(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5093.)

§477. Model civil justice expense and delay reduction plan

(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5094.)

REFERENCES IN TEXT

Section 103(c) of the Civil Justice Reform Act of 1990 [Pub. L. 101–650], referred to in subsec. (a)(1), is set out as a note under section 471 of this title.

§ 478. Advisory groups

(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

(Added Pub. L. 101–650, title I, § 103(a), Dec. 1, 1990, 104 Stat. 5094.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in subsec. (a), is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 472, 473, 475 of this title.

§ 479. Information on litigation management and cost and delay reduction

(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives.

(b) The Judicial Conference of the United States shall, on a continuing basis—

(1) study ways to improve litigation management and dispute resolution services in the district courts; and

(2) make recommendations to the district courts on ways to improve such services.

(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual.

(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

(Added Pub. L. 101–650, title I, § 103(a), Dec. 1, 1990, 104 Stat. 5095.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in subsec. (a), is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

Sections 104 and 105 of the Civil Justice Reform Act of 1990 [Pub. L. 101–650], referred to in subsec. (c)(2), are set out as notes under section 471 of this title.

§ 480. Training programs

The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

(Added Pub. L. 101–650, title I, § 103(a), Dec. 1, 1990, 104 Stat. 5095.)

§ 481. Automated case information

(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

(b)(1) In carrying out subsection (a), the Director shall prescribe—

(A) the information to be recorded in district court automated systems; and

(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5095.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 476 of this title.

§482. Definitions

As used in this chapter, the term ''judicial officer'' means a United States district court judge or a United States magistrate.

(Added Pub. L. 101–650, title I, §103(a), Dec. 1, 1990, 104 Stat. 5096.)

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

PART II—DEPARTMENT OF JUSTICE

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AMENDMENTS

1986—Pub. L. 99–554, title I, §144(g)(2), Oct. 27, 1986, 100 Stat. 3097, substituted ''40'' for ''39'' in item relating to Independent Counsel.

1983—Pub. L. 97–409, §2(a)(2), Jan. 3, 1983, 96 Stat. 2039, substituted ''Independent Counsel'' for ''Special Prosecutor'' in item for second chapter 39.

1978—Pub. L. 95–598, title II, §224(b), Nov. 6, 1978, 92 Stat. 2664, added item for chapter 39, ''United States Trustees'', effective Oct. 1, 1979.

Pub. L. 95–521, title VI, §601(b), Oct. 26, 1978, 92 Stat. 1873, added item for chapter 39 ''Special Prosecutor''.

1966—Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 611, added items for chapters 31 and 33 and redesignated items for former chapters 31 and 33 as 35 and 37, respectively.

CHAPTER 31—THE ATTORNEY GENERAL

Sec.
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AMENDMENTS

1992—Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in item 520.

1988—Pub. L. 100–690, title VI, §6281(b), Nov. 18, 1988, 102 Stat. 4369, added item 530A.

1983—Pub. L. 98–86, §2, Aug. 26, 1983, 97 Stat. 492, added item 530.

1982—Pub. L. 97–258, §2(g)(1)(A), Sept. 13, 1982, 96 Stat. 1060, substituted ''Availability of appropriations'' for ''Appropriations for administrative expenses; notarial fees; meals and lodging of bailiffs'' in item 524.

Pub. L. 97–164, title I, §118(b), Apr. 2, 1982, 96 Stat. 33, substituted ''United States Claims Court or in United States Court of Appeals for the Federal Circuit'' for ''Court of Claims'' in item 520.

1978—Pub. L. 95–598, title II, §219(c), Nov. 6, 1978, 92 Stat. 2662, inserted reference to trustees in item 526.

Pub. L. 95–521, title VI, §603(b), Oct. 26, 1978, 92 Stat. 1875, added items 528 and 529.

1977—Pub. L. 95–139, §1(b), Oct. 19, 1977, 91 Stat. 1171, added item 504a.

1975—Pub. L. 93–613, §1(2), Jan. 2, 1975, 88 Stat. 1975, added item 527.

1966—Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 611, substituted ''THE ATTORNEY GENERAL'' for ''UNITED STATES ATTORNEYS'' in chapter heading, ''Executive Department'' for ''Appointment of United States attorneys'' in item 501, ''Seal'' for ''Appointment of assistant United States attorneys'' in item 502, ''Attorney General'' for ''Appointment of attorneys'' in item 503, ''Deputy Attorney General'' for ''Tenure and oath of office; removal'' in item 504, ''Solicitor General'' for ''Residence'' in item 505, ''Assistant Attorney General'' for ''Vacancies'' in item 506, ''Assistant Attorney General for Administration'' for ''Duties; supervision by Attorney General'' in item 507, ''Vacancies'' for ''Salaries'' in item 508, ''Functions of the Attorney General'' for ''Expenses'' in item 509, ''Delegation of authority'' for ''Clerical assistants and messengers'' in item 510, and added items 511 to 526.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 463 of this title; title 42 section 7192.

§501. Executive department

The Department of Justice is an executive department of the United States at the seat of Government.

[1] Chapter heading amended by Pub. L. 100–690 without corresponding amendment of analysis.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 611.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 291 (less last 10 words).	R.S. § 346 (less last 10 words).

The words ''There shall be'', referring to the establishment of the Department, are omitted as executed.

PRIOR PROVISIONS

A prior section 501, acts June 25, 1948, ch. 646, 62 Stat. 909; Mar. 18, 1959, Pub. L. 86–3, § 11(a), 73 Stat. 9, related to appointment of United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 541 of this title by section 4(c) of Pub. L. 89–554.

SPECIFIC AUTHORIZATION OF APPROPRIATIONS REQUIRED FOR DEPARTMENT OF JUSTICE

Pub. L. 94–503, title II, § 204, Oct. 15, 1976, 90 Stat. 2427, provided that: ''No sums shall be deemed to be authorized to be appropriated for any fiscal year beginning on or after October 1, 1978, for the Department of Justice (including any bureau, agency, or other similar subdivision thereof) except as specifically authorized by Act of Congress with respect to such fiscal year. Neither the creation of a subdivision in the Department of Justice, nor the authorization of an activity of the Department, any subdivision, or officer thereof, shall be deemed in itself to be an authorization of appropriations for the Department of Justice, such subdivision, or activity, with respect to any fiscal year beginning on or after October 1, 1978.''

§ 502. Seal

The Attorney General shall have a seal for the Department of Justice. The design of the seal is subject to the approval of the President.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 611.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 292.	R.S. § 353.

The section is rewritten to conform to other statutes authorizing departmental seals. The words ''The seal heretofore provided for the office of the Attorney General shall be'' are omitted as obsolete.

PRIOR PROVISIONS

A prior section 502, act June 25, 1948, ch. 646, 62 Stat. 909, related to appointment of assistant United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 542 of this title by section 4(c) of Pub. L. 89–554.

§ 503. Attorney General

The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States. The Attorney General is the head of the Department of Justice.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 291 (last 10 words).	R.S. § 346 (last 10 words).

The words ''The President shall appoint, by and with the advice and consent of the Senate'' have been added to conform the section with the Constitution. See article II, section 2, clause 2.

PRIOR PROVISIONS

A prior section 503, act June 25, 1948, ch. 646, 62 Stat. 909, related to appointment of attorneys to assist United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 543 of this title by section 4(c) of Pub. L. 89–554.

ACTIONS CHALLENGING APPOINTMENT OF ATTORNEY GENERAL ON GROUNDS OF VIOLATION OF CONSTITUTIONAL PROVISIONS GOVERNING COMPENSATION AND OTHER EMOLUMENTS

Pub. L. 93–178, § 2, Dec. 10, 1973, 87 Stat. 697, provided that:

''(a) Any person aggrieved by an action of the Attorney General may bring a civil action in the appropriate district court to contest the constitutionality of the appointment and continuance in office of the Attorney General on the ground that such appointment and continuance in office is in violation of article I, section 6, clause 2, of the Constitution. The United States district courts shall have exclusive jurisdiction, without regard to the sum or value of the matter in controversy, to determine the validity of such appointment and continuance in office.

''(b) Any action brought under this section shall be heard and determined by a panel of three judges in accordance with the provisions of section 2284 of title 28, United States Code. Any appeal from the action of a court convened pursuant to such section shall lie to the Supreme Court.

''(c) Any judge designated to hear any action brought under this section shall cause such action to be in every way expedited.''

CROSS REFERENCES

Compensation of Attorney General, see section 5312 of Title 5, Government Organization and Employees.

Office of Justice Programs, see section 3711 of Title 42, The Public Health and Welfare.

§ 504. Deputy Attorney General

The President may appoint, by and with the advice and consent of the Senate, a Deputy Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 294.	Mar. 3, 1903, ch. 1006, § 1 (so much of 2d par. under ''Department of Justice'' as provides for appointment, pay, and duties of an assistant to the Attorney General), 32 Stat. 1062.
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 3, eff. May 24, 1950, 64 Stat. 1261.

The words ''may appoint'' are substituted for ''is authorized to appoint''. So much of the Act of Mar. 3, 1903, as relates to pay is omitted as superseded by § 303(c) of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 416, which is codified in section 5314 of title 5, United States Code.

PRIOR PROVISIONS

A prior section 504, acts June 25, 1948, ch. 646, 62 Stat. 909; Mar. 18, 1959, Pub. L. 86–3, § 11(b), 73 Stat. 9, related to tenure and oath of office of United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in sections 541 and 544 of this title by section 4(c) of Pub. L. 89–554.

CROSS REFERENCES

Compensation of Deputy Attorney General, see section 5313 of Title 5, Government Organization and Employees.

§ 504a. Associate Attorney General

The President may appoint, by and with the advice and consent of the Senate, an Associate Attorney General.

(Added Pub. L. 95–139, § 1(a), Oct. 19, 1977, 91 Stat. 1171.)

CROSS REFERENCES

Compensation of Associate Attorney General, see section 5314 of Title 5, Government Organization and Employees.

§ 505. Solicitor General

The President shall appoint in the Department of Justice, by and with the advice and consent of the Senate, a Solicitor General, learned in the law, to assist the Attorney General in the performance of his duties.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 293.	R.S. § 347 (less last sentence).

So much of R.S. § 347 as relates to the pay of the Solicitor General is omitted as superseded by § 303(c) of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 416, which is codified in section 5314 of title 5, United States Code.

PRIOR PROVISIONS

A prior section 505, act June 25, 1948, ch. 646, 62 Stat. 909, related to residence of United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 545 of this title by section 4(c) of Pub. L. 89–554.

CROSS REFERENCES

Compensation of Solicitor General, see section 5314 of Title 5, Government Organization and Employees.

§ 506. Assistant Attorneys General

The President shall appoint, by and with the advice and consent of the Senate, ten Assistant Attorneys General, who shall assist the Attorney General in the performance of his duties.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612; amended Pub. L. 95–598, title II, § 218, Nov. 6, 1978, 92 Stat. 2662.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 295.	R.S. § 348. July 11, 1890, ch. 667, § 1 (words between 3d and 4th semicolons under "Department of Justice"), 26 Stat. 265. Mar. 3, 1903, ch. 1006, § 1 (so much of 2d par. under "Department of Justice" as provides for appointment, pay, and duties of an additional Assistant Attorney General), 32 Stat. 1062. July 16, 1914, ch. 141, § 1 (words between 3d and 4th semicolons under "Department of Justice"), 38 Stat. 497. Mar. 4, 1915, ch. 141, § 1 (words between 3d and 4th semicolons under "Department of Justice"), 38 Stat. 1038. June 16, 1933, ch. 101, § 16(b), 48 Stat. 308. Mar. 2, 1943, ch. 7, 57 Stat. 4.
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 4, eff. May 24, 1950, 64 Stat. 1261.
.....	[Uncodified].	1953 Reorg. Plan No. 4, § 2, eff. June 20, 1953. 67 Stat. 636.
.....	5 U.S.C. 295–1.	Sept. 9, 1957, Pub. L. 85–315, § 111, 71 Stat. 637.

The words "There shall be in the Department of Justice" are omitted as unnecessary as the title of the positions establishes their location in the Department of Justice.

The position of sixth Assistant Attorney General, referred to in the Acts of July 16, 1914, and Mar. 4, 1915, was made a permanent position by the Act of Mar. 4, 1915, ch. 141, § 6, 38 Stat. 1049.

The number of Assistant Attorneys General referred to in the Act of Mar. 2, 1943, is changed from "six" to "nine" to reflect the three additional Assistant Attorneys General authorized by 1950 Reorg. Plan No. 2, 1953 Reorg. Plan No. 4, and the Act of Sept. 9, 1957.

The words "learned in the law" are omitted as unnecessary. Such a requirement is not made of the Attorney General, United States attorneys, or United States judges. (See reviser's note under 28 U.S.C. 501, 1964 ed.)

The reference in former section 295 of title 5 to the Assistant Attorneys General assisting the Solicitor General are omitted on authority of the transfer of functions made by 1950 Reorg. Plan No. 2 and 1953 Reorg. Plan No. 4.

Provisions of 1950 Reorg. Plan No. 2, § 4, and 1953 Reorg. Plan No. 4, § 2, abolishing positions and transferring incumbents are omitted as executed.

Provisions relating to pay of Assistant Attorneys General are omitted as superseded by § 303(d) of the Act of August 14, 1964, Pub. L. 88–426, 78 Stat. 418, which is codified in section 5315 of title 5, United States Code.

PRIOR PROVISIONS

A prior section 506, act June 25, 1948, ch. 646, 62 Stat. 909, related to vacancies in the office of United States attorney, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 546 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1978—Pub. L. 95–598 substituted "ten" for "nine".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CROSS REFERENCES

Compensation of Assistant Attorneys General, see section 5315 of Title 5, Government Organization and Employees.

§ 507. Assistant Attorney General for Administration

(a) The Attorney General shall appoint, with the approval of the President, an Assistant Attorney General for Administration, who shall perform such duties as the Attorney General may prescribe.

(b) The position of Assistant Attorney General for Administration is in the competitive service.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 5 eff. May 24, 1950, 64 Stat. 1261.

The title of the position was changed to ''Assistant Attorney General for Administration'' by § 307 of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 432.

The words ''competitive service'' are substituted for ''classified civil service'' because the term ''classified civil service'' formerly used to designate the merit system established by the Civil Service Act of 1883 has become ambiguous due to the creation of the ''classified'' pay system. The term ''competitive service'' is now customarily used, and appears throughout title 5, United States Code, in place of ''classified civil service''.

The words ''There shall be in the Department of Justice'' are omitted as unnecessary as the title of the position and the fact of appointment by the Attorney General establish the location of the position in the Department of Justice.

The last 12 words of section 5 of the Reorganization Plan are omitted on authority of the Act of June 5, 1952, ch. 369, § 1101 (3d proviso), 66 Stat. 121. The salary of the position is now fixed by § 303(e) of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 420, which is codified in section 5316 of title 5, United States Code.

PRIOR PROVISIONS

A prior section 507, acts June 25, 1948, ch. 646, 62 Stat. 910; May 24, 1949, ch. 139, § 71, 63 Stat. 100, related to duties of United States attorneys, and to supervision by the Attorney General, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in sections 509 and 547 of this title by section 4(c) of Pub. L. 89–554.

CROSS REFERENCES

Compensation of Assistant Attorney General for Administration, see section 5316 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7422; title 42 section 3211.

§ 508. Vacancies

(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612; amended Pub. L. 95–139, § 2, Oct. 19, 1977, 91 Stat. 1171.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	R.S. § 347 (last sentence). 1953 Reorg. Plan No. 4, § 1, eff. June 20, 1953, 67 Stat. 636.

The last sentence of R.S. § 347 is cited as authority inasmuch as the function contained therein was the function transferred to the Deputy Attorney General by 1953 Reorg. Plan No. 4. The word ''may'' is substituted for ''have the power''. The words ''During any period of time'' are omitted as unnecessary.

PRIOR PROVISIONS

A prior section 508, acts June 25, 1948, ch. 646, 62 Stat. 910; Mar. 2, 1955, ch. 9, § 2(a), 69 Stat. 10; Oct. 11, 1962, Pub. L. 87–793, § 1003(a), 76 Stat. 865; Aug. 14, 1964, Pub. L. 88–426, title III, § 306(a)(1), 78 Stat. 428; Oct. 6, 1964, Pub. L. 88–631, § 3(b), 78 Stat. 1008, related to salaries of United States attorneys, assistant United States attorneys, and special attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 548 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–139 substituted ''the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General'' for ''the Assistant Attorneys General and the Solicitor General, in such order of succession as the Attorney General may from time to time prescribe, shall act as Attorney General''.

§ 509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.; and

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc..[1]

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612; amended Pub. L. 95–251, § 2(a)(6), Mar. 27, 1978, 92 Stat. 183; Pub. L. 98–473, title II, § 228(a), Oct. 12, 1984, 98 Stat. 2030.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 1, eff. May 24, 1950, 64 Stat. 1261.

The section is restated to allow incorporation into this chapter.

[The Historical and Revision Notes for former section 507, from which this section is partially derived, is set out under section 547 of this title.]

PRIOR PROVISIONS

A prior section 509, act June 25, 1948, ch. 646, 62 Stat. 910, related to expenses of United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 549 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1984—Pub. L. 98–473 inserted ''and'' at end of cl. (2), substituted a period for ''; and'' at end of cl. (3), and struck out cl. (4) which related to functions of Board of Parole.

1978—Cl. (1). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 235(a)(1)(B)(ii)(IV) of Pub. L. 98–473 provided that the amendment made by Pub. L. 98–473 is effective Oct. 12, 1984.

[1] So in original.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Attorney General, see Parts 1, 2, and 11 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

REIMBURSEMENT OF EMPLOYEES TRAVELING ON BEHALF OF UNITED STATES IN TEMPORARY DUTY STATUS

Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 115], Sept. 30, 1996, 110 Stat. 3009, 3009–22, provided that: ''Effective with the enactment of this Act [Sept. 30, 1996] and in any fiscal year hereafter, under policies established by the Attorney General, the Department of Justice may reimburse employees who are paid by an appropriation account within the Department of Justice and are traveling on behalf of the United States in temporary duty status to investigate, prosecute, or litigate (including the provision of support therefor) a criminal or civil matter, or for other similar special circumstances, for Federal, State, and local taxes heretofore and hereafter resulting from any reimbursement of travel expenses from an appropriation account within the Department of Justice: *Provided*, That such reimbursement may include an amount equal to all income taxes for which the employee would be liable due to such reimbursement.''

OVERSEAS LAW ENFORCEMENT TRAINING ACTIVITIES

Pub. L. 104–132, title VIII, § 801, Apr. 24, 1996, 110 Stat. 1304, provided that: ''The Attorney General and the Secretary of the Treasury are authorized to support law enforcement training activities in foreign countries, in consultation with the Secretary of State, for the purpose of improving the effectiveness of the United States in investigating and prosecuting transnational offenses.''

REIMBURSEMENT BY OTHER GOVERNMENT AGENCIES OF DEPARTMENT OF JUSTICE SALARIES AND EXPENSES IN HIGH-COST LITIGATION

Pub. L. 103–317, title I, § 109, Aug. 26, 1994, 108 Stat. 1735, provided that: ''Notwithstanding 31 U.S.C. 3302 or any other law, in litigation involving unusually high costs, the Department of Justice may receive and retain reimbursement for salaries and expenses, for fiscal year 1995 and thereafter, from any other governmental component being represented in the litigation.''

NEIGHBORHOOD REVITALIZATION

Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1830, provided in part: ''That for fiscal year 1993 and thereafter the Attorney General shall (1) promote neighborhood revitalization by developing a plan for the use of Federal funds appropriated for selected activities in the Departments of Labor, Education, Health and Human Services, Transportation, Agriculture, and Housing and Urban Development; (2) the Attorney General shall solicit from State and local governments plans to revitalize neighborhoods using programs administered by such agencies; and (3) the Attorney General shall review and approve such plans in consultation with the Federal agency to which funds are appropriated''.

PROCUREMENT OF EXPERT WITNESSES WITHOUT REGARD TO COMPETITIVE PROCUREMENT PROCEDURES

Pub. L. 102–140, title VI, § 611(a), Oct. 28, 1991, 105 Stat. 832, provided that, notwithstanding any other provision of law: ''For fiscal year 1992 and thereafter, the Department of Justice may procure the services of expert witnesses for use in preparing or prosecuting a civil or criminal action, without regard to competitive procurement procedures, including the Commerce Business Daily publication requirements: *Provided*, That no witness shall be paid more than one attendance fee for any calendar day.''

STRUCTURAL REFORMS TO IMPROVE FEDERAL RESPONSE TO CRIMES AFFECTING FINANCIAL INSTITUTIONS

Pub. L. 101–647, title XXV, §§ 2536–2539, Nov. 29, 1990, 104 Stat. 4883, 4884, provided that:

''SEC. 2536. ESTABLISHMENT OF FINANCIAL INSTITUTIONS CRIME UNIT AND OFFICE OF SPECIAL COUNSEL FOR FINANCIAL INSTITUTIONS CRIME UNIT.

''(a) ESTABLISHMENT.—There is established within the Office of the Deputy Attorney General in the Department of Justice a Financial Institutions Fraud Unit to be headed by a special counsel (hereafter in this title [probably means this subtitle which is subtitle D (§§ 2536–2540) of title XXV of Pub. L. 101–647, which amended section 1441a of Title 12, Banks and Banking, and enacted this note] referred to as the 'Special Counsel').

''(b) RESPONSIBILITY.—The Financial Institutions Fraud Unit and the Special Counsel shall be responsible to and shall report directly to the Deputy Attorney General.

''(c) SUNSET.—The provisions of this section shall cease to apply at the end of the 5-year period beginning on the date of the enactment of this Act [Nov. 29, 1990].

''SEC. 2537. APPOINTMENT RESPONSIBILITIES AND COMPENSATION OF THE SPECIAL COUNSEL.

''(a) APPOINTMENT.—The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate.

''(b) RESPONSIBILITIES.—The Special Counsel shall—

''(1) supervise and coordinate investigations and prosecutions within the Department of Justice of fraud and other criminal activity in and against the financial services industry, including, to the extent consistent with the independent counsel provision of chapter 40 of title 28, United States Code, any such activity by any current or former elected official or high-level executive branch official or any member of the immediate family of any such official;

''(2) ensure that Federal law relating to civil enforcement, asset seizure and forfeiture, money laundering, and racketeering are used to the fullest extent authorized to recover the proceeds of unlawful activities from persons who have committed crimes in and against the financial services industry; and

''(3) ensure that adequate resources are made available for the investigation and prosecution of fraud and other criminal activity in and against the financial services industry.

''(c) COMPENSATION.—The Special Counsel shall be paid at the basic pay payable for level V of the Executive Schedule.

''SEC. 2538. ASSIGNMENT OF PERSONNEL.

''There shall be assigned to the Financial Institutions Fraud Unit such personnel as the Attorney General deems necessary to provide an appropriate level of enforcement activity in the area of fraud and other criminal activity in and against the financial services industry.

''SEC. 2539. FINANCIAL INSTITUTIONS FRAUD TASK FORCES.

''(a) ESTABLISHMENT.—The Attorney General shall establish such financial institutions fraud task forces as the Attorney General deems appropriate to ensure that adequate resources are made available to investigate and prosecute crimes in or against financial institutions and to recover the proceeds of unlawful activities from persons who have committed fraud or have engaged in other criminal activity in or against the financial services industry.

''(b) SUPERVISION.—The Attorney General shall determine how each task force shall be supervised and may provide for the supervision of any task force by the Special Counsel.

''(c) SENIOR INTERAGENCY GROUP.—

''(1) ESTABLISHMENT.—The Attorney General shall establish a senior interagency group to assist in iden-

tifying the most significant financial institution fraud cases and in allocating investigative and prosecutorial resources where they are most needed.

''(2) MEMBERSHIP.—The senior interagency group shall be chaired by the Special Counsel and shall include senior officials from—

''(A) the Department of Justice, including representatives of the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities;

''(B) the Department of the Treasury;

''(C) the Office of Thrift Supervision;

''(D) the Resolution Trust Corporation;

''(E) the Federal Deposit Insurance Corporation;

''(F) the Office of the Comptroller of the Currency;

''(G) the Board of Governors of the Federal Reserve System; and

''(H) the National Credit Union Administration.

''(3) DUTIES.—This senior interagency group shall enhance interagency coordination and assist in accelerating the investigations and prosecution of financial institutions fraud.''

AUTHORIZATION OF APPROPRIATIONS FOR HUMANITARIAN EXPENSES INCURRED BY FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION

Pub. L. 101–647, title XXXII, § 3201, Nov. 29, 1990, 104 Stat. 4916, provided that:

''(a) FEDERAL BUREAU OF INVESTIGATION.—For each fiscal year beginning after September 30, 1990, there is authorized to be appropriated for the Federal Bureau of Investigation $25,000, to be expended in the discretion of the Director of the Federal Bureau of Investigation to pay humanitarian expenses incurred—

''(1) by an employee of the Bureau as a result of serious illness, serious injury, or death occurring while on official business; or

''(2) by any member of the immediate family of such employee, incident to the serious illness, serious injury, or death of such employee occurring while on official business.

''(b) DRUG ENFORCEMENT ADMINISTRATION.—For each fiscal year beginning after September 30, 1990, there is authorized to be appropriated for the Drug Enforcement Administration $25,000, to be expended at the discretion of the Administrator of the Drug Enforcement Administration to pay humanitarian expenses incurred—

''(1) by an employee of the Administration as a result of serious illness, serious injury, or death occurring while on official business; or

''(2) by any member of the immediate family of such employee, incident to the serious illness, serious injury, or death of such employee occurring while on official business.''

INVESTIGATION OF FINANCIAL INSTITUTIONS; ASSISTANCE OF GOVERNMENT PERSONNEL

Pub. L. 101–509, title V, § 528, Nov. 5, 1990, 104 Stat. 1427, as amended by Pub. L. 103–322, title XXXII, § 320923, Sept. 13, 1994, 108 Stat. 2131, provided that:

''(a) Notwithstanding any other law and in any fiscal year—

''(1) The Attorney General shall accept, and Federal departments and agencies, including the United States Secret Service, the Internal Revenue Service, the Resolution Trust Corporation, and the appropriate Federal banking agency, may provide, without reimbursement, the services of attorneys, law enforcement personnel, and other employees of any other departments or agencies of the Federal Government to assist the Department of Justice, subject to the supervision of the Attorney General, in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation;

''(2) any attorney of a department or agency whose services are accepted pursuant to paragraph (1) may, subject to the supervision of the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, and perform any other investigative or prosecutorial function, which United States attorneys are authorized by law to conduct or perform whether or not the attorney is a resident of the district in which the proceeding is brought; and

''(3) law enforcement personnel of the United States Secret Service are authorized, subject to the supervision of the Attorney General, to conduct or perform any kind of investigation, civil or criminal, related to fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, which the Department of Justice law enforcement personnel are authorized by law to conduct or perform: *Provided*, That the Secret Service shall not initiate investigations pursuant to this section independent of the supervision of the Attorney General.

''(b) This section—

''(1) shall not, except as expressly provided herein, alter the authority of any Federal law enforcement agency; and

''(2) shall expire on December 31, 2004.

''(c) This section applies notwithstanding any other provision of law enacted by the 101st Congress after October 15, 1990, that by its terms would grant authority to, or otherwise affect the authority of, the Secret Service or other departments or agencies of the Federal Government to conduct or to assist the Department of Justice in conducting investigations or prosecutions of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and any other such provision shall not be effective in granting or otherwise affecting any such authority.''

PROCESSING OF NAME CHECKS AND BACKGROUND RECORDS FOR NONCRIMINAL EMPLOYMENT, LICENSING, AND HUMANITARIAN PURPOSES

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 995, provided in part: ''That for fiscal year 1990 and hereafter the Chief, United States National Central Bureau, INTERPOL, may establish and collect fees to process name checks and background records for noncriminal employment, licensing, and humanitarian purposes and, notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services''.

EXPENSES OF LEGAL DEFENSE FOR FEDERAL GOVERNMENT EMPLOYEES PERFORMING OFFICIAL DUTIES; FEES AND EXPENSES OF WITNESSES

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 997, provided: ''That for fiscal year 1990 and hereafter the Attorney General may enter into reimbursable agreements with other Federal Government agencies or components within the Department of Justice to pay expenses of private counsel to defend Federal Government employees sued for actions while performing their official duties: *Provided further*, That for fiscal year 1990 and hereafter the Attorney General, upon notification to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 606 of this Act [Pub. L. 101–162, title VI, Nov. 21, 1989, 103 Stat. 1031], may authorize litigating components to reimburse this account for expert witness expenses when it appears current allocations will be exhausted for cases scheduled for trial in the current fiscal year.''

UNIFORMS AND ALLOWANCES

Pub. L. 101–162, title II, § 203, Nov. 21, 1989, 103 Stat. 1002, provided that: ''For fiscal year 1990 and hereafter, appropriations for 'Salaries and expenses, General Administration', 'Salaries and expenses, United States

Marshals Service', 'Salaries and expenses, Federal Bureau of Investigation', 'Salaries and expenses, Drug Enforcement Administration', 'Salaries and expenses, Immigration and Naturalization Service', and 'Salaries and expenses, Federal Prison System', shall be available for uniforms and allowances therefor as authorized by law (5 U.S.C. 5901–5902).''

JUSTICE DEPARTMENT ORGANIZED CRIME AND DRUG ENFORCEMENT ENHANCEMENT

Pub. L. 100–690, title I, subtitle B, Nov. 18, 1988, 102 Stat. 4189, provided that:

''SEC. 1051. SHORT TITLE.

''This subtitle may be cited as the 'Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1988'.

''SEC. 1052. FINDINGS.

''The Congress finds that—

''(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

''(2) trends in drug trafficking patterns necessitate a response that gives appropriate weight to—

''(A) the prosecution of drug-related crimes; and

''(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and organized crime groups;

''(3) law enforcement components of the Department of Justice should give high priority to the enforcement of civil sanctions against drug networks and organized crime groups; and

''(4) the structure of the Department of Justice Criminal Division needs to be reviewed in order to determine the most effective structure to address such drug-related problems.

''SEC. 1053. CIVIL ENFORCEMENT REPORT.

''(a) REPORT.—Not later than 1 year after the date of the enactment of this title [Nov. 18, 1988], the Director of National Drug Control Policy (the Director) in consultation with the Attorney General, shall report to the Congress on the necessity to establish a new division or make other organizational changes within the Department of Justice in order to promote better civil and criminal law enforcement. In preparing such report, the Director shall consider restructuring and consolidating one or more of the following divisions and programs—

''(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

''(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

''(3) the Asset Forfeiture Office of the Criminal Division; and

''(4) the Organized Crime Drug Enforcement Task Force Program;[.]

''(b) LEGISLATIVE RECOMMENDATIONS.—The report submitted under subsection (a) shall include appropriate legislative recommendations for the Congress.

''SEC. 1054. CIVIL ENFORCEMENT ENHANCEMENT.

''(a) DUTY OF ATTORNEY GENERAL.—The Attorney General shall insure that each component of the Department of Justice having criminal law enforcement responsibilities with respect to the prosecution of organized crime and controlled substances violations, including each United States Attorney's Office, attaches a high priority to the enforcement of civil statutes creating ancillary sanctions and remedies for such violations, such as civil penalties and actions, forfeitures, injunctions and restraining orders, and collection of fines.

''(b) DUTY OF ASSOCIATE ATTORNEY GENERAL.—The Associate Attorney General shall be responsible for implementing the policy set forth in this subsection.

''(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $3,000,000 for salaries and expenses to the Department of Justice General Legal Activities Account and $3,000,000 for salaries and expenses for United States Attorneys for fiscal year 1989.

''(2) Any appropriation of funds authorized under paragraph (1) shall be—

''(A) in addition to any appropriations requested by the President in the 1989 fiscal year budget submitted by the President to the Congress on February 18, 1988, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989; and

''(B) used to increase the number of field attorneys and related support staff over such personnel levels employed at the Department of Justice on September 30, 1988.

''(3) Any increase in full-time equivalent positions described under paragraph (2)(B) shall be exclusively used for asset forfeiture and civil enforcement and be assigned to appropriate field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces.

''(d) REPORTING REQUIREMENT.—The Attorney General, at the end of each such fiscal year, shall file a report with the Congress setting forth the extent of such enforcement efforts, as well as the need for any enhancements in resources necessary to carry out this policy.

''SEC. 1055. EXPENSES OF TASK FORCES.

''(a) APPROPRIATIONS AND REIMBURSEMENTS PROCEDURE.—Beginning in fiscal year 1990, the Attorney General in his budget shall submit a separate appropriations request for expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. Such appropriations shall be made to the Department of Justice's Interagency Law Enforcement Appropriation Account for the Attorney General to make reimbursements to the involved agencies as necessary.

''(b) ENHANCEMENT OF FIELD ACTIVITIES.—The appropriations and reimbursements procedure described under subsection (a) shall—

''(1) provide for the flexibility of the Task Forces which is vital to success;

''(2) permit Federal law enforcement resources to be shifted in response to changing patterns of organized criminal drug activities;

''(3) permit the Attorney General to reallocate resources among the organizational components of the Task Forces and between regions without undue delay; and

''(4) ensure that the Task Forces function as a unit, without the competition for resources among the participating agencies that would undermine the overall effort.''

IMPACT ANALYSIS OF ADDITIONAL RESOURCES TO CERTAIN COMPONENTS OF FEDERAL CRIMINAL JUSTICE SYSTEM; STUDY BY COMPTROLLER GENERAL AND REPORT TO CONGRESS

Pub. L. 100–690, title IX, § 9201, Nov. 18, 1988, 102 Stat. 4535, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study—

''(1) to determine the impact of additional resources to certain components of the Federal criminal justice system on other components of the system and of enhanced or new Federal criminal penalties or laws on the agencies and offices of the Department of Justice, the Federal courts, and other components of the Federal criminal justice system; and

''(2) use the data derived from the impact analysis to develop a model that can be applied by Congress and Federal agencies and departments to help determine appropriate staff and budget responses in order to maintain balance in the Federal criminal justice system and effectively implement changes in resources, laws, or penalties.

''(b) REPORT TO CONGRESS.—The Comptroller General shall report the results and recommendations derived

from the study required by subsection (a) no later than 1 year after the date of enactment of this Act [Nov. 18, 1988].''

FEDERAL ENVIRONMENTAL OR NATURAL RESOURCE LAWS; INVESTIGATIONS RESPECTING, ETC.

Pub. L. 96–132, § 12, Nov. 30, 1979, 93 Stat. 1048, provided that: ''The Attorney General may, with the concurrence of any agency or Department with primary enforcement responsibility for an environmental or natural resource law, investigate any violation, of an environmental or natural resource law of the United States, and bring such actions as are necessary to enforce such laws. This section does not affect the criminal law enforcement authority of the Attorney General.''

POSITIONS IN DRUG ENFORCEMENT ADMINISTRATION; GRADES EXCEPTED FROM COMPETITIVE SERVICE; VACANCIES; REMOVAL, SUSPENSION, OR REDUCTION IN RANK OR PAY; RATE OF PAY

Pub. L. 94–503, title II, § 201, Oct. 15, 1976, 90 Stat. 2425, provided that:

''(a) Effective beginning one year after date of the enactment of this Act [Oct. 15, 1976], the following positions in the Drug Enforcement Administration (and individuals holding such positions) are hereby excepted from the competitive service:

''(1) positions at GS–16, 17, and 18 of the General Schedule under section 5332(a) of title 5, United States Code, and

''(2) positions at GS–15 of the General Schedule which are designated as—

''(A) regional directors,

''(B) office heads, or

''(C) executive assistants (or equivalent positions) under the immediate supervision of the Administrator (or the Deputy Administrator) of the Drug Enforcement Administration.

''(b) Effective during the one year period beginning on the date of the enactment of this Act [Oct. 15, 1976], vacancies in positions in the Drug Enforcement Administration (other than positions described in subsection (a)) at a grade not lower than GS–14 shall be filled—

''(1) first, from applicants who have continuously held positions described in subsection (a) since the date of the enactment of this Act and who have applied for, and are qualified to fill, such vacancies, and

''(2) then, from other applicants in the order which would have occurred in the absence of this subsection.

Any individual placed in a position under paragraph (1) shall be paid in accordance with subsection (d).

''(c)(1) Effective beginning one year after the date of the enactment of this Act [Oct. 15, 1976], an individual in a position described in subsection (a) may be removed, suspended for more than 30 days, furloughed without pay, or reduced in rank or pay by the Administrator of the Drug Enforcement Administration if—

''(A) such individual has been employed in the Drug Enforcement Administration for less than the one-year period immediately preceding the date of such action, and

''(B) the Administrator determines, in his discretion, that such action would promote the efficiency of the service.

''(2) Effective beginning one year after the date of the enactment of this Act [Oct. 15, 1976], an individual in a position described in subsection (a) may be reduced in rank or pay by the Administrator within the Drug Enforcement Administration if—

''(A) such individual has been continuously employed in such position since the date of the enactment of this Act, and

''(B) the Administrator determines, in his discretion, that such action would promote the efficiency of the service.

Any individual reduced in rank or pay under this paragraph shall be paid in accordance with subsection (d).

''(3) The provisions of sections 7512 and 7701 of title 5, United States Code, and otherwise applicable Executive orders, shall not apply with respect to actions taken by the Administrator under paragraph (1) or any reduction in rank or pay (under paragraph (2) or otherwise) of any individual in a position described in subsection (a).

''(d) Any individual whose pay is to be determined in accordance with this subsection shall be paid basic pay at the rate of basic pay he was receiving immediately before he was placed in a position under subsection (b)(1) or reduced in rank or pay under subsection (c)(2), as the case may be, until such time as the rate of basic pay he would receive in the absence of this subsection exceeds such rate of basic pay. The provisions of section 5337 of title 5, United States Code, shall not apply in any case in which this subsection applies.''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

REORGANIZATION PLAN NO. 1 OF 1968

Eff. Apr. 8, 1968, 33 F.R. 5611, 82 Stat. 1367, as amended Reorg. Plan No. 2 of 1973, § 3, eff. July 1, 1973, 38 F.R. 15932, 87 Stat. 1091

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 7, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

NARCOTICS; DRUG ABUSE CONTROL

SECTION 1. TRANSFER OF FUNCTIONS FROM TREASURY DEPARTMENT

There are hereby transferred to the Attorney General:

(a) Those functions of the Secretary of the Treasury which are administered through or with respect to the Bureau of Narcotics.

(b) All functions of the Bureau of Narcotics, of the Commissioner of Narcotics, and of all other officers, employees and agencies of the Bureau of Narcotics.

(c) So much of other functions or parts of functions of the Secretary of the Treasury and the Department of the Treasury as is incidental to or necessary for the performance of the functions transferred by paragraphs (a) and (b) of this section.

SEC. 2. TRANSFER OF FUNCTIONS FROM THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

There are hereby transferred to the Attorney General:

(a) The functions of the Secretary of Health, Education, and Welfare under the Drug Abuse Control Amendments of 1965 (Public Law 89–74; 79 Stat. 226) [see Short Title note under 21 U.S.C. 301], except the function of regulating the counterfeiting of those drugs which are not controlled ''depressant or stimulant'' drugs.

(b) So much of other functions or parts of functions of the Secretary of Health, Education, and Welfare, and of the Department of Health, Education, and Welfare, as is incidental to or necessary for the performance of the functions transferred by paragraph (a) of this section.

SEC. 3. BUREAU OF NARCOTICS AND DANGEROUS DRUGS

(a) [Repealed. Reorg. Plan No. 2 of 1973, § 3, 38 F.R. 15932, 87 Stat. 1091, eff. July 1, 1973. Subsection established the Bureau of Narcotics and Dangerous Drugs in the Department of Justice and provided that it be headed by a Director appointed by the Attorney General.]

(b) There are hereby established in the Department of Justice, in addition to the positions transferred to that Department by this Plan, four new positions, appointment to which shall be made by the Attorney General

in the competitive service. Two of those positions shall have compensation at the rate now or hereafter provided for GS-18 positions of the General Schedule and the other two shall have compensation at the rate now or hereafter provided for GS-16 positions of the General Schedule (5 U.S.C. 5332). Each such position shall have such title and duties as the Attorney General shall prescribe.

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

SEC. 4. ABOLITION

The Bureau of Narcotics in the Department of the Treasury, including the office of Commissioner of Narcotics (21 U.S.C. 161), is hereby abolished. The Secretary of the Treasury shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics not otherwise provided for in this reorganization plan.

SEC. 5. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or organizational entity of the Department of Justice.

SEC. 6. INCIDENTAL TRANSFERS

(a) There are hereby transferred to the Department of Justice all of the positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, (1) of the Bureau of Narcotics, and (2) of the Bureau of Drug Abuse Control of the Department of Health, Education, and Welfare.

(b) There shall be transferred to the Department of Justice, at such time or times as the Director of the Bureau of the Budget shall direct, so much as the Director shall determine of other positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds of the Department of the Treasury and of the Department of Health, Education, and Welfare employed, used, held, available or to be made available in connection with functions transferred by the provisions of this reorganization plan.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

In my first Reorganization Plan of 1968, I call for the creation of a new and powerful Bureau of Narcotics and Dangerous Drugs.

With this action, America will serve notice to the pusher and the peddler that their criminal acts must stop.

No matter how well organized they are, we will be better organized. No matter how well they have concealed their activities, we will root them out.

Today, Federal investigation and enforcement of our narcotics laws are fragmented. One major element—the Bureau of Narcotics—is in the Treasury Department and responsible for the control of marihuana and narcotics such as heroin. Another—the Bureau of Drug Abuse Control—is in the Department of Health, Education, and Welfare, and is responsible for the control of dangerous drugs including depressants, stimulants, and hallucinogens such as LSD.

Neither is located in the agency which is primarily concerned with Federal law enforcement—the Department of Justice.

This separation of responsibilities—despite the relentless and dedicated efforts of the agents of each Bureau—has complicated and hindered our response to a national menace.

For example, more than nine out of ten seizures of LSD made by the Bureau of Drug Abuse Control have also turned up marihuana—but that Bureau has no jurisdiction over marihuana.

In many instances, we are confronted by well organized disciplined and resourceful criminals who reap huge profits at the expense of their unfortunate victims.

The response of the Federal Government must be unified. And it must be total.

Today, in my Message on Crime, I recommended strong new laws to control dangerous drugs. I also recommended an increase of more than thirty percent in the number of Federal agents enforcing the narcotic and dangerous drug laws.

I now propose that a single Bureau of Narcotics and Dangerous Drugs be established in the Department of Justice to administer those laws and to bring to the American people the most efficient and effective Federal enforcement machinery we can devise.

Under this Reorganization Plan the Attorney General will have full authority and responsibility for enforcing the Federal laws relating to narcotics and dangerous drugs. The new Bureau of Narcotics and Dangerous Drugs, to be headed by a Director appointed by the Attorney General, will:

—consolidate the authority and preserve the experience and manpower of the Bureau of Narcotics and the Bureau of Drug Abuse Control.

—work with states and local governments in their crackdown on illegal trade in drugs and narcotics, and help to train local agents and investigators.

—maintain worldwide operations, working closely with other nations, to suppress the trade in illicit narcotics and marihuana.

—conduct an extensive campaign of research and a nationwide public education program on drug abuse and its tragic effects.

The Plan I forward today moves in the direction recommended by two distinguished groups:

—1949 Hoover Commission.

—the 1963 Presidential Advisory Commission on Narcotic and Drug Abuse.

This Administration and this Congress have the will and the determination to stop the illicit traffic in drugs.

But we need more than the will and the determination. We need a modern and efficient instrument of Government to transform our plans into action. That is what this Reorganization Plan calls for.

The Plan has been prepared in accordance with chapter 9 of title 5 of the United States Code.

I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

I have also found that, by reason of these reorganizations, it is necessary to include in the accompanying plan provisions for the appointment and compensation of the five new positions as specified in section 3 of the plan. The rates of compensation fixed for these new positions are those which I have found to prevail in respect of comparable positions in the Executive Branch of the Government.

Should the reorganization I propose take effect, they will make possible more effective and efficient administration of Federal law enforcement functions. It is not practicable at this time, however, to itemize the reduction in expenditures which may result.

I recommend that the Congress allow this urgently needed and important Reorganization Plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, February 7, 1968

REORGANIZATION PLAN NO. 2 OF 1973

Effective July 1, 1973, 38 F.R. 15932, 87 Stat. 1091, as amended Pub. L. 93–253, §1, Mar. 16, 1974, 88 Stat. 50

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 28, 1973, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

LAW ENFORCEMENT IN ILLICIT DRUG ACTIVITIES

SECTION 1. TRANSFERS TO THE ATTORNEY GENERAL

There are hereby transferred from the Secretary of the Treasury, the Department of the Treasury, and any other officer or any agency of the Department of the Treasury, to the Attorney General all intelligence, investigative, and law enforcement functions, vested by law in the Secretary, the Department, officers, or agencies which relate to the suppression of illicit traffic in narcotics, dangerous drugs, or marihuana, except that the Secretary shall retain, and continue to perform, those functions, to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, or marihuana or to the apprehension or detention of persons in connection therewith, at regular inspection locations at ports of entry or anywhere along the land or water borders of the United States: *Provided*, that any illicit narcotics, dangerous drugs, marihuana, or related evidence seized, and any person apprehended or detained by the Secretary or any officer of the Department of the Treasury, pursuant to the authority retained in them by virtue of this section, shall be turned over forthwith to the jurisdiction of the Attorney General: *Provided further*, that nothing in this section shall be construed as limiting in any way any authority vested by law in the Secretary of the Treasury, the Department of the Treasury, or any other officer or any agency of that Department on the effective date of this Plan with respect to contraband other than illicit narcotics, dangerous drugs, and marihuana: and *Provided further*, that nothing in this section shall be construed as limiting in any way any authority the Attorney General, the Department of Justice, or any other officer or any agency of that Department may otherwise have to make investigations or engage in law enforcement activities, including activities relating to the suppression of illicit traffic in narcotics, dangerous drugs, and marihuana, at ports of entry or along the land and water borders of the United States.

SEC. 2. TRANSFERS TO THE SECRETARY OF THE TREASURY

[Repealed. Pub. L. 93–253, §1(a)(1), (b), Mar. 16, 1974, 88 Stat. 50, eff. July 1, 1973. Section provided for transfer to Secretary of the Treasury of functions vested in Attorney General, Department of Justice, or any other officer of such Department respecting inspection at ports of entry of persons, and documents of persons, entering or leaving the United States.]

SEC. 3. ABOLITION

The Bureau of Narcotics and Dangerous Drugs, including the Office of Director thereof, is hereby abolished, and section 3(a) of Reorganization Plan No. 1 of 1968 is hereby repealed. The Attorney General shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics and Dangerous Drugs not otherwise provided for in this Reorganization Plan.

SEC. 4. DRUG ENFORCEMENT ADMINISTRATION

There is established in the Department of Justice an agency which shall be known as the Drug Enforcement Administration, hereinafter referred to as ''the Administration.''

SEC. 5. OFFICERS OF THE ADMINISTRATION

(a) There shall be at the head of the Administration the Administrator of Drug Enforcement, hereinafter referred to as ''the Administrator.'' The Administrator shall be appointed by the President by and with the advice and consent of the Senate, and shall receive compensation at the rate now or hereafter prescribed by law for positions of level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). He shall perform such functions as the Attorney General shall from time to time direct.

(b) There shall be in the Administration a Deputy Administrator of the Drug Enforcement Administration, hereinafter referred to as ''the Deputy Administrator,'' who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Attorney General may from time to time direct, and shall receive compensation at the rate now or hereafter prescribed by law for positions of level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(c) The Deputy Administrator or such other official of the Department of Justice as the Attorney General shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

SEC. 6. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this Reorganization Plan by any officer, employee, or agency of the Department of Justice.

[Section, former subsec. (a) designation, and subsec. (b) providing for performance of functions transferred to Secretary of Treasury by any officer, employee, or agency of Treasury Department, repealed by Pub. L. 93–253, §1(a)(2), (b), Mar. 16, 1974, 88 Stat. 50, eff. July 1, 1973.]

SEC. 7. COORDINATION

The Attorney General, acting through the Administrator and such other officials of the Department of Justice as he may designate, shall provide for the coordination of all drug law enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among the Administration, the Federal Bureau of Investigation, and other units of the Department involved in the performance of these and related functions.

SEC. 8. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Attorney General and to the Secretary of the Treasury by this Reorganization Plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Justice and to the Department of the Treasury, respectively, at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such Federal agencies as he shall designate.

SEC. 9. INTERIM OFFICERS

(a) The President may authorize any person who, immediately prior to the effective date of this Reorganization Plan, held a position in the Executive Branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 10. EFFECTIVE DATE

The provisions of this Reorganization Plan shall take effect as provided by section 906(a) of title 5 of the United States Code or on July 1, 1973, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Drug abuse is one of the most vicious and corrosive forces attacking the foundations of American society today. It is a major cause of crime and a merciless destroyer of human lives. We must fight it with all of the resources at our command.

This Administration has declared all-out, global war on the drug menace. As I reported to the Congress earlier this month in my State of the Union message, there is evidence of significant progress on a number of fronts in that war.

Both the rate of new addiction to heroin and the number of narcotic-related deaths showed an encouraging downturn last year. More drug addicts and abusers are in treatment and rehabilitation programs than ever before.

Progress in pinching off the supply of illicit drugs was evident in last year's stepped-up volume of drug seizures worldwide—which more than doubled in 1972 over the 1971 level.

Arrests of traffickers have risen by more than one-third since 1971. Prompt Congressional action on my proposal for mandatory minimum sentences for pushers of hard drugs will help ensure that convictions stemming from such arrests lead to actual imprisonment of the guilty.

Notwithstanding these gains, much more must be done. The resilience of the international drug trade remains grimly impressive—current estimates suggest that we still intercept only a small fraction of all the heroin and cocaine entering this country. Local police still find that more than one of every three suspects arrested for street crimes is a narcotic abuser or addict. And the total number of Americans addicted to narcotics, suffering terribly themselves and inflicting their suffering in countless others, still stands in the hundreds of thousands.

A UNIFIED COMMAND FOR DRUG ENFORCEMENT

Seeking ways to intensify our counter-offensive against this menace, I am asking the Congress today to join with this Administration in strengthening and streamlining the Federal drug law enforcement effort.

Funding for this effort has increased sevenfold during the past five years, from $36 million in fiscal year 1969 to $257 million in fiscal year 1974—more money is not the most pressing enforcement need at present. Nor is there a primary need for more manpower working on the problem, over 2100 new agents having already been added to the Federal drug enforcement agencies under this Administration, an increase of more than 250 percent over the 1969 level.

The enforcement work could benefit significantly, however, from consolidation of our anti-drug forces under a single unified command. Right now the Federal Government is fighting the war on drug abuse under a distinct handicap, for its efforts are those of a loosely confederated alliance facing a resourceful, elusive, worldwide enemy. Admiral Mahan, the master naval strategist, described this handicap precisely when he wrote that "Granting the same aggregate of force, it is never as great in two hands as in one, because it is not perfectly concentrated."

More specifically, the drug law enforcement activities of the United States now are not merely in two hands but in half a dozen. Within the Department of Justice, with no overall direction below the level of the Attorney General, these fragmented forces include the Bureau of Narcotics and Dangerous Drugs, the Office for Drug Abuse Law Enforcement, the Office of National Narcotics Intelligence, and certain activities of the Law Enforcement Assistance Administration. The Treasury Department is also heavily engaged in enforcement work through the Bureau of Customs.

This aggregation of Federal activities has grown up rapidly over the past few years in response to the urgent need for stronger anti-drug measures. It has enabled us to make a very encouraging beginning in the accelerated drug enforcement drive of this Administration.

But it also has serious operational and organizational shortcomings. Certainly the cold-blooded underworld networks that funnel narcotics from suppliers all over the world into the veins of American drug victims are no respecters of the bureaucratic dividing lines that now complicate our anti-drug efforts. On the contrary, these modern-day slave traders can derive only advantage from the limitations of the existing organizational patchwork. Experience has now given us a good basis for correcting those limitations, and it is time to do so.

I therefore propose creation of a single, comprehensive Federal agency within the Department of Justice to lead the war against illicit drug traffic.

Reorganization Plan No. 2 of 1973, which I am transmitting to the Congress with this message, would establish such an agency, to be called the Drug Enforcement Administration. It would be headed by an Administrator reporting directly to the Attorney General.

The Drug Enforcement Administration would carry out the following anti-drug functions, and would absorb the associated manpower and budgets:

—All functions of the Bureau of Narcotics and Dangerous Drugs (which would be abolished as a separate entity by the reorganization plan);
—Those functions of the Bureau of Customs pertaining to drug investigations and intelligence (to be transferred from the Treasury Department to the Attorney General by the reorganization plan).
—All functions of the Office of Drug Abuse Law Enforcement; and
—All functions of the Office of National Narcotics Intelligence.

Merger of the latter two organizations into the new agency would be effected by an executive order dissolving them and transferring their functions, to take effect upon approval of Reorganization Plan No. 2 by the Congress. Drug law enforcement research currently funded by the Law Enforcement Assistance Administration and other agencies would also be transferred to the new agency by executive action.

The major responsibility of the Drug Enforcement Administration would thus include:

—development of overall Federal drug law enforcement strategy, programs, planning, and evaluation;
—full investigation and preparation for prosecution of suspects for violations under all Federal drug trafficking laws;
—full investigation and preparation for prosecution of suspects connected with illicit drugs seized at U.S. ports-of-entry and international borders;
—conduct of all relations with drug law enforcement officials of foreign governments, under the policy guidance of the Cabinet Committee on International Narcotics Control;
—full coordination and cooperation with State and local law enforcement officials on joint drug enforcement efforts; and
—regulation of the legal manufacture of drugs and other controlled substances under Federal regulations.

The Attorney General, working closely with the Administrator of this new agency, would have authority to make needed program adjustments. He would take steps within the Department of Justice to ensure that high priority emphasis is placed on the prosecution and

sentencing of drug traffickers following their apprehension by the enforcement organization. He would also have the authority and responsibility for securing the fullest possible cooperation-particularly with respect to collection of drug intelligence—from all Federal departments and agencies which can contribute to the anti-drug work, including the Internal Revenue Service and the Federal Bureau of Investigation.

My proposals would make possible a more effective antidrug role for the FBI, especially in dealing with the relationship between drug trafficking and organized crime. I intend to see that the resources of the FBI are fully committed to assist in supporting the new Drug Enforcement Administration.

The consolidation effected under Reorganization Plan No. 2 would reinforce the basic law enforcement and criminal justice mission of the Department of Justice. With worldwide drug law enforcement responsibilities no longer divided among several organizations in two different Cabinet departments, more complete and cumulative drug law enforcement intelligence could be compiled. Patterns of international and domestic illicit drug production, distribution, and sale could be more directly compared and interpreted. Case-by-case drug law enforcement activities could be more comprehensively linked, cross-referenced, and coordinated into a single, organic enforcement operation. In short, drug law enforcement officers would be able to spend more time going after the traffickers and less time coordinating with one another.

Such progress could be especially helpful on the international front. Narcotics control action plans, developed under the leadership of the Cabinet Committee on International Narcotics Control, are now being carried out by U.S. officials in cooperation with host governments in 59 countries around the world. This wide-ranging effort to cut off drug supplies before they ever reach U.S. borders or streets is just now beginning to bear fruit. We can enhance its effectiveness, with little disruption of ongoing enforcement activities, by merging both the highly effective narcotics force of overseas Customs agents and the rapidly developing international activities of the Bureau of Narcotics and Dangerous Drugs into the Drug Enforcement Administration. The new agency would work closely with the Cabinet Committee under the active leadership of the U.S. Ambassador in each country where anti-drug programs are underway.

Two years ago, when I established the Special Action Office for Drug Abuse Prevention within the Executive Office of the President, we gained an organization with the necessary resources, breadth, and leadership capacity to begin dealing decisively with the ''demand'' side of the drug abuse problem—treatment and rehabilitation for those who have been drug victims, and preventive programs for potential drug abusers. This year, by permitting my reorganization proposals to take effect, the Congress can help provide a similar capability on the ''supply'' side. The proposed Drug Enforcement Administration, working as a team with the Special Action Office, would arm Americans with a potent one-two punch to help us fight back against the deadly menace of drug abuse. I ask full Congressional cooperation in its establishment.

IMPROVING PORT-OF-ENTRY INSPECTIONS

No heroin or cocaine is produced within the United States; domestic availability of these substances results solely from their illegal importation. The careful and complete inspection of all persons and goods coming into the United States is therefore an integral part of effective Federal drug law enforcement.

At the present time, however, Federal responsibility for conducting port-of-entry inspections is awkwardly divided among several Cabinet departments. The principal agencies involved are the Treasury Department's Bureau of Customs, which inspects goods, and the Justice Department's Immigration and Naturalization Service, which inspects persons and their papers. The two utilize separate inspection procedures, hold differing views of inspection priorities, and employ dissimilar personnel management practices.

To reduce the possibility that illicit drugs will escape detection at ports-of-entry because of divided responsibility, and to enhance the effectiveness of the Drug Enforcement Administration, the reorganization plan which I am proposing today would transfer to the Secretary of the Treasury all functions currently vested in Justice Department officials to inspect persons, or the documents of persons.

When the plan takes effect, it is my intention to direct the Secretary of the Treasury to use the resources so transferred—including some 1,000 employees of the Immigration and Naturalization Service—to augment the staff and budget of the Bureau of Customs. The Bureau's primary responsibilities would then include:

—inspection of all persons and goods entering the United States;
—valuation of goods being imported, and assessment of appropriate tariff duties;
—interception of contraband being smuggled into the United States;
—enforcement of U.S. laws governing the international movement of goods, except the investigation of contraband drugs and narcotics; and
—turning over the investigation responsibility for all drug law enforcement cases to the Department of Justice.

The reorganization would thus group most port-of-entry inspection functions in a single Cabinet department. It would reduce the need for much day-to-day interdepartmental coordination, allow more efficient staffing at some field locations, and remove the basis for damaging interagency rivalries. It would also give the Secretary of the Treasury the authority and flexibility to meet changing requirements in inspecting the international flow of people and goods. An important by-product of the change would be more convenient service for travellers entering and leaving the country.

For these reasons, I am convinced that inspection activities at U.S. ports-of-entry can more effectively support our drug law enforcement efforts if concentrated in a single agency. The processing of persons at ports-of-entry is too closely interrelated with the inspection of goods to remain organizationally separated from it any longer. Both types of inspections have numerous objectives besides drug law enforcement, so it is logical to vest them in the Treasury Department, which has long had the principal responsibility for port-of-entry inspection of goods, including goods being transported in connection with persons. As long as the inspections are conducted with full awareness of related drug concerns it is neither necessary nor desirable that they be made a responsibility of the primary drug enforcement organization.

DECLARATIONS

After investigation, I have found that each action included in Reorganization Plan No. 2 of 1973 is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. In particular, the plan is responsive of the intention of the Congress as expressed in Section 901(a)(1): ''to promote better execution of the laws, more effective management of the executive branch and of its agencies and functions, and expeditious administration of the public business;'' Section 901(a)(3): ''to increase the efficiency of the operations of the Government to the fullest extent practicable;'' Section 901(a)(5) ''to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the Government;'' and Section 901(a)(6): ''to eliminate overlapping and duplication of effort.''

As required by law, the plan has one logically consistent subject matter: consolidation of Federal drug law enforcement activities in a manner designed to increase their effectiveness.

The plan would establish in the Department of Justice a new Administration designated as the Drug En-

forcement Administration. The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in Section 5 of the plan. The rates of compensation fixed for these officers would be comparable to those fixed for officers in the executive branch who have similar responsibilities.

While it is not practicable to specify all of the expenditure reductions and other economies which may result from the actions proposed, some savings may be anticipated in administrative costs now associated with the functions being transferred and consolidated.

The proposed reorganization is a necessary step in upgrading the effectiveness of our Nation's drug law enforcement effort. Both of the proposed changes would build on the strengths of established agencies, yielding maximum gains in the battle against drug abuse with minimum loss of time and momentum in the transition.

I am confident that this reorganization plan would significantly increase the overall efficiency and effectiveness of the Federal Government. I urge the Congress to allow it to become effective.

RICHARD NIXON.

THE WHITE HOUSE, March 28, 1973

EX. ORD. NO. 12146. MANAGEMENT OF FEDERAL LEGAL RESOURCES

Ex. Ord. No. 12146, July 18, 1979, 44 F.R. 42657, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, it is hereby ordered as follows:

1–1. ESTABLISHMENT OF THE FEDERAL LEGAL COUNCIL

1–101. There is hereby established the Federal Legal Council, which shall be composed of the Attorney General and the representatives of not more than 15 other agencies. The agency representative shall be designated by the head of the agency.

1–102. The initial membership of the Council, in addition to the Attorney General, shall consist of representatives designated by the heads of the following agencies:

(a) The Department of Commerce.
(b) The Department of Defense.
(c) The Department of Energy.
(d) The Environmental Protection Agency.
(e) The Equal Employment Opportunity Commission.
(f) The Federal Trade Commission.
(g) The Department of Health and Human Services.
(h) The Interstate Commerce Commission.
(i) The Department of Labor.
(j) The National Labor Relations Board.
(k) The Securities and Exchange Commission.
(*l*) The Department of State.
(m) The Department of the Treasury.
(n) The United States Postal Service and
(*o*) the Veterans Administration.

1–103. The initial members of the Council shall serve for a term of two years. Thereafter, the agencies which compose the membership shall be designated annually by the Council and at least five positions on the Council, other than that held by the Attorney General, shall rotate annually.

1–104. In addition to the above members, the Directors of the Office of Management and Budget and the Office of Personnel Management, or their designees, shall be advisory members of the Council.

1–105. The Attorney General shall chair the Council and provide staff for its operation. Representatives of agencies that are not members of the Council may serve on or chair subcommittees of the Council.

1–2. FUNCTIONS OF THE COUNCIL

1–201. The Council shall promote:

(a) coordination and communication among Federal legal offices;
(b) improved management of Federal lawyers, associated support personnel, and information systems;
(c) improvements in the training provided to Federal lawyers;
(d) the facilitation of the personal donation of pro bono legal services by Federal attorneys;
(e) the use of joint or shared legal facilities in field offices; and
(f) the delegation of legal work to field offices.

1–202. The Council shall study and seek to resolve problems in the efficient and effective management of Federal legal resources that are beyond the capacity or authority of individual agencies to resolve.

1–203. The Council shall develop recommendations for legislation and other actions: (a) to increase the efficient and effective operation and management of Federal legal resources, including those matters specified in Section 1–201, and (b) to avoid inconsistent or unnecessary litigation by agencies.

1–3. LITIGATION NOTICE SYSTEM

1–301. The Attorney General shall establish and maintain a litigation notice system that provides timely information about all civil litigation pending in the courts in which the Federal Government is a party or has a significant interest.

1–302. The Attorney General shall issue rules to govern operation of the notice system. The rules shall include the following requirement:

(a) All agencies with authority to litigate cases in court shall promptly notify the Attorney General about those cases that fall in classes or categories designated from time to time by the Attorney General.
(b) The Attorney General shall provide all agencies reasonable access to the information collected in the litigation notice system.

1–4. RESOLUTION OF INTERAGENCY LEGAL DISPUTES

1–401. Whenever two or more Executive agencies are unable to resolve a legal dispute between them, including the question of which has jurisdiction to administer a particular program or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General.

1–402. Whenever two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute, the agencies shall submit the dispute to the Attorney General prior to proceeding in any court, except where there is specific statutory vesting of responsibility for a resolution elsewhere.

1–5. ACCESS TO LEGAL OPINIONS

1–501. In addition to the disclosure now required by law, all agencies are encouraged to make available for public inspection and copying other opinions of their legal officers that are statements of policy or interpretation that have been adopted by the agency, unless the agency determines that disclosure would result in demonstrable harm.

1–502. All agencies are encouraged to make available on request other legal opinions, when the agency determines that disclosure would not be harmful.

1–6. AUTOMATED LEGAL RESEARCH AND INFORMATION SYSTEMS

1–601. The Attorney General, in coordination with the Secretary of Defense and other agency heads, shall provide for a computerized legal research system that will be available to all Federal law offices on a reimbursable basis. The system may include in its data base such Federal regulations, case briefs, and legal opinions, as the Attorney General deems appropriate.

1–602. The Federal Legal Council shall provide leadership for all Federal legal offices in establishing appropriate word processing and management information systems.

1–7. RESPONSIBILITIES OF THE AGENCIES

1–701. Each agency shall (a) review the management and operation of its legal activities and report in one

year to the Federal Legal Council all steps being taken to improve those operations, and (b) cooperate with the Federal Legal Council and the Attorney General in the performance of the functions provided by this Order.

1–702. To the extent permitted by law, each agency shall furnish the Federal Legal Council and the Attorney General with reports, information and assistance as requested to carry out the provisions of this Order.

CROSS REFERENCES

Bureau of Justice Assistance within Department of Justice, see section 3741 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 1082; title 42 section 12651d.

§ 510. Delegation of authority

The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 2, eff. May 24, 1950, 64 Stat. 1261.

The words ''including any function transferred to the Attorney General by the provisions of this reorganization plan'' are omitted as executed and unnecessary as the words ''any function of the Attorney General'' include the functions transferred to the Attorney General by 1950 Reorg. Plan. No. 2.

PRIOR PROVISIONS

A prior section 510, act June 25, 1948, ch. 646, 62 Stat. 910, related to clerical assistants and messengers for United States attorneys, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 550 of this title by section 4(c) of Pub. L. 89–554.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6103; title 31 section 3733.

§ 511. Attorney General to advise the President

The Attorney General shall give his advice and opinion on questions of law when required by the President.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 303.	R.S. § 354. Feb. 27, 1877, ch. 69, § 1 (8th full par. on p. 241), 19 Stat. 241.

§ 512. Attorney General to advise heads of executive departments

The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 304.	R.S. § 356.

§ 513. Attorney General to advise Secretaries of military departments

When a question of law arises in the administration of the Department of the Army, the Department of the Navy, or the Department of the Air Force, the cognizance of which is not given by statute to some other officer from whom the Secretary of the military department concerned may require advice, the Secretary of the military department shall send it to the Attorney General for disposition.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 307.	R.S. § 357.

The Department of War was designated the Department of the Army by the Act of July 26, 1947, ch. 343, § 205, 61 Stat. 501. ''Department of the Air Force'' is added on authority of the Act of July 26, 1947, ch. 343, § 207(a), (f), 61 Stat. 502. The word ''Secretary'' is substituted for ''head.'' The words ''military department'' are substituted for ''department'' to conform to section 102 of title 5, United States Code, and section 101 of title 10, United States Code. The words ''for disposition'' are substituted for ''to be by him referred to the proper officer in his department, or otherwise disposed of as he may deem proper.''

§ 514. Legal services on pending claims in departments and agencies

When the head of an executive department or agency is of the opinion that the interests of the United States require the service of counsel on the examination of any witness concerning any claim, or on the legal investigation of any claim, pending in the department or agency, he shall notify the Attorney General, giving all facts necessary to enable him to furnish proper professional service in attending the examination or making the investigation, and the Attorney General shall provide for the service.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	5 U.S.C. 48. 5 U.S.C. 313.	R.S. § 187. R.S. § 364.

Sections 187 and 364 of the Revised Statutes are combined into one section since they both deal with the same subject matter and are derived from the Act of Feb. 14, 1871, ch. 51, § 3, 16 Stat. 412.

The words ''executive department'' are substituted for ''Department'' because ''Department'', as used in R.S. §§ 187 and 364, meant ''executive department''. (See R.S. § 159.) The word ''agency'' is substituted for ''bureau'' as it has a more common current acceptance.

The word ''concerning'' is substituted for ''touching''. Reference to application for a subpena is omitted as R.S. §364 gives the department head the same authority to request aid from the Attorney General whether or not application has been made for a subpena.

Section 187 of the Revised Statutes was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Minor changes are made in phraseology to allow for the combining of the two sections.

§515. Authority for legal proceedings; commission, oath, and salary for special attorneys

(a) The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

(b) Each attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney, and shall take the oath required by law. Foreign counsel employed in special cases are not required to take the oath. The Attorney General shall fix the annual salary of a special assistant or special attorney at not more than $12,000.

(Added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 310.	June 30, 1906, ch. 3935, 34 Stat. 816.
(b)	5 U.S.C. 315.	R.S. §366. Apr. 17, 1930, ch. 174, 46 Stat. 170. June 25, 1948, ch. 646, §3, 62 Stat. 985.
.....	[Uncodified].	Aug. 5, 1953, ch. 328, §202 (1st and 2d provisos, as applicable to special assistants and special attorneys), 67 Stat. 375.
.....	[Uncodified].	July 2, 1954, ch. 456, §202 (as applicable to special assistants and special attorneys), 68 Stat. 421.

In subsection (a), the words ''or counselor'' are omitted as redundant. The words ''United States attorneys'' are substituted for ''district attorneys'' on authority of the Act of June 25, 1948, ch. 646, §1, 62 Stat. 909. The words ''any provision of'' are omitted as unnecessary.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

§516. Conduct of litigation reserved to Department of Justice

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

(Added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 306.	R.S. §361. Sept. 3, 1954, ch. 1263, §11, 68 Stat. 1229.

The section is revised to express the effect of the law. As agency heads have long employed, with the approval of Congress, attorneys to advise them in the conduct of their official duties, the first 56 words of R.S. §361 and of former section 306 of title 5 are omitted as obsolete.

The section concentrates the authority for the conduct of litigation in the Department of Justice. The words ''Except as otherwise authorized by law,'' are added to provide for existing and future exceptions (e.g., section 1037 of title 10). The words ''an agency'' are added for clarity and to align this section with section 519 which is of similar import. The words ''as such officer'' are omitted as unnecessary since it is implied that the officer is a party in his official capacity as an officer.

So much as prohibits the employment of counsel, other than in the Department of Justice, to conduct litigation is omitted as covered by R.S. §365, which is codified in section 3106 of title 5, United States Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 7516; title 12 section 4243; title 19 section 2350; title 31 section 3718; title 38 sections 3730, 5316; title 42 section 1785.

§517. Interests of United States in pending suits

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

(Added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 613.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 316.	R.S. §367.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 943; title 19 section 1920; title 20 section 1082; title 42 sections 292j, 3211, 12651d.

§518. Conduct and argument of cases

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the United States Court of Federal Claims or in the United States Court of Appeals for the Federal Circuit and in the Court of International Trade in which the United States is interested.

(b) When the Attorney General considers it in the interests of the United States, he may per-

sonally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 613; amended Pub. L. 96–417, title V, § 503, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 97–164, title I, § 117, Apr. 2, 1982, 96 Stat. 32; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 309.	R.S. § 359.

The words ''and writs of error'' are omitted on authority of the Act of Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54. The word ''considers'' is substituted for ''deems''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Subsec. (a). Pub. L. 97–164 substituted ''United States Claims Court or in the United States Court of Appeals for the Federal Circuit'' for ''Court of Claims''.

1980—Subsec. (a). Pub. L. 96–417 required the Attorney General and the Solicitor General to conduct and argue suits in the Court of International Trade.

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 this title.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 1204, 7105, 8477; title 12 sections 2244, 4243; title 29 sections 663, 792, 1132, 1852; title 30 section 822; title 31 section 3718; title 42 sections 300aa–12, 7171.

§ 519. Supervision of litigation

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 614.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 507(b).	[None].

The words ''Except as otherwise authorized by law,'' are added to provide for existing and future exceptions (e.g., section 1037 of title 10).

The words ''or officer'' are added for clarity and to align this section with section 516 which is of similar import.

The words ''special attorneys appointed under section 543'' are substituted for ''attorneys appointed under section 543'' to reflect the revision of this title.

CASE MANAGEMENT INFORMATION AND TRACKING SYSTEMS FOR FEDERAL JUDICIAL DISTRICTS AND DIVISIONS OF DEPARTMENT; PREPARATION, SUBMISSION, ETC., OF PLAN

Pub. L. 96–132, § 11, Nov. 30, 1979, 93 Stat. 1047, required the Attorney General, not later than Apr. 15, 1980, after consultation with the Director of the Executive Office of United States Attorneys and such Assistant Attorneys as appropriate, to prepare and submit to the Committees on the Judiciary of the Senate and the House of Representatives a plan for the activation and coordination, within the Department of Justice, of compatible, comprehensive case management information and tracking systems for each of the judicial districts of the United States and for each of the divisions of the Department.

REPORT TO CONGRESS REGARDING PROVISIONS OF LAW CONSIDERED UNCONSTITUTIONAL BY THE DEPARTMENT OF JUSTICE; DECLARATION OF SUCH POSITION

Pub. L. 96–132, § 21, Nov. 30, 1979, 93 Stat. 1049, required the Attorney General, during the fiscal year ending Sept. 30, 1980, to transmit a report to each House of Congress in any case in which the Attorney General considered the provisions of law enacted by the Congress and at issue to be unconstitutional and in such cases required a representative of the Department of Justice participating in such case to make a declaration that such opinion of the Attorney General regarding the constitutionality of those provisions of law involved constitutes the opinion of the executive branch of the government with respect to such matter.

Similar provisions were contained in Pub. L. 95–624, § 13, Nov. 9, 1978, 92 Stat. 3464.

STUDY AND REPORT TO CONGRESS ON EXTENT TO WHICH VIOLATIONS OF FEDERAL CRIMINAL LAWS ARE NOT PROSECUTED

Pub. L. 95–624, § 17, Nov. 9, 1978, 92 Stat. 3465, provided that the Attorney General undertake a study and make recommendations concerning violations of Federal criminal laws which have not been prosecuted and present such study and recommendations to the Committee on the Judiciary of the Senate and the House of Representatives not later than Oct. 1, 1979.

EXECUTIVE ORDER NO. 12778

Ex. Ord. No. 12778, Oct. 23, 1991, 56 F.R. 55195, which prescribed guidelines for promotion of just and efficient Government civil litigation and set forth principles for enactment of legislation and promulgation of regulations which did not unduly burden the Federal court system and for promotion of just and efficient administrative adjudications, was revoked by Ex. Ord. No. 12988, § 12, Feb. 5, 1996, 61 F.R. 4734, set out below.

EX. ORD. NO. 12988. CIVIL JUSTICE REFORM

Ex. Ord. No. 12988, Feb. 5, 1996, 61 F.R. 4729, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to improve access to justice for all persons who wish to avail themselves of court and administrative adjudicatory tribunals to resolve disputes, to facilitate the just and efficient resolution of civil claims involving the United States Government, to encourage the filing of only meritorious civil claims, to improve legislative and regulatory drafting to reduce needless litigation, to promote fair and prompt adjudication before administrative tribunals, and to provide a model for similar reforms of litigation practices in the private sector and in various states, it is hereby ordered as follows:

SECTION 1. *Guidelines to Promote Just and Efficient Government Civil Litigation*. To promote the just and efficient resolution of civil claims, those Federal agencies and litigation counsel that conduct or otherwise participate in civil litigation on behalf of the United States Government in Federal court shall respect and adhere to the following guidelines during the conduct of such litigation:

(a) *Pre-filing Notice of a Complaint*. No litigation counsel shall file a complaint initiating civil litigation without first making a reasonable effort to notify all disputants about the nature of the dispute and to attempt to achieve a settlement, or confirming that the referring agency that previously handled the dispute has made a reasonable effort to notify the disputants and to achieve a settlement or has used its conciliation processes.

(b) *Settlement Conferences*. As soon as practicable after ascertaining the nature of a dispute in litigation, and throughout the litigation, litigation counsel shall evaluate settlement possibilities and make reasonable efforts to settle the litigation. Such efforts shall include offering to participate in a settlement conference or moving the court for a conference pursuant to Rule 16 of the Federal Rules of Civil Procedure [28 App. U.S.C.] in an attempt to resolve the dispute without additional civil litigation.

(c) *Alternative Methods of Resolving the Dispute in Litigation*. Litigation counsel shall make reasonable attempts to resolve a dispute expeditiously and properly before proceeding to trial.

(1) Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal court proceeding. Where the benefits of Alternative Dispute Resolution (''ADR'') may be derived, and after consultation with the agency referring the matter, litigation counsel should suggest the use of an appropriate ADR technique to the parties.

(2) It is appropriate to use ADR techniques or processes to resolve claims of or against the United States or its agencies, after litigation counsel determines that the use of a particular technique is warranted in the context of a particular claim or claims, and that such use will materially contribute to the prompt, fair, and efficient resolution of the claims.

(3) To facilitate broader and effective use of informal and formal ADR methods, litigation counsel should be trained in ADR techniques.

(d) *Discovery*. To the extent practical, litigation counsel shall make every reasonable effort to streamline and expedite discovery in cases under counsel's supervision and control.

(1) *Review of Proposed Document Requests*. Each agency within the executive branch shall establish a coordinated procedure for the conduct and review of document discovery undertaken in litigation directly by that agency when that agency is litigation counsel. The procedure shall include, but is not necessarily limited to, review by a senior lawyer prior to service or filing of the request in litigation to determine that the request is not cumulative or duplicative, unreasonable, oppressive, unduly burdensome or expensive, taking into account the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained from some other source that is more convenient, less burdensome, or less expensive.

(2) *Discovery Motions*. Before petitioning a court to resolve a discovery motion or petitioning a court to impose sanctions for discovery abuses, litigation counsel shall attempt to resolve the dispute with opposing counsel. If litigation counsel makes a discovery motion concerning the dispute, he or she shall represent in that motion that any attempt at resolution was unsuccessful or impracticable under the circumstances.

(e) *Sanctions*. Litigation counsel shall take steps to seek sanctions against opposing counsel and opposing parties where appropriate.

(1) Litigation counsel shall evaluate filings made by opposing parties and, where appropriate, shall petition the court to impose sanctions against those responsible for abusive practices.

(2) Prior to filing a motion for sanctions, litigation counsel shall submit the motion for review to the sanctions officer, or his or her designee, within the litigation counsel's agency. Such officer or designee shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States. The sanctions officer or designee shall also review motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers.

(f) *Improved Use of Litigation Resources*. Litigation counsel shall employ efficient case management techniques and shall make reasonable efforts to expedite civil litigation in cases under that counsel's supervision and control. This includes but is not limited to:

(1) making reasonable efforts to negotiate with other parties about, and stipulate to, facts that are not in dispute;

(2) reviewing and revising pleadings and other filings to ensure that they are accurate and that they reflect a narrowing of issues, if any, that has resulted from discovery;

(3) requesting early trial dates where practicable;

(4) moving for summary judgment in every case where the movant would be likely to prevail, or where the motion is likely to narrow the issues to be tried; and

(5) reviewing and revising pleadings and other filings to ensure that unmeritorious threshold defenses and jurisdictional arguments, resulting in unnecessary delay, are not raised.

SEC. 2. *Government Pro Bono and Volunteer Service*. All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation, or other rule or guideline.

SEC. 3. *Principles to Enact Legislation and Promulgate Regulations Which Do Not Unduly Burden the Federal Court System*.

(a) *General Duty to Review Legislation and Regulations*. Within current budgetary constraints and existing executive branch coordination mechanisms and procedures established in OMB Circular A-19 and Executive Order No. 12866 [5 U.S.C. 601 note], each agency promulgating new regulations, reviewing existing regulations, developing legislative proposals concerning regulations, and developing new legislation shall adhere to the following requirements:

(1) The agency's proposed legislation and regulations shall be reviewed by the agency to eliminate drafting errors and ambiguity;

(2) The agency's proposed legislation and regulations shall be written to minimize litigation; and

(3) The agency's proposed legislation and regulations shall provide a clear legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

(b) *Specific Issues for Review*. In conducting the reviews required by subsection (a), each agency formulating proposed legislation and regulations shall make every reasonable effort to ensure:

(1) that the legislation, as appropriate—

(A) specifies whether all causes of action arising under the law are subject to statutes of limitations;

(B) specifies in clear language the preemptive effect, if any, to be given to the law;

(C) specifies in clear language the effect on existing Federal law, if any, including all provisions repealed, circumscribed, displaced, impaired, or modified;

(D) provides a clear legal standard for affected conduct;

(E) specifies whether private arbitration and other forms of private dispute resolution are appropriate under enforcement and relief provisions; subject to constitutional requirements;

(F) specifies whether the provisions of the law are severable if one or more of them is found to be unconstitutional;

(G) specifies in clear language the retroactive effect, if any, to be given to the law;

(H) specifies in clear language the applicable burdens of proof;

(I) specifies in clear language whether it grants private parties a right to sue and, if so, the relief available and the conditions and terms for authorized awards of attorney's fees, if any;

(J) specifies whether State courts have jurisdiction under the law and, if so, whether and under what conditions an action would be removable to Federal court;

(K) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(L) sets forth the standards governing the assertion of personal jurisdiction, if any;

(M) defines key statutory terms, either explicitly or by reference to other statutes that explicitly define those terms;

(N) specifies whether the legislation applies to the Federal Government or its agencies;

(O) specifies whether the legislation applies to States, territories, the District of Columbia, and the Commonwealths of Puerto Rico and of the Northern Mariana Islands;

(P) specifies what remedies are available such as money damages, civil penalties, injunctive relief, and attorney's fees; and

(Q) addresses other important issues affecting clarity and general draftsmanship of legislation set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget (''OMB'') and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(2) that the regulation, as appropriate—

(A) specifies in clear language the preemptive effect, if any, to be given to the regulation;

(B) specifies in clear language the effect on existing Federal law or regulation, if any, including all provisions repealed, circumscribed, displaced, impaired, or modified;

(C) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction;

(D) specifies in clear language the retroactive effect, if any, to be given to the regulation;

(E) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies;

(F) defines key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items; and

(G) addresses other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of OMB and after consultation with affected agencies, that are determined to be in accordance with the purposes of this order.

(c) *Agency Review*. The agencies shall review such draft legislation or regulation to determine that either the draft legislation or regulation meets the applicable standards provided in subsections (a) and (b) of this section, or it is unreasonable to require the particular piece of draft legislation or regulation to meet one or more of those standards.

SEC. 4. *Principles to Promote Just and Efficient Administrative Adjudications*.

(a) *Implementation of Administrative Conference Recommendations*. In order to promote just and efficient resolution of disputes, an agency that adjudicates administrative claims shall, to the extent reasonable and practicable, and when not in conflict with other sections of this order, implement the recommendations of the Administrative Conference of the United States, entitled ''Case Management as a Tool for Improving Agency Adjudication,'' as contained in 1 C.F.R. 305.86-7 (1991).

(b) *Improvements in Administrative Adjudication*. All Federal agencies should review their administrative adjudicatory processes and develop specific procedures to reduce delay in decision-making, to facilitate self-representation where appropriate, to expand non-lawyer counseling and representation where appropriate, and to invest maximum discretion in fact-finding officers to encourage appropriate settlement of claims as early as possible.

(c) *Bias*. All Federal agencies should review their administrative adjudicatory processes to identify any type of bias on the part of the decision-makers that results in an injustice to persons who appear before administrative adjudicatory tribunals; regularly train all fact-finders, administrative law judges, and other decision-makers to eliminate such bias; and establish appropriate mechanisms to receive and resolve complaints of such bias from persons who appear before administrative adjudicatory tribunals.

(d) *Public Education*. All Federal agencies should develop effective and simple methods, including the use of electronic technology, to educate the public about its claims/benefits policies and procedures.

SEC. 5. *Coordination by the Department of Justice*.

(a) The Attorney General shall coordinate efforts by Federal agencies to implement sections 1, 2 and 4 of this order.

(b) To implement the principles and purposes announced by this order, the Attorney General is authorized to issue guidelines implementing sections 1 and 4 of this order for the Department of Justice. Such guidelines shall serve as models for internal guidelines that may be issued by other agencies pursuant to this order.

SEC. 6. *Definitions*. For purposes of this order:

(a) The term ''agency'' shall be defined as that term is defined in section 105 of title 5, United States Code.

(b) The term ''litigation counsel'' shall be defined as the trial counsel or the office in which such trial counsel is employed, such as the United States Attorney's Office for the district in which the litigation is pending or a litigating division of the Department of Justice. Special Assistant United States Attorneys are included within this definition. Those agencies authorized by law to represent themselves in court without assistance from the Department of Justice are also included in this definition, as are private counsel hired by any Federal agency to conduct litigation on behalf of the agency or the United States.

SEC. 7. *No Private Rights Created*. This order is intended only to improve the internal management of the executive branch in resolving disputes, conducting litigation in a reasonable and just manner, and reviewing legislation and regulations. This order shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order. Nothing in this order shall be construed to obligate the United States to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to forego seeking a consent decree or other relief, or to alter any existing delegation of settlement or litigating authority.

SEC. 8. *Scope*.

(a) *No Applicability to Criminal Matters or Proceedings in Foreign Courts*. This order is applicable to civil matters only. It is not intended to affect criminal matters, including enforcement of criminal fines or judgments of criminal forfeiture. This order does not apply to litigation brought by or against the United States in foreign courts or tribunals.

(b) *Application of Notice Provision*. Notice pursuant to subsection (a) of section 1 is not required (1) in any action to seize or forfeit assets subject to forfeiture or in any action to seize property; (2) in any bankruptcy, in-

solvency, conservatorship, receivership, or liquidation proceeding; (3) when the assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation, or destruction; (4) when the defendant is subject to flight; (5) when, as determined by litigation counsel, exigent circumstances make providing such notice impracticable or such notice would otherwise defeat the purpose of the litigation, such as in actions seeking temporary restraining orders or preliminary injunctive relief; or (6) in those limited classes of cases where the Attorney General determines that providing such notice would defeat the purpose of the litigation.

(c) *Additional Guidance as to Scope*. The Attorney General shall have the authority to issue further guidance as to the scope of this order, except section 3, consistent with the purposes of this order.

SEC. 9. *Conflicts with Other Rules*. Nothing in this order shall be construed to require litigation counsel or any agency to act in a manner contrary to the Federal Rules of Civil Procedure [28 App. US.C.], Tax Court Rules of Practice and Procedure [26 App. U.S.C.], State or Federal law, other applicable rules of practice or procedure, or court order.

SEC. 10. *Privileged Information*. Nothing in this order shall compel or authorize the disclosure of privileged information, sensitive law enforcement information, information affecting national security, or information the disclosure of which is prohibited by law.

SEC. 11. *Effective Date*. This order shall become effective 90 days after the date of signature. This order shall not apply to litigation commenced prior to the effective date.

SEC. 12. *Revocation*. Executive Order No. 12778 is hereby revoked.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 943; title 12 section 4243; title 19 section 1920; title 31 section 3718; title 38 sections 3730, 5316; title 42 section 8412.

§ 520. Transmission of petitions in United States Court of Federal Claims or in United States Court of Appeals for the Federal Circuit; statement furnished by departments

(a) In suits against the United States in the United States Court of Federal Claims or in the United States Court of Appeals for the Federal Circuit founded on a contract, agreement, or transaction with an executive department or military department, or a bureau, officer, or agent thereof, or when the matter or thing on which the claim is based has been passed on and decided by an executive department, military department, bureau, or officer authorized to adjust it, the Attorney General shall send to the department, bureau, or officer a printed copy of the petition filed by the claimant, with a request that the department, bureau, or officer furnish to the Attorney General all facts, circumstances, and evidence concerning the claim in the possession or knowledge of the department, bureau, or officer.

(b) Within a reasonable time after receipt of the request from the Attorney General, the executive department, military department, bureau, or officer shall furnish the Attorney General with a written statement of all facts, information, and proofs. The statement shall contain a reference to or description of all official documents and papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the department, office, or place where the same is kept or may be secured. If the claim has been passed on and decided by the department, bureau, or officer, the statement shall briefly state the reasons and principles on which the decision was based. When the decision was founded on an Act of Congress it shall be cited specifically, and if any previous interpretation or construction has been given to the Act, section, or clause by the department, bureau, or officer, it shall be set forth briefly in the statement and a copy of the opinion filed, if any, attached to it. When a decision in the case has been based on a regulation of a department or when a regulation has, in the opinion of the department, bureau, or officer sending the statement, any bearing on the claim, it shall be distinctly quoted at length in the statement. When more than one case or class of cases is pending, the defense of which rests on the same facts, circumstances, and proofs, the department, bureau, or officer may certify and send one statement and it shall be held to apply to all cases as if made out, certified, and sent in each case respectively.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 614; amended Pub. L. 97–164, title I, § 118(a), Apr. 2, 1982, 96 Stat. 32; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 91.	R.S. § 188.

The section is reorganized and restated for clarity.

In subsection (a), the word ''concerning'' is substituted for ''touching''.

In subsection (b), the words ''without delay'' are omitted as unnecessary in view of the requirement that the statement be furnished ''Within a reasonable time''. The word ''briefly'' is substituted for ''succinctly''. The words ''in suit'' are omitted as unnecessary.

The words ''executive department'' are substituted for ''department'' because ''department'' as used in R.S. § 188 meant ''executive department''. (See R.S. § 159.) The words ''military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301 of title 5, United States Code.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in section catchline and subsec. (a).

1982—Pub. L. 97–164, § 118(a)(2), substituted ''United States Claims Court or in United States Court of Appeals for the Federal Circuit'' for ''Court of Claims'' in section catchline.

Subsec. (a). Pub. L. 97–164, § 118(a)(1), substituted ''United States Claims Court or in the United States Court of Appeals for the Federal Circuit'' 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 this title.

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 this title.

§ 521. Publication and distribution of opinions

The Attorney General, from time to time—

(1) shall cause to be edited, and printed in the Government Printing Office, such of his opinions as he considers valuable for preservation in volumes; and

(2) may prescribe the manner for the distribution of the volumes.

Each volume shall contain headnotes, an index, and such footnotes as the Attorney General may approve.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 614.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 305 (1st sentence, as applicable to the Attorney General; 2d and 3d sentences).	R.S. § 383 (1st sentence, as applicable to the Attorney General; 2d and 3d sentences).

Section 188 of the Revised Statutes was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

The words ''his opinions'' are substituted for ''the opinions of the law officers herein authorized to be given'' as the opinions of the Attorney General are his and only his and the reference to other ''law officers'' is misleading. All functions of all other officers of the Department of Justice were transferred to the Attorney General by 1950 Reorg. Plan No. 2, § 1, eff. May 14, 1950, 64 Stat. 1261. The word ''considers'' is substituted for ''may deem''.

In the last sentence, the words ''proper'' and ''complete and full'' are omitted as unnecessary.

§ 522. Report of business and statistics

The Attorney General, by April 1 of each year, shall report to Congress on the business of the Department of Justice for the last preceding fiscal year, and on any other matters pertaining to the Department that he considers proper, including—

(1) a statement of the several appropriations which are placed under the control of the Department and the amount appropriated;

(2) the statistics of crime under the laws of the United States; and

(3) a statement of the number of causes involving the United States, civil and criminal, pending during the preceding year in each of the several courts of the United States.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 615; amended Pub. L. 94–273, § 19, Apr. 21, 1976, 90 Stat. 379.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 333.	R.S. § 384.

The words ''The Attorney General . . . shall report'' are substituted for ''It shall be the duty of the Attorney General to make . . . a report''. The word ''beginning'' is substituted for ''commencement''. The words ''pertaining to the Department that he considers proper'' are substituted for ''appertaining thereto that he may deem proper''.

The words ''and a detailed statement of the amounts used for defraying the expenses of the United States courts in each judicial district'' are omitted as obsolete in view of the creation of the Administrative Office of the United States Courts by the Act of Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223 (Chapter 41 of this title).

In paragraph (3), the words ''involving the United States'' are inserted for clarity. The function of reporting on all cases pending in the United States courts is now vested in the Administrative Office of the United States Courts, see 28 U.S.C. 604.

AMENDMENTS

1976—Pub. L. 94–273 substituted ''by April 1 of each year'' for ''at the beginning of each regular session of Congress''.

REPORT TO CONGRESS ON BANKING LAW OFFENSES

Pub. L. 101–647, title XXV, § 2546, Nov. 29, 1990, 104 Stat. 4885, provided that:

''(a) IN GENERAL.—

''(1) DATA COLLECTION.—The Attorney General shall compile and collect data concerning—

''(A) the nature and number of civil and criminal investigations, prosecutions, and related proceedings, and civil enforcement and recovery proceedings, in progress with respect to banking law offenses under sections 981, 1008, 1032, and 3322(d) of title 18, United States Code, and section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 1833a] and conspiracies to commit any such offense, including inactive investigations of such offenses;

''(B) the number of—

''(i) investigations, prosecutions, and related proceedings described in subparagraph (A) which are inactive as of the close of the reporting period but have not been closed or declined; and

''(ii) unaddressed referrals which allege criminal misconduct involving offenses described in subparagraph (A),

and the reasons such matters are inactive and the referrals unaddressed;

''(C) the nature and number of such matters closed, settled, or litigated to conclusion; and

''(D) the results achieved, including convictions and pretrial diversions, fines and penalties levied, restitution assessed and collected, and damages recovered, in such matters.

''(2) ANALYSIS AND REPORT.—The Attorney General shall analyze and report to the Congress on the data described in paragraph (1) and its coordination and other related activities named in section 2539(c)(2) [probably means section 2539(c)(3) of Pub. L. 101–647, set out as a note under section 509 of this title] and shall provide such report on the data monthly through December 31, 1991, and quarterly after such date.

''(b) SPECIFICS OF REPORT.—The report required by subsection (a) shall—

''(1) categorize data as to various types of financial institutions and appropriate dollar loss categories;

''(2) disclose data for each Federal judicial district;

''(3) describe the activities of the Financial Institution Fraud Unit; and

''(4) list—

''(A) the number of institutions, categorized by failed and open institutions, in which evidence of significant fraud, unlawful activity, insider abuse or serious misconduct has been alleged or detected;

''(B) civil, criminal, and administrative enforcement actions, including those of the Federal financial institutions regulatory agencies, brought against offenders;

''(C) any settlements or judgments obtained against offenders;

''(D) indictments, guilty pleas, or verdicts obtained against offenders; and

''(E) the resources allocated in pursuit of investigations, prosecutions, and sentencings (including indictments, guilty pleas, or verdicts obtained against offenders) and related proceedings.''

CONGRESSIONAL OVERSIGHT

Pub. L. 100–700, § 6, Nov. 19, 1988, 102 Stat. 4634, provided that: ''Commencing with the first year after the date of enactment of this section [Nov. 19, 1988], the Attorney General shall annually report to the Congress with respect to—

''(1) the number of referrals of fraud cases by the Department of Defense of defense contractors (with specific statistics with respect to the one hundred largest contractors), the number of open investigation of such contractors, and a breakdown of to which United States Attorney's Office or other component of the Department of Justice each such case was referred;

''(2) the number of referrals of fraud cases from other agencies or sources;

''(3) the number of attorneys and support staff assigned pursuant to this Act [see Tables for classification];

''(4) the number of investigative agents assigned to each investigation and the period of time each investigation has been opened;

''(5) the number of convictions and acquittals achieved by individuals assigned to positions established by the Act; and

''(6) the sentences, recoveries, and penalties achieved by individuals assigned to positions established by this Act.''

REPORT TO CONGRESS ON ROBBERIES AND BURGLARIES INVOLVING CONTROLLED SUBSTANCES

Pub. L. 98–305, § 4, May 31, 1984, 98 Stat. 222, provided that: ''For each of the first three years after the date of enactment of this Act [May 31, 1984], the Attorney General of the United States shall submit an annual report to the Congress with respect to the enforcement activities of the Attorney General relating to the offenses created by the amendment made by section 2 of this Act [enacting section 2118 of Title 18, Crimes and Criminal Procedure].''

REPORT TO CONGRESS ON SEXUAL EXPLOITATION OF CHILDREN

Pub. L. 98–292, § 9, May 21, 1984, 98 Stat. 206, provided that: ''Beginning one hundred and twenty days after the date of enactment of this Act [May 21, 1984], and every year thereafter, the Attorney General shall report to the Congress on prosecutions, convictions, and forfeitures under chapter 110 of title 18 of the United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 2320; title 42 section 1997f.

§ 523. Requisitions

The Attorney General shall sign all requisitions for the advance or payment of moneys appropriated for the Department of Justice, out of the Treasury, subject to the same control as is exercised on like estimates or accounts by the General Accounting Office.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 615.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 319.	R.S. § 369.

The words ''General Accounting Office'' are substituted for ''First Auditor or First Comptroller of the Treasury'' on authority of the Act of June 10, 1921, ch. 18, § 304, 42 Stat. 24.

§ 524. Availability of appropriations

(a) Appropriations for the Department of Justice are available for payment of—

(1) notarial fees, including such additional stenographic services as are required in connection therewith in the taking of depositions, and compensation and expenses of witnesses and informants, all at the rates authorized or approved by the Attorney General or the Assistant Attorney General for Administration; and

(2) when ordered by the court, actual expenses of meals and lodging for marshals, deputy marshals, or criers when acting as bailiffs in attendance on juries.

(b) Except as provided in subsection (a) of this section, a claim of not more than $500 for expenses related to litigation that is beyond the control of the Department may be paid out of appropriations currently available to the Department for expenses related to litigation when the Comptroller General settles the payment.

(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereafter in this subsection referred to as the ''Fund'') which shall be available to the Attorney General without fiscal year limitation for the following law enforcement purposes—

(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expense incident to the seizure, detention, forfeiture, or disposal of such property including—

(i) payments for—

(I) contract services;

(II) the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this clause;

(ii) payments to reimburse any Federal agency participating in the Fund for investigative costs leading to seizures;

(iii) payments for contracting for the services of experts and consultants needed by the Department of Justice to assist in carrying

out duties related to asset seizure and forfeiture; and

(iv) payments made pursuant to guidelines promulgated by the Attorney General if such payments are necessary and directly related to seizure and forfeiture program expenses for—

(I) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

(II) training;

(III) printing;

(IV) the storage, protection, and destruction of controlled substances; and

(V) contracting for services directly related to the identification of forfeitable assets, and the processing of and accounting for forfeitures;

(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of the Internal Revenue Code of 1986;

(C) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Fund;

(D) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

(E) disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice;

(F)(i) for equipping for law enforcement functions of any Government-owned or leased vessel, vehicle, or aircraft available for official use by any Federal agency participating in the Fund;

(ii) for equipping any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist law enforcement functions if the vessel, vehicle, or aircraft will be used in a joint law enforcement operation with a Federal agency participating in the Fund; and

(iii) payments for other equipment directly related to seizure or forfeiture, including laboratory equipment, protective equipment, communications equipment, and the operation and maintenance costs of such equipment;

(G) for purchase of evidence of any violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, chapter 96 of title 18, or sections 1956 and 1957 of title 18;

(H) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order; and[1]

(I) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in a joint law enforcement operation with a Federal law enforcement agency participating in the Fund;[2]

(I)[3] after all reimbursements and program-related expenses have been met at the end of fiscal year 1989, the Attorney General may transfer deposits from the Fund to the building and facilities account of the Federal prison system for the construction of correctional institutions.

Amounts for paying the expenses authorized by subparagraphs (A)(iv), (B), (F), (G), and (H)[4] shall be specified in appropriations Acts and may be used under authorities available to the organization receiving the funds. Amounts for other authorized expenditures and payments from the Fund, including equitable sharing payments, are not required to be specified in appropriations acts. The Attorney General may exempt the procurement of contract services under subparagraph (A) under the fund[5] from section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following), and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations.

(2) Any award paid from the Fund for information, as provided in paragraph (1)(B) or (C), shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards, except that the authority to pay an award of $250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for information pursuant to paragraph (1)(B) shall not exceed $250,000. Any award for information pursuant to paragraph (1)(C) shall not exceed the lesser of $250,000 or one-fourth of the amount realized by the United States from the property forfeited.

(3) Any amount under subparagraph (F) of paragraph (1) shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay $100,000 or more may be delegated only to the respective head of the agency involved.

(4) There shall be deposited in the Fund—

(A) all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. Probably should be followed by ''and''.

[3] So in original. Probably should be ''(J)''.

[4] See References in Text note below.

[5] So in original. Probably should be capitalized.

1981 (16 U.S.C. 3375(d)), or the Postmaster General of the United States pursuant to 39 U.S.C. 2003(b)(7);

(B) all amounts representing the Federal equitable share from the forfeiture of property under any Federal, State, local or foreign law, for any Federal agency participating in the Fund; and

(C) all amounts transferred by the Secretary of the Treasury pursuant to section 9703(g)(4)(A)(ii)[4] of title 31.

(5) Amounts in the Fund, and in any holding accounts associated with the Fund[6] which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Fund.

(6) The Attorney General shall transmit to the Congress, not later than 4 months after the end of each fiscal year, detailed reports as follows:

(A) a report on—

(i) the estimated total value of property forfeited under any law enforced or administered by the Department of Justice with respect to which funds were not deposited in the Fund; and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on—

(i) the Fund's beginning balance;

(ii) sources of receipts (seized cash, conveyances, and others);

(iii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies;

(iv) the net amount realized from the year's operations, amount of seized cash being held as evidence, and the amount of money legally allowed to be carried over to next year;

(v) any defendant's property, not forfeited at the end of the preceding fiscal year, if the equity in such property is valued at $1,000,000 or more; and

(vi) year-end Fund balance;

(C) a report for such fiscal year, containing audited financial statements, in the form prescribed by the Attorney General, in consultation with the Comptroller General, including profit and loss information with respect to forfeited property (by category), and financial information on forfeited property transactions (by type of disposition).

The report should also contain all annual audit reports from State and local law enforcement agencies required to be reported to the Attorney General under subparagraph (B) of paragraph (7);[7] and

(D) a report for such fiscal year containing a description of the administrative and contracting expenses paid from the Fund under paragraph (1)(A).

(7) The provisions of this subsection relating to deposits in the Fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(8)(A) There are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (A)(iv), (B), (F), (G), and (H)[8] of paragraph (1).

(B) Subject to subparagraphs (C) and (D), at the end of each of fiscal years 1994, 1995, and 1996, the Attorney General shall transfer from the Fund not more than $100,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1988.

(C) Transfers under subparagraph (B) may be made only from the excess unobligated balance and may not exceed one-half of the excess unobligated balance for any year. In addition, transfers under subparagraph (B) may be made only to the extent that the sum of the transfers in a fiscal year and one-half of the unobligated balance at the beginning of that fiscal year for the Special Forfeiture Fund does not exceed $100,000,000.

(D) For the purpose of determining amounts available for distribution at year end for any fiscal year, ''excess unobligated balance'' means the unobligated balance of the Fund generated by that fiscal year's operations, less any amounts that are required to be retained in the Fund to ensure the availability of amounts in the subsequent fiscal year for purposes authorized under paragraph (1).

(E) Subject to the notification procedures contained in section 605 of Public Law 103–121, and after satisfying the transfer requirement in subparagraph (B) of this paragraph, any excess unobligated balance remaining in the Fund on September 30, 1997 and thereafter shall be available to the Attorney General, without fiscal year limitation, for any Federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice. Any amounts provided pursuant to this subparagraph may be used under authorities available to the organization receiving the funds.

(9)(A) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, in her discretion, to warrant clear title to any subsequent purchaser or transferee of such property.

(B) For fiscal year 1997, the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, real or personal property of limited or marginal value, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs. Such transfer shall not create or confer any private right of action in any person against the United States.

(10) The Attorney General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of the Department of the

[6] So in original. Probably should be followed by a comma.

[7] See References in Text note below.

[8] See References in Text note below.

Treasury law enforcement organizations (described in section 9703(p)[8] of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Department of Justice.

(11) For purposes of this subsection and notwithstanding section 9703[8] of title 31 or any other law, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

(A) a judicial forfeiture proceeding when the underlying seizure was made by an officer of a Federal law enforcement agency participating in the Department of Justice Assets Forfeiture Fund or the property was maintained by the United States Marshals Service; or

(B) a civil administrative forfeiture proceeding conducted by a Department of Justice law enforcement component or pursuant to the authority of the Secretary of Commerce.

(d)(1) The Attorney General may accept, hold, administer, and use gifts, devises, and bequests of any property for the purpose of aiding or facilitating the work of the Department of Justice.

(2) Gifts, devises, and bequests of money, the proceeds of sale or liquidation of any other property accepted hereunder, and any income accruing from any property accepted hereunder—

(A) shall be deposited in the Treasury in a separate fund and held in trust by the Secretary of the Treasury for the benefit of the Department of Justice; and

(B) are hereby appropriated, without fiscal year limitation, and shall be disbursed on order of the Attorney General.

(3) Upon request of the Attorney General, the Secretary of the Treasury may invest and reinvest the fund described herein in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States or comparable maturities.

(4) Evidences of any intangible personal property (other than money) accepted hereunder shall be deposited with the Secretary of the Treasury, who may hold or liquidate them, except that they shall be liquidated upon the request of the Attorney General.

(5) For purposes of federal[9] income, estate, and gift taxes, property accepted hereunder shall be considered a gift, devise, or bequest to, or for the use of, the United States.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 615; amended Pub. L. 97–258, § 2(g)(1)(B)–(D), Sept. 13, 1982, 96 Stat. 1060; Pub. L. 98–473, title II, §§ 310, 2303, Oct. 12, 1984, 98 Stat. 2052, 2193; Pub. L. 99–570, title I, § 1152(a), Oct. 27, 1986, 100 Stat. 3207–12; Pub. L. 99–646, § 27, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 100–202, § 101(a) [title II, § 210(a)], Dec. 22, 1987, 101 Stat. 1329, 1329–18; Pub. L. 100–690, title VI, § 6072, Nov. 18, 1988, 102 Stat. 4320; Pub. L. 101–509, title III, § 1, Nov. 5, 1990, 104 Stat. 1403; Pub. L. 101–647, title XVI, § 1601, title XX, §§ 2001(a), 2002, 2005, 2006, Nov. 29, 1990, 104 Stat. 4842, 4854, 4855; Pub. L. 102–27, title II, § 101, Apr. 10, 1991, 105 Stat. 135; Pub. L. 102–140, title I, § 112, Oct. 28, 1991, 105 Stat. 795; Pub. L. 102–393, title VI, § 638(f), Oct. 6, 1992, 106 Stat. 1788; Pub. L. 102–395, title I, § 114(b), (c), Oct. 6, 1992, 106 Stat. 1845; Pub. L. 102–550, title XV, § 1529, Oct. 28, 1992, 106 Stat. 4065; Pub. L. 103–121, title I, § 109, Oct. 27, 1993, 107 Stat. 1164; Pub. L. 103–317, title I, § 110, Aug. 26, 1994, 108 Stat. 1735; Pub. L. 103–322, title IX, § 90205(b), title XXXII, §§ 320301, 320302, 320913(a), Sept. 13, 1994, 108 Stat. 1994, 2114, 2128; Pub. L. 104–66, title I, § 1091(h), Dec. 21, 1995, 109 Stat. 722; Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37; Pub. L. 104–134, title I, § 101[(a)] [title I, § 122], Apr. 26, 1996, 110 Stat. 1321, 1321–22; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–208, div. A, title I, § 101(a) [title I, §§ 108, 114, 116, 117], Sept. 30, 1996, 110 Stat. 3009, 3009–18, 3009–22, 3009–23; Pub. L. 105–119, title I, §§ 108, 124, title II, § 211(b), Nov. 26, 1997, 111 Stat. 2457, 2471, 2487.)

[9] So in original. Probably should be capitalized.

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341.	July 28, 1950, ch. 503, § 1, 64 Stat. 380.

The words ''now or hereafter'' are omitted as unnecessary. The words ''Assistant Attorney General for Administration'' are substituted for ''his administrative assistant'' to make the statute more specific and to reflect the current title of the position, see § 307 of the Act of Aug. 14, 1964, Pub. L. 88–426, 78 Stat. 432.

1982 ACT

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
28:524(b) ..	31:693a.	Oct. 10, 1949, ch. 662, § 101 (par. under heading ''General Provision—Department of Justice''), 63 Stat. 746.

The words ''After October 10, 1949'' are omitted as executed. The words ''Except as provided in subsection (a) of this section'' are added for clarity. The words ''fees, storage, or other items of'' are omitted as surplus. The words ''to the Department'' are added for clarity.

REFERENCES IN TEXT

Subparagraph (H), referred to in subsec. (c)(1), (8)(A), was redesignated subpar. (I) relating to payment of overtime salaries, travel, etc., and a new subpar. (H) was added by Pub. L. 103–322, title XXXII, § 320913(a), Sept. 13, 1994, 108 Stat. 2128.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(1), is act June 30, 1949, ch. 288, 63 Stat. 393, as amended. Title III of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

Section 6050I of the Internal Revenue Code of 1986, referred to in subsec. (c)(1)(B), is classified to section 6050I of Title 26, Internal Revenue Code.

The Controlled Substances Act, referred to in subsec. (c)(1)(G), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (c)(1)(G), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

Section 9703 of title 31, referred to in subsec. (c)(4)(C), (10), (11), probably means the section 9703 of Title 31, Money and Finance, added by Pub. L. 102–393, title VI, §638(b)(1), Oct. 6, 1992, 106 Stat. 1779. Clause (ii) of subsec. (g)(4)(A) of that section was repealed by Pub. L. 103–322, title IX, §90205(c)(2)(B), Sept. 13, 1994, 108 Stat. 1995.

Paragraph (7), referred to in subsec. (c)(6)(C), was struck out by Pub. L. 104–66 and par. (8) was redesignated as par. (7).

The effective date of the Comprehensive Forfeiture Act of 1983, referred to in subsec. (c)(7), probably means the date of enactment of the Comprehensive Forfeiture Act of 1984, chapter III (§§301 to 323) of title II of Pub. L. 98–473, which was approved Oct. 12, 1984.

Section 6073 of the Anti-Drug Abuse Act of 1988, referred to in subsec. (c)(8)(B), is classified to section 1509 of Title 21, Food and Drugs.

Section 605 of Public Law 103–121, referred to in subsec. (c)(8)(E), is section 605 of Pub. L. 103–121, title VI, Oct. 27, 1993, 107 Stat. 1194, which is not classified to the Code.

CODIFICATION

Amendment by Pub. L. 104–91 is based on section 109 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS

1997—Subsec. (c)(8)(B). Pub. L. 105–119, §124, substituted ''and 1996,'' for ''1996, and 1997,''.

Subsec. (c)(8)(E). Pub. L. 105–119, §108, substituted ''1997 and thereafter'' for ''1996''.

Subsec. (c)(11)(B). Pub. L. 105–119, §211(b), which directed the amendment of subpar. (B) by inserting at end thereof ''or pursuant to the authority of the Secretary of Commerce'', was executed by inserting the material before the period to reflect the probable intent of Congress.

1996—Subsec. (c)(1). Pub. L. 104–208, §101(a) [title I, §114(a)], struck out ''(C),'' after ''(B),'' in concluding provisions.

Subsec. (c)(8)(A). Pub. L. 104–208, §101(a) [title I, §114(b)], struck out ''(C),'' after ''(B),''.

Subsec. (c)(8)(E). Pub. L. 104–208, §101(a) [title I, §108], substituted ''September 30, 1996'' for ''September 30, 1995''.

Pub. L. 104–134 struck out subpar. (E), as added by Pub. L. 103–317, which read as follows: ''Subject to the notification procedures contained in section 605 of Public Law 103–121, and after satisfying the transfer requirement in subparagraph (B) above, any excess unobligated balance remaining in the Fund on September 30, 1994 shall be available to the Attorney General, without fiscal year limitation, for any Federal law enforcement, litigative/prosecutive, and correctional activities, or any other authorized purpose of the Department of Justice. Any amounts provided pursuant to this section may be used under authorities available to the organization receiving the funds.''

Pub. L. 104–91, as amended by Pub. L. 104–99, which directed amendment of subsec. (c)(9) of this section by adding subpar. (E) relating to excess unobligated balance remaining in the Fund on Sept. 30, 1995, was executed by adding subpar. (E) at the end of subsec. (c)(8), to reflect the redesignation of subsec. (c)(9) as (c)(8) by Pub. L. 104–66. See below.

Subsec. (c)(9). Pub. L. 104–208, §101(a) [title I, §117], amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, at his discretion, to warrant clear title to any subsequent purchaser or transferee of such forfeited property.''

Subsec. (d). Pub. L. 104–208, §101(a) [title I, §116], added subsec. (d).

1995—Subsec. (c)(7) to (12). Pub. L. 104–66 redesignated pars. (8) to (12) as (7) to (11), respectively, and struck out former par. (7) which read as follows:

''(7)(A) The Fund shall be subject to annual audit by the Comptroller General.

''(B) The Attorney General shall require that any State or local law enforcement agency receiving funds conduct an annual audit detailing the uses and expenses to which the funds were dedicated and the amount used for each use or expense and report the results of the audit to the Attorney General.''

1994—Subsec. (c)(1)(H), (I). Pub. L. 103–322, §320913(a), added subpar. (H) and redesignated former subpar. (H) relating to payment of overtime salaries, travel, etc. as (I).

Subsec. (c)(6)(B). Pub. L. 103–322, §320302(1), struck out ''and'' at end.

Subsec. (c)(6)(C). Pub. L. 103–322, §320302(2), substituted ''; and'' for period at end.

Pub. L. 103–322, §320301(b), inserted as flush sentence at end ''The report should also contain all annual audit reports from State and local law enforcement agencies required to be reported to the Attorney General under subparagraph (B) of paragraph (7).''

Subsec. (c)(6)(D). Pub. L. 103–322, §320302(3), added subpar. (D).

Subsec. (c)(7). Pub. L. 103–322, §320301(a), amended par. (7) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (c)(9)(B) to (D). Pub. L. 103–322, §90205(b), amended subpars. (B) to (D) generally. Prior to amendment, subpars. (B) to (D) read as follows:

''(B) Subject to subparagraph (C), in each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General may transfer from the Fund not more than $150,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1988. Such transfers shall be made at the end of each quarter of the fiscal year involved and on a quarterly pro rata basis.

''(C) Transfers under subparagraph (B) may be made only from excess unobligated amounts and only to the extent that, as determined by the Attorney General, such transfers will not impair the future availability of amounts for the purposes under paragraph (1). Further, transfers under subsection (B) may be made only to the extent that the sum of the transfers for the current fiscal year and the unobligated balance at the beginning of the current fiscal year for the Special Forfeiture Fund do not exceed $150,000,000.

''(D) At the end of each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General may retain in the Fund not more than $15,000,000, or, if determined by the Attorney General to be necessary for asset-specific expenses, a greater amount equal to not more than one-tenth of the total of obligations from the Fund in preceding fiscal year.''

Subsec. (c)(9)(E). Pub. L. 103–317 added subpar. (E).

1993—Subsec. (c)(9)(E). Pub. L. 103–121, which directed the striking of ''subsection (E)'', was executed by striking subpar. (E) which read as follows: ''Subject to the notification procedures contained in section 606 of Public Law 101–515, and after reserving the amounts authorized in subparagraph (D) above, any unobligated balances remaining in the Fund on September 30, 1991, and on September 30 of each fiscal year thereafter, shall be available to the Attorney General, without fiscal year limitation, for law enforcement, prosecution and correctional activities, and related training requirements of Federal agencies. Any amounts provided pursuant to this section may be used under authorities available to the organization receiving the funds.''

1992—Subsec. (c)(1). Pub. L. 102–393, §638(f)(1)(C)–(F), which directed amendment of par. (1) by adding subpar. (H), redesignating former subpar. (H) as (I), and sub-

stituting ''(A)(iv)'' for ''(A)(ii)'' and ''(G), and (H)'' for ''and (G)'' in the first sentence of par. following subpar. (I), was executed to par. (1) as amended by Pub. L. 102–395, § 114(c), to reflect the probable intent of Congress and the approval of Pub. L. 102–393 and Pub. L. 102–395 on the same day.

Pub. L. 102–395, § 114(c), amended generally the first sentence of par. following subpar. (H). Prior to amendment, that sentence read as follows: ''Amounts for paying the expenses authorized by subparagraphs (A)(ii), (B), (C), (F), and (G) shall be specified in appropriations acts.''

Subsec. (c)(1)(A). Pub. L. 102–393, § 638(f)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property; such payments may include—

''(i) payments for contract services, the employment of outside contractors to operate and manage properties or provide other specialized services as necessary to dispose of such properties in an effort to maximize the return from such properties, and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions; and

''(ii) payments made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than a majority of which use will be program related), training, printing, contracting for services directly related to the identification of forfeitable assets processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;''.

Subsec. (c)(1)(B). Pub. L. 102–550 inserted ''or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of the Internal Revenue Code of 1986'' after ''United States''.

Subsec. (c)(1)(F). Pub. L. 102–393, § 638(f)(1)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''for equipping for law enforcement functions any government-owned or leased vessels, vehicles, and aircraft available for official use by any federal agency participating in the Fund;''.

Subsec. (c)(1)(H), (I). Pub. L. 102–393, § 638(f)(1)(C)–(E), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (c)(4). Pub. L. 102–393, § 638(f)(2), inserted ''Federal,'' before ''State'' in subpar. (B) and added subpar. (C).

Subsec. (c)(6)(B)(v). Pub. L. 102–393, § 638(f)(3), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''any defendant's equity in property valued at $1,000,000 or more; and''.

Subsec. (c)(9)(A). Pub. L. 102–393, § 638(f)(4), substituted ''(A)(iv)'' for ''(A)(ii)'' and ''(G), and (H)'' for ''and (G)''.

Subsec. (c)(9)(E). Pub. L. 102–395, § 114(b), struck out ''to be transferred to any Federal agency'' after ''without fiscal year limitation,'' and substituted for period at end ''of Federal agencies. Any amounts provided pursuant to this section may be used under authorities available to the organization receiving the funds.''

Pub. L. 102–393, § 638(f)(5), struck out ''to procure vehicles, equipment, and other capital investment items'' before ''for law enforcement''.

Subsec. (c)(11), (12). Pub. L. 102–393, § 638(f)(6), added pars. (11) and (12) and struck out former par. (11) which read as follows: ''For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

''(A) any criminal forfeiture proceeding;

''(B) any civil judicial forfeiture proceeding; or

''(C) any civil administrative forfeiture proceeding conducted by the Department of Justice,

except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the United States Customs Service in which case the provisions of section 613A of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.''

1991—Subsec. (c)(1). Pub. L. 102–140, § 112(1), substituted ''law enforcement purposes'' for ''purposes of the Department of Justice'' in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 102–140, § 112(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''at the discretion of the Attorney General, the payment of awards for information or assistance leading to—

''(i) a civil or criminal forfeiture under the Controlled Substances Act or the Controlled Substances Import and Export Act;

''(ii) a criminal forfeiture under chapter 96 of title 18;

''(iii) a civil forfeiture under section 981 of title 18; or

''(iv) a criminal forfeiture under section 982 of title 18.''

Subsec. (c)(1)(F). Pub. L. 102–140, § 112(3), (4), struck out ''drug'' before ''law enforcement functions'' and substituted ''any federal agency participating in the Fund'' for ''the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service''.

Subsec. (c)(4). Pub. L. 102–140, § 112(5), added par. (4) and struck out former par. (4) which read as follows: ''There shall be deposited in the Fund all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)) or the Postmaster General of the United States pursuant to section 2003(b)(7) of title 39.''

Subsec. (c)(5). Pub. L. 102–140, § 112(6), inserted '', and in any holding accounts associated with the Fund'' after first reference to ''Fund''.

Subsec. (c)(9)(C). Pub. L. 102–140, § 112(7), inserted at end ''Further, transfers under subsection (B) may be made only to the extent that the sum of the transfers for the current fiscal year and the unobligated balance at the beginning of the current fiscal year for the Special Forfeiture Fund do not exceed $150,000,000.''

Subsec. (c)(9)(E). Pub. L. 102–140, § 112(8)(B), which directed the substitution of ''to be transferred to any Federal agency to procure vehicles, equipment, and other capital investment items for law enforcement, prosecution and correctional activities, and related training requirements'' for ''to procure vehicles, equipment, and other capital investment items for the law enforcement, prosecution and correctional activities of the Department of Justice'' was executed by making the substitution for the quoted words which in the original contained a comma after ''prosecution'', to reflect the probable intent of Congress.

Pub. L. 102–140, § 112(8)(A), substituted ''of each fiscal year thereafter'' for '', 1992''.

Pub. L. 102–27 added subpar. (E).

1990—Subsec. (c)(1)(C). Pub. L. 101–647, § 2005, amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''the payment of awards for information or assistance leading to a civil or criminal forfeiture under any law enforced or administered by the Department of Justice., at the discretion of the Attorney General;''.

Pub. L. 101–647, § 1601, which directed substitution of ''the payment of awards for information or assistance leading to a civil or criminal forfeiture under any law enforced or administered by the Department of Justice.'' for ''the payment of awards for information or assistance leading to civil or criminal forfeiture under

the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.)'', was executed by making the substitution for ''the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.)'' to reflect the probable intent of Congress.

Subsec. (c)(6). Pub. L. 101–647, §2006, struck out ''two'' after ''fiscal year,'' in introductory provisions and added subpar. (C).

Subsec. (c)(9). Pub. L. 101–647, §2001(a), inserted ''(A)'' before ''There'' and substituted subpars. (B) to (D) for ''For each of fiscal years 1991, 1992, and 1993, the Attorney General shall transfer not to exceed $150,000,000 in unobligated amounts available in the Fund to the Special Forfeiture Fund: *Provided*, That such amounts will be transferred on a quarterly basis: *Provided further*, That, upon each transfer, not to exceed $15,000,000, or, if determined by the Attorney General to be necessary to meet forfeiture program expenses, an amount not to exceed one-tenth of the previous year's obligations shall be retained in the Fund and remain available for payment of authorized expenses: *Provided further*, That, any unobligated amounts in excess of $150,000,000 shall remain on deposit in the Fund.''

Pub. L. 101–509 amended second sentence generally, substituting sentence providing for transfers to Special Forfeiture Fund in fiscal years 1991, 1992, and 1993 for sentence that read as follows: ''At the end of each of fiscal years 1990, 1991, and 1992, unobligated amounts not to exceed $150,000,000 remaining in the Fund shall be deposited in the Special Forfeiture Fund, except that an amount not to exceed $15,000,000 or, if determined necessary by the Attorney General to meet asset specific expenses, an amount equal to one-twelfth of the previous year's expenditures may be carried forward and remain available for appropriation in the next fiscal year.''

Subsec. (c)(10), (11). Pub. L. 101–647, §2002, added par. (10) and redesignated former par. (10) as (11).

1988—Subsec. (c). Pub. L. 100–690 amended subsec. (c) generally, revising and restating as pars. (1) to (10) provisions of former pars. (1) to (8).

1987—Subsec. (c)(1)(H). Pub. L. 100–202 added subpar. (H).

1986—Subsec. (c)(1)(A). Pub. L. 99–570, §1152(a)(1)(2), inserted provisions allowing payments that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment, training, printing, contracting for services directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances.

Subsec. (c)(1)(B) to (E). Pub. L. 99–570, §1152(a)(1)(3), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (c)(1)(F). Pub. L. 99–646, §27(a), which directed the amendment of subpar. (E) by inserting ''the Federal Bureau of Investigation, the United States Marshals Service,'' after ''for official use by'' and a comma before ''or'' was not executed in view of prior redesignation of subpar. (E) as (F) and substantively similar amendment by section 1152(a) of Pub. L. 99–570.

Pub. L. 99–570, §1152(a)(1)(3), (4), redesignated former subpar. (E) as (F) and amended it generally. Prior to amendment, subpar. (E) read as follows: ''for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the Drug Enforcement Administration or the Immigration and Naturalization Service; and''. Former subpar. (F) redesignated (G).

Subsec. (c)(1)(G). Pub. L. 99–570, §1152(a)(1)(3), redesignated former subpar. (F) as (G).

Subsec. (c)(4). Pub. L. 99–570, §1152(a)(1)(5), and Pub. L. 99–646, §27(b), made substantially identical amendments substituting '', except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))'' for ''remaining after the payment of expenses for forfeiture and sale authorized by law''.

Subsec. (c)(8), (9). Pub. L. 99–570, §1152(a)(1)(6), redesignated par. (9) as (8), and struck out former par. (8) which provided for an authorization of appropriations for fiscal years 1984 to 1987 and deposit of excess amounts in the general fund of the Treasury of the United States.

1984—Subsec. (c). Pub. L. 98–473, §310, added subsec. (c).

Subsec. (c)(1)(E), (F). Pub. L. 98–473, §2303(a), added subpars. (E) and (F).

Subsec. (c)(3) to (9). Pub. L. 98–473, §2303(b), added par. (3) and redesignated existing pars. (3) to (8) as (4) to (9), respectively.

1982—Pub. L. 97–258, §2(g)(1)(B), substituted ''Availability of appropriations'' for ''Appropriations for administrative expenses; notarial fees; meals and lodging of bailiffs'' in section catchline.

Subsecs. (a), (b). Pub. L. 97–258, §2(g)(1)(C), (D), designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 320913(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to all claims pending at the time of or commenced subsequent to the date of enactment of this Act [Sept. 13, 1994].''

COUNTERTERRORISM FUND

Pub. L. 104–19, title III, July 27, 1995, 109 Stat. 249, provided that: ''There is hereby established the Counterterrorism Fund which shall remain available without fiscal year limitation. For necessary expenses, as determined by the Attorney General, $34,220,000, to remain available until expended, is appropriated to the Counterterrorism Fund to reimburse any Department of Justice organization for the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as the result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City or any domestic or international terrorism event: *Provided*, That funds from this appropriation also may be used to reimburse the appropriation account of any Department of Justice agency engaged in, or providing support to, countering, investigating or prosecuting domestic or international terrorism, including payment of rewards in connection with these activities, and to conduct a terrorism threat assessment of Federal agencies and their facilities: *Provided further*, That any amount obligated from appropriations under this heading may be used under the authorities available to the organization reimbursed from this appropriation: *Provided further*, That amounts in excess of the $10,555,000 made available for extraordinary expenses incurred in the Oklahoma City bombing for fiscal year 1995, shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of Public Law 103–317 [108 Stat. 1773]: *Provided further*, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(D)(i)], as amended: *Provided further*, That the amount not previously designated by the President as an emergency requirement shall be available only to the extent an official budget request, for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement, as defined in the Balanced Budget and Emergency Deficit Control Act of 1985 [see Short Title

note set out under 2 U.S.C. 900], as amended, is transmitted to Congress.''

UNAUTHORIZED TRANSFERS FROM DEPARTMENT OF JUSTICE ACCOUNTS; CONTROL OF ALLOCATION OF FUNDS BY AUTHORITY OTHER THAN OFFICE OF MANAGEMENT AND BUDGET OR DEPARTMENT OF JUSTICE

Section 110 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided that: ''Hereafter, notwithstanding any other provision of law—

''(1) No transfers may be made from Department of Justice accounts other than those authorized in this Act [probably means H.R. 2076, One Hundred Fourth Congress, which was vetoed], or in previous or subsequent appropriations Acts for the Department of Justice, or in part II of title 28 of the United States Code, or in section 10601 of title 42 of the United States Code; and

''(2) No appropriation account within the Department of Justice shall have its allocation of funds controlled by other than an apportionment issued by the Office of Management and Budget or an allotment advice issued by the Department of Justice.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–317, title I, § 113, Aug. 26, 1994, 108 Stat. 1736.

USE OF DEPOSITS TRANSFERRED FROM ASSETS FORFEITURE FUND TO BUILDINGS AND FACILITIES ACCOUNT OF FEDERAL PRISON SYSTEM

Section 106 of Pub. L. 103–121 provided that: ''For fiscal year 1994 and thereafter, deposits transferred from the Assets Forfeiture Fund to the Buildings and Facilities account of the Federal Prison System may be used for the construction of correctional institutions, and the construction and renovation of Immigration and Naturalization Service and United States Marshals Service detention facilities, and for the authorized purposes of the Cooperative Agreement Program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–395, title I, § 107, Oct. 6, 1992, 106 Stat. 1841.

Pub. L. 102–140, title I, § 107, Oct. 28, 1991, 105 Stat. 794.

Pub. L. 101–515, title II, § 208, Nov. 5, 1990, 104 Stat. 2119.

Pub. L. 101–162, title II, as added Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 216.

NOTICE AND APPROVAL OF TRANSFER OF SUBSECTION (c)(1)(H) DEPOSITS

Section 101(a) [title II, § 210(b)] of Pub. L. 100–202 provided that: ''Amounts proposed for transfer pursuant to subsection (a) [amending this section] shall be transferred only upon notification by the Attorney General to the Committees on Appropriations of the House of Representatives and the Senate and approval under said Committees' policies concerning the reprogramming of funds.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 793, 794, 798, 2254; title 21 sections 881, 1509; title 31 section 9703; title 50 section 783.

§ 525. Procurement of law books, reference books, and periodicals; sale and exchange

In the procurement of law books, reference books, and periodicals, the Attorney General may exchange or sell similar items and apply the exchange allowances or proceeds of such sales in whole or in part payment therefor.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 615.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341e.	July 28, 1950, ch. 503, § 3, 64 Stat. 380.

The words ''Attorney General'' are substituted for ''Department of Justice''.

§ 526. Authority of Attorney General to investigate United States attorneys, marshals, and trustees, clerks of court, and others

(a) The Attorney General may investigate the official acts, records, and accounts of—

(1) the United States attorneys, marshals,,[1] trustees, including trustees in cases under title 11; and

(2) at the request and on behalf of the Director of the Administrative Office of the United States Courts, the clerks of the United States courts and of the district court of the Virgin Islands, probation officers, United States magistrates, and court reporters;

for which purpose all the official papers, records, dockets, and accounts of these officers, without exception, may be examined by agents of the Attorney General at any time.

(b) Appropriations for the examination of judicial officers are available for carrying out this section.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 615; amended Pub. L. 95–598, title II, §§ 219(a), (b), 220, Nov. 6, 1978, 92 Stat. 2662; Pub. L. 99–554, title I, § 144(c), Oct. 27, 1986, 100 Stat. 3096.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341b.	July 28, 1950, ch. 503, § 4, 64 Stat. 380. July 7, 1958, Pub. L. 85–508, § 12(q), 72 Stat. 349.

In subsection (b), the words ''now or hereafter'' and ''the provisions of'' are omitted as unnecessary.

CODIFICATION

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98–166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98–353, title III, § 323, July 10, 1984, 98 Stat. 358; Pub. L. 99–429, Sept. 30, 1986, 100 Stat. 985; Pub. L. 99–500, § 101(b) [title II, § 200], Oct. 18, 1986, 100 Stat. 1783–39, 1783–45, and Pub. L. 99–591, § 101(b) [title II, § 200], Oct. 30, 1986, 100 Stat. 3341–39, 3341–45; Pub. L. 99–554, title III, § 307(a), Oct. 27, 1986, 100 Stat. 3125, provided for the deletion of any references to United States Trustees in this title at a prospective date, prior to repeal by Pub. L. 99–554, title III, § 307(b), Oct. 27, 1986, 100 Stat. 3125.

AMENDMENTS

1986—Pub. L. 99–554, § 144(c)(1), substituted ''trustees'' for ''trustee'' in section catchline.

Subsec. (a)(1). Pub. L. 99–554, § 144(c)(2)(A), inserted reference to trustees in cases under title 11.

Subsec. (a)(2). Pub. L. 99–554, § 144(c)(2)(B), struck out references to courts of the Canal Zone and trustees in cases under title 11.

1978—Pub. L. 95–598, § 219(b), substituted ''marshals, and trustee'' for ''and marshals'' in section catchline.

Subsec. (a)(1). Pub. L. 95–518, § 219(a), substituted ''marshals, and trustees'' for ''and marshals''.

[1] So in original.

Subsec. (a)(2). Pub. L. 95–598, § 220, substituted ''officers, trustees in cases under title 11'' for ''officers, referees, trustees and receivers in bankruptcy'' and ''magistrates'' for ''commissioners''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 527. Establishment of working capital fund

There is hereby authorized to be established a working capital fund for the Department of Justice, which shall be available, without fiscal year limitation, for expenses and equipment necessary for maintenance and operations of such administrative services as the Attorney General, with the approval of the Office of Management and Budget, determines may be performed more advantageously as central services. The capital of the fund shall consist of the amount of the fair and reasonable value of such inventories, equipment, and other assets and inventories on order pertaining to the services to be carried on by the fund as the Attorney General may transfer to the fund less related liabilities and unpaid obligations together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed or credited with advance payments from applicable appropriations and funds of the Department of Justice, other Federal agencies, and other sources authorized by law for supplies, materials, and services at rates which will recover the expenses of operations including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, any net income after making provisions for prior year losses, if any.

(Added Pub. L. 93–613, § 1(1), Jan. 2, 1975, 88 Stat. 1975.)

CREDITING TO WORKING CAPITAL FUND OF AMOUNTS COLLECTED PURSUANT TO CIVIL DEBT COLLECTION LITIGATION ACTIVITIES

Pub. L. 103–121, title I, § 108, Oct. 27, 1993, 107 Stat. 1164, provided that: ''Notwithstanding 31 U.S.C. 3302 or any other statute affecting the crediting of collections, the Attorney General may credit, as an offsetting collection, to the Department of Justice Working Capital Fund, for fiscal year 1994 and thereafter, up to three percent of all amounts collected pursuant to civil debt collection litigation activities of the Department of Justice. Such amounts in the Working Capital Fund shall remain available until expended and shall be subject to the terms and conditions of that fund, and shall be used only for paying the costs of processing and tracking such litigation.''

CAPITAL EQUIPMENT ACQUISITION, ETC., BY INCOME RETAINED FROM OR TRANSFERRED TO WORKING CAPITAL FUND; AMOUNTS AND LIMITATIONS

Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 784, provided that:

''Of the total income of the Working Capital Fund in fiscal year 1992 and each fiscal year thereafter, not to exceed 4 percent of the total income may be retained, to remain available until expended, for the acquisition of capital equipment and for the improvement and implementation of the Department's financial management and payroll/personnel systems: *Provided*, That in fiscal year 1992, not to exceed $4,000,000 of the total income retained shall be used for improvements to the Department's data processing operation: *Provided further*, That any proposed use of the retained income in fiscal year 1992 and thereafter, except for the $4,000,000 specified above, shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act [105 Stat. 824].

''In addition, for fiscal year 1992 and thereafter, at no later than the end of the fifth fiscal year after the fiscal year for which funds are appropriated or otherwise made available, unobligated balances of appropriations available to the Department of Justice during such fiscal year may be transferred into the capital account of the Working Capital Fund to be available for the departmentwide acquisition of capital equipment, development and implementation of law enforcement or litigation related automated data processing systems, and for the improvement and implementation of the Department's financial management and payroll/personnel systems: *Provided*, That any proposed use of these transferred funds in fiscal year 1992 and thereafter shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 606 of this Act.''

§ 528. Disqualification of officers and employees of the Department of Justice

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

(Added Pub. L. 95–521, title VI, § 603(a), Oct. 26, 1978, 92 Stat. 1874.)

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95–521, set out as a note under section 591 of this title.

§ 529. Annual report of Attorney General

Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not

elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual's Federal Government position, employment, or compensation;

(2) any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual's State or local government position, employment, or compensation; and

(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals.

(Added Pub. L. 95–521, title VI, § 603(a), Oct. 26, 1978, 92 Stat. 1874.)

EFFECTIVE DATE

Section effective Oct. 26, 1978, see section 604 of Pub. L. 95–521, set out as a note under section 591 of this title.

§ 530. Payment of travel and transportation expenses of newly appointed special agents

The Attorney General or the Attorney General's designee is authorized to pay the travel expenses of newly appointed special agents and the transportation expenses of their families and household goods and personal effects from place of residence at time of selection to the first duty station, to the extent such payments are authorized by section 5723 of title 5 for new appointees who may receive payments under that section.

(Added Pub. L. 98–86, § 1, Aug. 26, 1983, 97 Stat. 492.)

§ 530A. Authorization of appropriations for travel and related expenses and for health care of personnel serving abroad

There are authorized to be appropriated, for any fiscal year, for the Department of Justice, such sums as may be necessary—

(1) for travel and related expenses of employees of the Department of Justice serving abroad and their families, to be payable in the same manner as applicable with respect to the Foreign Service under paragraphs (3), (5), (6), (8), (9), (11), and (15) of section 901 of the Foreign Service Act of 1980, and under the regulations issued by the Secretary of State; and

(2) for health care for such employees and families, to be provided under section 904 of that Act.

(Added Pub. L. 100–690, title VI, § 6281(a), Nov. 18, 1988, 102 Stat. 4368.)

REFERENCES IN TEXT

Sections 901 and 904 of the Foreign Service Act of 1980, referred to in pars. (1) and (2), are classified to sections 4081 and 4084, respectively, of Title 22, Foreign Relations and Intercourse.

CHAPTER 33—FEDERAL BUREAU OF INVESTIGATION

Sec.
531. Federal Bureau of Investigation.
532. Director of Federal Bureau of Investigation.[1]
533. Investigative and other officials; appointment.
534. Acquisition, preservation, and exchange of identification records and information; appointment of officials.
535. Investigation of crimes involving Government officers and employees; limitations.
536. Positions in excepted service.
537. Expenses of unforeseen emergencies of a confidential nature.[1]
538. Investigation of aircraft piracy and related violations.
539. Counterintelligence official reception and representation expenses.
540. Investigation of felonious killings of State or local law enforcement officers.
540A. Investigation of violent crimes against travelers.

AMENDMENTS

1994—Pub. L. 103–322, title XXXII, § 320916(b), Sept. 13, 1994, 108 Stat. 2129, added item 540A.

Pub. L. 103–272, § 4(e)(2), July 5, 1994, 108 Stat. 1361, added item 538.

1988—Pub. L. 100–690, title VII, § 7331(b), Nov. 18, 1988, 102 Stat. 4468, added item 540.

1986—Pub. L. 99–569, title IV, § 401(b), Oct. 27, 1986, 100 Stat. 3195, added item 539.

1982—Pub. L. 97–292, § 3(b), Oct. 12, 1982, 96 Stat. 1260, inserted "and information" after "identification records" in item 534.

1966—Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616, substituted "FEDERAL BUREAU OF INVESTIGATION" for "UNITED STATES MARSHALS" in chapter heading, added items 531 to 537, and struck out items 541 to 556.

CROSS REFERENCES

Powers of Federal Bureau of Investigation, see section 3052 of Title 18, Crimes and Criminal Procedure.

§ 531. Federal Bureau of Investigation

The Federal Bureau of Investigation is in the Department of Justice.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience and clarification. The Bureau of Investigation in the Department of Justice, the earliest predecessor agency of the Federal Bureau of Investigation, was created administratively in 1908. It appears that funds used for the Bureau of Investigation were first obtained through the Department of Justice Appropriation Act of May 22, 1908, ch. 186, § 1 (par. beginning "From the appropriations for the prosecution of crimes"), 35 Stat. 236, although that statutory provision makes no express mention of the Bureau or of the investigative function.

Section 3 of Executive Order No. 6166 of June 10, 1933, specifically recognized the Bureau of Investigation in

[1] So in original. Does not conform to section catchline.

the Department of Justice and provided that all that Bureau's functions together with the investigative functions of the Bureau of Prohibition were ''transferred to and consolidated in a Division of Investigation in the Department of Justice, at the head of which shall be a Director of Investigation.''

The Division of Investigation was first designated as the ''Federal Bureau of Investigation'' by the Act of Mar. 22, 1935, ch. 39, title II, 49 Stat. 77, and has been so designated in statutes since that date.

FEDERAL BUREAU OF INVESTIGATION FUNDING AUTHORIZATIONS

Pub. L. 104–132, title VIII, § 811, Apr. 24, 1996, 110 Stat. 1312, provided that:

''(a) IN GENERAL.—With funds made available pursuant to subsection (c)—

''(1) the Attorney General shall—

''(A) provide support and enhance the technical support center and tactical operations of the Federal Bureau of Investigation;

''(B) create a Federal Bureau of Investigation counterterrorism and counterintelligence fund for costs associated with the investigation of cases involving cases of terrorism;

''(C) expand and improve the instructional, operational support, and construction of the Federal Bureau of Investigation Academy;

''(D) construct a Federal Bureau of Investigation laboratory, provide laboratory examination support, and provide for a command center;

''(E) make grants to States to carry out the activities described in subsection (b); and

''(F) increase personnel to support counterterrorism activities; and

''(2) the Director of the Federal Bureau of Investigation may expand the combined DNA Identification System (CODIS) to include Federal crimes and crimes committed in the District of Columbia.

''(b) STATE GRANTS.—

''(1) AUTHORIZATION.—The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, may make grants to each State eligible under paragraph (2) to be used by the chief executive officer of the State, in conjunction with units of local government, other States, or any combination thereof, to carry out all or part of a program to establish, develop, update, or upgrade—

''(A) computerized identification systems that are compatible and integrated with the databases of the National Crime Information Center of the Federal Bureau of Investigation;

''(B) the capability to analyze deoxyribonucleic acid (DNA) in a forensic laboratory in ways that are compatible and integrated with the combined DNA Identification System (CODIS) of the Federal Bureau of Investigation; and

''(C) automated fingerprint identification systems that are compatible and integrated with the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation.

''(2) ELIGIBILITY.—To be eligible to receive a grant under this subsection, a State shall require that each person convicted of a felony of a sexual nature shall provide to appropriate State law enforcement officials, as designated by the chief executive officer of the State, a sample of blood, saliva, or other specimen necessary to conduct a DNA analysis consistent with the standards established for DNA testing by the Director of the Federal Bureau of Investigation.

''(3) INTERSTATE COMPACTS.—A State may enter into a compact or compacts with another State or States to carry out this subsection.

''(c) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated for the activities of the Federal Bureau of Investigation, to help meet the increased demands for activities to combat terrorism—

''(A) $114,000,000 for fiscal year 1997;

''(B) $166,000,000 for fiscal year 1998;

''(C) $96,000,000 for fiscal year 1999; and

''(D) $92,000,000 for fiscal year 2000.

''(2) AVAILABILITY OF FUNDS.—Funds made available pursuant to paragraph (1), in any fiscal year, shall remain available until expended.

''(3) ALLOCATION.—

''(A) IN GENERAL.—Of the total amount appropriated to carry out subsection (b) in a fiscal year—

''(i) the greater of 0.25 percent of such amount or $500,000 shall be allocated to each eligible State; and

''(ii) of the total funds remaining after the allocation under clause (i), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this subparagraph as the population of such State bears to the population of all States.

''(B) DEFINITION.—For purposes of this paragraph, the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, except that for purposes of the allocation under this subparagraph, American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one State and that for these purposes, 67 percent of the amounts allocated shall be allocated to American Samoa, and 33 percent to the Commonwealth of the Northern Mariana Islands.''

§ 532. Director of the Federal Bureau of Investigation

The Attorney General may appoint a Director of the Federal Bureau of Investigation. The Director of the Federal Bureau of Investigation is the head of the Federal Bureau of Investigation.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience and clarification and is based on section 3 of Executive Order No. 6166 of June 10, 1933, which provided for the transfer of the functions of the Bureau of Investigation together with the investigative functions of the Bureau of Prohibition to a ''Division of Investigation in the Department of Justice, at the head of which shall be a Director of Investigation''. The Division of Investigation was first designated as the ''Federal Bureau of Investigation'' by the Act of Mar. 22, 1935, ch. 39, title II, 49 Stat. 77, and has been so designated in statutes since that date. The title of ''Director of the Federal Bureau of Investigation'' was recognized by statute in the Act of June 5, 1936, ch. 529, 49 Stat. 1484, and has been used in statutes since that date.

FBI CRITICAL SKILLS SCHOLARSHIP PROGRAM

Pub. L. 102–183, title V, § 501, Dec. 4, 1991, 105 Stat. 1268, provided that:

''(a) STUDY.—The Director of the Federal Bureau of Investigation shall conduct a study relative to the establishment of an undergraduate training program with respect to employees of the Federal Bureau of Investigation that is similar in purpose, conditions, content, and administration to undergraduate training programs administered by the Central Intelligence Agency (under section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j)), the National Security Agency (under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 (note))[)], and the Defense Intelligence Agency (under section 1608 [now 1623] of title 10, United States Code).

''(b) IMPLEMENTATION.—Any program proposed under subsection (a) may be implemented only after the Department of Justice and the Office of Management and Budget review and approve the implementation of such program.

''(c) AVAILABILITY OF FUNDS.—Any payment made by the Director of the Federal Bureau of Investigation to carry out any program proposed to be established under subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.''

CONFIRMATION AND COMPENSATION OF DIRECTOR; TERM OF SERVICE

Pub. L. 90–351, title VI, § 1101, June 19, 1968, 82 Stat. 236, as amended by Pub. L. 94–503, title II, § 203, Oct. 15, 1976, 90 Stat. 2427, provided that:

''(a) Effective as of the day following the date on which the present incumbent in the office of Director ceases to serve as such, the Director of the Federal Bureau of Investigation shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed for level II of the Federal Executive Salary Schedule [section 5313 of Title 5, Government Organization and Employees].

''(b) Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, after June 1, 1973, the term of service of the Director of the Federal Bureau of Investigation shall be ten years. A Director may not serve more than one ten-year term. The provisions of subsections (a) through (c) of section 8335 of title 5, United States Code, shall apply to any individual appointed under this section.''

§ 533. Investigative and other officials; appointment

The Attorney General may appoint officials—

(1) to detect and prosecute crimes against the United States;

(2) to assist in the protection of the person of the President; and

(3) to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General.

This section does not limit the authority of departments and agencies to investigate crimes against the United States when investigative jurisdiction has been assigned by law to such departments and agencies.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 299, 300 (less applicability to acquisition etc. of identification and other records).	Aug. 31, 1964, Pub. L. 88–527, § 201 (1st 105 words of 1st par. under ''Federal Bureau of Investigation'', less applicability to acquisition etc. of identification and other records), 78 Stat. 717.

The section is from the Department of Justice Appropriation Act, 1965. Similar provisions were contained in each appropriation Act for the Department running back to 1921, which Acts are identified in a note under sections 299 and 300 of title 5, U.S.C. 1964 ed.

The section is reorganized for clarity. The authority to appoint officials for the cited purposes is implied. The word ''may'' is substituted for ''is authorized to''. The words ''who shall be vested with the authority necessary for the execution of such duties'' are omitted as unnecessary as the appointment of the officials for the purposes indicated carries with it the authority necessary to perform their duties.

In paragraph (2), the words ''to assist in'' are added for clarity and in recognition of the provisions of 18 U.S.C. 3056 which vest in the United States Secret Service the responsibility for the protection of the person of the President. As so revised, this paragraph will assure that the Secret Service will continue to have primary responsibility for the protection of the President but at the same time will permit the Federal Bureau of Investigation to render assistance in such protection.

The last sentence is added because in various areas the authority to investigate certain criminal offenses has been specifically assigned by statute to departments and agencies other than the Federal Bureau of Investigation. For example, the enforcement of the internal revenue laws is specifically a function of the Secretary of the Treasury and he is authorized to employ such number of persons as he deems proper for the enforcement of such laws (26 U.S.C. 7801, 7803). The Secretary of the Treasury is specifically authorized to direct the collection of duties on imports and to appoint such employees for that purpose as he deems necessary (19 U.S.C. 3, 6). The U.S. Coast Guard is specifically authorized to enforce or assist in enforcing the Federal laws upon the high seas and waters subject to the jurisdiction of the United States (14 U.S.C. 2). Subject to the direction of the Secretary of the Treasury, the Secret Service is specifically authorized to detect and arrest persons committing offenses against the laws of the United States relating to coins and obligations and securities of the United States and foreign governments (18 U.S.C. 3056).

DEPARTMENT OF JUSTICE EXEMPTION AUTHORITY

Pub. L. 104–132, title VIII, § 815(d), Apr. 24, 1996, 110 Stat. 1315, provided that: ''Notwithstanding any other provision of law, section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (Public Law 102–395) [section 102(b)(5)–(6) of Pub. L. 102–395 is set out as a note below], shall remain in effect until specifically repealed, subject to any limitation on appropriations contained in any Department of Justice Appropriation Authorization Act.''

FBI INVESTIGATIONS OF ESPIONAGE BY PERSONS EMPLOYED BY OR ASSIGNED TO UNITED STATES DIPLOMATIC MISSIONS ABROAD

Pub. L. 101–193, title VI, § 603, Nov. 30, 1989, 103 Stat. 1710, provided that: ''Subject to the authority of the Attorney General, the FBI shall supervise the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad. All departments and agencies shall report immediately to the FBI any information concerning such a violation. All departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations. Nothing in this provision shall be construed as establishing a defense to any criminal, civil, or administrative action.''

UNDERCOVER INVESTIGATIVE OPERATIONS CONDUCTED BY FEDERAL BUREAU OF INVESTIGATION OR DRUG ENFORCEMENT ADMINISTRATION; ANNUAL REPORT TO CONGRESS; FINANCIAL AUDIT

Pub. L. 102–395, title I, § 102(b)(5), (6), Oct. 6, 1992, 106 Stat. 1840, as amended by section 112(3) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided that:

''(5)(A) The Federal Bureau of Investigation or the Drug Enforcement Administration, as the case may be, shall conduct a detailed financial audit of each undercover investigative operation which is closed in fiscal year 1996—

''(i) submit the results of such audit in writing to the Attorney General, and

''(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

''(B) The Federal Bureau of Investigation and the Drug Enforcement Administration shall each also submit a report annually to the Congress specifying as to their respective undercover investigative operations—

''(i) the number, by programs, of undercover investigative operations pending as of the end of the one-year period for which such report is submitted,

''(ii) the number, by programs, of undercover investigative operations commenced in the one-year period preceding the period for which such report is submitted, and

''(iii) the number, by programs, of undercover investigative operations closed in the one-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained. With respect to each such closed undercover operation which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

''(I) the results,

''(II) any civil claims, and

''(III) identification of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

''(6) For purposes of paragraph (5)—

''(A) the term 'closed' refers to the earliest point in time at which—

''(i) all criminal proceedings (other than appeals) are concluded, or

''(ii) covert activities are concluded, whichever occurs later,

''(B) the term 'employees' means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation, and

''(C) the terms 'undercover investigative operations' and 'undercover operation' mean any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration (other than a foreign counterintelligence undercover investigative operation)—

''(i) in which—

''(I) the gross receipts (excluding interest earned) exceed $50,000, or

''(II) expenditures (other than expenditures for salaries of employees) exceed $150,000, and

''(ii) which is exempt from section 3302 or 9102 of title 31 of the United States Code,

except that clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of such paragraph.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–140, title I, § 102(b)(4), (5), Oct. 28, 1991, 105 Stat. 793.

Pub. L. 101–515, title II, § 202(b)(4), (5), Nov. 5, 1990, 104 Stat. 2118.

Pub. L. 101–162, title II, § 204(b)(4), (5), Nov. 21, 1989, 103 Stat. 1004.

Pub. L. 100–459, title II, § 204(b)(4), (5), Oct. 1, 1988, 102 Stat. 2200, 2201, as amended by Pub. L. 101–650, title III, § 325(c)(2), Dec. 1, 1990, 104 Stat. 5121.

Pub. L. 100–202, § 101(a) [title II, § 204(b)(4), (5)], Dec. 22, 1987, 101 Stat. 1329, 1329–16.

Pub. L. 99–500, § 101(b) [title II, § 204(b)(4), (5)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–52, 1783–53, and Pub. L. 99–591, § 101(b) [title II, § 204(b)(4), (5)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–52, 3341–53.

Pub. L. 99–180, title II, § 204(b)(4), (5), Dec. 13, 1985, 99 Stat. 1148.

Pub. L. 98–411, title II, § 203(b)(4), (5), Aug. 30, 1984, 98 Stat. 1560.

Pub. L. 98–166, title II, § 205(b)(4), (5), Nov. 28, 1983, 97 Stat. 1087.

Pub. L. 96–132, § 7(d), Nov. 30, 1979, 93 Stat. 1046, provided that:

''(1) The Federal Bureau of Investigation shall conduct detailed financial audits of undercover operations closed on or after October 1, 1979, and—

''(A) report the results of each audit in writing to the Department of Justice, and

''(B) report annually to the Congress concerning these audits.

''(2) For the purposes of paragraph (1), 'undercover operation' means any undercover operation of the Federal Bureau of Investigation, other than a foreign counterintelligence undercover operation—

''(A) in which the gross receipts exceed $50,000, and

''(B) which is exempted from section 3617 of the Revised Statutes (31 U.S.C. 484) [31 U.S.C. 3302(b)] or section 304(a) of the Government Corporation Control Act (31 U.S.C. 869(a)) [31 U.S.C. 9102].''

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

(2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin);[1]

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(d) For purposes of this section, the term ''other institutions'' includes—

(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and

(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.

[1] So in original. Probably should be followed by ''and''.

(e)(1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.

(2) Federal and State criminal justice agencies authorized to enter information into criminal information databases may include—

(A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

(B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection—

(A) the term ''national crime information databases'' means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

(B) the term ''protection order'' includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616; amended Pub. L. 97–292, §§ 2, 3(a), Oct. 12, 1982, 96 Stat. 1259; Pub. L. 100–690, title VII, § 7333, Nov. 18, 1988, 102 Stat. 4469; Pub. L. 103–322, title IV, § 40601(a), Sept. 13, 1994, 108 Stat. 1950.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 300 (as applicable to acquisition etc. of identification and other records).	Aug. 31, 1964, Pub. L. 88–527, § 201 (1st 105 words of 1st par. under ''Federal Bureau of Investigation'', as applicable to acquisition etc. of identification and other records), 78 Stat. 717.
.....	5 U.S.C. 340.	June 11, 1930, ch. 455, 46 Stat. 554.

The sections are combined and reorganized for clarity. Former section 300 of title 5 was from the Department of Justice Appropriation Act, 1965. Similar provisions were contained in each appropriation Act for the Department of Justice running back to 1921, which Acts are identified in a note under former section 300 of title 5, U.S.C. 1964 ed.

In subsection (a), the word ''shall'' is substituted for ''has the duty'' as a more direct expression. The function of acquiring, collecting, classifying, etc., referred to in former section 340 of title 5 was transferred to the Attorney General by 1950 Reorg., Plan No. 2, § 1, eff. May 24, 1950, 64 Stat. 1261, which is codified in section 509 of this title. Accordingly, the first 29 words and last 30 words of former section 340 are omitted as unnecessary.

In subsection (c), the authority to appoint officials for the cited purposes is implied.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–322 added subsec. (e).

1988—Subsec. (d). Pub. L. 100–690 added subsec. (d).

1982—Pub. L. 97–292, § 3(a), inserted ''and information'' after ''identification records'' in section catchline.

Subsec. (a). Pub. L. 97–292, § 2(a), added pars. (2) and (3), redesignated former par. (2) as (4), and substituted ''exchange such records and information'' for ''exchange these records'' in par. (4).

Subsec. (b). Pub. L. 97–292, § 2(b), substituted ''exchange of records and information authorized by subsection (a)(4)'' for ''exchange of records authorized by subsection (a)(2)''.

COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES

Pub. L. 104–132, title VIII, § 808, Apr. 24, 1996, 110 Stat. 1310, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) threats of violence and acts of violence against Federal, State, and local government employees and their families are increasing as the result of attempts to stop public servants from performing their lawful duties;

''(2) these acts are a danger to the constitutional form of government of the United States; and

''(3) more information is needed relating to the extent and nature of the danger to these employees and their families so that actions can be taken to protect public servants at all levels of government in the performance of their duties.

''(b) STATISTICS.—The Attorney General shall collect data, for the calendar year 1990 and each succeeding calendar year thereafter, relating to crimes and incidents of threats of violence and acts of violence against Federal, State, and local government employees and their families in the performance of their lawful duties. Such data shall include—

''(1) in the case of crimes against such employees and their families, the nature of the crime; and

''(2) in the case of incidents of threats of violence and acts of violence, including verbal and implicit threats against such employees and their families, the deterrent effect on the performance of their jobs.

''(c) GUIDELINES.—The Attorney General shall establish guidelines for the collection of the data under subsection (b), including a definition of the sufficiency of evidence of noncriminal incidents required to be reported.

''(d) USE OF DATA.—

''(1) ANNUAL PUBLISHING.—The Attorney General shall publish an annual summary of the data collected under this section.

''(2) USE OF DATA.—Except with respect to the summary published under paragraph (1), data collected under this section shall be used only for research and statistical purposes.

''(e) EXEMPTION.—The Attorney General, the Secretary of State, and the United States Secret Service is not required to participate in any statistical reporting activity under this section with respect to any direct or indirect threat made against any individual for whom that official or Service is authorized to provide protection.''

RULEMAKING RELATING TO ACCESS TO FEDERAL CRIMINAL INFORMATION DATABASES

Section 40601(b) of Pub. L. 103–322 provided that: ''The Attorney General may make rules to carry out the subsection added to section 534 of title 28, United States Code, by subsection (a), after consultation with the officials charged with managing the National Crime Information Center and the Criminal Justice Information Services Advisory Policy Board.''

NATIONAL CRIME INFORMATION CENTER PROJECT 2000

Pub. L. 101–647, title VI, subtitle B, Nov. 29, 1990, 104 Stat. 4823, provided that:

''SEC. 611. SHORT TITLE.

''This section [subtitle] may be cited as the 'National Law Enforcement Cooperation Act of 1990'.

''SEC. 612. FINDINGS.

''The Congress finds that—

''(1) cooperation among Federal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and drug trafficking in the United States;

''(2) the National Crime Information Center, which links more than 16,000 Federal, State and local law enforcement agencies, is the single most important avenue of cooperation among law enforcement agencies;

''(3) major improvements to the National Crime Information Center are needed because the current system is more than twenty years old; carries much greater volumes of enforcement information; and at this time is unable to incorporate technological advances that would significantly improve its performance; and

''(4) the Federal Bureau of Investigation, working with State and local law enforcement agencies and private organizations, has developed a promising plan, 'NCIC 2000', to make the necessary upgrades to the National Crime Information Center that should meet the needs of United States law enforcement agencies into the next century.

''SEC. 613. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated the following sums to implement the 'NCIC 2000' project:

''(1) $17,000,000 for fiscal year 1991;

''(2) $25,000,000 for fiscal year 1992;

''(3) $22,000,000 for fiscal year 1993;

''(4) $9,000,000 for fiscal year 1994; and

''(5) such sums as may be necessary for fiscal year 1995.

''SEC. 614. REPORT.

''By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000.''

FBI FEES TO PROCESS FINGERPRINT IDENTIFICATION RECORDS AND NAME CHECKS

Pub. L. 101–515, title II, Nov. 5, 1990, 104 Stat. 2112, as amended by section 113 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, §211, Jan. 26, 1996, 110 Stat. 37, provided in part that: ''for fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs''.

HATE CRIME STATISTICS

Pub. L. 101–275, Apr. 23, 1990, 104 Stat. 140, as amended by Pub. L. 103–322, title XXXII, §320926, Sept. 13, 1994, 108 Stat. 2131; Pub. L. 104–155, §7, July 3, 1996, 110 Stat. 1394, provided: ''That (a) this Act may be cited as the 'Hate Crime Statistics Act'.

''(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

''(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

''(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.] or the All Writs Act [see 28 U.S.C. 1651].

''(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

''(5) The Attorney General shall publish an annual summary of the data acquired under this section.

''(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

''SEC. 2. (a) Congress finds that—

''(1) the American family life is the foundation of American Society,

''(2) Federal policy should encourage the well-being, financial security, and health of the American family,

''(3) schools should not de-emphasize the critical value of American family life.

''(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.''

UNIFORM FEDERAL CRIME REPORTING ACT OF 1988

Section 7332 of Pub. L. 100–690 provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Uniform Federal Crime Reporting Act of 1988'.

''(b) DEFINITIONS.—For purposes of this section, the term 'Uniform Crime Reports' means the reports authorized under section 534 of title 28, United States Code, and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

''(c) ESTABLISHMENT OF SYSTEM.—

''(1) IN GENERAL.—The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

''(2) REPORTING BY FEDERAL AGENCIES.—All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

''(3) DISTRIBUTION OF DATA.—The Attorney General shall distribute data received pursuant to paragraph (2), in the form of annual Uniform Crime Reports for the United States, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

''(d) ROLE OF FEDERAL BUREAU OF INVESTIGATION.—The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and

may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

''(e) INCLUSION OF OFFENSES INVOLVING ILLEGAL DRUGS.—The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

''(g) EFFECTIVE DATE.—The provisions of this section shall be effective on January 1, 1989.''

FAMILY AND DOMESTIC VIOLENCE; DATA COLLECTION AND REPORTING

Section 7609 of Pub. L. 100–690 provided that:

''(a) FAMILY VIOLENCE REPORTING.—Under the authority of section 534 of title 28, United States Code, the Attorney General shall require, and include in uniform crime reports, data that indicate—

''(1) the age of the victim; and

''(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

''(b) NATIONAL CRIME SURVEY.—The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section.''

PARIMUTUEL LICENSING SIMPLIFICATION

Pub. L. 100–413, Aug. 22, 1988, 102 Stat. 1101, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Parimutuel Licensing Simplification Act of 1988'.

''SEC. 2. SUBMISSION BY ASSOCIATION OF STATE REGULATORY OFFICIALS.

''(a) IN GENERAL.—An association of State officials regulating parimutuel wagering, designated for the purpose of this section by the Attorney General, may submit fingerprints to the Attorney General on behalf of any applicant for State license to participate in parimutuel wagering. In response to such a submission, the Attorney General may, to the extent provided by law, exchange, for licensing and employment purposes, identification and criminal history records with the State governmental bodies to which such applicant has applied.

''(b) DEFINITION.—As used in this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

''SEC. 3. EFFECTIVE DATE.

''This Act shall take effect on July 1, 1989.''

FUNDS FOR EXCHANGE OF IDENTIFICATION RECORDS

Pub. L. 92–544, title II, § 201, Oct. 25, 1972, 86 Stat. 1115, provided that: ''The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation.''

§ 535. Investigation of crimes involving Government officers and employees; limitations

(a) The Attorney General and the Federal Bureau of Investigation may investigate any violation of title 18 involving Government officers and employees—

(1) notwithstanding any other provision of law; and

(2) without limiting the authority to investigate any matter which is conferred on them or on a department or agency of the Government.

(b) Any information, allegation, or complaint received in a department or agency of the executive branch of the Government relating to violations of title 18 involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, unless—

(1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or

(2) as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

(c) This section does not limit—

(1) the authority of the military departments to investigate persons or offenses over which the armed forces have jurisdiction under the Uniform Code of Military Justice (chapter 47 of title 10); or

(2) the primary authority of the Postmaster General to investigate postal offenses.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 311a.	Aug. 31, 1954, ch. 1143, § 1, 68 Stat. 998.

The section is reorganized for clarity and continuity.

In subsection (a), the word ''may'' is substituted for ''shall have authority''. The word ''is'' is substituted for ''may have been or may hereafter be''.

In subsection (c), the words ''This section does not limit'' are substituted for ''that the provisions of this section shall not limit, in any way''. The words ''(chapter 47 of title 10)'' are added after ''Uniform Code of Military Justice'' to reflect the codification of that Code in title 10, United States Code.

TRANSFER OF FUNCTIONS

Office of Postmaster General of Post Office Department abolished and all functions, powers, and duties of Postmaster General transferred to United States Postal Service by Pub. L. 91–375, § 4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403q.

§ 536. Positions in excepted service

All positions in the Federal Bureau of Investigation are excepted from the competitive serv-

ice, and the incumbents of such positions occupy positions in the excepted service.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 617.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 300d.	Aug. 31, 1964, Pub. L. 88–527, § 201 (2nd par. under ''Federal Bureau of Investigation''), 78 Stat. 718.
.....	5 U.S.C. 341c (last sentence).	July 28, 1950, ch. 503, § 5 (last sentence), 4 Stat. 380.

The section is revised and restated to eliminate ambiguity and give true effect to the prohibition against the use of appropriations to the Federal Bureau of Investigation. The language used to define the excepted status of the positions, officers, and employees is based on revised sections 2102 and 2103 of title 5, United States Code.

The provisions of this section were made permanent by the Act of July 28, 1950, 64 Stat. 380. Identical provisions appearing in former section 300d of title 5 are derived from the Department of Justice Appropriation Act, 1965, and earlier appropriation Acts for the Department of Justice running back to 1942, which Acts are identified in a note under former section 300d of title 5, U.S.C. 1964 ed.

§ 537. Expenses of unforeseen emergencies of a confidential character

Appropriations for the Federal Bureau of Investigation are available for expenses of unforeseen emergencies of a confidential character, when so specified in the appropriation concerned, to be spent under the direction of the Attorney General. The Attorney General shall certify the amount spent that he considers advisable not to specify, and his certification is a sufficient voucher for the amount therein expressed to have been spent.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 617.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 341c (less last sentence).	July 28, 1950, ch. 503, § 5 (less last sentence), 64 Stat. 380.

The section is revised and reorganized for clarity. The words ''now or hereafter provided'' are omitted as unnecessary. The words ''for expenses of membership in the International Commission of Criminal Police and'' are omitted as obsolete. The Act of Aug. 27, 1958, Pub. L. 85–768, 72 Stat. 921 (22 U.S.C. 263a) authorizes the Attorney General to accept and maintain, on behalf of the United States, membership in the International Criminal Police Organization, and to designate any departments and agencies which may participate in the United States representation with that organization; and authorizes each participating department and agency to pay its pro rata share, as determined by the Attorney General, of the expenses of such membership. The word ''spent'' is substituted for ''expended''. The words ''certify the amount spent that he considers'' are substituted for ''make a certificate of the amount of any such expenditure as he may think it''. The words ''his certification is a sufficient voucher'' are substituted for ''and every such certificate shall be deemed a sufficient voucher''.

§ 538. Investigation of aircraft piracy and related violations

The Federal Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49.

(Added Pub. L. 103–272, § 4(e)(1), July 5, 1994, 108 Stat. 1361.)

§ 539. Counterintelligence official reception and representation expenses

The Director of the Federal Bureau of Investigation may use funds available to the Federal Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Federal Bureau of Investigation for consultation on counterintelligence matters.

(Added Pub. L. 99–569, title IV, § 401(a), Oct. 27, 1986, 100 Stat. 3195.)

§ 540. Investigation of felonious killings of State or local law enforcement officers

The Attorney General and the Federal Bureau of Investigation may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of the performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or employee killed, and under such guidelines as the Attorney General or his designee may establish.

(Added Pub. L. 100–690, title VII, § 7331(a), Nov. 18, 1988, 102 Stat. 4468.)

§ 540A. Investigation of violent crimes against travelers

(a) IN GENERAL.—At the request of an appropriate law enforcement official of a State or political subdivision, the Attorney General and Director of the Federal Bureau of Investigation may assist in the investigation of a felony crime of violence in violation of the law of any State in which the victim appears to have been selected because he or she is a traveler.

(b) FOREIGN TRAVELERS.—In a case in which the traveler who is a victim of a crime described in subsection (a) is from a foreign nation, the Attorney General and Director of the Federal Bureau of Investigation, and, when appropriate, the Secretary of State shall assist the prosecuting and law enforcement officials of a State or political subdivision to the fullest extent possible in securing from abroad such evidence or other information as may be needed for the effective investigation and prosecution of the crime.

(c) DEFINITIONS.—In this section—

(1) ''felony crime of violence'' means an offense punishable by more than one year in prison that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(2) ''State'' means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(3) ''traveler'' means a victim of a crime of violence who is not a resident of the State in which the crime of violence occurred.

(Added Pub. L. 103–322, title XXXII, § 320916(a), Sept. 13, 1994, 108 Stat. 2129; amended Pub. L. 104–294, title VI, § 604(b)(21), Oct. 11, 1996, 110 Stat. 3507.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–294 designated three undesignated pars. as pars. (1) to (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

CHAPTER 35—UNITED STATES ATTORNEYS

Sec.
541. United States attorneys.
542. Assistant United States attorneys.
543. Special attorneys.
544. Oath of office.
545. Residence.
546. Vacancies.
547. Duties.
548. Salaries.
549. Expenses.
550. Clerical assistants, messengers, and private process servers.

AMENDMENTS

1990—Pub. L. 101–647, title XXXVI, § 3626(b), Nov. 29, 1990, 104 Stat. 4965, substituted ''Clerical assistants, messengers, and private process servers'' for ''Clerical assistants and messengers'' in item 550.

1966—Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 617, added chapter 35 and items 541 to 550.

CROSS REFERENCES

United States attorney for Guam, Virgin Islands, and Northern Mariana Islands, this chapter as applicable, see sections 1424b, 1617, and 1821 of Title 48, Territories and Insular Possessions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 sections 1424b, 1617, 1821.

§ 541. United States attorneys

(a) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney for each judicial district.

(b) Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States attorney is subject to removal by the President.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 617.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	28 U.S.C. 501.	[None].
(b)	28 U.S.C. 504(a).	[None].
(c)	28 U.S.C. 504(b) (less 2d sentence).	[None].

In subsection (c), the word ''is'' is substituted for ''shall be''.

1948 ACT

Prior section 501.—Based on title 28, U.S.C., 1940 ed., § 481, sections 643 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and section 11–1001, District of Columbia Code, 1940 ed. (R.S., § 767; June 26, 1876, ch. 147, §§ 1, 4, 19 Stat. 61, 62; Feb. 24, 1879, ch. 97, § 8, 20 Stat. 320; Mar. 3, 1881, ch. 144, § 7, 21 Stat. 507; Apr. 25, 1882, ch. 87, §§ 1, 3, 22 Stat. 47; July 20, 1882, ch. 312, § 3, 22 Stat. 172; Aug. 5, 1886, ch. 928, § 7, 24 Stat. 309; Feb. 22, 1889, ch. 180, § 21, 25 Stat. 682; July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 10, 1890, ch. 664, § 16, 26 Stat. 225; Mar. 3, 1893, ch. 220, 27 Stat. 745; July 16, 1894, ch. 138, §§ 14, 16, 28 Stat. 110, 111; June 24, 1898, ch. 495, § 1, 30 Stat. 487; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 85; Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; May 12, 1900, ch. 391, § 9, 31 Stat. 176; Jan. 22, 1901, ch. 105, §§ 4, 7, 31 Stat. 736, 737; Feb. 12, 1901, ch. 355, §§ 5, 7, 31 Stat. 782; Mar. 2, 1901, ch. 801, §§ 3, 5, 31 Stat. 881; Mar. 3, 1901, ch. 854, § 183, 31 Stat. 1220; Mar. 11, 1902, ch. 183, §§ 5, 6, 32 Stat. 66; June 30, 1902, ch. 1329, 32 Stat. 527; Mar. 2, 1905, ch. 1305, §§ 4, 6, 33 Stat. 824; Mar. 3, 1905, ch. 1427, §§ 13, 15, 19, 33 Stat. 995, 996; June 16, 1906, ch. 3335, § 13, 34 Stat. 275; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 3, 1915, ch. 100, §§ 3, 4, 38 Stat. 961; Mar. 2, 1917, ch. 145, § 41, 39 Stat. 965; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; July 9, 1921, ch. 42, § 313, 42 Stat. 119; May 28, 1926, ch. 414, § 2(b), 44 Stat. 672; Apr. 21, 1928, ch. 393, 45 Stat. 437; Mar. 26, 1928, ch. 51, § 2, 52 Stat. 118).

Section consolidates section 481 of title 28, U.S.C., 1940 ed., and section 11–1001 of the District of Columbia Code, 1940 ed., with parts of sections 643 and 863 of title 48, U.S.C., 1940 ed., relating to appointment of United States attorneys.

The term ''United States attorney'' was adopted in this section for ''attorney for the United States.'' Since the decision of the Supreme Court of the United States in In re Neagle, 1890 (10 S. Ct. 658, 135 U.S. 1, 34, L. Ed. 55) where the terms ''attorneys of the United States'' and ''district attorneys'' were used interchangeably, Congress has also designated such officers as either ''United States attorneys'' or as ''district attorneys.'' See Acts of Feb. 22, 1886, ch. 928, § 7, 24 Stat. 309; July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 10, 1890, ch. 664, § 16, 26 Stat. 225, and Acts of July 20, 1882, ch. 312, § 3, 22 Stat. 172; Mar. 3, 1915, ch. 100, § 3, 38 Stat. 961; May 28, 1926, ch. 414, § 2(b), 44 Stat. 672.

At present, such officers are invariably designated as ''United States attorneys'' by Federal courts and the Department of Justice.

Words ''The President may appoint, by and with the advice and consent of the Senate,'' were inserted to conform section with the Constitution. See article II, section 2, clause 2.

Words ''including the District of Columbia'' were omitted, because the District is made a judicial district by section 88 of this title. District of Columbia Code, 1940 ed., § 11–1001, provided for appointment of an ''attorney of the United States for the District'' by the President, subject to Senate confirmation.

Words ''learned in the law'' were omitted as unnecessary. Such requirement is not made of United States judges and no reason appears to make a distinction respecting United States attorneys.

Parts of section 863 of title 48, U.S.C., 1940 ed., remain in said title 48. For remainder thereof, see Distribution Table. Other provisions of section 643 of such title are incorporated in sections 133, 504 [now 541 and 544], and 541 [see 561] of this title.

Changes were made in phraseology.

[The Historical and Revision Notes for former section 504, from which this section is partially derived, is set out under section 544 of this title.]

PRIOR PROVISIONS

A prior section 541, acts June 25, 1948, ch. 646, 62 Stat 910; Mar. 18, 1959, Pub. L. 86–3, § 11(c), (d), 73 Stat. 9, re-

lated to appointment, residence and tenure of marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 561 of this title by section 4(c) of Pub. L. 89–554.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 546 of this title.

§ 542. Assistant United States attorneys

(a) The Attorney General may appoint one or more assistant United States attorneys in any district when the public interest so requires.

(b) Each assistant United States attorney is subject to removal by the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	28 U.S.C. 502.	[None].
(b)	28 U.S.C. 504(b) (2d sentence, as applicable to assistant United States attorneys).	[None].

In subsection (b), the word ''is'' is substituted for ''shall be''.

1948 ACT

Prior section 502.—Based on title 28, U.S.C., 1940 ed., §§ 483, 594 (May 28, 1896, ch. 252, § 8, 29 Stat. 181; July 19, 1919, ch. 24, § 1, 41 Stat. 209; Mar. 4, 1923, ch. 295, 42 Stat. 1560; June 25, 1936, ch. 804, 49 Stat. 1921).

Section consolidates sections 483 and 594 of title 28, U.S.C., 1940 ed., relating to appointment of assistant United States attorneys.

Words ''United States attorneys'' were substituted for ''district attorneys.'' (See reviser's note under section 501 [now 541] of this title.)

The exception of Alaska from the operation of such section 483 was omitted as covered by section 109 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, authorizing appointment of assistant United States attorneys in Alaska.

Reference in such section 483 to ''District of Columbia'' was omitted. (See reviser's note under section 501 [now 541] of this title.)

The provisions of sections 483 and 594 of title 28, U.S.C., 1940 ed., requiring the judges and United States attorneys to certify or evidence in writing the necessity for assistant United States attorneys in their respective districts, and specifying that such opinion of the judge shall state to the Attorney General the facts as distinguished from conclusions, showing the necessity therefor, were omitted. The Attorney General, as chief law enforcement officer, is in a better position to determine such necessity.

The salary provisions of such section 594 were omitted as covered by section 508 [now 548] of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 542, act June 25, 1948, ch. 646, 62 Stat. 911, related to appointment and tenure of deputies and assistants for United States marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 562 of this title by section 4(c) of Pub. L. 89–554.

§ 543. Special attorneys

(a) The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires.

(b) Each attorney appointed under this section is subject to removal by the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	28 U.S.C. 503. 5 U.S.C. 298.	[None]. July 28, 1916, ch. 261, § 1 (6th par. on p. 413), 39 Stat. 413.
(b)	28 U.S.C. 504(b) (2d sentence, less applicability to assistant United States attorneys).	[None].

The text of former section 298 of title 5 is omitted as unnecessary. The position so authorized has not been filled in recent years, and the authority is preserved by this section and revised section 3101 of title 5, United States Code.

In subsection (b), the word ''is'' is substituted for ''shall be''.

1948 ACT

Prior section 503.—Based on section 312 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (R.S. § 363).

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 507 [now 509 and 547] and 508 [now 548] of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 543, act June 25, 1948, ch. 646, 62 Stat. 911, related to oath of office for United States Marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 563 of this title by section 4(c) of Pub. L. 89–554.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 519, 544, 548 of this title.

§ 544. Oath of office

Each United States attorney, assistant United States attorney, and attorney appointed under section 543 of this title, before taking office, shall take an oath to execute faithfully his duties.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 504(c).	[None].

1948 ACT

Prior section 504.—Based on section 315 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, title 28, U.S.C., 1940 ed., § 482, and sections 643 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (R.S. §§ 366, 769; June 24, 1898, ch. 495, § 1, 30 Stat. 487; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 85; Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 2, 1917, ch. 145, § 41, 39 Stat. 965; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; July 9, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Apr. 17, 1930, ch. 174, 46 Stat. 170; Mar. 26, 1938, ch. 51, § 2, 52 Stat. 118).

Section consolidates parts of sections 315 of title 5, U.S.C., 1940 ed., and 643 and 863 of title 48, both U.S.C.,

1940 ed., with section 482 of title 28, U.S.C., 1940 ed. It is recommended that said section 315 be amended so as to omit those provisions relating to special attorneys to assist ''district attorneys'' which were used as part of the basis for this section, as other parts of said section 315, relating to special assistants to the Attorney General, and to foreign counsel, are to remain in title 5.

Words ''United States attorney'' were substituted for district attorney, and reference to District of Columbia was omitted. (See reviser's note under section 501 [now 541] of this title.)

Reference to the territories in said section 482, was also omitted as covered by provisions of title 48, U.S.C., 1940 ed., Territories and Insular Possessions. See sections 109 and 112 of such title applicable to United States attorney in Alaska, and 1353 applicable in the Canal Zone, and 1405y applicable in the Virgin Islands.

The provision as to the tenure of the assistant United States attorneys and special attorneys is new. Existing law contains no provision as to tenure or removal of such officials. While the Supreme Court has held that the power of removal of executive officials is incident to the power of appointment, this section expressly provides for removal. See *Meyers v. United States*, 1926 (47 S.Ct. 21, 272 U.S. 52, 71 L.Ed. 160).

Said section 315 contained a provision that special attorneys appointed to assist United States attorneys should take the same oath required of the latter. This section was extended to assistant United States attorneys, respecting whom no provision existed as to oaths.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of said section 863, see Distribution Table. Other provisions of section 643 of such title are incorporated in sections 133, 501 [now 541], and 541 [see 561] of this title.

Other changes were made in phraseology.

PRIOR PROVISIONS

A prior section 544, acts June 25, 1948, ch. 646, 62 Stat. 911; Sept. 2, 1958, Pub. L. 85–856, 72 Stat. 1104, related to bonds of United States marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 564 of this title by section 4(c) of Pub. L. 89–554.

§ 545. Residence

(a) Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof. Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618; amended Pub. L. 95–530, § 1, Oct. 27, 1978, 92 Stat. 2028; Pub. L. 96–91, Oct. 25, 1979, 93 Stat. 700; Pub. L. 103–322, title XXXII, § 320932, Sept. 13, 1994, 108 Stat. 2135.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 505.	[None].

In subsection (a), the word ''shall'' is substituted for ''must''. The word ''thereof'' is substituted for ''of the District''.

1948 ACT

Prior section 505.—Based on title 28, U.S.C., 1940 ed., § 524 (June 20, 1874, ch. 328, § 2, 18 Stat. 109; May 28, 1896, ch. 252, §§ 8, 12, 29 Stat. 181, 183; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 14, 1941, ch. 203, §§ 1, 2, 55 Stat. 251).

The provisions of section 524 of title 28, U.S.C., 1940 ed., that the United States attorney shall give his personal attention to the duties of his office and declaring the office of United States attorney vacant upon his removal from his district or neglect of duty, were omitted as unnecessary and inconsistent with section 507(b) [now 519] of this title, charging the Attorney General with the duty of supervising the United States attorneys in the performance of their duties.

The provision permitting the United States attorney and his assistants to reside within twenty miles of the District of Columbia was added because of the relatively small and congested area of the District, as a result of which few Federal officers are appointed from the District or reside therein. Also the residence requirement of this section has no relation to domicile or voting residence nor does it affect the citizenship or residence status of District of Columbia officeholders in the several States from which appointed.

Only citizens of Hawaii resident therein at least 3 years preceding appointment may be appointed as United States Attorneys for the district of Hawaii. See section 501 [now 541] of this title.

Other provisions of section 524 of title 28, U.S.C., 1940 ed., were incorporated in sections 541 [see 561] and 751 of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 545, act June 25, 1948, ch. 646, 62 Stat. 911, related to vacancies in the office of the United States Marshal, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 565 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 struck out ''and assistant United States attorney'' after ''Each United States attorney'' and inserted after first sentence ''Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof.''

1979—Subsec. (a). Pub. L. 96–91 inserted provisions authorizing the United States attorney and the assistant United States attorneys for the Eastern District of New York to reside outside the district but within 20 miles thereof.

1978—Subsec. (a). Pub. L. 95–530 inserted provision that this subsection not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

§ 546. Vacancies

(a) Except as provided in subsection (b), the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant.

(b) The Attorney General shall not appoint as United States attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

(c) A person appointed as United States attorney under this section may serve until the earlier of—

(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

(2) the expiration of 120 days after appointment by the Attorney General under this section.

(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618; amended Pub. L. 99–646, § 69, Nov. 10, 1986, 100 Stat. 3616.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 506.	[None].

1948 ACT

Prior section 506.—Based on title 28, U.S.C., 1940 ed., § 511 (R.S. § 793; June 24, 1898, ch. 495, § 2, 30 Stat. 487; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Words ''United States attorney'' were substituted for ''district attorney.'' (See Reviser's Note under section 501 [now 541] of this title.)

Words ''The Supreme Court of the Territory, and the district court of the United States for the District of Columbia'' were omitted as obsolete. This section, as revised, applies to all districts enumerated in chapter 5 of this title. There were no provisions respecting vacancies in Hawaii and Puerto Rico. Therefore this section remedies this situation and establishes a uniform method to fill interim vacancies.

Words ''and a copy shall be entered on the journal of the court'' after ''filed in the clerk's office of said court'', in section 511 of title 28, U.S.C., 1940 ed., were omitted as unnecessary.

The provisions of section 511 of title 28, U.S.C., 1940 ed., relating to marshals, are incorporated in sections 544 and 545 [see Prior Provisions notes under those sections] of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 546, act June 25, 1948, ch. 646, 62 Stat. 911, related to death of a marshal, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 566 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1986—Pub. L. 99–646 amended section generally. Prior to amendment, section read as follows: ''The district court for a district in which the office of United States attorney is vacant may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.''

§ 547. Duties

Except as otherwise provided by law, each United States attorney, within his district, shall—

(1) prosecute for all offenses against the United States;

(2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned;

(3) appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury;

(4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and

(5) make such reports as the Attorney General may direct.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 507(a).	[None].

The word ''shall'' is substituted for ''it shall be the duty of''.

1948 ACT

Prior section 507.—Based on sections 312, 317, 323, 324, 327, 329, 330, 331 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees; second paragraph of section 305e of title 25, U.S.C., 1940 ed., Indians; and title 28, U.S.C., 1940 ed., §§ 485, 486, 487, 488, 489 (R.S. §§ 362, 363, 373, 374, 377, 379–381, 771–775, 838; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Apr. 9, 1910, ch. 152, 36 Stat. 294; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; May 10, 1934, ch. 277, § 512, 48 Stat. 758; Aug. 27, 1935, ch. 748, § 6, 49 Stat. 893).

This section consolidates provisions of the sections enumerated above.

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 503 [now 543] and 508 [now 548] of this title.

All requirements in said sections for reports to officers other than the Attorney General are omitted as unnecessary and are simplified in subsection (a)(5) of this section. The Attorney General directs the course of litigation in government cases and makes appropriate rules for furnishing information promptly to the Departments interested.

Specific duties fixed by sections 485—489 of title 28, U.S.C., 1940 ed., and the second paragraph of section 305e of title 25, U.S.C., 1940 ed., to prosecute and defend both civil and criminal proceedings, are covered in subsections (a)(1)–(4) of this section.

Use of ''revenue law'' in subsection (a)(4) in this section, which is based on section 486 of title 28, U.S.C., 1940 ed., obviates repetition of provisions relating to customs and revenue laws as both are covered by the term. For discussion of this point, see reviser's note under section 3283 in House Report 152, to accompany H.R. 1600 Eightieth Congress, for revision of the Criminal Code.

The following sections of said title 5, U.S.C., 1940 ed., are superseded by, covered by, or inconsistent with subsection (a)(2)(5) of this section, subsection (b) of this section [now section 519 of this title], and section 5 of Executive Order No. 6166 of June 10, 1933, transferring to the Department of Justice the function of supervising the work of United States attorneys in connection with suits by or against the United States exercised by any agency or officer:

Section 323 requiring the General Counsel of the Treasury to make entries of bonds delivered to United States attorneys by collectors for suit until the amounts have been paid or judgments secured;

Section 324 requiring said General Counsel to examine and compare the reports made by collectors of bonds delivered by them to United States attorneys for suit, and of the returns of such bonds;

Section 329 authorizing said General Counsel to instruct United States attorneys, marshals and clerks in all matters relating to suits, except for taxes, forfeit-

ures and penalties, and to require them to make such reports to him as he may direct. The first provision of section 329 of title 5, U.S.C., 1940 ed., is covered by the last paragraph of this section [now section 519 of this title], under which the Attorney General exercises supervision of the duties of United States attorneys. The Director of the Administrative Office of the United States Courts supervises the duties of clerks under chapter 41 of this title. The provision for authority of said General Counsel over marshals, also contained in section 329, is incorporated in section 547 [see Prior Provisions note below] of this title in which such authority is vested in the Attorney General.

Section 327 of title 5, U.S.C., 1940 ed., authorized said General Counsel to establish regulations, subject to approval by the Attorney General, to be observed by United States attorneys and marshals in which the United States is a party. The provision as to United States attorneys is also covered by the last paragraph of this section [now section 519 of this title], and that as to marshals is covered by section 547 [see Prior Provisions note below] of this title.

Provisions of section 327 of title 5, U.S.C., 1940 ed., relating to establishment of regulations for the observance of collectors of the customs, by the General Counsel for the Department of the Treasury, with the approbation of the Secretary of the Treasury, was omitted and recommended for repeal as covered by section 66 of title 19, U.S.C., 1940 ed., Customs Duties.

The last paragraph of this section [now section 519 of this title], is based on the first clause of section 317 of title 5, U.S.C., 1940 ed.; see also section 309 of title 5. The second clause of said section 317 is covered by subsection (a)(5) of this section. The authority of the Attorney General over marshals and the requirement that they shall report to him the conduct and state of their offices, contained also in said section 317, is incorporated in section 547 [see Prior Provisions note below] of this title.

Section 330 of title 5, U.S.C., 1940 ed., which required that United States attorneys should conduct, under direction of the General Counsel of the Treasury, all suits and proceedings involving the United States under the laws governing national banking associations is covered by subsection (a)(2) of this section.

Section 331 of title 5, U.S.C., 1940 ed., requiring United States attorneys to obey directions of the Department of Justice in suits for money due the Post Office Department, is covered also by subsection (a)(2) of this section.

Changes in arrangement and phraseology were made.

PRIOR PROVISIONS

A prior section 547, acts June 25, 1948, ch. 646, 62 Stat. 912; Oct. 18, 1962, Pub. L. 87–845, § 8, 76A Stat. 699, related to powers and duties of marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 569 of this title by section 4(c) of Pub. L. 89–554.

CROSS REFERENCES

Bankruptcy offenses, duties of United States attorneys, see section 3057 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 4243; title 19 section 2350; title 20 section 1082; title 31 section 3718; title 42 sections 292j, 12651d.

§ 548. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States attorneys, assistant United States attorneys, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618; amended Pub. L. 98–473, title II, § 1701(a) Oct. 12, 1984, 98 Stat. 2184.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 508.	[None].

The words ''sections 5315–5317 of title 5'' are substituted for ''subsection (f) and (g) of section 303 of the Federal Executive Salary Act of 1964'' to reflect the codification of those subsections in title 5. The words ''GS–18 of the General Schedule set forth in section 5332 of title 5'' are substituted for ''grade 18 of the General Schedule of the Classification Act of 1949, as amended''.

1948 ACT

Prior section 508.—Based on section 312 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, and title 28, U.S.C., 1940 ed., §§ 579 and 580 (R.S. § 363; May 28, 1896, ch. 252, §§ 8, 24, 29 Stat. 181, 186; Mar. 3, 1903, ch. 1007, § 1, 32 Stat. 1141; Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1360; May 27, 1908, ch. 200, § 1, 35 Stat. 375; July 19, 1919, ch. 24, § 1, 41 Stat. 209; June 1, 1922, ch. 204, title II (part), 42 Stat. 616; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1083; Mar. 4, 1923, ch. 295, 42 Stat. 1560; May 28, 1924, ch. 204, title II (part), 43 Stat. 220).

Section consolidates part of section 312 of title 5, U.S.C., 1940 ed., and part of section 579 of title 28, U.S.C., 1940 ed., with section 580 of title 28, U.S.C., 1940 ed.

Sections 579 and 580 of title 28, U.S.C., 1940 ed., fixed specific salaries for the United States attorneys and assistants, while section 312 of title 5, U.S.C., 1940 ed., provided for a contractual arrangement for compensation of special attorneys.

According to a Department of Justice interpretation, provisions for specific salaries were superseded by section 678 of title 5, which provides for adjustment of compensation by heads of departments. Hence, this section leaves the amount of compensation to the Attorney General.

Section 578b of title 28, U.S.C., 1940 ed., providing that United States attorneys shall be paid for their services, was omitted as unnecessary.

Section 578c of title 28, U.S.C., 1940 ed., providing that United States attorneys shall not receive fees in addition to their salaries, was omitted as obsolete, in view of this section and current practice.

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 503 [now 543] and 507 [now 509 and 547] of this title, and other provisions of section 579 of title 28, U.S.C., 1940 ed., are incorporated in section 552 [see Prior Provisions note for that section] of this title.

PRIOR PROVISIONS

A prior section 548, act June 25, 1948, ch. 646, 62 Stat. 912, related to administration of oaths by marshals, prior to repeal by Pub. L. 89–554, § 8(a).

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code'' for ''highest rate of GS–18 of the General Schedule set forth in section 5332 of title 5''.

SALARY INCREASES

1969—Increase in the rates of pay of United States Attorneys and Assistant United States Attorneys whose annual salaries are fixed pursuant to this section, effective on the first day of the first pay period which begins on or after Dec. 27, 1969, by amounts equal, as

nearly as may be practicable, to the increases provided pursuant to section 2 of Pub. L. 91–231, which raised corresponding rates by 6 percent, see Pub. L. 91–231, set out as a note under section 5332 of Title 5, Government Organization and Employees.

1967—Pub. L. 90–206, title II, § 211(a), Dec. 16, 1967, 81 Stat. 633, provided that: ''The rates of basic pay of United States attorneys and assistant United States attorneys whose annual salaries are fixed pursuant to section 548 of title 28, United States Code shall be increased, effective on the effective date of section 202 of this title [see Effective Date of 1967 Amendment note set out under section 5332 of Title 5] by amounts equal, as nearly as may be practicable, to the increases provided by section 202(a) of this title [see section 5332(a) of Title 5] for corresponding rates of basic pay.''

Section 211(a) of Pub. L. 90–206 effective as of the beginning of the first pay period which begins on or after Oct. 1, 1967, see section 220(a)(2) of Pub. L. 90–206, set out as a note under section 5332 of Title 5.

1966—Pub. L. 89–504, title I, § 108(a), July 18, 1966, 80 Stat. 293, provided that: ''The rates of basic compensation of assistant United States attorneys whose basic salaries are fixed pursuant to section 508 of title 28, United States Code [now this section] shall be increased, effective on the effective date of section 102 of this title [first day of the first pay period beginning on or after July 1, 1966], by amounts equal, as nearly as may be practicable, to the increases provided by section 102(a) of this title [see section 5332(a) of Title 5], for corresponding rates of compensation.''

Provision effective July 18, 1966, see section 109(1) of Pub. L. 89–504.

1965—Pub. L. 89–301, § 15(a), Oct. 29, 1965, 79 Stat. 1122, provided that: ''The rates of basic compensation of assistant United States attorneys whose basic salaries are fixed pursuant to section 508 of title 28, United States Code, [now this section], shall be increased by 3.6 per centum effective on the first day of the first pay period which begins on or after October 1, 1965.''

1962—Pub. L. 87–793, § 1003(b), Oct. 11, 1962, 76 Stat. 866, provided that: ''The rates of basic compensation of assistant United States attorneys whose basic salaries are fixed by section 508 of title 28, United States Code, [now this section], shall be increased by 7½ per centum effective on the first day of the first pay period which begins on or after the date of enactment of this Act [Oct. 11, 1962].''

COMPENSATION OF INCUMBENT UNITED STATES ATTORNEYS AND ASSISTANT UNITED STATES ATTORNEYS

Pub. L. 88–426, § 306(a)(2), Aug. 14, 1962, 78 Stat. 428, as amended by Pub. L. 88–631, § 3(c), Oct. 6, 1964, 78 Stat. 1008, provided that: ''Subject to section 303(f) and (g) of this Act [see sections 5315 to 5317 of Title 5, Government Organization and Employees], each incumbent United States attorney and assistant United States attorney shall be paid compensation at a rate equal to that of attorneys of comparable responsibility and professional qualifications, as determined by the Attorney General, whose compensation is prescribed in the General Schedule of the Classification Act of 1949, as amended [now covered by chapter 51 and subchapter III of chapter 53 of Title 5].''

ALASKA, CANAL ZONE AND VIRGIN ISLANDS

Act Mar. 2, 1955, ch. 9, § 2(b), 69 Stat. 10, provided that: ''The salaries of United States attorneys and assistant United States attorneys for the districts of Alaska, Canal Zone, and the Virgin Islands are subject to the provisions of section 508 of title 28, United States Code [now this section.]''

SALARY LIMITATIONS

Acts Aug. 5, 1953, ch. 328, title II, § 202, 67 Stat. 375; July 2, 1954, ch. 456, title II, § 202, 68 Stat. 421, which prescribed salary limitations, were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 657.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 594 of this title.

§ 549. Expenses

Necessary office expenses of United States attorneys shall be allowed when authorized by the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 509.	[None].

The second paragraph of former section 509 is omitted as it was superseded by the Travel Expense Act of 1949, which is codified in subchapter I of chapter 57 of title 5, United States Code.

The second paragraph was based in part on former section 73 of title 5, 1940 ed., which was superseded by the Subsistence Expense Act of 1926.

Section 6 of the Travel Expense Act of 1949, which is codified in section 5706 of title 5, United States Code, substantially reenacted former section 73 of title 5, 1940 ed., which was repealed by the Act of June 25, 1948, ch. 646, by which title 28 was originally enacted. The purpose of section 6 was to allow reimbursement for only such actual and necessary travel expenses incurred unless otherwise permitted by the Act of 1949 itself or by laws relating to the military. Section 6 did not, however, provide for the exception of United States attorneys as did former section 73.

Sections 2 and 3 of the Act of 1949, which are codified in sections 5701 and 5702 of title 5, United States Code, defined the coverage of the Act and allowed for specific exclusions in the legislative and judicial branches but did not mention an exclusion in the executive branch for United States attorneys.

Section 7 of the 1949 Act, which is codified in section 5707 of title 5, United States Code, expressly vested in the Director of the Bureau of the Budget the authority to prescribe regulations covering travel allowances and the reimbursement of travel expenses.

Section 8 of the 1949 Act, which is codified in section 5708(1), (2) of title 5, United States Code, made specific exclusions from the coverage of the Act, and United States attorneys were not so excluded.

Section 9 of the 1949 Act, which is codified in section 5708(3), (4) of title 5, United States Code, modified acts inconsistent with the 1949 Act, and specifically mentioned acts which authorize reimbursement of ''actual and necessary'' expenses.

1948 ACT

Prior section 509.—Based on sections 73 and 318 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, and title 28, U.S.C., 1940 ed., §§ 586, 587 and 592 (R.S. §§ 368, 833, 834; Mar. 3, 1875, ch. 133, § 1, 18 Stat. 452; May 28, 1896, ch. 252, §§ 13, 14, 24, 29 Stat. 183, 186; Mar. 4, 1907, ch. 2918, § 1, 34 Stat. 1360; May 27, 1908, ch. 200, § 1, 35 Stat. 375; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; July 1, 1918, ch. 113, § 1, 40 Stat. 683; July 19, 1919, ch. 24, § 1, 41 Stat. 209; Dec. 24, 1942, ch. 825, § 3, 56 Stat. 1089).

Section consolidates parts of sections 73 and 318 of title 5, U.S.C., 1940 ed., and of sections 586, 587, and 592 of title 28, U.S.C., 1940 ed.

First paragraph of this section is from section 587 of title 28, U.S.C., 1940 ed., which did not apply to Alaska because of the restriction in section 591 of said title 28. However, the latter section has been superseded, in that respect, by subsequent appropriation acts, the latest being act July 5, 1946, ch. 541, title II, 60 Stat. 460, which specifically allows office expenses for United States attorneys in Alaska. This section applies to all United States attorneys.

Section 73 of title 5, U.S.C., 1940 ed., allowed only actual traveling expenses to Government employees, ex-

cept ''district attorneys,'' marshals and clerks of courts and their deputies. It has been superseded by the Subsistence Expense Act of 1926. See sections 821 et seq. of said title 5.

References in section 592 of title 28, U.S.C., 1940 ed., to absence ''from their respective official residences'' and to going to and returning from attendance before courts, etc., were omitted as surplusage and covered by the phrase ''on official business.'' Language relating to Standardized Government Travel Regulations was also omitted as the reference in this section is to the provision in the Subsistence Expense Act, supra, authorizing those regulations. Verification under oath provision was omitted as covered by section 553 [see Prior Provisions note for that section] of this title which simplifies procedure by requiring payment upon certification by the payee. The penal provisions of title 18 are ample protection against fraud and an oath alone is no deterrent.

The requirement in section 592 of title 28, U.S.C., 1940 ed., that the marshals should include such payments in their accounts for auditing and allowance, was omitted as unnecessary. See section 541 et seq. [now section 561 et seq.] of this title and section 71 et seq. of title 31, U.S.C., 1940 ed.

Section 318 of title 5, U.S.C., 1940 ed., required the Attorney General to supervise the accounts of ''district'' attorneys, marshals, clerks, and other court officers. The language of this section covers that requirement. The provision as to marshals is incorporated in section 547 [see Prior Provisions note under that section] of this title.

Quarterly expense accounts were required of United States attorneys and marshals by section 586 of title 28, U.S.C., 1940 ed. Such provision is omitted as unnecessary in view of this section and section 547 [see Prior Provisions note under that section] of this title. Further provisions of said section 586 that office expenses of United States attorneys, assistants, and marshals should be allowed under regulations of the Attorney General and verified under oath, are simplified by this section and section 550 [see Prior Provisions note under that section] of this title. Another provision that accounts therefor should be submitted to, examined by the district court and, when approved by the court then audited and allowed by law, was omitted. The power of the Attorney General is sufficient. The reference to audit and allowance was unnecessary as covered by section 71 et seq. of title 31, U.S.C., 1940 ed., Money and Finance. Said section 586 applied also to marshals and deputies and those provisions are incorporated in section 550 [see Prior Provisions note under that section] of this title.

The exception in sections 586 and 591 of title 28, U.S.C., 1940 ed., that the former should not apply in Alaska was omitted as unnecessary. Section 114 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, requires travel expense accounts to be rendered and paid as in other districts.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 549, act June 25, 1948, ch. 646, 62 Stat. 912, related to the marshal's power as a sheriff, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 570 of this title by section 4(c) of Pub. L. 89–554.

CROSS REFERENCES

Payment of office expenses by marshal, see section 566 of this title.

§ 550. Clerical assistants, messengers, and private process servers

The United States attorneys may employ clerical assistants, messengers, and private process servers on approval of the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 619; amended Pub. L. 101–647, title XXXVI, § 3626(a), Nov. 29, 1990, 104 Stat. 4965.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 510.	[None].

The words ''and at salaries fixed by'' are omitted as superseded by the Classification Act of 1949, as amended, which is codified in chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

1948 ACT

Prior section 510.—Based on title 28, U.S.C., 1940 ed., §§ 484, 593 (May 28, 1896, ch. 252, § 15, 29 Stat. 183; June 30, 1906, ch. 3914, § 1, 34 Stat. 753; July 19, 1919, ch. 24, § 1, 41 Stat. 209).

Section consolidates and simplifies sections 484 and 593 of title 28, U.S.C., 1940 ed. For provisions with respect to classified civil service, see sections 631–684 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Section 593 of title 28, U.S.C., 1940 ed., related to clerks and messengers in the office of United States attorney, southern district of New York. Section 484 of title 28, U.S.C., 1940 ed., related to clerical assistants for all United States attorneys. It was not affected by section 678 of title 5 U.S.C. 1940 ed., Executive Departments and Government Officers and Employees, according to a Department of Justice interpretation.

Provision of said section 593 for office expenses of United States attorneys is covered by section 509 [now 549] of this title.

Said section 593 also required that payment of salaries of such clerks and messengers be made by the disbursing clerk of the Department of Justice. Under section 550 [see Prior Provisions note below] of this title the marshals will make such payments including the office expenses of United States attorneys.

The restriction that section 484 of title 28, U.S.C., 1940 ed., did not apply to Alaska is omitted as unnecessary since section 109 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, authorizes employment of clerical assistants to United States attorneys in Alaska by the Attorney General.

The provision in such section 484 of title 28, U.S.C., 1940 ed., that the need for clerical assistants be certified by the district judge, was omitted as unnecessary. The need may be determined by the Attorney General.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 550, acts June 25, 1948, ch. 646, 62 Stat. 912; Sept. 9, 1959, Pub. L. 86–243, § 2, 73 Stat. 474, related to disbursement of salaries and expenses, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 571 of this title by section 4(c) of Pub. L. 89–554.

A prior section 551, act June 25, 1948, ch. 646, 62 Stat. 912, related to the collection of fees by United States marshals, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663, and reenactment in section 572 of this title by section 4(c) of Pub. L. 89–554.

A prior section 552, act June 25, 1948, ch. 646, 62 Stat. 912, related to the fixing of salaries of United States marshals, their deputies and assistants, by the Attorney General, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663, and reenactment in section 571 of this title by section 4(c) of Pub. L. 89–554.

A prior section 553, acts June 25, 1948, ch. 646, 62 Stat. 912; May 24, 1949, ch. 139, § 72, 63 Stat. 100; Aug. 4, 1955, ch. 550, 69 Stat. 492; Aug. 14, 1961, Pub. L. 87–139, § 5, 75 Stat. 340, related to expenses of marshal, prior to repeal by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663, and reenactment in section 567 of this title by section 4(c) of Pub. L. 89–554.

A prior section 554, act June 25, 1948, ch. 646, 62 Stat. 913, related to the delivery of prisoners to the successor marshal, prior to repeal by Pub. L. 89–554, § 8(a), Sept.

6, 1966, 80 Stat. 663, and reenactment in section 573 of this title by section 4(c) of Pub. L. 89–554.

A prior section 555, act June 25, 1948, ch. 646, 62 Stat. 913, related to the delivery of all unserved process to the successor marshal or his deputies, prior to repeal by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 663, and reenactment in section 574 of this title by section 4(c) of Pub. L. 89–554.

A prior section 556, act June 25, 1948, ch. 646, 62 Stat. 913, related to the prohibition of the practice of law by a marshal or deputy marshal, prior to repeal by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 663, and reenactment in section 575 of this title by section 4(c) of Pub. L. 89–554.

AMENDMENTS

1990—Pub. L. 101–647 substituted ‘‘, messengers, and private process servers’’ for ‘‘and messengers’’ in section catchline and text.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 594 of this title.

CHAPTER 37—UNITED STATES MARSHALS SERVICE

Sec.
561. United States Marshals Service.
562. Vacancies.
563. Oath of office.
564. Powers as sheriff.
565. Expenses of the Service.
566. Powers and duties.
567. Collection of fees; accounting.
568. Practice of law prohibited.
569. Reemployment rights.

AMENDMENTS

1988—Pub. L. 100–690, title VII, §7608(a)(3), Nov. 18, 1988, 102 Stat. 4514, substituted in chapter heading ‘‘Marshals Service’’ for ‘‘Marshals’’ and amended chapter analysis generally, substituting items 561 to 569 for former items 561 to 576.

1984—Pub. L. 98–473, title II, §1211(c), Oct. 12, 1984, 98 Stat. 2163, added item 576.

1982—Pub. L. 97–258, §2(g)(3)(A), Sept. 13, 1982, 96 Stat. 1060, added item 572a.

1972—Pub. L. 92–310, title II, §206(a)(2), June 6, 1972, 86 Stat. 203, struck out item 564 ‘‘Bond’’.

1966—Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 619, added chapter 37 and items 561 to 575.

CROSS REFERENCES

Supreme Court marshal, see section 672 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 48 sections 1424b, 1614, 1821.

§561. United States Marshals Service

(a) There is hereby established a United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States Marshals Service (hereafter in this chapter referred to as the ‘‘Service’’) a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The Director of the United States Marshals Service (hereafter in this chapter referred to as the ‘‘Director’’) shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

(c) The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.

(e) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that—

(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and

(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

(f) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

(g) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.

(h) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

(i) There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Service.

(Added Pub. L. 100–690, title VII, §7608(a)(1), Nov. 18, 1988, 102 Stat. 4512.)

PRIOR PROVISIONS

A prior section 561, added Pub. L. 89–554, §4(c), Sept. 6, 1966, 80 Stat. 619; amended Pub. L. 95–530, §2, Oct. 27, 1978, 92 Stat. 2028, related to appointment, term, and residence of United States marshals, prior to repeal by Pub. L. 100–690, §7608(a)(1).

CROSS REFERENCES

Guam, Virgin Islands, and Northern Mariana Islands, appointment of marshal, see sections 1424b, 1614, and 1821 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 562 of this title.

§ 562. Vacancies

(a) In the case of a vacancy in the office of a United States marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

(b) A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

(1) The entry into office of a United States marshal appointed by the President, pursuant to section 561(c).

(2) The expiration of the thirtieth day following the end of the next session of the Senate.

(3) If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.

(Added Pub. L. 100–690, title VII, § 7608(a)(1), Nov. 18, 1988, 102 Stat. 4513.)

PRIOR PROVISIONS

A prior section 562, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 619, related to appointment of deputy marshals and clerical assistants, prior to repeal by Pub. L. 100–690, § 7608(a)(1). See section 561(f) of this title.

§ 563. Oath of office

The Director and each United States marshal and law enforcement officer of the Service, before taking office, shall take an oath or affirmation to faithfully execute the duties of that office.

(Added Pub. L. 100–690, title VII, § 7608(a)(1), Nov. 18, 1988, 102 Stat. 4513.)

PRIOR PROVISIONS

A prior section 563, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 619, specifically stated the oath of office to be taken, prior to repeal by Pub. L. 100–690, § 7608(a)(1). See section 561(h) of this title.

§ 564. Powers as sheriff

United States marshals, deputy marshals and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.

(Added Pub. L. 100–690, title VII, § 7608(a)(1), Nov. 18, 1988, 102 Stat. 4513.)

PRIOR PROVISIONS

A prior section 564, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 619, related to bonds of United States marshals, prior to repeal by Pub. L. 92–310, title II, § 206(a)(1), June 6, 1972, 86 Stat. 203.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3002 of this title.

§ 565. Expenses of the Service

The Director is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements, authorized by the Attorney General, for security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by United States marshals and deputy marshals.

(Added Pub. L. 100–690, title VII, § 7608(a)(1), Nov. 18, 1988, 102 Stat. 4513.)

PRIOR PROVISIONS

A prior section 565, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 620, related to filling vacancies, prior to repeal by Pub. L. 100–690, § 7608(a)(1). See section 562 of this title.

§ 566. Powers and duties

(a) It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals and the Court of International Trade.

(b) The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in that district, and of the Court of International Trade holding sessions in that district, and may, in the discretion of the respective courts, be required to attend any session of court.

(c) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.

(d) Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

(e)(1) The United States Marshals Service is authorized to—

(A) provide for the personal protection of Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding; and

(B) investigate such fugitive matters, both within and outside the United States, as directed by the Attorney General.

(2) Nothing in paragraph (1)(B) shall be construed to interfere with or supersede the authority of other Federal agencies or bureaus.

(f) In accordance with procedures established by the Director, and except for public money deposited under section 2041 of this title, each United States marshal shall deposit public moneys that the marshal collects into the Treasury, subject to disbursement by the marshal. At the end of each accounting period, the earned part of public moneys accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

(g) Prior to resignation, retirement, or removal from office—

(1) a United States marshal shall deliver to the marshal's successor all prisoners in his custody and all unserved process; and

(2) a deputy marshal shall deliver to the marshal all process in the custody of the deputy marshal.

(h) The United States marshals shall pay such office expenses of United States Attorneys as may be directed by the Attorney General.

(Added Pub. L. 100–690, title VII, § 7608(a)(1), Nov. 18, 1988, 102 Stat. 4514.)

PRIOR PROVISIONS

A prior section 566, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 620; amended Pub. L. 92–310, title II, § 206(b), June 6, 1972, 86 Stat. 203, provided that upon death of a marshal his deputy or deputies perform his duties until a successor is appointed and qualifies, prior to repeal by Pub. L. 100–690, § 7608(a)(1).

§ 567. Collection of fees; accounting

(a) Each United States marshal shall collect, as far as possible, his lawful fees and account for the same as public moneys.

(b) The marshal's accounts of fees and costs paid to a witness or juror on certificate of attendance issued as provided by sections 1825 and 1871 of this title may not be reexamined to charge him for an erroneous payment of the fees or costs.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 621, § 572; renumbered § 567, Pub. L. 100–690, title VII, § 7608(a)(2)(B), Nov. 18, 1988, 102 Stat. 4514.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 551.	[None].

In subsection (b), the words "may not" are substituted for "shall not".

1948 ACT

Prior section 551.—Based on title 28, U.S.C., 1940 ed., §§ 577, 578a (R.S. § 846; May 28, 1896, ch. 252, §§ 6, 13, 24, 29 Stat. 179, 183, 186; May 27, 1908, ch. 200, § 1, 35 Stat. 375; June 6, 1930, ch. 409, 46 Stat. 522; Oct. 13, 1941, ch. 431, § 1, 55 Stat. 736).

Section consolidates first sentence of section 577 with section 578a of title 28, U.S.C., 1940 ed., with changes of phraseology necessary to effect consolidation. Other provisions of said section 577 are incorporated in section 1929 of this title.

The qualification that payments of witness fees or costs be made upon "order of court," contained in said section 577 of title 28, U.S.C., 1940 ed., was omitted as obsolete and suitable reference was made to sections 1825 and 1871 of this title under which payments are now made on certificates of attendance.

Section 578a of title 28, U.S.C., 1940 ed., is rewritten in simplified terms without change of substance. The proviso of such section 578a, prohibiting the collection of fees from the United States, was omitted as covered by section 2412 of this title, providing that the United States should be liable only for fees when such liability is expressly provided by Congress.

The provision of section 578a of title 28, U.S.C., 1940 ed., requiring that fees and emoluments collected by the marshal shall be deposited by him in accordance with the provisions of section 495 of title 31, U.S.C., 1940 ed., Money and Finance, was omitted as said section 495 governs such deposits without implementation in this section.

PRIOR PROVISIONS

A prior section 567, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 620, related to expenses of marshals, prior to repeal by Pub. L. 100–690, § 7608(a)(1). See section 565 of this title.

AMENDMENTS

1988—Pub. L. 100–690 renumbered section 572 of this title as this section.

§ 568. Practice of law prohibited

A United States marshal or deputy marshal may not practice law in any court of the United States.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 621, § 575; renumbered § 568, Pub. L. 100–690, title VII, § 7608(a)(2)(B), Nov. 18, 1988, 102 Stat. 4514.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	28 U.S.C. 556.	[None].

The words "may not" are substituted for "shall not".

1948 ACT

Prior section 556.—Based on title 28, U.S.C., 1940 ed., §§ 395 and 396 (Mar. 3, 1911, ch. 231, §§ 273, 274, 36 Stat. 1164).

Section consolidates parts of sections 395 and 396 of title 28, U.S.C., 1940 ed. Similar provisions in said sections, relating to clerks, are incorporated in section 955 of this title.

The revised section substitutes, as simpler and more appropriate, the prohibition against practice of law "in any court of the United States" for the more involved language of section 395 of title 28, U.S.C., 1940 ed., which provided that no clerks or marshals, deputies, or assistants within the district for which appointed "shall act as solicitor, proctor, attorney or counsel, in any cause depending in any of said courts, or in any district for which he is acting as such officer."

Provisions of section 396 of title 28, U.S.C., 1940 ed., for striking the name of an offender from the roll of attorneys and for recommendation of dismissal, were omitted as unnecessary and as covered by section 541 of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 568, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 620, related to availability of appropriations for transfer of prisoners to narcotic farms, prior to repeal by Pub. L. 100–690, § 7608(a)(1).

AMENDMENTS

1988—Pub. L. 100–690 renumbered section 575 of this title as this section.

§ 569. Reemployment rights

(a) A United States marshal for a judicial district who was appointed from a position in the competitive service (as defined in section 2102 of title 5) in the United States Marshals Service and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from such office, is entitled to be reemployed in any vacant position in the competitive service in the United States Marshals Service at the same

grade or pay level, or lower, as the individual's former position if—

(1) the individual is qualified for the vacant position; and

(2) the individual has made application for the position not later than ninety days after being removed from office as a United States marshal.

Such individual shall be so reemployed within thirty days after making such application or after being removed from office, whichever is later. An individual denied reemployment under this section in a position because the individual is not qualified for that position may appeal that denial to the Merit Systems Protection Board under section 7701 of title 5.

(b) Any United States marshal serving on the effective date of this section shall continue to serve for the remainder of the term for which such marshal was appointed, unless sooner removed by the President.

(Added Pub. L. 98–473, title II, § 1211(a), Oct. 12, 1984, 98 Stat. 2163, § 576; renumbered § 569, Pub. L. 100–690, title VII, § 7608(a)(2)(B), Nov. 18, 1988, 102 Stat. 4514.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (b), is Oct. 1, 1984. See Effective Date note set out below.

PRIOR PROVISIONS

A prior section 569, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 620; amended Pub. L. 95–598, title II, § 221, Nov. 6, 1978, 92 Stat. 2662; Pub. L. 96–417, title V, § 501(12), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 99–466, § 3(a), Oct. 14, 1986, 100 Stat. 1191, related to powers and duties generally and supervision by the Attorney General, prior to repeal by Pub. L. 100–690, § 7608(a)(1). See section 566 of this title.

AMENDMENTS

1988—Pub. L. 100–690 renumbered section 576 of this title as this section.

EFFECTIVE DATE

Section 1212 of subpart B (§§ 1211, 1212) of part F of chapter XII of title II of Pub. L. 98–473 provided that: "The amendments made by this subpart [enacting this section] shall take effect on October 1, 1984."

[§§ 570, 571. Repealed. Pub. L. 100–690, title VII, § 7608(a)(1), Nov. 18, 1988, 102 Stat. 4512]

Section 570, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 620, granted United States marshals the power of a sheriff in executing laws of the United States in a State. See section 564 of this title.

Section 571, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 621; amended Pub. L. 95–598, title II, §§ 222, 223, Nov. 6, 1978, 92 Stat. 2662; Pub. L. 97–258, § 2(g)(2), Sept. 13, 1982, 96 Stat. 1060, related to disbursement of salaries and moneys.

[§ 572. Renumbered § 567]

[§§ 572a to 574. Repealed. Pub. L. 100–690, title VII, § 7608(a)(2)(A), Nov. 18, 1988, 102 Stat. 4514]

Section 572a, added Pub. L. 97–258, § 2(g)(3)(B), Sept. 13, 1982, 96 Stat. 1060, related to depositing of public moneys. See section 566(f) of this title.

Section 573, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 621, related to delivery of prisoners to a successor. See section 566(g)(1) of this title.

Section 574, added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 621, related to delivery of unserved process to a successor. See section 566(g)(2) of this title.

[§§ 575, 576. Renumbered §§ 568, 569]

CHAPTER 39—UNITED STATES TRUSTEES

Sec.
581. United States trustees.
582. Assistant United States trustees.
583. Oath of office.
584. Official stations.
585. Vacancies.
586. Duties; supervision by Attorney General.
587. Salaries.
588. Expenses.
589. Staff and other employees.
589a. United States Trustee System Fund.

AMENDMENTS

1986—Pub. L. 99–554, title I, § 115(b), Oct. 27, 1986, 100 Stat. 3095, added item 589a.

UNITED STATES TRUSTEE PILOT; REPEAL OF BANKRUPTCY PROVISIONS RELATING TO UNITED STATES TRUSTEES

Pub. L. 95–598, title IV, § 408, Nov. 6, 1978, 92 Stat. 2686, as amended by Pub. L. 98–166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98–353, title III, § 323, July 10, 1984, 98 Stat. 358; Pub. L. 99–429, Sept. 30, 1986, 100 Stat. 985; Pub. L. 99–500, § 101(b) [title II, § 200], Oct. 18, 1986, 100 Stat. 1783–39, 1783–45, and Pub. L. 99–591, § 101(b) [title II, § 200], Oct. 30, 1986, 100 Stat. 3341–39, 3341–45; Pub. L. 99–554, title III, § 307(a), Oct. 27, 1986, 100 Stat. 3125, which provided that the Attorney General conduct such studies and surveys as necessary to evaluate needs, feasibility, and effectiveness of the United States trustee system, and report result of such studies and surveys to Congress, the President, and the Judicial Conference of the United States, beginning on or before January 3, 1980, and annually thereafter during the transition period; that not later than January 3, 1984, the Attorney General report to Congress, the President, and the Judicial Conference of the United States, as to the feasibility, projected annual cost and effectiveness of the United States trustee system, as determined on the basis of the studies and surveys respecting the operation of the United States trustee system in the districts, together with recommendations as to the desirability and method of proceeding with implementation of the United States trustee system in all judicial districts of the United States; and that chapter 15 of title 11 and chapter 39 of this title were repealed, and all references to the United States trustee contained in this title were deleted, 30 days after the effective date of Pub. L. 99–554 (see section 302 of Pub. L. 99–554, set out as a note under section 581 of this title), with service of any United States trustee, of any assistant United States trustee, and of any employee employed or appointed under the authority of such chapter 39 was terminated on such date, was repealed by Pub. L. 99–554, title III, § 307(b), Oct. 27, 1986, 100 Stat. 3125.

§ 581. United States trustees

(a) The Attorney General shall appoint one United States trustee for each of the following regions composed of Federal judicial districts (without regard to section 451):

(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

(2) The judicial districts established for the States of Connecticut, New York, and Vermont.

(3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.

(4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the District of Columbia.

(5) The judicial districts established for the States of Louisiana and Mississippi.

(6) The Northern District of Texas and the Eastern District of Texas.

(7) The Southern District of Texas and the Western District of Texas.

(8) The judicial districts established for the States of Kentucky and Tennessee.

(9) The judicial districts established for the States of Michigan and Ohio.

(10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.

(11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.

(12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

(13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.

(14) The District of Arizona.

(15) The Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.

(16) The Central District of California.

(17) The Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada.

(18) The judicial districts established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington.

(19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

(20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.

(21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.

(b) Each United States trustee shall be appointed for a term of five years. On the expiration of his term, a United States trustee shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States trustee is subject to removal by the Attorney General.

(Added Pub. L. 95–598, title II, §224(a), Nov. 6, 1978, 92 Stat. 2662; amended Pub. L. 99–554, title I, §111(a)–(c), Oct. 27, 1986, 100 Stat. 3090, 3091.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–554, §111(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Attorney General shall appoint one United States trustee for each of the following districts or groups of districts:

''(1) District of Maine, District of New Hampshire, District of Massachusetts, and District of Rhode Island.

''(2) Southern District of New York.

''(3) District of Delaware and District of New Jersey.

''(4) Eastern District of Virginia and District of District of Columbia.

''(5) Northern District of Alabama.

''(6) Northern District of Texas.

''(7) Northern District of Illinois.

''(8) District of Minnesota, District of North Dakota, District of South Dakota.

''(9) Central District of California.

''(10) District of Colorado and District of Kansas.''

Subsec. (b). Pub. L. 99–554, §111(b), substituted ''five years'' for ''seven years'' and ''office'' for ''Office''.

Subsec. (c). Pub. L. 99–554, §111(c), struck out ''for cause'' after ''removal''.

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITION AND ADMINISTRATIVE PROVISIONS

Title III of Pub. L. 99–554, as amended by Pub. L. 101–650, title III, §317(a), (c), Dec. 1, 1990, 104 Stat. 5115, 5116; Pub. L. 103–65, §1, Aug. 6, 1993, 107 Stat. 311, provided that:

''SEC. 301. INCUMBENT UNITED STATES TRUSTEES.

''(a) AREA FOR WHICH APPOINTED.—Notwithstanding any paragraph of section 581(a) of title 28, United States Code, as in effect before the effective date of this Act, a United States trustee serving in such office on the effective date of this Act shall serve the remaining term of such office as United States trustee for the region specified in a paragraph of such section, as amended by this Act, that includes the site at which the primary official station of the United States trustee is located immediately before the effective date of this Act.

''(b) TERM OF OFFICE.—Notwithstanding section 581(b) of title 28, United States Code, as in effect before the effective date of this Act, the term of office of any United States trustee serving in such office on the date of the enactment of this Act [Oct. 27, 1986] shall expire—

''(1) 2 years after the expiration date of such term of office under such section, as so in effect, or

''(2) 4 years after the date of the enactment of this Act,

whichever occurs first.

''SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

''(a) GENERAL EFFECTIVE DATE.—Except as provided in subsections (b), (c), (d), (e), and (f), this Act and the amendments made by this Act [see Short Title of 1986 Amendment note below] shall take effect 30 days after the date of the enactment of this Act [Oct. 27, 1986].

''(b) AMENDMENTS RELATING TO BANKRUPTCY JUDGES AND INCUMBENT UNITED STATES TRUSTEES.—Subtitle A of title I, and sections 301 and 307(a) [amending sections 152 and 156 of this title, enacting provisions set out as notes under section 581 of this title, and amending provisions set out as notes under section 152 of this title and preceding section 581 of this title], shall take effect on the date of the enactment of this Act [Oct. 27, 1986].

''(c) AMENDMENTS RELATING TO FAMILY FARMERS.—(1) The amendments made by subtitle B of title II [§§251 to 257 of Pub. L. 99–554, see Tables for classification] shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

''(2) Section 1202 of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) shall take effect on the effective date of this Act and before the amendment made by section 227 of this Act [amending section 1202 of this title].

''(3) Until the amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification] become effective in a district and apply to a case, for purposes of such case—

''(A)(i) any reference in section 326(b) of title 11 of the United States Code to chapter 13 of title 11 of the United States Code shall be deemed to be a reference to chapter 12 or chapter 13 of title 11 of the United States Code,

''(ii) any reference in such section 326(b) to section 1302(d) of title 11 of the United States Code shall be deemed to be a reference to section 1302(d) of title 11 of the United States Code or section 586(b) of title 28 of the United States Code, and

''(iii) any reference in such section 326(b) to section 1302(a) of title 11 of the United States Code shall be deemed to be a reference to section 1202(a) or section 1302(a) of title 11 of the United States Code, and

''(B)(i) the first two references in section 1202(a) of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) to the United States trustee shall be deemed to be a reference to the court, and

''(ii) any reference in such section 1202(a) to section 586(b) of title 28 of the United States Code shall be deemed to be a reference to section 1202(c) of title 11 of the United States Code (as so added).

''(d) APPLICATION OF AMENDMENTS TO JUDICIAL DISTRICTS.—

''(1) CERTAIN REGIONS NOT CURRENTLY SERVED BY UNITED STATES TRUSTEES.—(A) The amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

''(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

''(ii) apply to cases while pending in such district before,

the expiration of the 270-day period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.

''(B) Subparagraph (A) applies to the following:

''(i) The judicial district established for the Commonwealth of Puerto Rico.

''(ii) The District of Connecticut.

''(iii) The judicial districts established for the State of New York (other than the Southern District of New York).

''(iv) The District of Vermont.

''(v) The judicial districts established for the State of Pennsylvania.

''(vi) The judicial district established for the Virgin Islands of the United States.

''(vii) The District of Maryland.

''(viii) The judicial districts established for the State of North Carolina.

''(ix) The District of South Carolina.

''(x) The judicial districts established for the State of West Virginia.

''(xi) The Western District of Virginia.

''(xii) The Eastern District of Texas.

''(xiii) The judicial districts established for the State of Wisconsin.

''(xiv) The judicial districts established for the State of Iowa.

''(xv) The judicial districts established for the State of New Mexico.

''(xvi) The judicial districts established for the State of Oklahoma.

''(xvii) The District of Utah.

''(xviii) The District of Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

''(xix) The judicial districts established for the State of Alabama.

''(xx) The judicial districts established for the State of Florida.

''(xxi) The judicial districts established for the State of Georgia.

''(2) CERTAIN REMAINING JUDICIAL DISTRICTS NOT CURRENTLY SERVED BY UNITED STATES TRUSTEES.—(A) The amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

''(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

''(ii) apply to cases while pending in such district before,

the expiration of the 2-year period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.

''(B) Subparagraph (A) applies to the following:

''(i) The judicial districts established for the State of Louisiana.

''(ii) The judicial districts established for the State of Mississippi.

''(iii) The Southern District of Texas and the Western District of Texas.

''(iv) The judicial districts established for the State of Kentucky.

''(v) The judicial districts established for the State of Tennessee.

''(vi) The judicial districts established for the State of Michigan.

''(vii) The judicial districts established for the State of Ohio.

''(viii) The judicial districts established for the State of Illinois (other than the Northern District of Illinois).

''(ix) The judicial districts established for the State of Indiana.

''(x) The judicial districts established for the State of Arkansas.

''(xi) The judicial districts established for the State of Nebraska.

''(xii) The judicial districts established for the State of Missouri.

''(xiii) The District of Arizona.

''(xiv) The District of Hawaii.

''(xv) The judicial district established for Guam.

''(xvi) The judicial district established for the Commonwealth of the Northern Mariana Islands.

''(xvii) The judicial districts established for the State of California (other than the Central District of California).

''(xviii) The District of Nevada.

''(xix) The District of Alaska.

''(xx) The District of Idaho.

''(xxi) The District of Montana.

''(xxii) The District of Oregon.

''(xxiii) The judicial districts established for the State of Washington.

''(3) JUDICIAL DISTRICTS FOR THE STATES OF ALABAMA AND NORTH CAROLINA.—(A) Notwithstanding paragraphs (1) and (2), and any other provision of law, the amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

''(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or

''(ii) apply to cases while pending in such district before,

such district elects to be included in a bankruptcy region established in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, or October 1, 2002, whichever occurs first, except that the amendment to section 105(a) of title 11, United

States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990 [Dec. 1, 1990].

''(B) Any election under subparagraph (A) shall be made upon a majority vote of the chief judge of such district and each bankruptcy judge in such judicial district in favor of such election.

''(C) Notice that an election has been made under subparagraph (A) shall be given, not later than 10 days after such election, to the Attorney General and the appropriate Federal Circuit Court of Appeals for such district.

''(D) Any election made under subparagraph (A) shall become effective on the date the amendments made by subtitle A of title II of this Act become effective in the region that includes such district or 30 days after the Attorney General receives the notice required under subparagraph (C), whichever occurs later.

''(E) Subparagraph (A) applies to the following:

''(i) The judicial districts established for the State of Alabama.

''(ii) The judicial districts established for the State of North Carolina.

''(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

''(I) commenced before the effective date of this Act, and

''(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective or October 1, 2002, whichever occurs first,

the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until October 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

''(ii) For purposes of clause (i), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if—

''(I) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title, or

''(II) a plan is confirmed under section 1129, 1225, or 1325 of such title,

before October 1, 2003, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

''(G) Notwithstanding section 589a of title 28, United States Code, as added by section 115 of this Act, funds collected as a result of the amendments made by section 117 of this Act [amending section 1930 of this title] in a judicial district in the State of Alabama or the State of North Carolina under section 1930(a) of title 28, United States Code, before the date the amendments made by subtitle A of title II of this Act take effect in such district shall be deposited in the general receipts of the Treasury.

''(H) The repeal made by section 231 of this Act [repealing chapter 15 of title 11] shall not apply in or with respect to the Northern District of Alabama until March 1, 1987, or the effective date of any election made under subparagraph (A) by such district, whichever occurs first.

''(I) In any judicial district in the State of Alabama or the State of North Carolina that has not made the election described in subparagraph (A), any person who is appointed under regulations issued by the Judicial Conference of the United States to administer estates in cases under title 11 of the United States Code may—

''(i) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under title 11, United States Code, and

''(ii) supervise the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of title 11, United States Code,

until the amendments made by subtitle A of title II take effect in such district.

''(e) APPLICATION OF UNITED STATES TRUSTEE SYSTEM AND QUARTERLY FEES TO CERTAIN CASES.—

''(1) IN GENERAL.—Subject to paragraph (2), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

''(A) commenced before the effective date of this Act, and

''(B) pending in a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, for which a United States trustee is not authorized before the effective date of this Act to be appointed,

the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification], and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until the expiration of the 3-year period beginning on the effective date of this Act, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of such section 581(a), as so amended, that includes such district, whichever occurs first.

''(2) AMENDMENTS INAPPLICABLE.—For purposes of paragraph (1), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if—

''(A) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title, or

''(B) a plan is confirmed under section 1129, 1225, or 1325 of such title,

before the expiration of the 3-year period, or the expiration of the 1-year period, specified in paragraph (1), whichever occurs first.

''(3) RULE OF CONSTRUCTION REGARDING FEES FOR CASES.—This Act [see Short Title of 1986 Amendment note below] and the amendments made by section 117(4) of this Act [amending section 1930 of this title] shall not be construed to require the payment of a fee under paragraph (6) of section 1930(a) of title 28, United States Code, in a case under title 11 of the United States Code for any conduct or period occurring before such paragraph becomes effective in the district in which such case is pending.

''(f) REPEAL OF CHAPTER 12 OF TITLE 11.—Chapter 12 of title 11 of the United States Code is repealed on October 1, 1998. All cases commenced or pending under chapter 12 of title 11, United States Code, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter had not been repealed. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed.

''SEC. 303. CERTIFICATION OF JUDICIAL DISTRICTS; NOTICE AND PUBLICATION OF CERTIFICATION.

''(a) CERTIFICATION BY ATTORNEY GENERAL.—The Attorney General may certify in writing a region specified in a paragraph of section 581(a) of title 28, United States Code (other than paragraph (16)), as amended by section 111(a) of this Act, to the appropriate court of appeals of the United States, for the purpose of informing such court that certain amendments made by this Act will become effective in accordance with section 302 of this Act.

''(b) NOTICE AND PUBLICATION OF CERTIFICATION.—Whenever the Attorney General transmits a certification under subsection (a), the Attorney General shall simultaneously—

''(1) transmit a copy of such certification to the Speaker of the House of Representatives and to the President pro tempore of the Senate, and

''(2) publish such certification in the Federal Register.

''SEC. 304. ADMINISTRATIVE PROVISIONS.

''(a) COOPERATIVE ARRANGEMENTS.—The Attorney General and the Director of the Administrative Office of the United States Courts may enter into agreements under which United States trustees may—

''(1) use—

''(A) the services, equipment, personnel, records, reports, and data compilations, in any form, of the courts of the United States, and

''(B) the facilities of such courts, and

''(2) cooperate in the use by the courts of the United States of—

''(A) the services, equipment, personnel, records, reports, and data compilations, in any form, of United States trustees, and

''(B) the facilities of such trustees,

to prevent duplication during the 2-year period beginning on the effective date of this Act.

''(b) INFORMATION AND DOCUMENTS RELATING TO BANKRUPTCY CASES AND UNITED STATES TRUSTEES.—The Director of the Administrative Office of the United States Courts shall make available to United States trustees, at the request of the Attorney General and on a continuing basis, all records, reports, and data compilations relating to—

''(1) cases and proceedings under title 11 of the United States Code, and

''(2) the duties of United States trustees under titles 11 and 28 of the United States Code.

''SEC. 305. APPLICATION OF CERTAIN BANKRUPTCY RULES.

''(a) RULES RELATING TO THE UNITED STATES TRUSTEE SYSTEM.—If a United States trustee is not authorized, before the effective date of this Act, to be appointed for a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, then part X of the Bankruptcy Rules [11 U.S.C. App.] shall not apply to cases in such district until the amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification] become effective under section 302 of this Act in such district.

''(b) RULES RELATING TO CHAPTER 12 OF TITLE 11.—The rules prescribed under section 2075 of title 28, United States Code, and in effect on the date of the enactment of this Act [Oct. 27, 1986] shall apply to cases filed under chapter 12 of title 11, United States Code, to the extent practicable and not inconsistent with the amendments made by title II of this Act [see Tables for classification].

''SEC. 306. SALARY OF INCUMBENT UNITED STATES TRUSTEES.

''For service as a United States trustee in the period beginning on the effective date of this Act and ending on the expiration under section 301 of this Act of their respective terms of office, the salary payable to United States trustees serving in such offices on the effective date of this Act shall be fixed in accordance with section 587 of title 28, United States Code, as amended by section 114(a) of this Act.

''SEC. 307. PRESERVATION OF UNITED STATES TRUSTEE SYSTEM DURING PENDENCY OF LEGISLATION; REPEALER.

''(a) TEMPORARY DELAY OF REPEAL OF UNITED STATES TRUSTEE SYSTEM.—Effective immediately before November 10, 1986, section 408(c) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2687), is amended by striking out 'November 10, 1986' and inserting in lieu thereof '30 days after the effective date of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 [Pub. L. 99–554]'.

''(b) CONFORMING AMENDMENT.—Section 408 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2687), is repealed.

''SEC. 308. CONSIDERATION OF CURRENT PRIVATE TRUSTEES FOR APPOINTMENT BY UNITED STATES TRUSTEES.

''(a) TRUSTEES IN BANKRUPTCY CASES UNDER CHAPTER 7.—It is the sense of the Congress that individuals who are serving before the effective date of this Act, as trustees in cases under chapter 7 of title 11, United States Code, should be considered by United States trustees for appointment under section 586(a)(1) of title 28, United States Code, to the panels of private trustees that are established as a result of the amendments made by this Act [see Short Title of 1986 Amendment note below].

''(b) STANDING TRUSTEES IN BANKRUPTCY CASES UNDER CHAPTER 13.—It is the sense of the Congress that individuals who are serving before the effective date of this Act, as standing trustees in cases under chapter 13 of title 11, United States Code, should be considered by the United States trustees for appointment under section 586(b) of title 28, United States Code, as standing trustees who are appointed as a result of the amendments made by this Act [see Short Title of 1986 Amendment note below].

''SEC. 309. APPOINTMENT OF UNITED STATES TRUSTEES BY THE ATTORNEY GENERAL.

''It is the sense of the Congress that individuals otherwise qualified who are serving, before the effective date of this Act, as estate administrators under title 11 of the United States Code should be considered by the Attorney General for appointment under sections 581 and 582 of title 28, United States Code, to new positions of United States trustee and assistant United States trustee resulting from the amendments made by this Act [see Short Title of 1986 Amendment note below].

''SEC. 310. ELECTRONIC CASE MANAGEMENT DEMONSTRATION PROJECT.

''(a) ESTABLISHMENT OF PROJECT.—Not later than 1 year after the effective date of this Act, the Director of the Executive Office for United States Trustees, in consultation with the Director of the Administrative Office of the United States Courts, shall establish an electronic case management demonstration project to be carried out in 3 Federal judicial districts that have a sufficiently large and varied bankruptcy caseload so as to provide a meaningful evaluation of the cost and effectiveness of such system. A contract for such project shall be awarded—

''(1) on the basis of competitive bids submitted by qualified nongovernmental entities that are able to design an automated joint information system for use by the United States courts and by United States trustees, and

''(2) in accordance with the Federal Property and Administrative Services Act of 1949 [see Short Title note under 40 U.S.C. 471], the Office of Federal Procurement Policy Act [see Short Title note under 41 U.S.C. 401], and title 31 of the United States Code.

''(b) STUDY BY GENERAL ACCOUNTING OFFICE.—Not later than 1 year after the electronic case management system begins to operate in all of the judicial districts participating in the demonstration project carried out under subsection (a), the General Accounting Office shall conduct a study to compare the cost and effectiveness of such system with the cost and effectiveness of case management systems used in Federal judicial districts that are not participating in such project.

''(c) TERM OF PROJECT.—The demonstration project required by subsection (a) shall be carried out until—

''(1) the expiration of the 2-year period beginning on the date the electronic case management system begins to operate in all of the judicial districts participating in such project, or

''(2) legislation is enacted to extend, expand, modify, or terminate the operation of such project,

whichever occurs first.

''(d) USE BY CLERKS OF THE COURTS.—The electronic case management system demonstrated under the project required by subsection (a) shall provide the clerk of court in each district in which such system is operated, with a means of—

''(1) maintaining a complete electronic case file of all relevant information contained in petitions and schedules (and any amendments thereto) relating to debtors in cases under title 11 of the United States Code, including—

''(A) a complete list of creditors in each such case, as listed by the debtor,

''(B) a complete list of assets scheduled by the debtor, the value of such asset, and any action taken by the trustee or debtor in possession with regard to such asset during the pendency of such case,

''(C) a complete list of debts and, with respect to each debt—

''(i) any priority of such debt under title 11 of the United States Code,

''(ii) whether such debt is secured or unsecured, and

''(iii) whether such debt is contingent or noncontingent, and

''(D) the debtor's statements of current expenses and income, and

''(2) maintaining all calendars and dockets and producing all notices required to be sent in cases under title 11 of the United States Code.

''(e) USE BY UNITED STATES TRUSTEES.—The electronic case management system demonstrated under the project required by subsection (a) shall provide, at a minimum, the United States trustee in each district in which such system is operated with—

''(1) complete electronic case files which contain, in addition to the information listed in subsection (d), records of case openings, case closings, hearings, and the filing of all motions, trustee appointments, pleadings, and responses, as well as a record of the responses by the United States trustee to those motions, trustee appointments, and pleadings,

''(2) a means to generate standardized forms for motions, appointments, pleadings, and responses,

''(3) a means to generate standard management reports and letters on an exception basis,

''(4) a means to maintain accounting records, reports, and information required to be maintained by debtors in possession and trustees in cases under title 11 of the United States Code,

''(5) a means to calculate and record distribution to creditors, final applications and orders for distribution, and final case closing reports, and

''(6) a means to monitor the payment of filing and other required fees.

''(f) AVAILABILITY TO CERTAIN GOVERNMENTAL ENTITIES.—Unlimited access to information maintained in the electronic case management system demonstrated under the project required by subsection (a) shall be provided at no charge to the following:

''(1) The Congress.

''(2) The Executive Office for the United States Trustees.

''(3) The Administrative Office of the United States Courts.

''(4) The clerks of the courts in judicial districts in which such system is operated and persons who review case information, in accordance with section 107(a) of title 11, United States Code, in the offices of the clerks.

''(5) The judges on the bankruptcy and district courts in districts in which such system is operated.

''(6) Trustees in cases pending in districts in which such system is operated.

''(g) FEES FOR OTHER USERS.—(1) The entity which is awarded a contract to provide the electronic case management system demonstrated under this project may, under guidelines established by the Director of the Executive Office for the United States Trustees in the provisions of such contract, collect reasonable fees from assets of the estate of the debtor in bankruptcy for providing notices and services to the court and trustees under the demonstration project.

''(2) Access to information maintained in electronic case files pursuant to the demonstration project may be provided to persons other than those specified in subsection (f), but such access shall be limited to viewing such information only. A reasonable charge for such access may be collected by the entity which is awarded a contract under this section, in accordance with the guidelines established by the Director of the Executive Office for the United States Trustees in such contract. A reasonable portion of any charge so collected may be required by the Director to be remitted to the Executive Office for United States Trustees and deposited in the United States Trustee System Fund established in section 589a of title 28, United States Code.

''(h) SECURITY.—Access provided under subsection (f) to an entity or an individual shall be subject to such security limitations as may be imposed by the Congress or the head of the affected entity.

''SEC. 311. CASES PENDING UNDER THE BANKRUPTCY ACT.

''At the end of one calendar year following the date the amendments made by subtitle A of title II of this Act [§§ 201 to 231 of Pub. L. 99–554, see Tables for classification] take effect in a district in which any case is still pending under the Bankruptcy Act [see 11 U.S.C. notes prec. 101], the district court shall withdraw the reference of any such case and, after notice and a hearing, determine the status of the case. Such case shall be remanded to the bankruptcy judge with such instructions as are necessary for the prompt closing of the case and with a requirement that a progress report on the case be provided by the bankruptcy judge after such interval as the district court deems appropriate.''

EFFECTIVE DATE

Chapter effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–554 provided: ''That this Act [enacting section 589a of this title and section 307 and chapter 12 of Title 11, Bankruptcy, amending this section, sections 49, 96, 152, 156, 157, 526, 582, 584 to 587, 604, 1334, and 1930 of this title, sections 101 to 103, 105, 108, 109, 303, 321, 322, 324, 326, 327, 329, 330, 341, 343, 345 to 348, 362 to 365, 502, 503, 521 to 524, 546 to 549, 554, 557, 701, 703 to 707, 724, 726 to 728, 743, 1102, 1104 to 1106, 1112, 1121, 1129, 1163, 1202, 1302, 1306, 1307, and 1324 to 1326 of Title 11, Bankruptcy Form No. 1, set out in the Appendix to Title 11, repealing chapters 11 and 12 of Title 11, enacting provisions set out as notes under this section and section 589 of this title, amending provisions set out as notes preceding this section and under section 152 of this title, and repealing provisions set out as a note preceding this section] may be cited as the ''Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 585 of this title.

§ 582. Assistant United States trustees

(a) The Attorney General may appoint one or more assistant United States trustees in any region when the public interest so requires.

(b) Each assistant United States trustee is subject to removal by the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663; amended Pub. L. 99–554, title I, § 111(d), Oct. 27, 1986, 100 Stat. 3091.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–554, § 111(d)(1), substituted ''region'' for ''district''.

Subsec. (b). Pub. L. 99–554, § 111(d)(2), struck out ''for cause'' after ''removal''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

APPOINTMENT OF UNITED STATES TRUSTEES BY ATTORNEY GENERAL

For sense of Congress concerning consideration of estate administrators under title 11 by the Attorney General for appointment under this section as U.S. trustee and assistant U.S. trustee, see section 309 of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 583. Oath of office

Each United States trustee and assistant United States trustee, before taking office, shall take an oath to execute faithfully his duties.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

§ 584. Official stations

The Attorney General may determine the official stations of the United States trustees and assistant United States trustees within the regions for which they were appointed.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663; amended Pub. L. 99–554, title I, § 144(d), Oct. 27, 1986, 100 Stat. 3096.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1986—Pub. L. 99–554 substituted ''regions'' for ''districts''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 585. Vacancies

(a) The Attorney General may appoint an acting United States trustee for a region in which the office of the United States trustee is vacant. The individual so appointed may serve until the date on which the vacancy is filled by appointment under section 581 of this title or by designation under subsection (b) of this section.

(b) The Attorney General may designate a United States trustee to serve in not more than two regions for such time as the public interest requires.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2663; amended Pub. L. 99–554, title I, § 112, Oct. 27, 1986, 100 Stat. 3091.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1986—Pub. L. 99–554 amended section generally. Prior to amendment, section read as follows: ''The Attorney General may appoint an acting United States trustee for a district in which the office of United States trustee is vacant, or may designate a United States trustee for another judicial district to serve as trustee for the district in which such vacancy exists. The individual so appointed or designated may serve until the earlier of 90 days after such appointment or designation, as the case may be, or the date on which the vacancy is filled by appointment under section 581 of this title.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, or 13 of title 11 by, whenever the United States trustee considers it to be appropriate—

(A)(i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

(ii) filing with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.[1]

(B) monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements;

[1] So in original. The period probably should be a semicolon.

(C) monitoring plans filed under chapters 12 and 13 of title 11 and filing with the court, in connection with hearings under sections 1224, 1229, 1324, and 1329 of such title, comments with respect to such plans;

(D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

(E) monitoring creditors' committees appointed under title 11;

(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action;

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; and

(H) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; and

(6) make such reports as the Attorney General directs.

(b) If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United States trustees.

(d) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix—

(A) a maximum annual compensation for such individual consisting of—

(i) an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule; and

(ii) the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services during the same period of time; and

(B) a percentage fee not to exceed—

(i) in the case of a debtor who is not a family farmer, ten percent; or

(ii) in the case of a debtor who is a family farmer, the sum of—

(I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed $450,000; and

(II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds $450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund—

(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds—

(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.

(Added Pub. L. 95–598, title II, §224(a), Nov. 6, 1978, 92 Stat. 2663; amended Pub. L. 99–554, title I, §113, Oct. 27, 1986, 100 Stat. 3091; Pub. L. 101–509, title V, §529 [title I, §110(a)], Nov. 5, 1990, 104 Stat. 1427, 1452; Pub. L. 103–394, title II, §224(a), title V, §502, Oct. 22, 1994, 108 Stat. 4130, 4147.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (e)(1)(A)(i), is set out in section 5316 of Title 5, Government Organization and Employees.

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–394 inserted ''12,'' after ''11,'' in introductory provisions and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''monitoring applications for compensation and reimbursement filed under section 330 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to any of such applications;''.

1990—Subsec. (e)(1)(A). Pub. L. 101–509 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a maximum annual compensation for such individual, not to exceed the annual rate of basic pay in effect for step 1 of grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and''.

1986—Subsec. (a). Pub. L. 99–554, § 113(a)(1), substituted ''the region for which such United States trustee is appointed'' for ''his district'' in introductory text.

Subsec. (a)(3). Pub. L. 99–554, § 113(a)(2), substituted ''title 11 by, whenever the United States trustee considers it to be appropriate—'' for ''title 11;'' and added subpars. (A) to (H).

Subsec. (a)(5). Pub. L. 99–554, § 113(a)(3), inserted ''and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe'' after ''title 11''.

Subsec. (b). Pub. L. 99–554, § 113(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the number of cases under chapter 13 of title 11 commenced in a particular judicial district so warrant, the United States trustee for such district may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustee, in cases under such chapter. The United States trustee for such district shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.''

Subsec. (d). Pub. L. 99–554, § 113(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under subsection (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11.''

Subsec. (e). Pub. L. 99–554, § 113(c), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 13 of title 11, shall fix—

''(A) a maximum annual compensation for such individual, not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and

''(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

''(2) Such individual shall collect such percentage fee from all payments under plans in the cases under chapter 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall pay to the Treasury—

''(A) any amount by which the actual compensation of such individual exceeds five percent upon all payments under plans in cases under chapter 13 of title 11 for which such individual serves as standing trustee; and

''(B) any amount by which the percentage for all such cases exceeds—

''(i) such individual actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

''(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of this title.

APPLICATION TO ALL STANDING TRUSTEES

Section 529 [title I, § 110(b)] of Pub. L. 101–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–54 [Pub. L. 99–554]; 100 Stat. 3121) [set out in an Effective Date of 1986 Amendment note under section 581 of this title] apply.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 sections 326, 589a, 701, 703, 1202, 1302, 1326.

§ 587. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664; amended Pub. L. 99–554, title I, § 114(a), Oct. 27, 1986, 100 Stat. 3093.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

AMENDMENTS

1986—Pub. L. 99–554 amended section generally. Prior to amendment, section read as follows: ''The Attorney

General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

§ 588. Expenses

Necessary office expenses of the United States trustee shall be allowed when authorized by the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

§ 589. Staff and other employees

The United States trustee may employ staff and other employees on approval of the Attorney General.

(Added Pub. L. 95–598, title II, § 224(a), Nov. 6, 1978, 92 Stat. 2664.)

CODIFICATION

Section 408(c) of Pub. L. 95–598, as amended, which provided for the repeal of this section and the deletion of any references to United States Trustees in this title at a prospective date, was repealed by section 307(b) of Pub. L. 99–554. See note set out preceding section 581 of this title.

TEMPORARY SUSPENSION OF LIMITATION ON APPOINTMENTS

Pub. L. 99–554, title I, § 114(b), Oct. 27, 1986, 100 Stat. 3093, provided that: ''During the period beginning on the effective date of this Act [see section 302 of Pub. L. 99–554, set out as an Effective Date note under section 581 of this title] and ending on October 1, 1989, the provisions of title 5 of the United States Code governing appointments in the competitive service shall not apply with respect to appointments under section 589 of title 28, United States Code.''

§ 589a. United States Trustee System Fund

(a) There is hereby established in the Treasury of the United States a special fund to be known as the ''United States Trustee System Fund'' (hereinafter in this section referred to as the ''Fund''). Monies in the Fund shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes in connection with the operations of United States trustees—

(1) salaries and related employee benefits;

(2) travel and transportation;

(3) rental of space;

(4) communication, utilities, and miscellaneous computer charges;

(5) security investigations and audits;

(6) supplies, books, and other materials for legal research;

(7) furniture and equipment;

(8) miscellaneous services, including those obtained by contract; and

(9) printing.

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation ''United States Trustee System Fund'', to remain available until expended, the following—

(1) 23.08 percent of the fees collected under section 1930(a)(1) of this title;

(2) one-half of the fees collected under section 1930(a)(3) of this title;

(3) one-half of the fees collected under section 1930(a)(4) of this title;

(4) one-half of the fees collected under section 1930(a)(5) of this title;

(5) 100 percent of the fees collected under section 1930(a)(6) of this title;

(6) three-fourths of the fees collected under the last sentence of section 1930(a) of this title;

(7) the compensation of trustees received under section 330(d) of title 11 by the clerks of the bankruptcy courts; and

(8) excess fees collected under section 586(e)(2) of this title.

(c) Amounts in the Fund which are not currently needed for the purposes specified in subsection (a) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(d) The Attorney General shall transmit to the Congress, not later than 120 days after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of expenditures made under this section.

(e) There are authorized to be appropriated to the Fund for any fiscal year such sums as may be necessary to supplement amounts deposited under subsection (b) for the purposes specified in subsection (a).

(Added Pub. L. 99–554, title I, § 115(a), Oct. 27, 1986, 100 Stat. 3094; amended Pub. L. 101–162, title IV, § 406(c), Nov. 21, 1989, 103 Stat. 1016; Pub. L. 102–140, title I, § 111(b), (c), Oct. 28, 1991, 105 Stat. 795; Pub. L. 103–121, title I, § 111(a)(2), (b)(2), (3), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 109(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–18.)

CODIFICATION

Amendment by Pub. L. 104–91 is based on section 111(b) and (c) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS

1996—Pub. L. 104–208 reenacted section catchline without change and amended text generally, revising and restating as subsecs. (a) to (e) provisions of former subsecs. (a) to (f).

Subsec. (b)(5). Pub. L. 104–91, as amended by Pub. L. 104–99, inserted ''until a reorganization plan is confirmed'' before semicolon.

Subsec. (f)(2). Pub. L. 104–91, as amended by Pub. L. 104–99, substituted ''until a reorganization plan is confirmed;'' for period at end.

Subsec. (f)(3). Pub. L. 104–91, as amended by Pub. L. 104–99, added par. (3).

1993—Subsec. (b)(1). Pub. L. 103–121, § 111(a)(2), substituted ''23.08 per centum'' for ''one-fourth''.

Subsec. (b)(2). Pub. L. 103–121, § 111(b)(2), substituted ''37.5 per centum'' for ''50 per centum''.

Subsec. (f)(1). Pub. L. 103–121, § 111(b)(3), substituted ''12.5 per centum'' for ''16.7 per centum''.

1991—Subsec. (b)(2). Pub. L. 102–140, § 111(b)(1), substituted ''50 per centum'' for ''three-fifths''.

Subsec. (b)(5). Pub. L. 102–140, § 111(b)(2), substituted ''60 per centum'' for ''all''.

Subsec. (f). Pub. L. 102–140, § 111(c), added subsec. (f).

1989—Subsec. (b)(1). Pub. L. 101–162 substituted ''one-fourth'' for ''one-third''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title I, § 109(c)] of Pub. L. 104–208 provided that: ''Notwithstanding any other provision of law or of this Act, the amendments to 28 U.S.C. 589a made by subsection (b) of this section shall take effect upon enactment of this Act [Sept. 30, 1996].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 111(a) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

Section 111(b) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 111 of Pub. L. 102–140 provided that the amendment made by that section is effective 60 days after Oct. 28, 1991.

EFFECTIVE DATE

Section effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 section 330.

CHAPTER 40—INDEPENDENT COUNSEL

Sec.
591. Applicability of provisions of this chapter.
592. Preliminary investigation and application for appointment of an independent counsel.
593. Duties of the division of the court.
594. Authority and duties of an independent counsel.
595. Congressional oversight.
596. Removal of an independent counsel; termination of office.
597. Relationship with Department of Justice.
598. Severability.
599. Termination of effect of chapter.

AMENDMENTS

1987—Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1293, amended chapter 40 heading and analysis generally, substituting items 591 to 599 for former items 591 to 598.

1986—Pub. L. 99–554, title I, § 144(g)(1), Oct. 27, 1986, 100 Stat. 3097, substituted ''40'' for ''39'' as chapter designation.

1983—Pub. L. 97–409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039, substituted ''independent counsel'' for ''special prosecutor'' in chapter heading and in items 592, 594, and 596.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 49 of this title; title 18 section 202.

§ 591. Applicability of provisions of this chapter

(a) PRELIMINARY INVESTIGATION WITH RESPECT TO CERTAIN COVERED PERSONS.—The Attorney General shall conduct a preliminary investigation in accordance with section 592 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) PERSONS TO WHOM SUBSECTION (a) APPLIES.—The persons referred to in subsection (a) are—

(1) the President and Vice President;

(2) any individual serving in a position listed in section 5312 of title 5;

(3) any individual working in the Executive Office of the President who is compensated at a rate of pay at or above level II of the Executive Schedule under section 5313 of title 5;

(4) any Assistant Attorney General and any individual working in the Department of Justice who is compensated at a rate of pay at or above level III of the Executive Schedule under section 5314 of title 5;

(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

(6) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of that committee exercising authority at the national level, during the incumbency of the President; and

(7) any individual who held an office or position described in paragraph (1), (2), (3), (4), or (5) for 1 year after leaving the office or position.

(c) PRELIMINARY INVESTIGATION WITH RESPECT TO OTHER PERSONS.—

(1) IN GENERAL.—When the Attorney General determines that an investigation or prosecution of a person by the Department of Justice may result in a personal, financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(2) MEMBERS OF CONGRESS.—When the Attorney General determines that it would be in the public interest, the Attorney General may conduct a preliminary investigation in accordance with section 592 if the Attorney General receives information sufficient to constitute grounds to investigate whether a Member of Congress may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(d) EXAMINATION OF INFORMATION TO DETERMINE NEED FOR PRELIMINARY INVESTIGATION.—

(1) FACTORS TO BE CONSIDERED.—In determining under subsection (a) or (c) (or section 592(c)(2)) whether grounds to investigate exist, the Attorney General shall consider only—

(A) the specificity of the information received; and

(B) the credibility of the source of the information.

(2) TIME PERIOD FOR MAKING DETERMINATION.—The Attorney General shall determine whether grounds to investigate exist not later than 30 days after the information is first received. If within that 30-day period the Attorney General determines that the information is not specific or is not from a credible source, then the Attorney General shall close the matter. If within that 30-day period the Attorney General determines that the information is specific and from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that information.

(e) RECUSAL OF ATTORNEY GENERAL.—

(1) WHEN RECUSAL IS REQUIRED.—(A) If information received under this chapter involves the Attorney General, the next most senior official in the Department of Justice who is not also recused shall perform the duties assigned under this chapter to the Attorney General.

(B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior official in the Department of Justice who is not also recused to perform the duties assigned under this chapter to the Attorney General.

(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to such information.

(Added Pub. L. 95–521, title VI, §601(a), Oct. 26, 1978, 92 Stat. 1867; amended Pub. L. 97–409, §§3, 4(a), Jan. 3, 1983, 96 Stat. 2039, 2040; Pub. L. 98–473, title II, §228(b), Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100–191, §2, Dec. 15, 1987, 101 Stat. 1293; Pub. L. 103–270, §§3(j), (k), 4, June 30, 1994, 108 Stat. 735, 736.)

AMENDMENTS

1994—Subsec. (b)(6) to (8). Pub. L. 103–270, §4(b), redesignated par. (8) as (6) and substituted "; and" for the period at end, added par. (7), and struck out former pars. (6) and (7) which read as follows:

"(6) any individual who leaves any office or position described in any of paragraphs (1) through (5) of this subsection, during the incumbency of the President under whom such individual served in the office or position plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position;

"(7) any individual who held an office or position described in any of paragraphs (1) through (5) of this subsection during the incumbency of one President and who continued to hold the office or position for not more than 90 days into the term of the next President, during the 1-year period after the individual leaves the office or position; and".

Subsec. (c). Pub. L. 103–270, §4(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "PRELIMINARY INVESTIGATION WITH RESPECT TO PERSONS NOT LISTED IN SUBSECTION (b).—The Attorney General may conduct a preliminary investigation in accordance with section 592 if—

"(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person other than a person described in subsection (b) may have violated any Federal criminal law other than a violation classified as a Class B or C misdemeanor or an infraction; and

"(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest."

Subsec. (d)(2). Pub. L. 103–270, §3(j), substituted "30" for "15" wherever appearing.

Subsec. (e). Pub. L. 103–270, §3(k), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "(e) RECUSAL OF ATTORNEY GENERAL.—

"(1) WHEN RECUSAL IS REQUIRED.—If information received under this chapter involves the Attorney General or a person with whom the Attorney General has a current or recent personal or financial relationship, the Attorney General shall recuse himself or herself by designating the next most senior officer in the Department of Justice whom that information does not involve and who does not have a current or recent personal or financial relationship with such person to perform the duties assigned under this chapter to the Attorney General with respect to that information.

"(2) REQUIREMENTS FOR RECUSAL DETERMINATION.—The Attorney General shall, before personally making any other determination under this chapter with respect to information received under this chapter, determine under paragraph (1) whether to recuse himself or herself with respect to that information. A determination to recuse shall be in writing, shall identify the facts considered by the Attorney General, and shall set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to the information involved."

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (e) relating to applicability of chapter for former subsecs. (a) to (c) relating to similar subject.

1984—Subsec. (a). Pub. L. 98–473 substituted "Class B or C misdemeanor or an infraction" for "petty offense".

1983—Subsec. (a). Pub. L. 97–409, §4(a)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "the Attorney General receives".

Subsec. (b)(3). Pub. L. 97–409, §3, substituted "who is compensated at or above a rate equivalent to level II" for "and compensated at a rate not less than the annual rate of basic pay provided for level IV".

Subsec. (b)(4), (5). Pub. L. 97–409, §3, redesignated as par. (5) "the Director of Central Intelligence" and all that followed through end of par. (4). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 97–409, §3, redesignated former par. (5) as (6) and substituted "through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;" for "through (4) of this subsection during the incumbency of the

President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and''. Former par. (6) redesignated (8).

Subsec. (b)(7). Pub. L. 97–409, § 3, added par. (7).

Subsec. (b)(8). Pub. L. 97–409, § 3, redesignated former par. (6) as (8) and substituted ''the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President'' for ''any officer of the principal national campaign committee seeking the election or reelection of the President''.

Subsec. (c). Pub. L. 97–409, § 4(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT; TRANSITION PROVISIONS

Section 7 of Pub. L. 103–270 provided that:

''(a) IN GENERAL.—Except as provided in this section, the amendments made by this Act [amending this section and sections 592 to 596 and 599 of this title] shall apply with respect to independent counsels appointed before, on, or after the date of enactment of this Act [June 30, 1994].

''(b) ASSIGNMENT OF EMPLOYEE TO CERTIFY EXPENDITURES.—An independent counsel appointed prior to the date of enactment of this Act shall assign to an employee the duty of certifying expenditures, as required by section 594(*l*) of title 28, United States Code, as added by section 3(a), by the date that is 30 days after the date of enactment of this Act.

''(c) OFFICE SPACE.—The Administrator of General Services, in applying section 594(*l*)(3) of title 28, United States Code, as added by section 3(a), to determine whether the office of an independent counsel appointed prior to the date of enactment of this Act should be moved to a Federal building, shall take into account the moving, legal, and other expenses that might arise if the office were moved.

''(d) TRAVEL AND SUBSISTENCE EXPENSES.—For purposes of the restrictions on reimbursement of travel and subsistence expenses of an independent counsel and employees of an office of independent counsel contained in paragraph (3) of section 594(b) of title 28, United States Code, as amended by section 3(b), as applied to the office of an independent counsel appointed before the date of enactment of this Act, the 1-year service period shall begin on the date of enactment of this Act.

''(e) RATES OF COMPENSATION.—The limitation on rates of compensation of employees of an office of independent counsel contained in the last sentence of section 594(c) of title 28, United States Code, as amended by section 3(c), shall not be applied to cause a reduction in the rate of compensation of an employee appointed before the date of enactment of this Act.

''(f) PERIODIC REAPPOINTMENT.—The determinations by the division of the court contained in the last sentence of section 596(b)(2) of title 28, United States Code, as amended by section 3(h), shall, for the office of an independent counsel appointed before the date of enactment of this Act, be required no later than 1 year after the date of enactment of this Act and at the end of each succeeding 1-year period.

''(g) REPORTING REQUIREMENTS.—No amendment made by this Act that establishes or modifies a requirement that any person submit a report to any other person with respect to an activity occurring during any time period shall be construed to require that a report submitted prior to the date of enactment of this Act, with respect to that time period be supplemented to include information with respect to such activity.

''(h) REGULATORY INDEPENDENT COUNSEL.—Notwithstanding the restriction in section 593(b)(2) of title 28, United States Code, the division of the court described in section 49 of that title may appoint as an independent counsel any individual who, on the date of enactment of this Act, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of Federal Regulations. If such an individual is so appointed, such an independent counsel shall comply with chapter 40 of title 28, United States Code, as amended by this Act, in the same manner and to the same extent as an independent counsel appointed before the date of enactment of this Act is required to comply with that chapter, except that subsection (f) of this section shall not apply to such an independent counsel.

''(i) WHITE HOUSE PERSONNEL REPORT.—Section 6 [enacting provisions set out as a note under section 113 of Title 3, The President] shall take effect on January 1, 1995.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 6 of Pub. L. 100–191 provided that:

''(a) IN GENERAL.—Subject to subsection (b), the amendments made by this Act [enacting section 599 of this title, amending this section, sections 49 and 592 to 598 of this title, sections 203 and 205 of Pub. L. 95–521 set out in the Appendix to Title 5, Government Organization and Employees, and section 202 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as a note under section 1 of this title, and amending provisions set out below] take effect on the date of the enactment of this Act [Dec. 15, 1987].

''(b) PENDING PROCEEDINGS.—With respect to any proceeding under chapter 39 of title 28, United States Code (before the redesignation of such chapter as chapter 40 by section 144(g) of Public Law 99–554), or under chapter 40 of such title (after such redesignation), which is pending on the date of the enactment of this Act [Dec. 15, 1987], the following shall apply:

''(1) Except as provided in paragraphs (2) and (3), the provisions of chapter 40 of such title as in effect on the day before such date of enactment shall, in lieu of the amendments made by this Act, continue to apply on or after such date to such proceeding until such proceeding is terminated in accordance with such chapter.

''(2) The following provisions shall apply to such proceeding on or after such date of enactment:

''(A) Section 593(f) of title 28, United States Code, as amended by section 2 of this Act, relating to the award of attorneys' fees.

''(B) Section 594(d)(2) of such title, as added by section 2 of this Act, to the extent that such section 594(d)(2) relates to reports by the Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after the date of the enactment of this Act.

''(C) Section 594(h)(1)(A) of such title, as added by section 2 of this Act, relating to reports by independent counsel, except that the 6-month periods described in such section 594(h)(1)(A) shall be calculated from the date of the enactment of this Act.

''(D) Section 594(i) of such title, as added by section 2 of this Act, relating to the independence of the office of independent counsel for certain purposes.

''(E) Section 594(k) of such title, as added by section 2 of this Act, relating to custody of records of independent counsel.

''(F) Section 596(a)(3) of such title, as amended by section 2 of this Act, relating to judicial review of the removal of an independent counsel from office.

''(G) Section 596(c) of such title, as added by section 2 of this Act, relating to audits of expenditures of independent counsel.

''(H) The amendments made by section 3 of this Act [amending sections 203 and 205 of Pub. L. 95–521, set out in Appendix to Title 5, and section 202 of Title 18], relating to the status of independent counsel and their appointees as special government employees and to their financial disclosure requirements.

''(3) Section 594(j) of title 28, United States Code, as added by section 2 of this Act, relating to certain standards of conduct shall, 90 days after the date of the enactment of this Act, apply to a pending proceeding described in this subsection.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 235(a)(1)(B)(ii)(IV) of Pub. L. 98–473 provided that the amendment made by Pub. L. 98–473 is effective Oct. 12, 1984.

EFFECTIVE DATE

Section 604 of Pub. L. 95–521 provided that: ''Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 528, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

''(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

''(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

''(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act.''

PERMANENT APPROPRIATION FOR EXPENSES OF INDEPENDENT COUNSELS

Pub. L. 100–202, § 101(a) [title II], Dec. 22, 1987, 101 Stat. 1329, 1329–9, provided: ''That a permanent indefinite appropriation is established within the Department of Justice to pay all necessary expenses of investigations and prosecutions by independent counsel appointed pursuant to the provisions of 28 U.S.C. 591 et seq. or other law: *Provided further*, That the Comptroller General shall perform semiannual financial reviews of expenditures from the Independent Counsel permanent indefinite appropriation, and report their findings to the Committees on Appropriations of the House and Senate''.

CONTINGENCY FUND FOR INDEPENDENT COUNSELS

Section 601(c) of Pub. L. 95–521, as amended by Pub. L. 97–409, § 2(c)(2), Jan. 3, 1983, 96 Stat. 2039; Pub. L. 100–191, § 5(b), Dec. 15, 1987, 101 Stat. 1307, provided that: ''There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any independent counsels appointed under chapter 40 (relating to independent counsels) of title 28 of the United States Code in the carrying out of functions under such chapter.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 592, 593 of this title.

§ 592. Preliminary investigation and application for appointment of an independent counsel

(a) CONDUCT OF PRELIMINARY INVESTIGATION.—

(1) IN GENERAL.—A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or (c), on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a congressional request under subsection (g), the Attorney General shall make such determination not later than 90 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 593(a) of the commencement of such preliminary investigation and the date of such commencement.

(2) LIMITED AUTHORITY OF ATTORNEY GENERAL.—(A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(B)(i) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the person lacked such state of mind.

(3) EXTENSION OF TIME FOR PRELIMINARY INVESTIGATION.—The Attorney General may apply to the division of the court for a single extension, for a period of not more than 60 days, of the 90-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant such extension.

(b) DETERMINATION THAT FURTHER INVESTIGATION NOT WARRANTED.—

(1) NOTIFICATION OF DIVISION OF THE COURT.—If the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent counsel with respect to the matters involved.

(2) FORM OF NOTIFICATION.—Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

(c) DETERMINATION THAT FURTHER INVESTIGATION IS WARRANTED.—

(1) APPLICATION FOR APPOINTMENT OF INDEPENDENT COUNSEL.—The Attorney General shall apply to the division of the court for the appointment of an independent counsel if—

(A) the Attorney General, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(B) the 90-day period referred to in subsection (a)(1), and any extension granted under subsection (a)(3), have elapsed and the Attorney General has not filed a notification with the division of the court under subsection (b)(1).

In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the conduct of criminal investigations.

(2) RECEIPT OF ADDITIONAL INFORMATION.—If, after submitting a notification under subsection (b)(1), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall—

(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and

(B) otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

(d) CONTENTS OF APPLICATION.—Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the division of the court in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

(e) DISCLOSURE OF INFORMATION.—Except as otherwise provided in this chapter or as is deemed necessary for law enforcement purposes, no officer or employee of the Department of Justice or an office of independent counsel may, without leave of the division of the court, disclose to any individual outside the Department of Justice or such office any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the Congress.

(f) LIMITATION ON JUDICIAL REVIEW.—The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent counsel shall not be reviewable in any court.

(g) CONGRESSIONAL REQUEST.—

(1) BY JUDICIARY COMMITTEE OR MEMBERS THEREOF.—The Committee on the Judiciary of either House of the Congress, or a majority of majority party members or a majority of all nonmajority party members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent counsel.

(2) REPORT BY ATTORNEY GENERAL PURSUANT TO REQUEST.—Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, or to the committee on which the persons making the request serve, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 591, as the case may be. The report shall set forth the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

(3) SUBMISSION OF INFORMATION IN RESPONSE TO CONGRESSIONAL REQUEST.—At the same time as any notification, application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material, or memorandum shall be supplied to the committee making the request, or to the committee on which the persons making the request serve. If no application for the appointment of an independent counsel is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the congressional request was made.

(4) DISCLOSURE OF INFORMATION.—Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will not in the committee's judgment prejudice the rights of any individual.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1868; amended Pub. L. 97–409, §§ 2(a)(1), 4(b)–(e), Jan. 3, 1983, 96 Stat. 2039–2041; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1295; Pub. L. 103–270, § 3(*l*), June 30, 1994, 108 Stat. 736.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–270 inserted ''or as is deemed necessary for law enforcement purposes'' after ''Except as otherwise provided in this chapter''.

1987—Pub. L. 100–191 amended section generally, substituting provisions relating to preliminary investigation and application for appointment of an independent counsel for provisions relating to application for appointment of an independent counsel.

1983—Subsec. (a). Pub. L. 97–409, § 4(b), designated existing provisions as par. (1), substituted, ''Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General'' for ''The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title,'', inserted ''In determining whether grounds to investigate exist, the Attorney General shall consider—(A) the degree of specificity of the information received, and (B) the credibility of the source of the information.'', and added par. (2).

Subsec. (b)(1). Pub. L. 97–409, §§2(a)(1)(A), 4(c), substituted ''that there are no reasonable grounds to believe that further investigation or prosecution is warranted'' for ''that the matter is so unsubstantiated that no further investigation or prosecution is warranted'' and substituted ''independent counsel'' for ''special prosecutor''.

Subsec. (c)(1). Pub. L. 97–409, §§2(a)(1)(A), 4(d), substituted ''finds reasonable grounds to believe that further investigation or prosecution is warranted'' for ''finds the matter warrants further investigation or prosecution'' after ''preliminary investigation'', ''that there are no reasonable grounds to believe that further investigation or prosecution is warranted'' for ''that the matter is so unsubstantiated as not to warrant further investigation or prosecution'', and ''independent counsel'' for ''special prosecutor'', and inserted provision that in determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

Subsec. (c)(2). Pub. L. 97–409, §2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' in provisions following subpar. (B).

Subsec. (c)(2)(A). Pub. L. 97–409, §4(e)(1), substituted ''information sufficient to constitute grounds to investigate'' for ''specific information'' after ''receives additional''.

Subsec. (c)(2)(B). Pub. L. 97–409, §4(e)(2), substituted ''reasonable grounds exist to warrant'' for ''such information warrants'' after ''appropriate, that''.

Subsecs. (d)(1), (e), (f). Pub. L. 97–409, §2(a)(1), substituted ''independent counsel'' for ''special prosecutor'' and ''independent counsel's'' for ''special prosecutor's'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, see section 7(a) of Pub. L. 103–270, set out as an Effective Date of 1994 Amendment; Transition Provisions note under section 591 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 591, 593 of this title.

§ 593. Duties of the division of the court

(a) REFERENCE TO DIVISION OF THE COURT.—The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) APPOINTMENT AND JURISDICTION OF INDEPENDENT COUNSEL.—

(1) AUTHORITY.—Upon receipt of an application under section 592(c), the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction.

(2) QUALIFICATIONS OF INDEPENDENT COUNSEL.—The division of the court shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The division of the court may not appoint as an independent counsel any person who holds any office of profit or trust under the United States.

(3) SCOPE OF PROSECUTORIAL JURISDICTION.—In defining the independent counsel's prosecutorial jurisdiction, the division of the court shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent counsel, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Federal crimes, other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General's request was made, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

(4) DISCLOSURE OF IDENTITY AND PROSECUTORIAL JURISDICTION.—An independent counsel's identity and prosecutorial jurisdiction (including any expansion under subsection (c)) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of such independent counsel shall be made public when any indictment is returned, or any criminal information is filed, pursuant to the independent counsel's investigation.

(c) EXPANSION OF JURISDICTION.—

(1) IN GENERAL.—The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent counsel, and such expansion may be in lieu of the appointment of another independent counsel.

(2) PROCEDURE FOR REQUEST BY INDEPENDENT COUNSEL.—(A) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 591, which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 592, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 592, the Attorney General shall give great weight to any recommendations of the independent counsel.

(B) If the Attorney General determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the juris-

diction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

(C) If—

(i) the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted,

the division of the court shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate such matters.

(d) RETURN FOR FURTHER EXPLANATION.—Upon receipt of a notification under section 592 or subsection (c)(2)(B) of this section from the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

(e) VACANCIES.—If a vacancy in office arises by reason of the resignation, death, or removal of an independent counsel, the division of the court shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed.

(f) ATTORNEYS' FEES.—

(1) AWARD OF FEES.—Upon the request of an individual who is the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, if no indictment is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys' fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the the[1] independent counsel who conducted the investigation and Attorney[2] General of any request for attorneys' fees under this subsection.

(2) EVALUATION OF FEES.—The division of the court shall direct such independent counsel and the Attorney General to file a written evaluation of any request for attorneys' fees under this subsection, addressing—

(A) the sufficiency of the documentation;

(B) the need or justification for the underlying item;

(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

(D) the reasonableness of the amount of money requested.

[1] So in original.

[2] So in original. Probably should be preceded by ''the''.

(g) DISCLOSURE OF INFORMATION.—The division of the court may, subject to section 594(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

(h) AMICUS CURIAE BRIEFS.—When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869; amended Pub. L. 97–409, §§ 2(a)(1), 5, Jan. 3, 1983, 96 Stat. 2039, 2041; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1297; Pub. L. 103–270, § 3(n), June 30, 1994, 108 Stat. 736.)

AMENDMENTS

1994—Subsec. (f)(1). Pub. L. 103–270, § 3(n)(1), inserted ''the independent counsel who conducted the investigation and'' before ''Attorney General'' in last sentence.

Subsec. (f)(2). Pub. L. 103–270, § 3(n)(2), in introductory provisions substituted ''shall direct such independent counsel and'' for ''may direct'' and ''subsection, addressing—'' for ''subsection, analyzing for each expense—'', added subpars. (A) to (D) and struck out former subpars. (A) to (C) which read as follows:

''(A) the sufficiency of the documentation;

''(B) the need or justification for the underlying item; and

''(C) the reasonableness of the amount of money requested.''

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (h) for former subsecs. (a) to (g) which related to similar subject matter.

1983—Subsec. (b). Pub. L. 97–409, § 2(a)(1), substituted ''independent counsel'' for ''special prosecutor'' and ''independent counsel's'' for ''special prosecutor's'' wherever appearing.

Subsecs. (c) to (e). Pub. L. 97–409, § 2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' wherever appearing.

Subsecs. (f), (g). Pub. L. 97–409, § 5, added subsecs. (f) and (g).

EFFECTIVE DATE OF 1994 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, and, notwithstanding restriction in subsec. (b)(2) of this section, the division of the court described in section 49 of this title is authorized to appoint as an independent counsel any individual who, on June 30, 1994, is serving as a regulatory independent counsel under parts 600 and 603 of title 28, Code of Federal Regulations, see section 7(a), (h) of Pub. L. 103–270, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, but with subsec. (f) applicable to previously initiated proceedings pending on Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 592, 594 of this title; title 26 section 6103.

§ 594. Authority and duties of an independent counsel

(a) AUTHORITIES.—Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with re-

spect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel considers necessary;

(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General;

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States; and

(10) consulting with the United States attorney for the district in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

(b) COMPENSATION.—

(1) IN GENERAL.—An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5.

(2) TRAVEL EXPENSES.—Except as provided in paragraph (3), an independent counsel and persons appointed under subsection (c) shall be entitled to the payment of travel expenses as provided by subchapter I of chapter 57 of title 5, United States Code, including travel, per diem, and subsistence expenses in accordance with section 5703 of title 5.

(3) TRAVEL TO PRIMARY OFFICE.—

(A) IN GENERAL.—After 1 year of service under this chapter, an independent counsel and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses under subchapter I of chapter 57 of title 5, United States Code, for the purpose of commuting to or from the city in which the primary office of the independent counsel or person is located. The 1-year period may be extended for successive 6-month periods if the independent counsel and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

(B) RELEVANT FACTORS.—In making any certification under this paragraph with respect to travel and subsistence expenses of an independent counsel or person appointed under subsection (c), the independent counsel and the division of the court shall consider, among other relevant factors—

(i) the cost to the Government of reimbursing such travel and subsistence expenses;

(ii) the period of time for which the independent counsel anticipates that the activities of the independent counsel or person, as the case may be, will continue;

(iii) the personal and financial burdens on the independent counsel or person, as the case may be, of relocating so that such travel and subsistence expenses would not be incurred; and

(iv) the burdens associated with appointing a new independent counsel, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate.

(c) ADDITIONAL PERSONNEL.—For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. Such employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of United States Attorney for the District of Columbia under sections 548 and 550, but in no event shall any such employee be compensated at a rate greater than the rate of basic pay payable for level ES–4 of the Senior Executive Service Schedule under section 5382 of title 5, as adjusted for the District of Columbia under section 5304 of that title regardless of the locality in which an employee is employed.

(d) ASSISTANCE OF DEPARTMENT OF JUSTICE.—

(1) IN CARRYING OUT FUNCTIONS.—An independent counsel may request assistance from the Department of Justice in carrying out the functions of the independent counsel, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's

prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties. At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.

(2) PAYMENT OF AND REPORTS ON EXPENDITURES OF INDEPENDENT COUNSEL.—The Department of Justice shall pay all costs relating to the establishment and operation of any office of independent counsel. The Attorney General shall submit to the Congress, not later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each such report shall include a statement of all payments made for activities of independent counsel but may not reveal the identity or prosecutorial jurisdiction of any independent counsel which has not been disclosed under section 593(b)(4).

(e) REFERRAL OF OTHER MATTERS TO AN INDEPENDENT COUNSEL.—An independent counsel may ask the Attorney General or the division of the court to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept such referral if the matter relates to the independent counsel's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent counsel pursuant to the independent counsel's request, or if the independent counsel accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent counsel shall so notify the division of the court.

(f) COMPLIANCE WITH POLICIES OF THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—An independent counsel shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws. To determine these policies and policies under subsection (*l*)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.

(2) NATIONAL SECURITY.—An independent counsel shall comply with guidelines and procedures used by the Department in the handling and use of classified material.

(g) DISMISSAL OF MATTERS.—The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(h) REPORTS BY INDEPENDENT COUNSEL.—

(1) REQUIRED REPORTS.—An independent counsel shall—

(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment, and with respect to each 6-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

(B) before the termination of the independent counsel's office under section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

(2) DISCLOSURE OF INFORMATION IN REPORTS.—The division of the court may release to the Congress, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

(3) PUBLICATION OF REPORTS.—At the request of an independent counsel, the Public Printer shall cause to be printed any report previously released to the public under paragraph (2). The independent counsel shall certify the number of copies necessary for the public, and the Public Printer shall place the cost of the required number to the debit of such independent counsel. Additional copies shall be made available to the public through the depository library program and Superintendent of Documents sales program pursuant to sections 1702 and 1903 of title 44.

(i) INDEPENDENCE FROM DEPARTMENT OF JUSTICE.—Each independent counsel appointed under this chapter, and the persons appointed by that independent counsel under subsection (c), are separate from and independent of the Department of Justice for purposes of sections 202 through 209 of title 18.

(j) STANDARDS OF CONDUCT APPLICABLE TO INDEPENDENT COUNSEL, PERSONS SERVING IN THE OFFICE OF AN INDEPENDENT COUNSEL, AND THEIR LAW FIRMS.—

(1) RESTRICTIONS ON EMPLOYMENT WHILE INDEPENDENT COUNSEL AND APPOINTEES ARE SERVING.—(A) During the period in which an independent counsel is serving under this chapter—

(i) such independent counsel, and

(ii) any person associated with a firm with which such independent counsel is associated,

may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(B) During the period in which any person appointed by an independent counsel under subsection (c) is serving in the office of independent counsel, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(2) POST EMPLOYMENT RESTRICTIONS ON INDEPENDENT COUNSEL AND APPOINTEES.—(A) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 3 years following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent counsel.

(B) Each independent counsel and each person appointed by that independent counsel under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(3) ONE-YEAR BAN ON REPRESENTATION BY MEMBERS OF FIRMS OF INDEPENDENT COUNSEL.—Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of the service of that independent counsel under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

(4) DEFINITIONS.—For purposes of this subsection—

(A) the term ''firm'' means a law firm whether organized as a partnership or corporation; and

(B) a person is ''associated'' with a firm if that person is an officer, director, partner, or other member or employee of that firm.

(5) ENFORCEMENT.—The Attorney General and the Director of the Office of Government Ethics have authority to enforce compliance with this subsection.

(k) CUSTODY OF RECORDS OF AN INDEPENDENT COUNSEL.—

(1) TRANSFER OF RECORDS.—Upon termination of the office of an independent counsel, that independent counsel shall transfer to the Archivist of the United States all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to rule 6(e) of the Federal Rules of Criminal Procedure as grand jury materials and which of these records have been classified as national security information. Any records which were compiled by an independent counsel and, upon termination of the independent counsel's office, were stored with the division of the court or elsewhere before the enactment of the Independent Counsel Reauthorization Act of 1987, shall also be transferred to the Archivist of the United States by the division of the court or the person in possession of such records.

(2) MAINTENANCE, USE, AND DISPOSAL OF RECORDS.—Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with chapters 21, 29, and 33 of title 44.

(3) ACCESS TO RECORDS.—

(A) IN GENERAL.—Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by section 552 of title 5.

(B) ACCESS BY DEPARTMENT OF JUSTICE.—The Archivist shall, upon written application by the Attorney General, disclose any such records to the Department of Justice for purposes of an ongoing law enforcement investigation or court proceeding, except that, in the case of grand jury materials, such records shall be so disclosed only by order of the court of jurisdiction under rule 6(e) of the Federal Rules of Criminal Procedure.

(C) EXCEPTION.—Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the National Archives and Records Administration who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

(4) RECORDS PROVIDED BY CONGRESS.—Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent counsel to assist in an investigation or prosecution conducted by that independent counsel—

(A) shall be maintained as a separate body of records within the records of the independent counsel; and

(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the House of Congress that provided the records to the independent counsel.

Subparagraph (B) shall not apply to those records which have been surrendered pursuant to grand jury or court proceedings.

(*l*) Cost and Administrative Support.—

(1) COST CONTROLS.—

(A) IN GENERAL.—An independent counsel shall—

(i) conduct all activities with due regard for expense;

(ii) authorize only reasonable and lawful expenditures; and

(iii) promptly, upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(B) LIABILITY FOR INVALID CERTIFICATION.—An employee making a certification under subparagraph (A)(iii) shall be liable for an

invalid certification to the same extent as a certifying official certifying a voucher is liable under section 3528 of title 31.

(C) DEPARTMENT OF JUSTICE POLICIES.—An independent counsel shall comply with the established policies of the Department of Justice respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

(2) ADMINISTRATIVE SUPPORT.—The Director of the Administrative Office of the United States Courts shall provide administrative support and guidance to each independent counsel. No officer or employee of the Administrative Office of the United States Courts shall disclose information related to an independent counsel's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent counsel.

(3) OFFICE SPACE.—The Administrator of General Services, in consultation with the Director of the Administrative Office of the United States Courts, shall promptly provide appropriate office space for each independent counsel. Such office space shall be within a Federal building unless the Administrator of General Services determines that other arrangements would cost less. Until such office space is provided, the Administrative Office of the United States Courts shall provide newly appointed independent counsels immediately upon appointment with appropriate, temporary office space, equipment, and supplies.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869; amended Pub. L. 97–409, §§ 2(a)(1), 6(a)–(c), Jan. 3, 1983, 96 Stat. 2039, 2041; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1300; Pub. L. 103–270, § 3(a)–(f), (m), (*o*), June 30, 1994, 108 Stat. 732–734, 736; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 118], Sept. 30, 1996, 110 Stat. 3009, 3009–23.)

REFERENCES IN TEXT

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8), is classified to section 6103 of Title 26, Internal Revenue Code.

The Federal Rules of Criminal Procedure, referred to in subsec. (k)(1), (3)(B), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The enactment of the Independent Counsel Reauthorization Act of 1987, referred to in subsec. (k)(1), is the enactment of Pub. L. 100–191, which was approved Dec. 15, 1987.

AMENDMENTS

1996—Subsec. (b)(3)(A). Pub. L. 104–208, § 101(a) [title I, § 118(a), (b)], in second sentence substituted ''for successive 6-month periods'' for ''by 6-months'' and ''independent counsel and the division of the court certify'' for ''employee assigned duties under subsection (*l*)(1)(A)(iii) certifies''.

Subsec. (b)(3)(B). Pub. L. 104–208, § 101(a) [title I, § 118(c)], which directed the amendment of second sentence of subsec. (b)(3)(A) by striking ''such employee'' and inserting ''the independent counsel'' and ''the division of the court'', was executed to introductory provisions of subsec. (b)(3)(B) by substituting ''the independent counsel and the division of the court'' for ''such employee'' to reflect the probable intent of Congress.

1994—Subsec. (b). Pub. L. 103–270, § 3(b), designated existing text as par. (1) and inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 103–270, § 3(c), substituted last sentence for former last sentence which read as follows: ''No such employee may be compensated at a rate exceeding the maximum rate of pay payable for GS–18 of the General Schedule under section 5332 of title 5.''

Subsec. (d)(1). Pub. L. 103–270, § 3(m), inserted at end ''At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel.''

Subsec. (f). Pub. L. 103–270, § 3(e), designated existing provisions as par. (1) and inserted heading, substituted ''shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply'' for ''shall, except where not possible, comply'', inserted at end ''To determine these policies and policies under subsection (*l*)(1)(B), the independent counsel shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Department of Justice.'', and added par. (2).

Subsec. (h)(1)(B). Pub. L. 103–270, § 3(*o*), struck out before period at end '', and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel''.

Subsec. (h)(3). Pub. L. 103–270, § 3(f), added par. (3).

Subsec. (j)(5). Pub. L. 103–270, § 3(d), added par. (5).

Subsec. (*l*). Pub. L. 103–270, § 3(a), added subsec. (*l*).

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (k) for former subsecs. (a) to (g) which related to similar subject matter.

1986—Subsec. (a)(8). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Pub. L. 97–409, § 2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' in section catchline.

Subsec. (a). Pub. L. 97–409, § 2(a)(1), substituted ''independent counsel'' for ''special prosecutor'' wherever appearing and ''independent counsel's'' for ''special prosecutor's''.

Subsec. (a)(10). Pub. L. 97–409, § 6(a), added par. (10).

Subsecs. (b), (c). Pub. L. 97–409, § 2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' wherever appearing.

Subsecs. (d), (e). Pub. L. 97–409, § 2(a)(1), substituted ''independent counsel'' for ''special prosecutor'' and ''independent counsel's'' for ''special prosecutor's'' wherever appearing.

Subsec. (f). Pub. L. 97–409, §§ 2(a)(1)(A), 6(b), substituted ''independent counsel'' for ''special prosecutor'', ''except where not possible'' for ''to the extent that such special prosecutor deems appropriate'', and ''written or other established policies'' for ''written policies''.

Subsec. (g). Pub. L. 97–409, § 6(c), added subsec. (g).

EFFECTIVE DATE OF 1994 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, with transition provisions relating to assignment of employee to certify expenditures and relating to office space, travel and subsistence expenses, rates of compensation, and reporting requirements established or modified by Pub. L. 103–270, see section 7(a)–(e), (g) of Pub. L. 103–270, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, but with the following provisions applicable to previously initiated proceedings pending on Dec. 15, 1987: subsec. (d)(2) (relating to reports by Attorney General on expenditures by independent counsel, except that the first such report shall be made only with respect to expenditures on or after Dec. 15, 1987), subsec. (h)(1)(A) except that the 6-month periods described in subsec. (h)(1)(A) of

this section shall be calculated from Dec. 15, 1987, subsec. (i), subsec. (k) of this section, and 90 days after Dec. 15, 1987, subsec. (j), see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 593, 596, 597 of this title; title 18 section 202.

§ 595. Congressional oversight

(a) OVERSIGHT OF CONDUCT OF INDEPENDENT COUNSEL.—

(1) CONGRESSIONAL OVERSIGHT.—The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(2) REPORTS TO CONGRESS.—An independent counsel appointed under this chapter shall submit to the Congress annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

(b) OVERSIGHT OF CONDUCT OF ATTORNEY GENERAL.—Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Congress with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case:

(1) When the information about the case was received.

(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

(3) Whether an application for the appointment of an independent counsel or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.

(c) INFORMATION RELATING TO IMPEACHMENT.—An independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives, in carrying out the independent counsel's responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1871; amended Pub. L. 97–409, § 2(a)(1), Jan. 3, 1983, 96 Stat. 2139; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1304; Pub. L. 103–270, § 3(g), June 30, 1994, 108 Stat. 734.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–270 substituted ''annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. Such report may omit any matter that in the judgment of the independent counsel should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent counsel has made'' for ''such statements or reports on the activities of such independent counsel as the independent counsel considers appropriate''.

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (c) relating to congressional oversight for former subsecs. (a) to (e) relating to reporting and congressional oversight.

1983—Pub. L. 97–409, § 2(a)(1), substituted ''independent counsel'' for ''special prosecutor'' and ''independent counsel's'' for ''special prosecutor's'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, with transition provision relating to reporting requirements established or modified by Pub. L. 103–270, see section 7(a), (g) of Pub. L. 103–270, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

§ 596. Removal of an independent counsel; termination of office

(a) REMOVAL; REPORT ON REMOVAL.—

(1) GROUNDS FOR REMOVAL.—An independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability),,[1] or any other condition that substantially impairs the performance of such independent counsel's duties.

(2) REPORT TO DIVISION OF THE COURT AND CONGRESS.—If an independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 594(h)(2).

(3) JUDICIAL REVIEW OF REMOVAL.—An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court for the District of Columbia. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action.

[1] So in original.

The independent counsel may be reinstated or granted other appropriate relief by order of the court.

(b) TERMINATION OF OFFICE.—

(1) TERMINATION BY ACTION OF INDEPENDENT COUNSEL.—An office of independent counsel shall terminate when—

(A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

(B) the independent counsel files a final report in compliance with section 594(h)(1)(B).

(2) TERMINATION BY DIVISION OF THE COURT.—The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of such termination, the independent counsel shall file the final report required by section 594(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.

(c) AUDITS.—(1) On or before June 30 of each year, an independent counsel shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that is 90 days after the date on which the office is terminated.

(2) The Comptroller General shall—

(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination; and

(B) report the results to the Committee on the Judiciary, Committee on Governmental Affairs, and Committee on Appropriations of the Senate and the Committee on the Judiciary, Committee on Government Operations, and Committee on Appropriations of the House of Representatives not later than 90 days following the submission of each such statement.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872; amended Pub. L. 97–409, §§ 2(a)(1), 6(d), Jan. 3, 1983, 96 Stat. 2039, 2042; Pub. L. 98–620, title IV, § 402(29)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1304; Pub. L. 103–270, §§ 3(h), (i), 5, June 30, 1994, 108 Stat. 735, 737.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–270, § 5, substituted ''physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability),'' for ''physical disability, mental incapacity''.

Subsec. (b)(2). Pub. L. 103–270, § 3(h), inserted at end ''If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent counsel, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.''

Subsec. (c). Pub. L. 103–270, § 3(i), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''AUDITS.—After the termination of the office of an independent counsel, the Comptroller General shall conduct an audit of the expenditures of that office, and shall submit to the appropriate committees of the Congress a report on the audit.''

1987—Pub. L. 100–191 amended section generally, substituting subsecs. (a) to (c) for former subsecs. (a) and (b) which related to similar subject matter.

1984—Subsec. (a)(3). Pub. L. 98–620 struck out provision requiring the division of the court to cause such an action to be in every way expedited.

1983—Pub. L. 97–409, § 2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' in section catchline.

Subsec. (a)(1). Pub. L. 97–409, §§ 2(a)(1), 6(d), substituted ''independent counsel'' for ''special prosecutor'', ''good cause'' for ''extraordinary impropriety'', and ''independent counsel's'' for ''special prosecutor's''.

Subsecs. (a)(2), (3), (b). Pub. L. 97–409, § 2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' wherever appearing.

CHANGE OF NAME

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, with transition provisions directing that determinations by the division of the court contained in last sentence of subsec. (b)(2) of this section shall, for the office of an independent counsel appointed before June 30, 1994, be required no later than 1 year after June 30, 1994, and at end of each succeeding 1-year period, and transition provisions relating to reporting requirements established or modified by Pub. L. 103–270, see section 7(a), (f), (g) of Pub. L. 103–270, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, but with subsecs. (a)(3) and (c) applicable to previously initiated proceedings pending on Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620,

set out as an Effective Date note under section 1657 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 594 of this title.

§ 597. Relationship with Department of Justice

(a) SUSPENSION OF OTHER INVESTIGATIONS AND PROCEEDINGS.—Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d)(1), and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) PRESENTATION AS AMICUS CURIAE PERMITTED.—Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which an independent counsel participates in an official capacity or any appeal of such a case or proceeding.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872; amended Pub. L. 97–409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1306.)

AMENDMENTS

1987—Pub. L. 100–191 amended section generally, substituting provisions relating to relationship with Department of Justice for substantially similar provisions.

1983—Pub. L. 97–409, § 2(a)(1)(A), substituted ''independent counsel'' for ''special prosecutor'' wherever appearing.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

§ 598. Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

(Added Pub. L. 95–521, title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1873; amended Pub. L. 97–409, §§ 2(a)(1)(A), 7, Jan. 3, 1983, 96 Stat. 2039, 2042; Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1306.)

AMENDMENTS

1987—Pub. L. 100–191 amended section generally, substituting provisions relating to severability for provisions relating to termination of chapter. See section 599 of this title.

1983—Pub. L. 97–409, §§ 2(a)(1)(A), 7, substituted reference to the date of enactment of the Ethics in Government Act Amendments of 1982 for reference to the date of enactment of this chapter and substituted ''independent counsel'' for ''special prosecutor'' wherever appearing.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–191 effective Dec. 15, 1987, and applicable to proceedings initiated and independent counsels appointed on and after Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

§ 599. Termination of effect of chapter

This chapter shall cease to be effective five years after the date of the enactment of the Independent Counsel Reauthorization Act of 1994, except that this chapter shall continue in effect with respect to then pending matters before an independent counsel that in the judgment of such counsel require such continuation until that independent counsel determines such matters have been completed.

(Added Pub. L. 100–191, § 2, Dec. 15, 1987, 101 Stat. 1306; amended Pub. L. 103–270, § 2, June 30, 1994, 108 Stat. 732.)

REFERENCES IN TEXT

The date of the enactment of the Independent Counsel Reauthorization Act of 1994, referred to in text, is the date of enactment of Pub. L. 103–270, which was approved June 30, 1994.

AMENDMENTS

1994—Pub. L. 103–270 substituted ''1994'' for ''1987''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–270 applicable with respect to independent counsels appointed before, on, or after June 30, 1994, see section 7(a) of Pub. L. 103–270, set out as an Effective Date of 1994 Amendment; Transition Provisions note under section 591 of this title.

EFFECTIVE DATE

Section effective Dec. 15, 1987, see section 6 of Pub. L. 100–191, set out as a note under section 591 of this title.

PART III—COURT OFFICERS AND EMPLOYEES

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SENATE REVISION AMENDMENT

Chapter 59 was renumbered as Chapter 57 but without change in its section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1992—Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' as item for chapter 51.

1988—Pub. L. 100–702, title IX, § 901(b), Nov. 19, 1988, 102 Stat. 4663, added item for chapter 44.

1984—Pub. L. 98–473, title II, § 217(b), Oct. 12, 1984, 98 Stat. 2026, added item for chapter 58, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986).

1982—Pub. L. 97–164, title I, § 121(g)(1), Apr. 2, 1982, 96 Stat. 35, substituted ''United States Claims Court'' for ''Court of Claims'' as item for chapter 51.

Pub. L. 97–164, title I, § 122(a), Apr. 2, 1982, 96 Stat. 36, struck out item for chapter 53.

1980—Pub. L. 96–417, title V, § 501(13), Oct. 10, 1980, 94 Stat. 1742, substituted ''Court of International Trade'' for ''Customs Court'' as item for chapter 55.

1978—Pub. L. 95–598, title II, § 233(b), Nov. 6, 1978, 92 Stat. 2667, directed the addition of item for chapter 50, ''Bankruptcy Courts'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1968—Pub. L. 90–578, title I, § 102(a), Oct. 17, 1968, 82 Stat. 1114, substituted ''United States Magistrates'' for ''United States Commissioners'' as item for chapter 43.

1967—Pub. L. 90–219, title II, § 204, Dec. 20, 1967, 81 Stat. 669, added item for chapter 42.

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Sec.
601. Creation; Director and Deputy Director.
602. Employees.
603. Salaries.
604. Duties of Director generally.
605. Budget estimates.
606. Duties of Deputy Director.
607. Practice of law prohibited.
608. Seal.
609. Courts' appointive power unaffected.
610. Courts defined.
611. Retirement of Director.
612. Judiciary Automation Fund.[1]

AMENDMENTS

1989—Pub. L. 101–162, title IV, § 404(b)(2), Nov. 21, 1989, 103 Stat. 1015, added item 612.

1967—Pub. L. 90–219, title II, § 201(b), Dec. 20, 1967, 81 Stat. 668, added item 611.

1959—Pub. L. 86–370, § 5(a)(2), Sept. 23, 1959, 73 Stat. 652, substituted ''Deputy Director'' for ''Assistant Director'' in items 601 and 606.

1949—Act May 24, 1949, ch. 139, § 72a, 63 Stat. 100, inserted an apostrophe after ''Courts'' and struck out comma after ''Courts'' in item 609.

§ 601. Creation; Director and Deputy Director

The Administrative Office of the United States Courts shall be maintained at the seat of government. It shall be supervised by a Director and a Deputy Director appointed and subject to removal by the Chief Justice of the United States, after consulting with the Judicial Conference. The Director and Deputy Director shall be deemed to be officers for purposes of title 5, United States Code.

(June 25, 1948, ch. 646, 62 Stat. 913; Pub. L. 86–370, § 5(a)(1), Sept. 23, 1959, 73 Stat. 652; Pub. L. 101–650, title III, § 307, Dec. 1, 1990, 104 Stat. 5112; Pub. L. 104–317, title VI, § 602, Oct. 19, 1996, 110 Stat. 3857.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C. 1940 ed., § 444 (Mar. 3, 1911, ch. 231, § 302 as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section contains part of section 444 of title 28, U.S.C., 1940 ed. The remainder of said section 444 is incorporated in sections 603, 606 and 608 of this title.

Changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–317 inserted at end ''The Director and Deputy Director shall be deemed to be officers for purposes of title 5, United States Code.''

1990—Pub. L. 101–650 substituted ''Chief Justice of the United States, after consulting with the Judicial Conference'' for ''Supreme Court''.

1959—Pub. L. 86–370 substituted ''Deputy Director'' for ''Assistant Director''.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–370 effective Sept. 23, 1959, see section 7(a) of Pub. L. 86–370.

REFERENCE TO ASSISTANT DIRECTOR DEEMED REFERENCE TO DEPUTY DIRECTOR

Section 5(a)(4) of Pub. L. 86–370 provided that: ''Whenever the Assistant Director of the Administrative Office of the United States Courts is referred to in any other law, such reference shall be deemed to be to the Deputy Director of the Administrative Office of the United States Courts.''

CONTINUATION OF LAW EXISTING ON SEPT. 1, 1948

Section 2(b) of act June 25, 1948, provided that: ''The provisions of title 28, Judiciary and Judicial Procedure, of the United States Code, set out in section 1 of this Act, with respect to the organization of each of the several courts therein provided for and of the Administrative Office of the United States Courts, shall be construed as continuations of existing law, and the tenure of the judges, officers, and employees thereof and of the United States attorneys and marshals and their deputies and assistants, in office on the effective date of this Act [Sept. 1, 1948], shall not be affected by its enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of title 28, as set out in section 1 of this Act, pursuant to his prior appointment: *Provided, however*, That each circuit court of appeals shall, as in said title 28 set out, hereafter be known as a United States court of appeals. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this Act shall result from its enactment.''

§ 602. Employees

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States Courts Personnel Act of 1990.

(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(16)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(d) All functions of other officers and employees of the Administrative Office and all func-

[1] Section catchline amended by Pub. L. 104–106 without corresponding amendment of chapter analysis.

tions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

(June 25, 1948, ch. 646, 62 Stat. 913; Pub. L. 95–539, §5, Oct. 28, 1978, 92 Stat. 2044; Pub. L. 101–474, §5(a), (q), Oct. 30, 1990, 104 Stat. 1099, 1101; Pub. L. 101–650, title III, §325(b)(4), Dec. 1, 1990, 104 Stat. 5121.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §445 (Mar. 3, 1911, ch. 231, §303, as added Aug. 7, 1939, ch. 501, §1, 53 Stat. 1223).

This section contains provisions in section 445 of title 28, U.S.C., 1940 ed., for appointment of employees.

Words ''with the approval of the Supreme Court'' were omitted to relieve the court of the burden of approving appointments which in practice should properly be made by the Director under the supervision of the Judicial Conference of the United States.

The remainder of section 445 of title 28, U.S.C., 1940 ed., is incorporated in sections 603 and 607 of this title.

Changes were made in phraseology.

REFERENCES IN TEXT

The Administrative Office of the United States Courts Personnel Act of 1990, referred to in subsec. (a), is Pub. L. 101–474, Oct. 30, 1990, 104 Stat. 1097, which amended this section and sections 603 and 604 of this title and sections 2301, 2302, 4301, 4501, 4701, 5102, 5108, 5349, 5595, 5596, 8331, 8347, 8401, and 8402 of Title 5, Government Organization and Employees, and enacted provisions set out below. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–474, §5(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.''

Subsec. (b). Pub. L. 101–474, §5(q), and Pub. L. 101–650 amended subsec. (b) identically, substituting ''604(a)(16)(B)'' for ''604(a)(15)(B)''.

1978—Pub. L. 95–539, among other changes, substituted provision authorizing the Director to appoint and fix the compensation of necessary employees in accordance with chapter 51 and subchapter III of chapter 53 of title 5 for provision authorizing the Director, subject to the provisions of the civil service laws, to appoint necessary employees for the Administrative Office and inserted provisions relating to appointing and fixing the compensation of certified interpreters, to obtaining personal services as authorized by section 3109 of title 5, and to transferring to the Director all of the functions of the officers and employees of the Administrative Office and all the functions of the organizational units of the Administrative Office with power in the Director to delegate his authority.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 10 of Pub. L. 95–539 provided that:

''(a) Except as provided in subsection (b), this Act [enacting section 1827 and 1828 of this title, amending this section and sections 603, 604, and 1920 of this title, enacting provisions set out as notes under this section and section 1 of this title, and repealing provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Oct. 28, 1978].

''(b) Section 2 of this Act [enacting sections 1827 and 1828 of this title] shall take effect ninety days after the date of the enactment of this Act [Oct. 28, 1978].''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS PERSONNEL

Sections 1 to 4 and 6 of Pub. L. 101–474 provided that:

''SECTION 1. SHORT TITLE.

''This Act [see References in Text note above and Tables for classification] may be cited as the 'Administrative Office of the United States Courts Personnel Act of 1990'.

''SEC. 2. GENERAL PERSONNEL AUTHORITY.

''The Director of the Administrative Office of the United States Courts (hereinafter in this Act referred to as the 'Director') may appoint, fix the compensation of, assign, and direct such personnel as the Director determines necessary to discharge the duties and functions of the Administrative Office.

''SEC. 3. ESTABLISHMENT OF PERSONNEL MANAGEMENT SYSTEM.

''(a) The Director shall, by regulation, establish a personnel management system for the Administrative Office which provides for the appointment, pay, promotion, and assignment of all employees on the basis of merit, but without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. The system shall apply to all Administrative Office employees except those referred to in section 603 of title 28, United States Code, and shall, at a minimum—

''(1) provide for a schedule of pay rates applicable to all employees; except as provided in paragraph (10), the basic pay of any person appointed under this section shall not exceed the rate of basic pay for level V of the Executive Schedule;

''(2) incorporate pay comparability principles as set forth in section 5301(a) of title 5, United States Code;

''(3) provide for the adjustment of the pay of employees at the same time and in the same percentage amount as rates of basic pay are adjusted for General Schedule and prevailing rate employees, as appropriate;

''(4) establish procedures for employee evaluations, the granting of periodic pay adjustments, incentive awards, and resolution of employee grievances;

''(5) establish procedures for disciplinary actions, including reduction in grade or pay, suspension, and removal, based on unacceptable performance or misconduct, except that—

''(A) such procedures shall be consistent with—

''(i) section 4303 of title 5, United States Code, to the extent that they relate to adverse actions based on unacceptable performance; and

''(ii) chapter 75 of title 5, United States Code, to the extent that they relate to adverse actions covered by such chapter; and

''(B) the Director may exempt from these procedures positions of a confidential or policy-determining character, not to exceed 4 percent of the authorized positions of the Administrative Office;

''(6) establish procedures for premium pay (including overtime), except that the Director may at his discretion implement flexible and compressed work schedules and may exempt the hours constituting such schedules from premium pay to the extent he deems necessary to implement such schedules;

''(7) include the principles set forth in section 2301(b) of title 5, United States Code;

''(8) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code;

''(9) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; the Director must promulgate regulations providing procedures for resolving complaints of discrimination by employees and applicants for employment;

''(10) provide for the basic pay of not more than 5 percent of the authorized positions of the Administrative Office (excluding the positions referred to in section 603 of title 28, United States Code) to be set at rates not to exceed the rate of basic pay for positions at level IV of the Executive Schedule; the aggregate pay (including basic pay and incentive awards) of any individual whose basic pay is set under this subsection may not exceed the salary of the Director; and

''(11) in the case of any individual who would be a preference eligible in the executive branch, provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.

''(b) The Director may apply the provisions of sections 5723 and 6304(f) of title 5, United States Code, to the positions referred to in subsection (a)(10) and in section 603 of title 28, United States Code, including the Deputy Director.

''(c) The Director may provide for incentive awards for the positions referred to in section 603 of title 28, United States Code, including the Deputy Director, subject to the aggregate pay limitation in subsection (a)(10).

''(d) The Chief Justice of the United States or the Judicial Conference of the United States may grant incentive awards to the Director, except that the Director's aggregate pay for any fiscal year, including salary and incentive awards, may not exceed the salary of a United States circuit judge. The Chief Justice or the Judicial Conference may authorize application of section 5723 of title 5, United States Code, to the Director.

''(e) The Director may develop and conduct programs to meet the short- and long-range training needs of the agency.

''(f) Notwithstanding any other provision of law, an individual who is an employee of the Administrative Office on the day before the effective date of this section and who, as of that day, was entitled to—

''(1) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

''(2) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code, or

''(3) file an appeal with the Equal Employment Opportunity Commission under part 1613 of title 29 of the Code of Federal Regulations,

shall continue to be entitled to file such appeal so long as the individual remains an employee of the Administrative Office, except that this provision shall not apply to employees in positions referred to in section 603 of title 28, United States Code, or in positions of a confidential or policy-determining character referred to in subsection (a)(10).

''(g) Nothing in this Act shall be construed to abolish or diminish any right or remedy granted to employees of or applicants for employment in the Administrative Office by any law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition, except that, with respect to any such employees and applicants for employment, any authority granted under any such law to the Equal Employment Opportunity Commission, the Office of Personnel Management, the Merit Systems Protection Board, or any other agency in the executive branch, shall be exercised by the Administrative Office.

''SEC. 4. NONCOMPETITIVE APPOINTMENTS.

''(a) Notwithstanding any other provision of law, any employee of the Administrative Office who has completed at least 1 year of continuous service under a nontemporary appointment under the personnel system established pursuant to section 3 acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

''(b) A period of continuous service performed as a nontemporary employee of the Administrative Office immediately before the personnel system under section 3 takes effect shall, for purposes of subsection (a), be treated as if it had been performed under such system.

''SEC. 6. AUTHORIZATION.

''There are authorized to be appropriated for fiscal year 1990 and for each fiscal year thereafter such sums as may be necessary to carry out the provisions of this Act.''

CONTRACT LIMITATIONS

Section 11 of Pub. L. 95–539 provided that: ''Any contracts entered into under this Act or any of the amendments made by this Act [enacting sections 1827 and 1828 of this title, amending this section and sections 603, 604, and 1920 of this title, enacting provisions set out as notes under this section and section 1 of this title, and repealing provisions set out as a note under this section] shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.''

EMPLOYMENT OF EXPERTS OR CONSULTANTS; RATES

Pub. L. 86–370, § 5(b), Sept. 23, 1959, 73 Stat. 652, authorized the Director of the Administrative Office of the United States Courts to procure the temporary or intermittent services of experts or consultants, prior to repeal by Pub. L. 95–539, § 8, Oct. 28, 1978, 92 Stat. 2044.

§ 603. Salaries

The salary of the Director shall be the same as the salary of a district judge. Notwithstanding any other provision of law, the Director shall not be deemed to be an ''employee'' for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Director shall be 92 percent of the salary of the Director. The salaries of six additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.

(June 25, 1948, ch. 646, 62 Stat. 913; Oct. 15, 1949, ch. 695, §§ 5(b), 6(b), 63 Stat. 881; Oct. 31, 1951, ch. 655, § 43(b), 65 Stat. 725; Pub. L. 86–370, § 5(a)(1), Sept. 23, 1959, 73 Stat. 652; Pub. L. 88–426, title IV, § 403(g), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90–206, title II, § 213(d), Dec. 16, 1967, 81 Stat. 635; Pub. L. 95–539, § 6, Oct. 28, 1978, 92 Stat. 2044; Pub. L. 100–202, § 101(a) [title IV, § 409], Dec. 22, 1987, 101 Stat. 1329, 1329–27; Pub. L. 100–459, title IV, § 406, Oct. 1, 1988, 102 Stat. 2213; Pub. L. 101–474, § 5(b), Oct. 30, 1990, 104 Stat. 1099.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 444, 445 (Mar. 3, 1911, ch. 231, §§ 302, 303, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section consolidates parts of title 28, U.S.C., 1940 ed., §§444, 445. The remainder of said sections are incorporated in sections 601, 602, 606, 607, and 608 of this title.

The figure ''$9,376.50'' was substituted for ''$7,500'' as the salary of the Assistant Director in conformity with section 934 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

The [former] figure, ''$7,500,'' with respect to salary of the Assistant Director, was restored by Senate amendment. See 80th Congress Senate Report No. 1559, amendments Nos. 15 and 65.

AMENDMENTS

1990—Pub. L. 101–474 inserted after first sentence ''Notwithstanding any other provision of law, the Director shall not be deemed to be an 'employee' for the purpose of subchapter I of chapter 63 of title 5. The salary of the Deputy Director shall be 92 percent of the salary of the Director.'' and struck out ''of the Deputy Director and'' after ''The salaries''.

1988—Pub. L. 100–459 substituted ''six'' for ''three''.

1987—Pub. L. 100–202 substituted ''The salaries of the Deputy Director and of three additional positions shall be fixed by the Director at rates not to exceed the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5'' for ''The salary of the Deputy Director shall be in the same amount as the annual rate of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5''.

1978—Pub. L. 95–539 struck out provision authorizing the Director to fix the compensation of Administrative Office employees in accordance with the Classification Act of 1949.

1967—Pub. L. 90–206 increased salaries of Director and Deputy Director from $27,000 and $26,000 per year to a salary equivalent to a United States district judge and the same amount of basic pay for positions at level V of the Executive Schedule under section 5316 of title 5, respectively.

1964—Pub. L. 88–426 substituted ''$27,000 for ''$15,000 and ''$26,000'' for ''$12,500''.

1959—Pub. L. 86–370 substituted ''Deputy Director'' for ''Assistant Director''.

1951—Act Oct. 31, 1951, substituted reference in second paragraph to the Classification Act of 1949 for reference to former Classification Act of 1923.

1949—Act Oct. 15, 1949, increased salaries of Director from $10,000 to $15,000 per annum and Assistant Director from $7,500 to $12,500 per annum.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95–539, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 220(a)(3) of title II of Pub. L. 90–206 provided, except as otherwise expressly provided, that: ''Sections 213(d) and (e) [amending this section and section 792 of this title], 214(j), (k), (*l*), (n), and (*o*) [amending sections 60j and 61–1 of Title 2, The Congress, and section 5533 of Title 5, Government Organization and Employees], 215 [amending sections 5314 to 5316 of Title 5] 217 [amending section 5545 of Title 5], 219 [amending sections 136a and 136a–1 of Title 2, sections 42a and 51a of former Title 31, Money and Finance, sections 162a, 166b, and 166b–1 of Title 40, Public Buildings, Property, and Works, and section 39a of Title 44, Public Printing and Documents], and 224(c) [amending material set out as a note under section 102 of Title 2], shall become effective at the beginning of the first pay period which begins on or after the date of enactment of this title [Dec. 16, 1967].''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–426 effective on first day of first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88–426, see section 501(a) of Pub. L. 88–426.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–370 effective Sept. 23, 1959, see section 7(a) of Pub. L. 86–370.

EFFECTIVE DATE OF 1949 AMENDMENT

The increased compensation provided for by act Oct. 15, 1949, took effect on first day of first pay period which began after Oct. 15, 1949, see section 9 of act Oct. 15, 1949.

SALARY INCREASES

1987—Salaries of Director and Deputy Director increased respectively to $89,500 and $72,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of Director and Deputy Director increased respectively to $54,500 and $48,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

1969—Salaries of Director and Deputy Director increased respectively from $30,000 and $28,000 to $40,000 and $36,000 per annum, commencing February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2.

1967—Pub. L. 90–206, title II, §213(a), Dec. 16, 1967, 81 Stat. 635, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision of a section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of Title 18, United States Code, the third sentence of section 603, sections 671 to 675, inclusive, or section 604(a)(5), of Title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by section 202(a) of this title [amending section 5332(a) of Title 5, Government Organization and Employees] in corresponding rates of compensation for officers and employees subject to section 5332 of Title 5, United States Code. The rates of basic compensation of officers and employees holding ungraded positions and whose salaries are fixed pursuant to such section 604(a)(5) may be increased by the amounts reflecting the respective applicable increases provided by section 202(a) of this title [amending section 5332(a) of Title 5] in corresponding rates of compensation for officers and employees subject to section 5332 of Title 5, United States Code.''

Section 213(a) of Pub. L. 90–206 effective as of beginning of first pay period which begins on or after Oct. 1, 1967, see section 220(a)(2) of Pub. L. 90–206, set out as a note under section 5332 of Title 5.

1966—Pub. L. 89–504, title II, §202(a), July 18, 1966, 80 Stat. 293, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18, United States Code, the third sentence of section 603, sections 671 to 675, inclusive, or section 604(a)(5), of title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by section 102(a) of title I of this Act [amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees] in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended. The rates of basic compensation of officers and employees holding ungraded positions and whose salaries are fixed pursuant to such section 604(a)(5) may be increased by the amounts reflecting the respective applicable increases provided by section 102(a) of title I of this Act in corresponding rates of compensation for officers and em-

ployees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

Section 203 of title II of Pub. L. 89–504 provided that: ''This title shall become effective as follows:

''(1) This section and section 201 [enacting provisions set out as a note under section 1 of this title] shall become effective on the date of enactment of this Act [July 18, 1966],

''(2) Section 202 [enacting provisions set out as note above and under sections 604 and 753 of this title] shall become effective on the first day of the first pay period which begins on or after July 1, 1966.''

1965—Pub. L. 89–301, §12(a), Oct. 29, 1965, 79 Stat. 1121, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)) section 3656 of Title 18, United States Code, the third sentence of section 603, sections 671 to 675, inclusive, or section 604(a)(5), of Title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by section 2(a) of this Act [amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees] in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]. The rates of basic compensation of officers and employees holding ungraded positions and whose salaries are fixed pursuant to such section 604(a)(5) [section 604(a)(5) of this title] may be increased by the amounts reflecting the respective applicable increases provided by section 2(a) of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5].''

1964—Pub. L. 88–426, title IV, §402(a), Aug. 14, 1964, 78 Stat. 433, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18, United States Code, the third sentence of section 603, sections 672 to 675, inclusive, or section 604(a)(5), of title 28, United States Code, insofar as the latter section applies to graded positions, are hereby increased by amounts reflecting the respective applicable increases provided by title I of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees]. The rates of basic compensation of officers and employees holding ungraded positions and whose salaries are fixed pursuant to section 604(a)(5) [section 604(a)(5) of this title] may be increased by the amounts reflecting the respective applicable increases provided by title I of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5].''

1962—Pub. L. 87–793, title VI, §1004(a), Oct. 11, 1962, 76 Stat. 866, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18 of the United States Code, the third sentence of section 603, section 604(a)(5), or section 672 to 675 inclusive, of title 28 of the United States Code, or section 107(a)(6) of the Act of July 31, 1956, as amended (5 U.S.C. 2206(a)(6)) [section 2206(a)(b) of former Title 5, Executive Departments and Government Officers and Employees], are hereby increased by two amounts, the first amount to be effective for the period beginning as of the first day of the first pay period which begins on or after the date of enactment of this Act [Oct 11, 1962], and ending immediately prior to the first day of the first pay period which begins on or after January 1, 1964, and the second amount to be effective on the first day of the first pay period which begins on or after January 1, 1964, and thereafter, which reflect the respective applicable increases provided by title II of this part in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

1960—Pub. L. 86–568, title I, §116(a), July 1, 1960, 74 Stat. 303, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed by or pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. 102(a)(2)), section 3656 of title 18 of the United States Code, the third sentence of section 603, section 604(a)(5), or sections 672 to 675, inclusive, of title 28 of the United States Code, or section 107(a)(6) of the Act of July 31, 1956, as amended (5 U.S.C. 2206(a)(6)), are hereby increased by amounts equal to the increases provided by section 612 [112] of this part [amending former section 1113(b) of Title 5] in corresponding rates of compensation paid to officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

Pub. L. 87–367, title III, §302(d), Oct. 4, 1961, 75 Stat. 793, provided that: ''On and after the effective date of this subsection, section 116(a) of the Federal Employees Salary Increase Act of 1960 (Part B of the Act of July 1, 1960; 74 Stat. 303; Public Law 86–568) [set out as a note above] shall not be applicable with respect to the Deputy Director of the Administrative Office of the United States Courts.''

1958—Pub. L. 85–462, §3(a), June 20, 1958, 72 Stat. 207, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C. (a)(2)), section 3656 of title 18 of the United States Code, the third sentence of section 603, section 604(a)(5), or sections 672 to 675 inclusive, of title 28 of the United States Code are hereby increased by amounts equal to the increases provided by section 2 of this Act in corresponding rates of compensation paid to officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

Section 2 of this Act, referred to above, amended section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees, to increase compensation rates.

1955—Act June 28, 1955, ch. 189, §3(a), 69 Stat. 175, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed pursuant to paragraph (2) of subdivision a of section 62 of the Bankruptcy Act (11 U.S.C., sec. 102(a)(2)), section 3656 of title 18 of the United States Code, the second and third sentences of section 603, section 604(a)(5), or sections 672 to 675, inclusive, of title 28 of the United States Code are hereby increased by amounts equal to the increases provided by section 2 of this Act in corresponding rates of compensation paid to officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

1951—Act Oct. 24, 1951, ch. 554, §1(c), 65 Stat. 613, provided that: ''The rates of basic compensation of officers and employees in or under the judicial branch of the Government whose rates of compensation are fixed pursuant to section 62(2) of the Bankruptcy Act (11 U.S.C. §102(a)(2)), section 3656 of title 18 of the United States Code the second and third sentences of section 603, section 604(5), or sections 672 to 675, inclusive, of title 28 of

the United States Code, or who are appointed pursuant to section 792(b) of title 28 of the United States Code, are hereby increased by amounts equal to the increases provided by subsections (a) and (b) in corresponding rates of compensation paid to officers and employees subject to the Classification Act of 1949 [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

REFERENCE TO ASSISTANT DIRECTOR DEEMED REFERENCE TO DEPUTY DIRECTOR

References in any other law to Assistant Director of the Administrative Office of the United States Courts deemed to be reference to the Deputy Director of the Administrative Office of the United States Courts, see note set out under section 601 of this title.

§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) Supervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts;

(2) Examine the state of the dockets of the courts; secure information as to the courts' need of assistance; prepare and transmit semiannually to the chief judges of the circuits, statistical data and reports as to the business of the courts;

(3) Submit to the annual meeting of the Judicial Conference of the United States, at least two weeks prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under paragraph (a)(2) of this section, and the Director's recommendations, which report, data and recommendations shall be public documents.

(4) Submit to Congress and the Attorney General copies of the report, data and recommendations required by paragraph (a)(3) of this section;

(5) Fix the compensation of clerks of court, deputies, librarians, criers, messengers, law clerks, secretaries, stenographers, clerical assistants, and other employees of the courts whose compensation is not otherwise fixed by law;

(6) Determine and pay necessary office expenses of courts, judges, and those court officials whose expenses are by law allowable, and the lawful fees of United States Commissioners;

(7) Regulate and pay annuities to widows and surviving dependent children of justices and judges of the United States, judges of the United States Court of Federal Claims, bankruptcy judges, United States magistrates, Directors of the Federal Judicial Center, and Directors of the Administrative Office, and necessary travel and subsistence expenses incurred by judges, court officers and employees, and officers and employees of the Administrative Office, and the Federal Judicial Center, while absent from their official stations on official business, without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5, except that the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;

(8) Disburse, directly or through the several United States marshals, moneys appropriated for the maintenance and operation of the courts;

(9) Establish pretrial services pursuant to section 3152 of title 18, United States Code;

(10)(A) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, supplies, and other personal property for the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)); (B) provide or make available readily to each court appropriate equipment for the interpretation of proceedings in accordance with section 1828 of this title; and (C) enter into and perform contracts and other transactions upon such terms as the Director may deem appropriate as may be necessary to the conduct of the work of the judicial branch of Government (except the Supreme Court unless otherwise provided pursuant to paragraph (17)), and contracts for nonpersonal services providing pretrial services, agencies, for the interpretation of proceedings, and for the provision of special interpretation services pursuant to section 1828 of this title may be awarded without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5);

(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the offices providing pretrial services, and their clerical and administrative personnel;

(12) Provide accommodations for the courts, the Federal Judicial Center, the offices providing pretrial services and their clerical and administrative personnel;

(13) Lay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts, and all other pertinent data relating to such courts;

(14) Pursuant to section 1827 of this title, establish a program for the certification and utilization of interpreters in courts of the United States;

(15) Pursuant to section 1828 of this title, establish a program for the provision of special interpretation services in courts of the United States;

(16)(A) In those districts where the Director considers it advisable based on the need for interpreters, authorize the full-time or part-time employment by the court of certified interpreters; (B) where the Director considers it advisable based on the need for interpreters, appoint certified interpreters on a full-time or part-time basis, for services in various courts when he determines that such appointments will result in the economical provision of interpretation services; and (C) pay out of moneys appropriated for the judiciary interpreters' salaries, fees, and expenses, and other costs which may accrue in accordance with the provisions of sections 1827 and 1828 of this title;

(17) In the Director's discretion, (A) accept and utilize voluntary and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5, United States Code; and (B) accept, hold, administer, and utilize gifts and bequests of personal property for the purpose of aiding or facilitating the work of the judicial branch of Government, but gifts or bequests of money shall be covered into the Treasury;

(18) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;

(19) Regulate and pay annuities to bankruptcy judges and United States magistrates in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988;

(20) Periodically compile—

(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

(B) the rules which are prescribed under section 372(c)(11) of this title; and

(C) the orders which are required to be publicly available under section 372(c)(15) of this title;

so as to provide a current record of such rules and orders;

(21) Establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior;

(22) Receive and expend, either directly or by transfer to the United States Marshals Service or other Government agency, funds appropriated for the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;

(23) Regulate and pay annuities to judges of the United States Court of Federal Claims in accordance with section 178 of this title; and[1]

(24)[2] Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.[3]

(24)[2] Lay before Congress, annually, statistical tables that will accurately reflect the business imposed on the Federal courts by the savings and loan crisis.

(b) The clerical and administrative personnel of the courts shall comply with all requests by the Director for information or statistical data as to the state of court dockets.

(c) Inspection of court dockets outside the continental United States may be made through United States officials residing within the jurisdiction where the inspection is made.

(d) The Director, under the supervision and direction of the conference, shall:

(1) supervise all administrative matters relating to the offices of the United States magistrates;

(2) gather, compile, and evaluate all statistical and other information required for the performance of his duties and the duties of the conference with respect to such officers;

(3) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the various United States magistrates, including (A) the number of matters in which the parties consented to the exercise of jurisdiction by a magistrate, (B) the number of appeals taken pursuant to the decisions of magistrates and the disposition of such appeals, and (C) the professional background and qualifications of individuals appointed under section 631 of this title to serve as magistrate;

(4) prepare and distribute a manual, with annual supplements and periodic revisions, for the use of such officers, which shall set forth their powers and duties, describe all categories of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively, and impartially.

(e) The Director may promulgate appropriate rules and regulations approved by the conference and not inconsistent with any provision of law, to assist him in the performance of the duties conferred upon him by subsection (d) of this section. Magistrates shall keep such records and make such reports as are specified in such rules and regulations.

(f) The Director may make, promulgate, issue, rescind, and amend rules and regulations (including regulations prescribing standards of conduct for Administrative Office employees) as may be necessary to carry out the Director's functions, powers, duties, and authority. The Director may publish in the Federal Register such rules, regulations, and notices for the judicial branch of Government as the Director determines to be of public interest; and the Director of the Federal Register hereby is authorized to accept and shall publish such materials.

(g)(1) When authorized to exchange personal property, the Director may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired, but any transaction carried out under the authority of this subsection shall be evidenced in writing.

(2) The Director hereby is authorized to enter into contracts for public utility services and related terminal equipment for periods not exceeding ten years.

(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

[1] So in original. The word "and" probably should not appear.

[2] So in original. There are two pars. (24).

[3] So in original. The period probably should be "; and".

(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.

(h)(1) The Director shall, out of funds appropriated for the operation and maintenance of the courts, provide facilities and pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference under section 372 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title. Administrative and professional assistance from the Administrative Office of the United States Courts may be requested by each judicial council and the Judicial Conference for purposes of discharging their duties under section 372 of this title.

(2) The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under section 372(c) of this title, indicating the general nature of such complaints and the disposition of those complaints in which action has been taken.

(June 25, 1948, ch. 646, 62 Stat. 914; Aug. 3, 1956, ch. 944, §3, 70 Stat. 1026; Pub. L. 90–219, title II, §203(a)–(c), Dec. 20, 1967, 81 Stat. 669; Pub. L. 90–578, title II, §201, Oct. 17, 1968, 82 Stat. 1114; Pub. L. 92–397, §4, Aug. 22, 1972, 86 Stat. 580; Pub. L. 93–619, title II, §204, Jan. 3, 1975, 88 Stat. 2089; Pub. L. 95–539, §§3, 4, Oct. 28, 1978, 92 Stat. 2043; Pub. L. 95–598, title II, §225, Nov. 6, 1978, 92 Stat. 2664; Pub. L. 96–82, §5, Oct. 10, 1979, 93 Stat. 645; Pub. L. 96–458, §5, Oct. 15, 1980, 94 Stat. 2040; Pub. L. 96–523, §1(c)(1), Dec. 12, 1980, 94 Stat. 3040; Pub. L. 97–267, §7, Sept. 27, 1982, 96 Stat. 1139; Pub. L. 99–554, title I, §116, Oct. 27, 1986, 100 Stat. 3095; Pub. L. 100–185, §2, Dec. 11, 1987, 101 Stat. 1279; Pub. L. 100–659, §6(a), Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100–702, title IV, §402(a), title X, §§1008, 1010, 1011, 1020(a)(2), Nov. 19, 1988, 102 Stat. 4650, 4667, 4668, 4671; Pub. L. 101–474, §5(r), Oct. 30, 1990, 104 Stat. 1101; Pub. L. 101–647, title XXV, §2548, Nov. 29, 1990, 104 Stat. 4888; Pub. L. 101–650, title III, §§306(e)(1), 325(c)(1), Dec. 1, 1990, 104 Stat. 5111, 5121; Pub. L. 102–572, title V, §503, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4513, 4516.)

HISTORICAL AND REVISION NOTES

Based on sections 726–1 and 726a of title 18, U.S.C., 1940 ed., Criminal Code and Criminal Procedure, and sections 1130(a)(b) and 1131 of title 26, U.S.C., 1940 ed., Internal Revenue Code, title 28, U.S.C., 1940 ed., §§9, 128, 222a, 245, 268a, 278a, 302–306, 374b, 446, 447, 450, 544, 545, 547, 557, 558, 560, 561, 561a, 562, 563, 565, 566, 595, and 596 and sections 11–204 and 11–403, District of Columbia Code, 1940 ed. (R.S. §§1075, 1085; Mar. 3, 1891, ch. 517, §§2, 9, 26 Stat. 826, 829; Feb. 9, 1893, ch. 74, §4, 27 Stat. 435; July 30, 1894, ch. 172, §1, 28 Stat. 160; Mar. 3, 1901, ch. 854, §224, 31 Stat. 1224; June 30, 1902, ch. 1329, 32 Stat. 528; Mar. 3, 1905, ch. 1487, 33 Stat. 1259; Mar. 3, 1911, ch. 231, §5, 36 Stat. 1088; Mar. 3, 1911, ch. 231, §118a, as added June 17, 1930, ch. 509, 46 Stat. 774; Mar. 3, 1911, ch. 231, §118b, as added Feb. 17, 1936, ch. 75, 49 Stat. 1140; Mar. 3, 1911, ch. 231, §§140, 163, 171, 189–193, 291, 36 Stat. 1136, 1140, 1141, 1143, 1167; Mar. 3, 1911, ch. 231, §§304, 305, 308, as added Aug. 7, 1939, ch. 501, §1, 53 Stat. 1223; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 26, 1919, ch. 49, §§1, 2, 3, 4, 5, 7, 8, 40 Stat. 1182; July 19, 1919, ch. 24, §1, 41 Stat. 210; Nov. 4, 1919, ch. 93, §1, 41 Stat. 338; Feb. 11, 1921, ch. 46, 41 Stat. 1099; Feb. 22, 1921, ch. 70, §7, 41 Stat. 1144; Mar. 4, 1921, ch. 161, 41 Stat. 1412; June 1, 1922, ch. 204, title II, 42 Stat. 616; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1084; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 28, 1924, ch. 204, title II, 43 Stat. 221; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1030; Apr. 29, 1926, ch. 195, title II, 44 Stat. 346, 347; May 21, 1928, ch. 659, 45 Stat. 645; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475; June 16, 1930, ch. 494, 46 Stat. 589; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Apr. 27, 1938, ch. 180, title II, §1, 52 Stat. 264; Feb. 10, 1939, ch. 2, §§1130(a)(b), 1131, 53 Stat. 162, 163; June 29, 1939, ch. 248, title II, 53 Stat. 902; May 14, 1940, ch. 189, titles III, IV, 54 Stat. 204, 209, 210; June 28, 1941, ch. 258, title IV, 55 Stat. 300–302; July 2, 1942, ch. 472, title IV, 56 Stat. 503, 504; June 28, 1943, ch. 173, title II, §201, 57 Stat. 242, 243; June 26, 1944, ch. 277, title II, §201, 58 Stat. 357; Dec. 7, 1944, ch. 522, §1, 58 Stat. 796; May 21, 1945, ch. 129, titles II, IV, 59 Stat. 184, 199; July 5, 1946, ch. 541, title IV, 60 Stat. 478, 479).

For purposes of uniformity, all provisions of law governing the regulation and allowance of office, travel, and subsistence expenses of all officers and employees of the courts, except those provisions relating to Supreme Court officers and employees, are incorporated in subsection (a)(6)(7) of this section. Likewise the provisions respecting the compensation of court officers and employees, except those of the Supreme Court, are incorporated in subsection (a)(5). In each instance the power to fix and determine such salaries and expenses is transferred to the Director of the Administrative Office of the United States Courts. This change is in conformity with the Administrative Office Act 1939 included in this chapter.

Compensation of bailiffs however is provided by sections 713 and 755 of this title and that of court reporters by section 753 of this title.

Salaries and travel expenses of Court of Claims Commissioners are covered by section 792 of this title.

The language ''and the lawful fees of United States Commissioners'' in subsection (a)(6) and ''the offices of the United States Commissioners'' in subsection (a)(9) is new. It conforms with sections 633, 636 and 639 of this title.

Subsection (a)(5)(7) covers the provisions of section 726–1 and 726a of title 18, U.S.C., 1940 ed., which provided that probation officers' salaries should not be less than $1,800 nor more than $3,600 per annum and their traveling expenses should not exceed more than 4 cents per mile.

Words ''and officers and employees of the Administrative Office'' were added in subsection (a)(7) to expressly authorize travel and subsistence expenses of such officers and employees.

The power to fix such pay and allowances is transferred to the Director as above indicated, and conforms with the Administrative Office Act of 1939. For further explanation of the general supervision of probation officers, see reviser's note under section 3654, H. Rept. to accompany H.R. 3190 for revision of title 18, U.S.C.

Subsection (a)(8) covers the provisions of section 1131 of title 26, U.S.C. 1940 ed. Such section 1131 authorized the Tax Court, successor to the Board of Tax Appeals, to make expenditures for personal services, rent, law books, reference books, periodicals, and provided that all expenditures should be paid out of appropriations for the Tax Court, on itemized vouchers approved by the court.

Two references to ''officials and employees covered by this chapter'' were changed to ''clerical and administrative personnel,'' following the language of paragraph (a)(1), conferring general power to supervise such personnel as respects administrative matters.

Similar language was used in paragraph (b) instead of ''The clerks of the district courts, their deputies and assistants, and all other employees of said courts.''

The provisions of section 374b of title 28, U.S.C., 1940 ed., based on successive acts relating to classification and compensation of secretaries and law clerks were omitted as temporary and unnecessary in revision, in

view of subsection (a)(5) of this section under which the salaries of all personnel are necessarily limited by current appropriation acts.

For increases in basic rates of compensation for other judicial officers and employees see, also, section 521 of Act June 30, 1945, ch. 212.

The designation ''senior circuit judges'' was changed to ''chief judges of the circuits'' in conformity with section 45 of this title.

Provisions of section 11–204 of District of Columbia Code, 1940 ed., relating to appointment of clerk of the United States Court of Appeals for the District of Columbia, and deputy clerk, crier, and messenger thereof, and the provisions relating to accounting for fees, are incorporated in sections 711 and 713 of this title. Provisions of said section, requiring the clerk of such court to give bond, were omitted as covered by section 952 of this title. Provisions of said section, relating to regulation of clerk's fees by such court were omitted so as to render uniform the method of such regulation as prescribed by section 1913 of this title, and the provisions of said section, placing a maximum of five hundred dollars per year on the office expenditures of the clerk of such court, were omitted as inconsistent with this consolidated section.

For distribution of other provisions of sections on which this section is based, see Distribution Table.

Changes were made in phraseology and arrangement.

SENATE REVISION AMENDMENTS

By Senate amendment, all provisions relating to the Tax Court were eliminated, therefore, as finally enacted, sections 1130(a)(b) and 1131 of Title 26, U.S.C., Internal Revenue Code [1940 ed.], did not constitute part of the source of this section. However, no change in the text of the section was necessary. See 80th Congress Senate Report No. 1559.

As finally enacted, part of act July 9, 1947, ch. 211, title IV, 61 Stat. 304, 305, which was classified to title 28, U.S.C., 1946 ed., § 374b, became one of the sources of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

REFERENCES IN TEXT

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (a)(19), is section 2(c) of Pub. L. 100–659, Nov. 15, 1988, 102 Stat. 3916, which is set out as a note under section 377 of this title.

AMENDMENTS

1992—Subsec. (a)(7), (23). Pub. L. 102–572, § 902(b)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (g)(3). Pub. L. 102–572, § 503, added par. (3).

1990—Subsec. (a)(7). Pub. L. 101–650, § 325(c)(1), amended Pub. L. 100–702, § 1011. See 1988 Amendment note below.

Pub. L. 101–650, § 306(e)(1)(B)(i), inserted ''judges of the United States Claims Court,'' before ''bankruptcy judges''.

Subsec. (a)(19). Pub. L. 101–474, § 5(r), and Pub. L. 101–650, § 306(e)(1)(A), made identical technical amendment to directory language of Pub. L. 100–702, § 402(a)(1). See 1988 Amendment note below.

Subsec. (a)(23). Pub. L. 101–650, § 306(e)(1)(B)(iii), added par. (23). Former par. (23) redesignated (24).

Pub. L. 101–474, § 5(r), and Pub. L. 101–650, § 306(e)(1)(A), made identical technical amendments to directory language of Pub. L. 100–702, § 402(a)(1). See 1988 Amendment note below.

Subsec. (a)(24). Pub. L. 101–650, § 306(e)(1)(B)(ii), redesignated par. (23), relating to performance of other duties, as (24).

Pub. L. 101–647 added par. (24) relating to statistical tables.

1988—Subsec. (a)(2). Pub. L. 100–702, § 1020(a)(2), substituted ''semiannually'' for ''quarterly''.

Subsec. (a)(7). Pub. L. 100–702, § 1011, as amended by Pub. L. 101–650, § 325(c)(1), which directed amendment of par. (7) ''by [sic] at the end the following: 'without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5, except that the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;' '' was executed by inserting the new language after the comma at the end to reflect the probable intent of Congress.

Pub. L. 100–659, § 6(a)(1), inserted ''bankruptcy judges, United States magistrates,'' after ''United States,''.

Subsec. (a)(14), (15). Pub. L. 100–702, § 1008(1), redesignated par. (14), relating to provision of special interpretation services in courts of United States, as (15). Former par. (15) redesignated (16).

Subsec. (a)(16), (17). Pub. L. 100–702, § 1008(1), redesignated pars. (15) and (16) as (16) and (17), respectively. Former par. (17) redesignated (18).

Subsec. (a)(18). Pub. L. 100–702, § 1008(1), redesignated par. (17) as (18). Former par. (18), as added by Pub. L. 100–659, redesignated (19).

Pub. L. 100–659, § 6(a)(3), added par. (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 100–702, § 1008(2), redesignated par. (19), as added by Pub. L. 100–702, § 402(a)(2), as (20).

Pub. L. 100–702, § 402(a), as amended by Pub. L. 101–474, § 5(r), and Pub. L. 101–650, § 306(e)(1)(A), redesignated par. (19), relating to performance of other duties, as (23) and added par. (19) relating to compilation of rules and orders.

Pub. L. 100–659, § 6(a)(2), redesignated par. (18), relating to performance of other duties, as (19).

Subsec. (a)(20). Pub. L. 100–702, § 1008(2), redesignated par. (19), as added by Pub. L. 100–702, § 402(a)(2), as (20).

Subsec. (a)(21). Pub. L. 100–702, § 1008(2), added par. (21).

Subsec. (a)(22). Pub. L. 100–702, § 1010, added par. (22).

Subsec. (a)(23). Pub. L. 100–702, § 402(a)(1), as amended by Pub. L. 101–474, § 5(r), and Pub. L. 101–650, § 306(e)(1)(A), redesignated par. (19), relating to performance of other duties, as (23).

1987—Subsec. (a)(17), (18). Pub. L. 100–185 added par. (17) and redesignated former par. (17) as (18).

1986—Subsec. (f). Pub. L. 99–554 struck out subsec. (f) as added by Pub. L. 99–598, § 225(b), which related to the Director naming qualified persons to membership on the panel of trustees, their number, qualifications, removal, etc.

1982—Subsec. (a)(9). Pub. L. 97–267, § 7(1), struck out ''agencies'' after ''pretrial services''.

Subsec. (a)(10). Pub. L. 97–267, § 7(2), substituted ''providing pretrial services'' for ''for pretrial services agencies''.

Subsec. (a)(11). Pub. L. 97–267, § 7(3), substituted ''offices providing pretrial services'' for ''pretrial service agencies''.

Subsec. (a)(12). Pub. L. 97–267, § 7(4), substituted ''offices providing pretrial services'' for ''pretrial services agencies''.

1980—Subsec. (a)(16)(A). Pub. L. 96–523 inserted ''(b)'' after ''3102''.

Subsec. (h). Pub. L. 96–458 added subsec. (h).

1979—Subsec. (d)(3). Pub. L. 96–82 added cls. (A), (B), and (C).

1978—Subsec. (a)(10). Pub. L. 95–539, § 3(a), expanded the duties of the Director to include providing or making available equipment for interpretation of proceedings in accordance with section 1828 of this title and to include entering into and performing contracts necessary to the conduct of the work of the judicial branch and exempted from the provisions of section 5 of title 41 contracts for nonpersonal services for pretrial agencies, for interpretation of proceedings, and for special interpretation services pursuant to section 1828 of this title.

Subsec. (a)(13), (14). Pub. L. 95–598, § 225(a), added par. (13) relating to annual statistical tables reflecting the

business of the several bankruptcy courts, and redesignated former par. (13), relating to provision of special interpretation services in courts of the United States, as (14).

Subsec. (a)(13) to (16). Pub. L. 95–539, §3(b), (c), added pars. (13) to (16). Former par. (13) redesignated (17).

Subsec. (a)(17). Pub. L. 95–539, §3(b), redesignated former par. (13) as (17).

Subsec. (f). Pub. L. 95–598, §225(b), added subsec. (f) relating to the naming of qualified persons to membership on the panel of trustees.

Subsecs. (f), (g). Pub. L. 95–539, §4, added subsecs. (f) and (g).

1975—Subsec. (a)(9). Pub. L. 93–619 added par. (9). Former par. (9) redesignated (10).

Subsec. (a)(10). Pub. L. 93–619 redesignated former par. (9) as (10) and substituted ''the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies'' for and the Administrative Office and the offices of the United States magistrates''. Former par. (10) redesignated (11).

Subsec. (a)(11). Pub. L. 93–619 redesignated former par. (10) as (11) and inserted reference to pretrial service agencies. Former par. (11) redesignated (12).

Subsec. (a)(12). Pub. L. 93–619 redesignated former par. (11) as (12) and inserted reference to pretrial service agencies. Former par. (12) redesignated (13).

Subsec. (a)(13). Pub. L. 93–619 redesignated former (12) as (13).

1972—Subsec. (a)(7). Pub. L. 92–397 substituted ''children of justices and judges of the United States'' for ''children of judges''.

1968—Subsec. (a)(9). Pub. L. 90–578, §201(a), substituted ''United States magistrates'' for ''United States Commissioners''.

Subsecs. (d), (e). Pub. L. 90–578 §201(b), added subsecs. (d) and (e).

1967—Subsec. (a)(7). Pub. L. 90–219, §203(a), amended par. (7) generally, inserting '', Directors of the Federal Judicial Center, and Directors of the Administrative Office,'' after ''judges'' and ''and the Federal Judicial Center,'' after ''Administrative Office''.

Subsec. (a)(9). Pub. L. 90–219, §203(b), inserted '', the Federal Judicial Center,'' after ''courts''.

Subsec. (a)(10), (11). Pub. L. 90–219, §203(c), inserted '', the Federal Judicial Center,'' after ''courts''.

1956—Subsec. (a)(7). Act Aug. 3, 1956, inserted ''annuities to widows and surviving dependent children of judges and'' after ''Regulate and pay''.

CHANGE OF NAME

Reference to United States Commissioners deemed to be reference to United States Magistrates pursuant to Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1108. See chapter 43 (§631 et seq.) of this title.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 503 of Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

Amendment by section 902(b)(1) of 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 this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 306(e)(1) of Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, as amended, set out as a note under section 8331 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 402(a) of Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–523 effective sixty days after Dec. 12, 1980, see section 3 of Pub. L. 96–523, set out as a note under section 3102 of Title 5, Government Organization and Employees.

Amendment by Pub. L. 96–458 effective Oct. 1, 1981, see section 7 of Pub. L. 96–458, set out as a note under section 331 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95–539, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment by magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

REPORTS BY DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

For requirement that Director of Administrative Office of the United States Courts include statistical information about implementation of chapter 44 of this title in annual report under section 604(a)(3) of this title, see section 903(a) of Pub. L. 100–702, set out as a note under section 651 of this title.

1970 INCREASE IN PAY RATES OF JUDICIAL BRANCH EMPLOYEES WHOSE RATES OF PAY ARE FIXED BY ADMINISTRATIVE ACTION

Adjustment of rates of pay of judicial branch employees whose rates of pay are fixed by administrative action by not to exceed the amounts of the adjustment for corresponding rates for employees subject to the section 2(a) of Pub. L. 91–231, which raised such corresponding rates by 6 percent, effective on the first day of the first pay period which begins on or after Dec. 27, 1969, see Pub. L. 91–231, set out as a note under section 5332 of Title 5, Government Organization and Employees.

COMPENSATION AND APPOINTMENT OF SECRETARIES AND LAW CLERKS

Provisions authorizing the appointment and compensation of secretaries and law clerks to circuit and district judges in such number and at such rates of compensation as may be determined by the Judicial Conference of the United States were contained in the following appropriation acts:

Dec. 12, 1985, Pub. L. 99–180, title IV, 99 Stat. 1154.

Aug. 30, 1984, Pub. L. 98–411, title IV, 98 Stat. 1571.

Nov. 28, 1983, Pub. L. 98–166, title IV, 97 Stat. 1099.

Dec. 21, 1982, Pub. L. 97–377, §101(d) [S. 2956, title IV], 96 Stat. 1866.

Dec. 15, 1981, Pub. L. 97–92, §101(h) [incorporating Pub. L. 96–536, §101(*o*); H.R. 7584, title IV], 95 Stat. 1190.

Dec. 16, 1980, Pub. L. 96–536, §101(*o*) [H.R. 7584, title IV], 94 Stat. 3169.
Sept. 24, 1979, Pub. L. 96–68, title IV, 93 Stat. 428.
Oct. 10, 1978, Pub. L. 95–431, title IV, 92 Stat. 1037.
Aug. 2, 1977, Pub. L. 95–86, title IV, 91 Stat. 435.
July 14, 1976, Pub. L. 94–362, title IV, 90 Stat. 953.
Oct. 21, 1975, Pub. L. 94–121, title IV, 89 Stat. 630.
Oct. 5, 1974, Pub. L. 93–433, title IV, 88 Stat. 1202.
Nov. 27, 1973, Pub. L. 93–162, title IV, 87 Stat. 651.
Oct. 25, 1972, Pub. L. 92–544, title IV, 86 Stat. 1126.
Aug. 10, 1971, Pub. L. 92–77, title IV, 85 Stat. 262.
Oct. 21, 1970, Pub. L. 91–472, title IV, 84 Stat. 1056.
Dec. 24, 1969, Pub. L. 91–153, title IV, 83 Stat. 419.
Aug. 9, 1968, Pub. L. 90–470, title IV, 82 Stat. 685.
Nov. 8, 1967, Pub. L. 90–133, title IV, 81 Stat. 427.
Nov. 8, 1966, Pub. L. 89–797, title IV, 80 Stat. 1499.
Sept. 2, 1965, Pub. L. 89–164, title IV, 79 Stat. 638.
Aug. 31, 1964, Pub. L. 88–527, title IV, 78 Stat. 729.
Dec. 30, 1963, Pub. L. 88–245, title IV, 77 Stat. 795.
Oct. 18, 1962, Pub. L. 87–843, title IV, 76 Stat. 1099.
Sept. 21, 1961, Pub. L. 87–264, title III, 75 Stat. 555.
Aug. 31, 1960, Pub. L. 86–678, title III, 74 Stat. 566.
July 13, 1959, Pub. L. 86–84, title III, 73 Stat. 192.
June 30, 1958, Pub. L. 85–474, title III, 72 Stat. 254.
June 11, 1957, Pub. L. 85–40, title III, 70 Stat. 65.
June 20, 1956, ch. 414, title III, 70 Stat. 310.
July 7, 1955, ch. 279, title III, 69 Stat. 276.
July 2, 1954, ch. 455, title II, 68 Stat. 410.
Aug. 1, 1953, ch. 304, title II, 67 Stat. 334.
July 10, 1952, ch. 651, title IV, 66 Stat. 569.
Oct. 22, 1951, ch. 533, title IV, 65 Stat. 596.
Sept. 6, 1950, ch. 896, Ch. III, title IV, 64 Stat. 631.

LIMITATION ON AGGREGATE SALARIES OF SECRETARIES AND LAW CLERKS

1967—Pub. L. 90–206, title II, §213(b), Dec. 16, 1967, 81 Stat. 635, provided that: ''The limitations provided by applicable law on the effective date of this section [see Effective Date of 1967 Amendment Note set out under section 5332 of Title 5, Government Organization and Employees] with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by section 202(a) of this title [amending section 5332(a) of Title 5] in corresponding rates of compensation for officers and employees subject to section 5332 of Title 5, United States Code''.

Section 213(b) of Pub. L. 90–206 effective as of the beginning of the first pay period which begins on or after Oct. 1, 1967, see section 220(a)(2) of Pub. L. 90–206, set out as a note under section 5332 of Title 5.

1966—Pub. L. 89–504, title II, §202(b), July 18, 1966, 80 Stat. 294, provided that: ''The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by section 102(a) of title I of this Act [amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees] in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

Provision effective first day of first pay period which begins on or after July 1, 1966, see section 203 of Pub. L. 89–504, set out as a note under section 603 of this title.

1965—Pub. L. 89–301, §12(b), Oct. 29, 1965, 79 Stat. 1122, provided that: ''The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by section 2(a) of this Act [amending section 1113(b) of former Title 5, Executive Departments and Government Officers and Employees] in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

1964—Pub. L. 88–426, title IV, §402(b), Aug. 14, 1964, 78 Stat. 433, provided that: ''The limitation provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by amounts which reflect the respective applicable increases provided by the title I of this Act in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

1962—Pub. L. 87–793, title VI, §1004(b), Oct. 11, 1962, 76 Stat. 866, provided that: ''The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by two amounts, the first amount to be effective for the period beginning as of the first day of the first pay period which begins on or after the date of enactment of this Act [Oct. 11, 1962], and ending immediately prior to the first day of the first pay period which begins on or after January 1, 1964, and the second amount to be effective on the first day of the first pay period which begins on or after January 1, 1964, and thereafter, which reflect the respective applicable increases provided by title II of this part in corresponding rates of compensation for officers and employees subject to the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees].''

1960—Pub. L. 86–568, title I, §116(b), July 1, 1960, 74 Stat. 303, provided that: ''The limitations provided by applicable law on the effective date of this section with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges are hereby increased by the amounts necessary to pay the additional basic compensation provided by this part.''

Words ''this part'', referred to above, means Part B of Pub. L. 86–568, which enacted section 932e of former Title 5, Executive Departments and Government Officers and Employees, amended section 753 of this title, sections 1113, 2091, 2252 and 3002 of former Title 5, sections 867 and 870 of Title 22, Foreign Relations and Intercourse, and former sections 4103, 4107 and 4108 of Title 38, Veterans' Benefits, and enacted notes set out under sections 603 and 604 of this title, sections 60a and 60f of Title 2, The Congress, sections 1113, and 2252 of former Title 5, section 590h of Title 16, Conservation, and section 867 of Title 22,

1958—Pub. L. 85–462, §3(b), June 20, 1958, 72 Stat. 207, provided that: ''The limitations of $13,485 and $18,010 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the paragraph designated ''Salaries of supporting personnel'' in the Judiciary Appropriation Act, 1958 (71 Stat. 65; Public Law 85–49), or any subsequent appropriation Act, shall be increased by the amounts necessary to pay the additional basic compensation provided by this Act.''

1955—Act June 28, 1955, ch. 189, §3(b), 69 Stat. 175, provided that: ''The limitations of $10,560 and $14,355 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the paragraph under the heading 'SALARIES OF SUPPORTING PERSONNEL' in the Judiciary Appropriation Act, 1955 (Public Law 470, Eighty-third Congress), or in any subsequent appropriation Act, shall be increased by the amounts necessary to pay the additional basic compensation provided by this Act.''

1951—Act Oct. 24, 1951, ch. 554, §1(d), 65 Stat. 613, provided that: ''The limitations of $9,600 and $13,050 with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges, contained in the sixteenth paragraph under the head 'Miscellaneous salaries' in the Judiciary Appropriation Act, 1951 (Public Law 759, Eighty-first Congress), or in any subsequent appropriation Act, shall be increased by the

amounts necessary to pay the additional basic compensation provided by this Act.''

The particular paragraph of the ''Judiciary Appropriation Act, 1951 (Public Law 759, Eighty-first Congress)'', referred to above, is act Sept. 6, 1950, ch. 896, ch. III, title IV, § 401 (part), 64 Stat. 631. The salary limitations therein, also referred to above, were identical with those in the Judiciary Appropriation Act, 1952 (act Oct. 22, 1951, ch. 533, title IV, § 401 (part), 65 Stat. 596).

INCREASES IN COMPENSATION RATES

Increases in rates of basic compensation fixed pursuant to subsec. (a)(5) of this section, see notes under section 603 of this title.

TRAVEL AND SUBSISTENCE EXPENSES

Pub. L. 87–139, § 6, Aug. 14, 1961, 75 Stat. 340, provided that: ''The Director of the Administrative Office of the United States Courts shall promulgate, in accordance with section 604(a)(7) and section 456 of title 28 of the United States Code, such regulations as he may deem necessary to effectuate the increases provided by this Act [amending section 553 of this title, former Title 5, Executive Departments and Government Officers and Employees, and sections 237*o*, 287q, and 1471 of Title 22, Foreign Relations and Intercourse].''

CROSS REFERENCES

Classification and General Schedule pay rates, see sections 5101 et seq., 5331 et seq. of Title 5, Government Organization and Employees.

Duties of Supreme Court Marshal, see section 672 of this title.

Expenses of judges and United States attorneys, see sections 456, 460, 549, and 566 of this title.

Office expenses of clerks of court, see section 961 and 963 of this title.

Overtime pay, see section 5541 et seq. of Title 5, Government Organization and Employees.

Supreme Court officers and employees, compensation and disbursement, see section 671 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 602, 1871 of this title; title 18 sections 3155, 3611, 3612.

§ 605. Budget estimates

The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Office of Management and Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

Such estimates shall be approved, before presentation to the Office of Management and Budget, by the Judicial Conference of the United States, except that the estimate with respect to the Court of International Trade shall be approved by such court and the estimate with respect to the United States Court of Appeals for the Federal Circuit shall be approved by such court.

(June 25, 1948, ch. 646, 62 Stat. 915; July 9, 1956, ch. 517, § 1(e), 70 Stat. 497; Aug. 3, 1956, ch. 944, § 4, 70 Stat. 1026; Pub. L. 87–253, § 3, Sept. 19, 1961, 75 Stat. 521; Pub. L. 96–417, title V, § 501(14), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97–164, title I, § 119(a), Apr. 2, 1982, 96 Stat. 33; Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 447 (Mar. 3, 1911, ch. 231, § 305, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section contains provisions of section 447 of title 28, U.S.C., 1940 ed., relating to budget estimates. The remainder of said section 447 is incorporated in section 604 of this title.

The designation ''senior circuit judges'' was changed to ''chief judges of the circuits'' in conformity with section 45 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1982—Pub. L. 97–258 struck out paragraph which had provided that budget estimates be included in the budget without revision, but subject to the recommendations of the Bureau of the Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court. See section 1105(b) of Title 31, Money and Finance.

Pub. L. 97–164 substituted ''Office of Management and Budget'' for ''Bureau of the Budget'' wherever appearing and inserted requirement that the estimate of the expenditures and appropriations necessary for the maintenance and operation of the United States Court of Appeals for the Federal Circuit be approved by such court.

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1961—Pub. L. 87–253 struck out from second paragraph the requirement that the estimate with respect to the Court of Customs and Patent Appeals be approved by such court.

1956—Act Aug. 3, 1956, inserted provision to authorize the Director to include in the budget estimates of the courts the expenditures and appropriations necessary for the operation of the judicial survivors annuity fund, and inserted provision that Director shall cause periodic actuarial examinations to be made of the judicial survivors annuity fund and shall report the actuary's findings and recommendations to the Judicial Conference.

Act July 9, 1956, struck out ''and the Court of Claims'' after ''the Customs Court'' and substituted ''and'' for the comma after ''the Court of Customs and Patents Appeals'' in second par.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3006A.

§ 606. Duties of Deputy Director

The Deputy Director shall perform the duties assigned to him by the Director, and shall act as

Director during the absence or incapacity of the Director or when the Director's office is vacant.

(June 25, 1948, ch. 646, 62 Stat. 915; Pub. L. 86–370, § 5(a)(1), Sept. 23, 1959, 73 Stat. 652.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 444 (Mar. 3, 1911, ch. 231, § 302, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section contains provisions as to duties of Assistant Director in section 444 of title 28, U.S.C., 1940 ed. The remainder of said section 444 is incorporated in sections 601, 603 and 608 of this title.

AMENDMENTS

1959—Pub. L. 86–370 substituted ''Deputy Director'' for ''Assistant Director''.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–370 effective Sept. 23, 1959, see section 7(a) of Pub. L. 86–370.

REFERENCE TO ASSISTANT DIRECTOR DEEMED REFERENCE TO DEPUTY DIRECTOR

References in any other law to Assistant Director of the Administrative Office of the United States Courts deemed to be reference to the Deputy Director of the Administrative Office of the United States Courts, see note set out under section 601 of this title.

§ 607. Practice of law prohibited

An officer or employee of the Administrative Office shall not engage directly or indirectly in the practice of law in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 915.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 445 (Mar. 3, 1911, ch. 231, § 303, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section contains the last paragraph of title 28, U.S.C., 1940 ed., § 445. The remainder of said section is incorporated in sections 602 and 603 of this title.

Changes were made in phraseology.

§ 608. Seal

The Director shall use a seal approved by the Supreme Court. Judicial notice shall be taken of such seal.

(June 25, 1948, ch. 646, 62 Stat. 915.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 444 (Mar. 3, 1911, ch. 231, § 302, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section contains a part of section 444 of title 28, U.S.C., 1940 ed. The remainder of said section 444 is incorporated in sections 601, 603 and 606 of this title.

Changes were made in phraseology.

§ 609. Courts' appointive power unaffected

The authority of the courts to appoint their own administrative or clerical personnel shall not be limited by any provisions of this chapter.

(June 25, 1948, ch. 646, 62 Stat. 915.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed. § 446 (Mar. 3, 1911, ch. 231, § 304, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

This section contains the last clause of section 446(1) of title 28, U.S.C., 1940 ed.

A similar provision with respect to the Attorney General's authority over United States attorneys and their assistants, and United States marshals and their deputies was omitted as unnecessary since there is nothing in this chapter that could affect such authority of the Attorney General.

For other provisions of section 446 of title 28, U.S.C., 1940 ed., see section 604 of this title.

Minor changes were made in phraseology.

§ 610. Courts defined

As used in this chapter the word ''courts'' includes the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Federal Claims, and the Court of International Trade.

(June 25, 1948, ch. 646, 62 Stat. 915; Oct. 31, 1951, ch. 655, § 44, 65 Stat. 725; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 95–598, title II, § 226, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96–417, title V, § 501(15), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97–164, title I, § 120(a), Apr. 2, 1982, 96 Stat. 33; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 450 (Mar. 3, 1911, ch. 231, § 308, as added Aug. 7, 1939, ch. 501, § 1, 53 Stat. 1223).

Words ''and the United States Court for China'' were omitted. See reviser's note under section 411 of this title.

Provisions making this chapter and sections 332 and 333 of this title expressly applicable to the Court of Appeals for the District of Columbia were omitted as covered by ''courts of appeals.'' (See section 41 of this title and reviser's notes under such section and section 44 of this title.)

A definition of ''continental United States'' as ''the States of the Union and the District of Columbia'' is omitted as unnecessary. (See reviser's note under section 333 of this title.)

The term ''district courts in the United States'' in this section includes the District Court for the District of Columbia. (See section 88 of this title.)

Other provisions of section 450 of title 28, U.S.C., 1940 ed., are incorporated in sections 333 and 604 of this title.

The phrase ''all other courts of the United States established by Act of Congress'' was added to provide for future growth of the Federal judicial system. [See Senate Revision Amendment below.]

Changes in arrangement and phraseology were made.

SENATE REVISION AMENDMENT

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''the United States Claims Court'' for ''the Court of Claims, the Court of Customs and Patent Appeals''.

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1978—Pub. L. 95–598 directed the amendment of section by substituting '', district courts, and bankruptcy courts'' for ''and district courts'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Pub. L. 85–508 struck out provisions which included District Court for Territory of Alaska within definition of court. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted reference to the District Court of Guam.

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 this title.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 963, 1631 of this title; title 5 sections 5584, 5595, 5596, 8331, 8347, 8402.

§611. Retirement of Director

(a) The Director may, by written election filed with the Chief Justice of the United States within 6 months after the date on which he takes office, waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees' Retirement System), whichever is applicable, and bring himself within the purview of this section. A Director who elects coverage under this section shall be deemed an ''employee'' for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. Waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director, upon separation from service other than by retirement, such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

(b) Upon the retirement of a Director who has elected coverage under this section and who has served at least fifteen years and attained the age of sixty-five years the Administrative Office of the United States Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Director who has elected coverage under this section and who has served at least ten years, but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service.

(c) A Director who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has served at least fifteen years, or equal to that proportion of 80 percentum of such salary that the aggregate number of years of his service bears to fifteen if he has served less than fifteen years, but in no event less than 50 per centum of such salary.

(d) For the purpose of this section, ''service'' means service, whether or not continuous, as Director of the Administrative Office of the United States Courts, and any service, not to exceed five years, as a judge of the United States, a Senator or Representative in Congress, or a civilian official appointed by the President, by and with the advice and consent of the Senate.

(e) Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

(Added Pub. L. 90–219, title II, §201(a), Dec. 20, 1967, 81 Stat. 668; amended Pub. L. 100–702, title X, §§1004(a), 1006(a)(1), Nov. 19, 1988, 102 Stat. 4665, 4666.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–702, §1006(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Director may, by written election filed with the Chief Justice of the United States within six months after the date on which he takes office, waive coverage under subchapter III (relating to civil service retirement) of chapter 83, Title 5, United States Code, and bring himself within the purview of this section. Such waiver and election shall not operate to foreclose to the Director, upon separation from service other than by retirement, such opportunity as the law may provide to secure civil service retirement credit for service as Director by depositing with interest the amount required by section 8334 of title 5, United States Code.''

Subsec. (e). Pub. L. 100–702, §1004(a), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1004(b) of title X of Pub. L. 100–702 provided that: ''The amendments made by this section [amending this section and section 627 of this title] shall apply to cost-of-living increases that go into effect on or after the date of enactment of this title [Nov. 19, 1988] with respect to any annuity being paid or becoming payable on or after such date.''

Section 1006(b) of title X of Pub. L. 100–702 provided that: ''The amendments made by this section [amending this section and section 627 of this title] shall apply to persons holding the offices of Director of the Administrative Office of the United States Courts, Director of the Federal Judicial Center, and Administrative Assistant to the Chief Justice on the date of enactment of this title [Nov. 19, 1988].''

RETROACTIVE EFFECT

Section 205 of Pub. L. 90–219 provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [enacting this section and amending sections 376 and 604 of this title], insofar as they relate to retirement and survivorship benefits of the Director of the Administrative Office of the United States Courts, shall be applicable only with respect to persons first appointed to such office after the date of enactment of this Act [Dec. 20, 1967].

''(b) The provisions of section 611(a), the first paragraph of section 611(b), and section 376(s), of title 28, United States Code, as added by such amendments, shall be applicable to a Director or former Director of the Administrative Office of the United States Courts who was first appointed prior to the date of enactment of this Act [Dec. 20, 1967] if at the time such Director or former Director left or leaves such office he had, or shall have, attained the age of sixty-five years and completed fifteen years of service as Director of the Administrative Office of the United States Courts and if, on or before the expiration of six months following the date of enactment of this Act [Dec. 20, 1967], he makes the election referred to in section 611(a) or section 376(s), or both, as the case may be.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 376, 677 of this title.

§ 612. Judiciary Information Technology Fund

(a) ESTABLISHMENT AND AVAILABILITY OF FUND.—There is hereby established in the Treasury of the United States a special fund to be known as the ''Judiciary Information Technology Fund'' (hereafter in this section referred to as the ''Fund''). Moneys in the Fund shall be available to the Director without fiscal year limitation for the procurement (by lease, purchase, exchange, transfer, or otherwise) of information technology equipment for program activities included in the courts of appeals, district courts, and other judicial services account of the judicial branch of the United States. The Fund shall also be available for expenses, including personal services, support personnel in the courts and in the Administrative Office of the United States Courts, and other costs, for the effective management, coordination, operation, and use of information technology equipment purchased by the Fund. In addition, all agencies of the judiciary may make deposits into the Fund to meet their information technology needs in accordance with subsections (b) and (c)(2).

(b) PLAN FOR MEETING INFORMATION TECHNOLOGY NEEDS.—

(1) DEVELOPMENT OF PLAN.—The Director shall develop and annually revise, with the approval of the Judicial Conference of the United States, a long range plan for meeting the information technology equipment needs of the activities funded under subsection (a) and shall include an annual estimate of any fees that may be collected under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133). Such plan and revisions shall be submitted to Congress.

(2) EXPENDITURES CONSISTENT WITH PLAN.—The Director may use amounts in the Fund to procure information technology equipment for the activities funded under subsection (a) only in accordance with the plan developed under paragraph (1).

(c) DEPOSITS INTO FUND.—

(1) DEPOSITS.—There shall be deposited in the Fund—

(A) all proceeds resulting from activities conducted under subsection (a), including net proceeds of disposal of excess or surplus property, all fees collected after the date of the enactment of the Judicial Amendments Act of 1994 by the judiciary under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133) and receipts from carriers and others for loss of or damage to property;

(B) amounts available for activities described in subsection (a) from funds appropriated to the judiciary; and

(C) any advances and reimbursements required by paragraph (2).

(2) ADVANCES AND REIMBURSEMENTS.—Whenever the Director procures information technology equipment for any entity in the judicial branch other than the courts or the Administrative Office, that entity shall advance or reimburse the Fund, whichever the Director considers appropriate, for the costs of the information technology equipment, from appropriations available to that entity.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund for any fiscal year such sums as are required to supplement amounts deposited under subsection (c) in order to conduct activities under subsection (a).

(e) CONTRACT AUTHORITY.—

(1) FOR EACH FISCAL YEAR.—In fiscal year 1990, and in each succeeding fiscal year, the Director may enter into contracts for the procurement of information technology equipment in amounts which, in the aggregate, do not exceed amounts estimated to be collected under subsection (c) for that fiscal year in advance of the availability of amounts in the Fund for such contracts.

(2) MULTIYEAR CONTRACTS.—In conducting activities under subsection (a), the Director is authorized to enter into multiyear contracts for information technology equipment for periods of not more than five years for any contract, if—

(A) funds are available and adequate for payment of the costs of such contract for the first fiscal year and for payment of any costs of cancellation or termination of the contract;

(B) such contract is awarded on a fully competitive basis; and

(C) the Director determines that—

(i) the need for the information technology equipment being provided will continue over the period of the contract; and

(ii) the use of the multi-year contract will yield substantial cost savings when compared with other methods of providing the necessary resources.

(3) CANCELLATION COSTS OF MULTIYEAR CONTRACT.—Any cancellation costs incurred with respect to a contract entered into under paragraph (2) shall be paid from currently available amounts in the Fund.

(f) APPLICABILITY OF PROCUREMENT STATUTE.—The procurement of information technology equipment under this section shall be conducted in compliance with the provisions of law, policies, and regulations applicable to executive agencies under division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.).

(g) AUTHORITY OF ADMINISTRATOR OF GENERAL SERVICES.—Nothing in this section shall be construed to limit the authority of the Administrator of General Services under section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481).

(h) ANNUAL REPORT.—

(1) IN GENERAL.—The Director shall submit to the Congress an annual report on the operation of the Fund, including on the inventory, use, and acquisition of information technology equipment from the Fund and the consistency of such acquisition with the plan prepared under subsection (b). The report shall set forth the amounts deposited into the Fund under subsection (c).

(2) ADDITIONAL CONTENTS OF REPORT.—The annual report submitted under this subsection shall include—

(A) the specific actions taken and the progress made to improve the plan developed under subsection (b) and the long range automation plan and strategic business plan developed under subsection (k); and

(B) a comparison of planned Fund expenditures and accomplishments with actual Fund expenditures and accomplishments, and the reasons for any delays in scheduled systems development, or budget overruns.

(3) REPORT IN YEAR OF TERMINATION OF AUTHORITY.—The annual report submitted under this subsection for any year in which the authority for this section is to terminate under subsection (m),[1] shall be submitted no later than 9 months before the date of such termination.

(i) REPROGRAMMING.—The Director of the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States, may transfer amounts up to $1,000,000 from the Fund into the account to which the funds were originally appropriated. Any amounts transferred from the Fund in excess of $1,000,000 in any fiscal year may only be transferred by following reprogramming procedures in compliance with section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100–459; 102 Stat. 2227).

(j) APPROPRIATIONS INTO THE FUND.—If the budget request of the Judiciary[2] is appropriated in full, the amount deposited into the Fund during any fiscal year under the authority of subparagraph (c)(1)(B) will be the same as the amount of funds requested by the Judiciary[2] for activities described in subsection (a). If an amount to be deposited is not specified in statute by Congress and if the full request is not appropriated, the amount to be deposited under (c)(1)(B)[3] will be set by the spending priorities established by the Judicial Conference.

(k) LONG RANGE MANAGEMENT AND BUSINESS PLANS.—The Director of the Administrative Office of the United States Court shall—

(1) develop an overall strategic business plan which would identify the judiciary's missions, goals, and objectives;

(2) develop a long range automation plan based on the strategic business plan and user needs assessments;

(3) establish effective Administrative Office oversight of court automation efforts to ensure the effective operation of existing systems and control over developments of future systems;

(4) expedite efforts to complete the development and implementation of life cycle management standards;

(5) utilize the standards in developing the next generation of case management and financial systems; and

(6) assess the current utilization and future user requirements of the data communications network.

(Added Pub. L. 101–162, title IV, §404(b)(1), Nov. 21, 1989, 103 Stat. 1013; amended Pub. L. 103–420, §2, Oct. 25, 1994, 108 Stat. 4343; Pub. L. 104–106, div. E, title LVI, §5602, Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–208, div. A, title I, §101(a) [title III, §305], Sept. 30, 1996, 110 Stat. 3009, 3009–45; Pub. L. 105–85, div. A, title X, §1073(h)(2), Nov. 18, 1997, 111 Stat. 1907; Pub. L. 105–119, title III, §304, Nov. 26, 1997, 111 Stat. 2491.)

REFERENCES IN TEXT

Section 404 of Public Law 101–515, referred to in subsecs. (b)(1) and (c)(1)(A), was formerly set out as a Court Fees for Electronic Access to Information note under section 1913 of this title.

The date of the enactment of the Judicial Amendments Act of 1994, referred to in subsec. (c)(1)(A), is the date of enactment of Pub. L. 103–420, which was approved Oct. 25, 1994.

The Clinger-Cohen Act of 1996, referred to in subsec. (f), is div. D (§§4001–4402) and div. E (§§5001–5703) of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 642, 679. Div. E of Pub. L. 104–106 is classified principally to chapter 25 (§1401 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 40, Short Title of 1996 Amendment note set out under section 251 of Title 41, Public Contracts, and Tables.

Subsection (m), referred to in subsec. (h)(3), was redesignated subsec. (*l*) of this section by Pub. L. 104–106, div. E, title LVI, §5602(a)(4), Feb. 10, 1996, 110 Stat. 699, and subsequently repealed by Pub. L. 105–119, title III, §304, Nov. 26, 1997, 111 Stat. 2491.

[1] See References in Text note below.

[2] So in original. Probably should not be capitalized.

[3] So in original. Probably should be "subparagraph (c)(1)(B)".

Section 606 of Public Law 100–459, referred to in subsec. (i), is section 606 of Pub. L. 100–459, title VI, Oct. 1, 1988, 102 Stat. 2227, which is not classified to the Code.

AMENDMENTS

1997—Subsec. (f). Pub. L. 105–85 substituted ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' for ''the Information Technology Management Reform Act of 1996''.

Subsec. (*l*). Pub. L. 105–119 struck out subsec. (*l*) which read as follows:

''(*l*) TERMINATION OF AUTHORITY.—The Fund, and the authorities conferred by this section, terminate on September 30, 1998. All unobligated amounts remaining in the Fund on that date shall be deposited into the fund established under section 1931 of this title to be used to reimburse other appropriations.''

1996—Pub. L. 104–106, § 5602(b)(1), substituted ''Information Technology Fund'' for ''Automation Fund'' in section catchline.

Subsec. (a). Pub. L. 104–106, § 5602(b)(3), substituted ''information technology'' for ''automatic data processing'' wherever appearing.

Pub. L. 104–106, § 5602(b)(2), substituted ''Information Technology Fund'' for ''Automation Fund''.

Subsecs. (b), (c)(2), (e). Pub. L. 104–106, § 5602(b)(3), substituted ''information technology'' for ''automatic data processing'' wherever appearing.

Subsec. (f). Pub. L. 104–106, § 5602(b)(3), substituted ''information technology'' for ''automatic data processing''.

Pub. L. 104–106, § 5602(a)(1), substituted ''the provisions of law, policies, and regulations applicable to executive agencies under the Information Technology Management Reform Act of 1996'' for ''section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)''.

Subsec. (g). Pub. L. 104–106, § 5602(a)(2), substituted ''section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481)'' for ''sections 111 and 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 and 759)''.

Subsec. (h)(1). Pub. L. 104–106, § 5602(b)(3), substituted ''information technology'' for ''automatic data processing''.

Subsec. (*l*). Pub. L. 104–208, § 101(a) [title III, § 305], substituted ''September 30, 1998'' for ''September 30, 1997''.

Pub. L. 104–106, § 5602(a)(3), (4), redesignated subsec. (m) as (*l*) and struck out former subsec. (*l*) which read as follows:

''(*l*) DEFINITION.—For purposes of this section, the term 'automatic data processing equipment' has the meaning given that term in section 111(a)(2)(A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2)(A)).''

Subsec. (m). Pub. L. 104–106, § 5602(a)(3), redesignated subsec. (m) as (*l*).

1994—Subsec. (a). Pub. L. 103–429, § 2(1), inserted ''program activities included in the courts of appeals, district courts, and other judicial services account of'' after ''equipment for'' and substituted '', support personnel in the courts and in the Administrative Office of the United States Courts, and other costs, for the effective management, coordination, operation, and use of automatic data processing equipment purchased by the Fund. In addition, all agencies of the judiciary may make deposits into the Fund to meet their automatic data processing needs in accordance with subsections (b) and (c)(2)'' for ''and other costs, for the effective management, coordination, operation, and use of automatic data processing equipment in the judicial branch''.

Subsec. (b)(1). Pub. L. 103–420, § 2(2), substituted ''activities funded under subsection (a) and shall include an annual estimate of any fees that may be collected under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133)'' for ''judicial branch''.

Subsec. (b)(2). Pub. L. 103–420, § 2(3), substituted ''activities funded under subsection (a)'' for ''judicial branch of the United States''.

Subsec. (c)(1)(A). Pub. L. 103–420, § 2(4), inserted '', all fees collected after the date of the enactment of the Judicial Amendments Act of 1994 by the judiciary under section 404 of the Judiciary Appropriations Act, 1991 (Public Law 101–515; 104 Stat. 2133)'' after ''surplus property''.

Subsec. (e)(1). Pub. L. 103–420, § 2(5), struck out ''(A)'' before ''In fiscal year 1990'' and substituted ''amounts estimated to be collected under subsection (c) for that fiscal year'' for ''$75,000,000''.

Subsec. (h). Pub. L. 103–420, § 2(6), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''ANNUAL REPORT.—The Director shall submit to the Congress an annual report on the operation of the Fund, including on the inventory, use, and acquisition of automatic data processing equipment from the Fund and the consistency of such acquisition with the plan prepared under subsection (b). The report shall set forth the amounts deposited into the Fund under subsection (c).''

Subsec. (i). Pub. L. 103–420, § 2(7), substituted ''may transfer amounts up to $1,000,000 from the Fund into the account to which the funds were originally appropriated. Any amounts transferred from the Fund in excess of $1,000,000 in any fiscal year may only be transferred by following reprogramming procedures in compliance with section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100–459; 102 Stat. 2227)'' for ''and upon notification to the Committees on Appropriations of the House of Representatives and the Senate, may use amounts deposited into the Fund under subparagraph (c)(1)(B) for purposes other than those established in subsection (a) only by following reprogramming procedures in compliance with provisions set forth in section 606 of Public Law 100–459.''

Subsec. (j). Pub. L. 103–420, § 2(8), substituted ''not specified in statute by Congress'' for ''not specified by Congress'' in second sentence.

Subsec. (k). Pub. L. 103–420, § 2(9), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–420, § 2(9), redesignated subsec. (k) as (*l*). Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 103–420, § 2(9), (10), redesignated subsec. (*l*) as (m) and substituted ''September 30, 1997'' for ''September 30, 1994'' and ''fund established under section 1931 of this title'' for '''Judicial Services Account''''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, set out as an Effective Date note under section 1401 of Title 40, Public Buildings, Property, and Works.

CHAPTER 42—FEDERAL JUDICIAL CENTER

Sec.
620. Federal Judicial Center.
621. Board; composition, tenure of members, compensation.
622. Meetings; conduct of business.
623. Duties of the Board.
624. Powers of the Board.
625. Director and staff.
626. Compensation of the Director and Deputy Director.
627. Retirement; employee benefits.
628. Appropriations and accounting.
629. Federal Judicial Center Foundation.

AMENDMENTS

1988—Pub. L. 100–702, title III, §§ 301(b), 304(b)(2), Nov. 19, 1988, 102 Stat. 4647, 4648, inserted ''and Deputy Director'' after ''Director'' in item 626 and added item 629.

1978—Pub. L. 95–598, title II, § 230(2), Nov. 6, 1978, 92 Stat. 2665, struck out item 629 ''Organizational provisions''.

1967—Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 664, added chapter 42 and items 620 to 629.

§ 620. Federal Judicial Center

(a) There is established within the judicial branch of the Government a Federal Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States.

(b) The Center shall have the following functions:

(1) to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States;

(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States magistrates, clerks of court, probation officers, and persons serving as mediators and arbitrators;

(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees;

(5) Insofar[1] as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice; and

(6) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 664; amended Pub. L. 95–598, title II, § 227, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 98–620, title II, § 214, Nov. 8, 1984, 98 Stat. 3346; Pub. L. 99–336, § 6(b), June 19, 1986, 100 Stat. 639; Pub. L. 100–702, title III, § 303, Nov. 19, 1988, 102 Stat. 4648; Pub. L. 102–572, title VI, § 602(a), Oct. 29, 1992, 106 Stat. 4514.)

AMENDMENTS

1992—Subsec. (b)(6). Pub. L. 102–572 added par. (6).

1988—Subsec. (b)(3). Pub. L. 100–702 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, clerks of court, probation officers, and United States magistrates;''.

1986—Subsec. (b)(3). Pub. L. 99–336 struck out ''referees,'' after ''judges,'' and substituted ''magistrates'' for ''commissioners''.

1984—Subsec. (b)(5). Pub. L. 98–620 added par. (5).

1978—Subsec. (b)(3). Pub. L. 95–598 directed the amendment of par. (3) by striking out ''referees,'' and by substituting ''magistrates'' for ''commissioners'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 6(c) of Pub. L. 99–336 provided that: ''The amendments made by this section [amending this section and section 288d of Title 2, The Congress, and redesignating sections 1364 to 1366 of this title] shall take effect on the date of the enactment of this Act [June 19, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 effective Oct. 1, 1985, see section 216 of Pub. L. 98–620, set out as a note under section 10701 of Title 42, The Public Health and Welfare.

STUDY OF INTERCIRCUIT CONFLICTS AND STRUCTURAL ALTERNATIVES FOR COURTS OF APPEALS BY FEDERAL JUDICIAL CENTER

Pub. L. 101–650, title III, § 302, Dec. 1, 1990, 104 Stat. 5104, as amended by Pub. L. 102–572, title V, § 502(c), Oct. 29, 1992, 106 Stat. 4513, directed Board of the Federal Judicial Center to conduct study and submit report to Congress by Jan. 1, 1992, on number and frequency of conflicts among judicial circuits in interpreting law that remain unresolved because they are not heard by the Supreme Court, and further directed Board to study full range of structural alternatives for Federal Courts of Appeals and submit report on the study to Congress and Judicial Conference of the United States, no later than 2 years and 9 months after Dec. 1, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 14001.

§ 621. Board; composition, tenure of members, compensation

(a) The activities of the Center shall be supervised by a Board to be composed of—

(1) the Chief Justice of the United States, who shall be the permanent Chairman of the Board;

(2) two circuit judges, three district judges, one bankruptcy judge, and one magistrate judge, elected by vote of the members of the Judicial Conference of the United States, except that any circuit or district judge so elected may be either a judge in regular active service or a judge retired from regular active service under section 371(b) of this title but shall not be a member of the Judicial Conference of the United States; and

(3) the Director of the Administrative Office of the United States Courts, who shall be a permanent member of the Board.

[1] So in original. Probably should not be capitalized.

(b) The term of office of each elected member of the Board shall be four years. A member elected to serve for an unexpired term arising by virtue of the death, disability, retirement pursuant to section 371(a) or section 372(a) of this title, or resignation of a member shall be elected only for such unexpired term.

(c) No member elected for a four-year term shall be eligible for reelection to the Board.

(d) Members of the Board shall serve without additional compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 664; amended Pub. L. 95–598, title II, §§ 228, 229, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 104–317, title VI, § 601(b), Oct. 19, 1996, 110 Stat. 3857.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–317, § 601(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''two active judges of the courts of appeals of the United States, three active judges of the district courts of the United States, one active judge of the bankruptcy courts of the United States elected by vote of the members of the Judicial Conference of the United States: *Provided, however*, That the judges so elected shall not be members of the Judicial Conference of the United States; and''.

Subsec. (b). Pub. L. 104–317, § 601(b)(2), substituted ''retirement pursuant to section 371(a) or section 372(a) of this title,'' for ''retirement,''.

1978—Subsec. (a)(2). Pub. L. 95–598, § 228, inserted reference to one active judge of the bankruptcy courts of the United States.

Subsec. (b). Pub. L. 95–598, § 229, struck out provisions requiring that section 629 of this title govern the terms of office of the first members elected to the Board.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 622. Meetings; conduct of business

(a) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the Chairman, acting at his own discretion or pursuant to the petition of any four members.

(b) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the members present and voting.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 665.)

§ 623. Duties of the Board

(a) In its direction and supervision of the activities of the Federal Judicial Center, the Board shall—

(1) establish such policies and develop such programs for the Federal Judicial Center as will further achievement of its purpose and performance of its functions;

(2) formulate recommendations for improvements in the administration of the courts of the United States, in the training of the personnel of those courts, and in the management of their resources;

(3) submit to the Judicial Conference of the United States, at least one month in advance of its annual meeting, a report of the activities of the Center and such recommendations as the Board may propose for the consideration of the Conference;

(4) present to other government departments agencies, and instrumentalities whose programs or activities relate to the administration of justice in the courts of the United States the recommendations of the Center for the improvement of such programs or activities;

(5) study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States, and include in the annual report required by paragraph (3) of this subsection details of the results of the studies and determinations made pursuant to this paragraph;

(6) consider and recommend to both public and private agencies aspects of the operation of the courts of the United States deemed worthy of special study; and

(7) conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government.

(b) The Board shall transmit to Congress and to the Attorney General of the United States copies of all reports and recommendations submitted to the Judicial Conference of the United States. The Board shall also keep the Committees on the Judiciary of the United States Senate and House of Representatives fully and currently informed with respect to the activities of the Center.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 665; amended Pub. L. 100–702, title III, § 302, Nov. 19, 1988, 102 Stat. 4648.)

AMENDMENTS

1988—Subsec. (a)(7). Pub. L. 100–702 added par. (7).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 629 of this title.

§ 624. Powers of the Board

The Board is authorized—

(1) to appoint and fix the duties of the Director and the Deputy Director of the Federal Judicial Center, who shall serve at the pleasure of the Board;

(2) to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to the performance of the functions of the Federal Judicial Center set forth in this chapter, and each such department, agency, or instrumentality is directed to cooperate with the Board and, to the extent permitted by law, to furnish such information to the Center upon request of the Chairman or upon request of the Director when the Board has delegated this authority to him;

(3) to contract with and compensate government and private agencies or persons for re-

search projects and other services, without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), and to delegate such contract authority to the Director of the Federal Judicial Center, who is hereby empowered to exercise such delegated authority.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 666; amended Pub. L. 100–702, title III, § 304(a), Nov. 19, 1988, 102 Stat. 4648.)

AMENDMENTS

1988—Par. (1). Pub. L. 100–702 inserted ''and the Deputy Director'' after ''Director''.

§ 625. Director and staff

(a) The Director shall supervise the activities of persons employed by the Center and perform other duties assigned to him by the Board.

(b) The Director shall appoint and fix the compensation of such additional professional personnel as the Board may deem necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates: *Provided, however*, That the compensation of any person appointed under this subsection shall not exceed the annual rate of basic pay of level V of the Executive Schedule pay rates, section 5316, title 5, United States Code: *And provided further*, That the salary of a reemployed annuitant under the Civil Servive[1] Retirement Act shall be adjusted pursuant to the provisions of section 8344, title 5, United States Code.

(c) The Director shall appoint and fix the compensation of such secretarial and clerical personnel as he may deem necessary, subject to the provisions of title 5, United States Code, governing appointments in competitive service without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(d) The Director may procure personal services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily equivalent of the highest rate payable under General Schedule pay rates, section 5332, title 5, United States Code. (e) The Director is authorized to incur necessary travel and other miscellaneous expenses incident to the operation of the Center.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 666; amended Pub. L. 102–572, title VI, § 602(b), Oct. 29, 1992, 106 Stat. 4514.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of Title 5, Government Organization and Employees.

The Civil Service Retirement Act, referred to in subsec. (b), is act May 29, 1930, ch. 349, 46 Stat. 468, as amended by act July 31, 1956, ch. 804, § 401, 70 Stat. 743, which was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as subchapter III (§ 8331 et seq.) of chapter 83 of Title 5.

[1] So in original. Should be ''Service''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted ''competitive service without regard to'' for ''competitive service and''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

§ 626. Compensation of the Director and Deputy Director

The compensation of the Director of the Federal Judicial Center shall be the same as that of the Director of the Administrative Office of the United States Courts, and his appointment and salary shall not be subject to the provisions of title 5, United States Code, governing appointments in competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates: *Provided, however*, That any Director who is a justice or judge of the United States inactive or retired status shall serve without additional compensation. The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 666; amended Pub. L. 100–702, title III, § 304(b)(1), Nov. 19, 1988, 102 Stat. 4648.)

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1988—Pub. L. 100–702 inserted ''and Deputy Director'' in section catchline and inserted at end of text ''The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 304(c) of Pub. L. 100–702 provided that: ''The amendment made by subsection (b) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1988.''

§ 627. Retirement; employee benefits

(a) A Director of the Federal Judicial Center who attains the age of seventy years shall be retired from that office.

(b) The Director, Deputy Director, the professional staff, and the clerical and secretarial employees of the Federal Judicial Center shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter

84 (relating to the Federal Employees' Retirement System), chapter 87 (relating to Federal employees' life insurance program), and chapter 89 (relating to Federal employees' health benefits program) of title 5, United States Code: *Provided, however*, That the Director, upon written notice filed with the Director of the Administrative Office of the United States Courts within 6 months after the date on which he takes office, may waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees' Retirement System), whichever is applicable, and elect coverage under the retirement and disability provisions of this section. A Director who elects coverage under this section shall be deemed an ''employee'' for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84: *And provided further*, That upon his nonretirement separation from the Federal Judicial Center, waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.

(c) Upon the retirement of a Director who has elected coverage under this section and who has served at least fifteen years and attained the age of sixty-five years the Director of the Administrative Office of the United States Courts shall pay him an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement.

Upon the retirement of a Director who has elected coverage under this section and who has served at least ten years, but who is not eligible to receive an annuity under the first paragraph of this subsection, the Administrative Office of the United States Courts shall pay him an annuity for life equal to that proportion of 80 per centum of the salary of the office at the time of his retirement that the number of years of his service bears to fifteen, reduced by one-quarter of 1 per centum for each full month, if any, he is under the age of sixty-five at the time of separation from service.

(d) A director who has elected coverage under this section and who becomes permanently disabled to perform the duties of his office shall be retired and shall receive an annuity for life equal to 80 per centum of the salary of the office at the time of his retirement if he has served at least fifteen years, or equal to that proportion of 80 per centum of such salary that the aggregate number of years of his service bears to fifteen if he has served less than fifteen years, but in no event less than 50 per centum of such salary.

(e) For the purpose of this section, ''service'' means service, whether or not continuous, as Director of the Federal Judicial Center, and any service, not to exceed five years, as a judge of the United States, a Senator or Representative in Congress, or a civilian official appointed by the President, by and with the advice and consent of the Senate.

(f) Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 666; amended Pub. L. 100–702, title X, §§ 1004(a), 1006(a)(2), Nov. 19, 1988, 102 Stat. 4665, 4666; Pub. L. 104–317, title VI, § 604, Oct. 19, 1996, 110 Stat. 3857.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–317, in first sentence, inserted ''Deputy Director,'' before ''the professional staff'' and ''chapter 84 (relating to the Federal Employees' Retirement System),'' after ''(relating to civil service retirement),''.

1988—Subsec. (b). Pub. L. 100–702, § 1006(a)(2), amended provisions after ''*Provided, however*,'' generally. Prior to amendment, those provisions read as follows: ''That the Director, upon written notice filed with the Director of the Administrative Office of the United States Courts within six months after the date on which he takes office, may waive coverage under subchapter III of chapter 83 of title 5, United States Code (relating to civil service retirement), and elect coverage under the retirement and disability provisions of this section: *And provided further*, That upon his non-retirement separation from the Federal Judicial Center, such waiver and election shall not operate to foreclose to the Director such opportunity as the law may provide to secure civil service retirement credit for service as Director by depositing with interest the amount required by section 8334 of title 5, United States Code.''

Subsec. (f). Pub. L. 100–702, § 1004(a), added subsec. (f).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1004(a) of Pub. L. 100–702 applicable to cost-of-living increases that go into effect on or after Nov. 19, 1988, with respect to any annuity being paid or becoming payable on or after such date, see section 1004(b) of Pub. L. 100–702, set out as a note under section 611 of this title.

Amendment by section 1006(a)(2) of Pub. L. 100–702 applicable to persons holding offices of Director of the Administrative Office of the United States Courts, Director of the Federal Judicial Center, and Administrative Assistant to the Chief Justice on Nov. 19, 1988, see section 1006(b) of Pub. L. 100–702, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 376 of this title.

§ 628. Appropriations and accounting

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. The Administrative Office of the United States Courts shall provide accounting, disbursing, auditing, and other fiscal services for the Federal Judicial Center.

(Added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 667.)

§ 629. Federal Judicial Center Foundation

(a) There is established a private nonprofit corporation which shall be known as the Federal

Judicial Center Foundation (hereafter in this section referred to as the ''Foundation'') and which shall be incorporated in the District of Columbia. The purpose of the Foundation shall be to have sole authority to accept and receive gifts of real and personal property and services made for the purpose of aiding or facilitating the work of the Federal Judicial Center. The Foundation shall not accept conditional or otherwise restricted gifts, except gifts that are designated for the support of specific projects previously approved by the Board of the Center may be accepted. The Foundation shall have no authority to administer or otherwise determine the use of gifts accepted under this section.

(b) The business of the Foundation shall be conducted by a Board that shall have seven members, including a chairman. Three members, including the chairman, shall be appointed by the Chief Justice of the United States, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The term of office of each member of the Board shall be 5 years, except that the initial terms shall be 5 years for the chairman, one member appointed by the President Pro Tempore and one member appointed by the Speaker, 3 years for the other member appointed by the President Pro Tempore and the other member appointed by the Speaker, and two years for the two other members appointed by the Chief Justice. Members of the Board shall serve without compensation but, upon authorization of the Director of the Center, shall be reimbursed by the Federal Judicial Center for actual and necessary expenses incurred in the performance of their official duties. No person who is a Federal or State judge in regular active service or otherwise eligible to perform judicial duties shall be eligible for membership on the Board. The Center shall provide all administrative support and facilities necessary for the operation of the Board.

(c) The Federal Judicial Center is authorized to administer and use gifts received by the Foundation under this section. The gifts shall be used to further the goals of the Center as determined by the Board of the Center.

(d) Gifts of money and proceeds from sales of other property received as gifts shall be deposited in a separate fund in the Treasury of the United States and disbursed on the order of the Director of the Center, in accordance with policies established by the Board of the Center.

(e) The Board of the Foundation shall, not later than October 1 of each year, submit to the Committees on the Judiciary of the United States Senate and House of Representatives a report with respect to gifts received under this section during the preceding 12-month period, including the source of each such gift, the amount of each gift of cash or cash equivalent, and a description of any other gift. The Center shall include in its annual report of the activities of the Center under section 623(a)(3) a description of the purposes for which gifts were used during the year covered by the report.

(f) For the purpose of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

(Added Pub. L. 100–702, title III, § 301(a), Nov. 19, 1988, 102 Stat. 4646.)

PRIOR PROVISIONS

A prior section 629, added Pub. L. 90–219, title I, § 101, Dec. 20, 1967, 81 Stat. 667, related to organization provisions for the Board, prior to repeal by Pub. L. 95–598, title II, § 230(1), Nov. 6, 1978, 92 Stat. 2665, effective Nov. 6, 1978.

CHAPTER 43—UNITED STATES MAGISTRATES

Sec.
631. Appointment and tenure.
632. Character of service.
633. Determination of number, locations, and salaries of magistrates.
634. Compensation.
635. Expenses.
636. Jurisdiction, powers, and temporary assignment.
637. Training.
638. Dockets and forms; United States Code; seals.
639. Definitions.

AMENDMENTS

1972—Pub. L. 92–239, § 3, Mar. 1, 1972, 86 Stat. 47, substituted ''Jurisdiction, powers, and temporary assignment'' for ''Jurisdiction and powers'' in item 636.

1968—Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1108, substituted ''MAGISTRATES'' for ''COMMISSIONERS'' in chapter heading, and ''Character of service'' for ''Park commissioners; jurisdiction and powers; procedure'' in item 632, ''Determination of number, locations, and salaries of magistrates'' for ''Fees and expenses'' in item 633, ''Compensation'' for ''Salaries of park commissioners; disposition of fees'' in item 634, ''Expenses'' for ''Park commissioners; residence'' in item 635, ''Jurisdiction and powers'' for ''Accounts'' in item 636, ''Training'' for ''Oaths, acknowledgments, affidavits and depositions'' in item 637, ''Dockets and forms; United States Code; seals'' for ''Seals'' in item 638, and ''Definitions'' for ''Dockets and forms; United States Code'' in item 639.

1954—Act Aug. 13, 1954, ch. 728, § 1(c), 68 Stat. 704, inserted ''and expenses'' after ''Fees'' in item 633.

CROSS REFERENCES

Petty offenses, trial by magistrate judges, see section 3401 of Title 18, Crimes and Criminal Procedure.

Rules of procedure and practice for trials of cases before magistrate judges, and taking of appeals, see section 3402 of Title 18 and rules 1 and 54 of Title 18, Appendix.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 375 of this title; title 48 sections 1912, 1934.

§ 631. Appointment and tenure

(a) The judges of each United States district court and the district court of the Virgin Islands shall appoint United States magistrates in such numbers and to serve at such locations within the judicial district as the conference may determine under this chapter. In the case of a magistrate appointed by the district court of the Virgin Islands, this chapter shall apply as though the court appointing such magistrate were a United States district court. Where there is more than one judge of a district court, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence,

then by the chief judge. Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed. Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts.

(b) No individual may be appointed or reappointed to serve as a magistrate under this chapter unless:

(1) He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, except that an individual who does not meet the bar membership requirements of this paragraph may be appointed and serve as a part-time magistrate if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;

(2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;

(3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;

(4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and

(5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States. Such standards and procedures shall contain provision for public notice of all vacancies in magistrate positions and for the establishment by the district courts of merit selection panels, composed of residents of the individual judicial districts, to assist the courts in identifying and recommending persons who are best qualified to fill such positions.

(c) A magistrate may hold no other civil or military office or employment under the United States: *Provided, however*, That, with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate, but the conference shall fix the aggregate amount of compensation to be received for performing the duties of part-time magistrate and part-time referee in bankruptcy, clerk or deputy clerk: *And provided further*, That retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Army National Guard of the United States, the Air National Guard of the United States, and the Naval Militia and of the National Guard of a State, territory, or the District of Columbia, except the National Guard disbursing officers who are on a full-time salary basis, may be appointed and serve as United States magistrates.

(d) Except as otherwise provided in sections 375 and 636(h) of this title, no individual may serve under this chapter after having attained the age of seventy years: *Provided, however*, That upon a majority vote of all the judges of the appointing court or courts, which is taken upon the magistrate's attaining age seventy and upon each subsequent anniversary thereof, a magistrate who has attained the age of seventy years may continue to serve and may be reappointed under this chapter.

(e) The appointment of any individual as a full-time magistrate shall be for a term of eight years, and the appointment of any individuals as a part-time magistrate shall be for a term of four years, except that the term of a full-time or part-time magistrate appointed under subsection (k)[1] shall expire upon—

(1) the expiration of the absent magistrate's term,

(2) the reinstatement of the absent magistrate in regular service in office as a magistrate,

(3) the failure of the absent magistrate to make timely application under subsection (j)[1] of this section for reinstatement in regular service in office as a magistrate after discharge or release from military service,

(4) the death or resignation of the absent magistrate, or

(5) the removal from office of the absent magistrate pursuant to subsection (i) of this section,

whichever may first occur.

(f) Upon the expiration of his term, a magistrate may, by a majority vote of the judges of the appointing district court or courts and with the approval of the judicial council of the circuit, continue to perform the duties of his office until his successor is appointed, or for 180 days after the date of the expiration of the magistrate's term, whichever is earlier.

(g) Each individual appointed as a magistrate under this section shall take the oath or affirmation prescribed by section 453 of this title before performing the duties of his office.

(h) Each appointment made by a judge or judges of a district court shall be entered of record in such court, and notice of such appointment shall be given at once by the clerk of that court to the Director.

(i) Removal of a magistrate during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but a magistrate's office shall be terminated if the conference determines that the services performed by his office are no longer needed. Removal shall be by the judges of the district court for the judicial district in which the magistrate serves; where there is more than one judge of a district court, removal shall not occur unless a majority of all the judges of such court concur in the order of removal; and when there is a tie vote of the judges of the district court on the question of the removal or retention in office of a magistrate, then removal shall be only by a concurrence of a majority of all the judges of the council. In the case of a magistrate appointed under the third sentence of subsection (a) of this sec-

[1] See References in Text note below.

tion, removal shall not occur unless a majority of all the judges of the appointing district courts concur in the order of removal; and where there is a tie vote on the question of the removal or retention in office of a magistrate, then removal shall be only by a concurrence of a majority of all the judges of the council or councils. Before any order or removal shall be entered, a full specification of the charges shall be furnished to the magistrate, and he shall be accorded by the judge or judges of the removing court, courts, council, or councils an opportunity to be heard on the charges.

(j) Upon the grant by the appropriate district court or courts of a leave of absence to a magistrate entitled to such relief under chapter 43 of title 38, such court or courts may proceed to appoint, in the manner specified in subsection (a) of this section, another magistrate, qualified for appointment and service under subsections (b), (c), and (d) of this section, who shall serve for the period specified in subsection (e) of this section.

(k) A United States magistrate appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.

(June 25, 1948, ch. 646, 62 Stat. 915; May 24, 1949, ch. 139, §73, 63 Stat. 100; July 9, 1952, ch. 609, §1, 66 Stat. 509; July 25, 1956, ch. 722, 70 Stat. 642; Pub. L. 90–578, title I, §101, Oct. 17, 1968, 82 Stat. 1108; Pub. L. 94–520, §2, Oct. 17, 1976, 90 Stat. 2458; Pub. L. 95–598, title II, §231, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96–82, §3(a)–(d), Oct. 10, 1979, 93 Stat. 644, 645; Pub. L. 97–230, Aug. 6, 1982, 96 Stat. 255; Pub. L. 99–651, title II, §201(a)(1), Nov. 14, 1986, 100 Stat. 3646; Pub. L. 100–659, §5, Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100–702, title X, §1003(a)(2), Nov. 19, 1988, 102 Stat. 4665; Pub. L. 101–45, title II, §104, June 30, 1989, 103 Stat. 122; Pub. L. 101–650, title III, §308(b), Dec. 1, 1990, 104 Stat. 5112; Pub. L. 103–353, §2(c), Oct. 13, 1994, 108 Stat. 3169.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§526 and 527, sections 27, 66, 80e, 100, 117e, 129, 172, 198e, 204e, 256d, 395e, 403c–5, 403h–5, 404c–5, and 408m of title 16, U.S.C., 1940 ed., Conservation, and section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (May 27, 1894, ch. 72, §5, 28 Stat. 74; May 28, 1896, ch. 252, §§19, 20, 29 Stat. 184; Apr. 12, 1900, ch. 191, §34, 31 Stat. 84; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Jan. 7, 1913, ch. 6, 37 Stat. 648; Aug. 22, 1914, ch. 264, §6, 38 Stat. 700; June 30, 1916, ch. 197, §6, 39 Stat. 245; Aug. 21, 1916, ch. 368, §6, 39 Stat. 523; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; June 2, 1920, ch. 218, §§7, 8, 41 Stat. 733; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; Dec. 13, 1926, ch. 6, §1, 44 Stat. 919; Apr. 25, 1928, ch. 434, §6, 45 Stat. 460; Apr. 26, 1928, ch. 438, §6, 45 Stat. 464; Mar. 2, 1929, ch. 583, §6, 45 Stat. 1538; Apr. 19, 1930, ch. 200, §6, 46 Stat. 228; June 25, 1935, ch. 309, §1, 49 Stat. 422; Aug. 19, 1937, ch. 703, §5, 50 Stat. 702; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118; June 25, 1938, ch. 684, §1, 52 Stat. 1164; June 28, 1938, ch. 778, §1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, §2, 54 Stat. 43; Mar. 6, 1942, ch. 150, §5, 56 Stat. 134; Mar. 6, 1942, ch. 151, §5, 56 Stat. 137; Apr. 29, 1942, ch. 264, §5, 56 Stat. 260; June 5, 1942, ch. 341, §5, 56 Stat. 318; Dec. 28, 1945, ch. 592, 59 Stat. 659, 660; Apr. 23, 1946, ch. 202, §1, 60 Stat. 119, 120).

Section consolidates section 526 and a portion of 527, both of title 28, U.S.C., 1940 ed., with provisions of sections 27, 66, 80e, 100, 117e, 129, 172, 198e, 204e, 256d, 395e, 403c–5, 403h–5, 404c–5 and 408m of title 16, U.S.C., 1940 ed., and provisions of section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to appointment of United States commissioners. For other provisions of said sections see Distribution Table.

Some of the provisions of section 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions were retained in that title.

The provision of sections 395e, 403c–5, 404c–5, and 408m of title 16, U.S.C., 1940 ed., for appointment of the Park Commissioner in the Hawaii National Park, Shenandoah National Park, Great Smoky Mountains National Park, Mammoth Cave National Park and Isle Royale National Park upon "the recommendation of the Secretary of the Interior" was omitted as inconsistent not only with other provisions of this title but with other statutes applicable to other national parks.

All such park commissioners are United States commissioners and the revision of these sections makes possible uniformity and consistency in administrative matters concerning such commissioners. (See, also, sections 604 and 634 of this title.)

Words "the Director of the Administrative Office of the United States Courts" were substituted for "Attorney General" in section 526 of title 28, U.S.C., 1940 ed., in view of the general supervision by the Director over clerks and commissioners under section 601 et seq. of this title.

See, also, section 751 of this title prohibiting clerks from receiving compensation in another capacity.

First sentence of subsection (b) was substituted for the provision in section 527 of title 28, U.S.C., 1940 ed., prohibiting specified persons from acting as commissioners.

Words "at such places in the district as may be designated by the district court," in section 526 of title 28, U.S.C., 1940 ed., were omitted as unnecessary.

A provision in section 526 of title 28, U.S.C., 1940 ed., that commissioners should have the same powers and duties as are conferred and imposed by law, was omitted as superfluous.

The phrase in sections 526 and 527 of title 16, U.S.C., 1940 ed., "except as provided in section 591" and section 591, the effect of which was to except Alaska from this section, were omitted as unnecessary. This revised section by its terms limits the section and chapter 43 of this title to commissioners appointed by a "district court," which includes the courts enumerated in chapter 5 of this title but not those of Alaska, Canal Zone, or Virgin Islands.

Sections from title 16, U.S.C., 1940 ed., contained no tenure provisions.

Changes in phraseology were made.

Prior residence requirement for national park commissioners in section 635.—Based on sections 1a and 403c–9 of title 16, U.S.C., 1940 ed., Conservation (Aug. 19, 1937, ch. 703, §8, 50 Stat. 702; June 28, 1938, ch. 778, §1, 52 Stat. 1213).

Section consolidates section 1a with part of section 403c–9 of title 16, U.S.C., 1940 ed., relating to residence of a national park commissioner.

The provisions of sections 1a and 403c–9 of title 16, U.S.C., 1940 ed., relating to designation by the Secretary of the Interior of some place of residence reasonably adjacent to the park was modified by making such designation subject to the approval of the appointing court.

SENATE REVISION AMENDMENT

By Senate amendment, "Big Bend" and "Crater Lake" were inserted in subsection (a) of this section, and section 158a of title 16, U.S.C., which was derived from act May 15, 1947, ch. 55, §1, 61 Stat. 91, accordingly became an additional source of this section, such Act being included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

As finally enacted, act May 15, 1947, ch. 57, 61 Stat. 92, which amended section 403c–5 of title 16, U.S.C., became an additional source of this section and was accordingly included in the schedule of repeals by Senate amendment. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment conforms the language of section 631(b) to the provisions of section 35 of the Bankruptcy Act, as amended by the act of June 28, 1946 (§ 3, 60 Stat. 324), that full-time referees in bankruptcy may not be appointed United States Commissioners.

This amendment also removes an ambiguity from section 631(b) by making it clear that the Director of the Administrative Office of the United States Courts has power to establish maximum limits of compensation to be received for performing the combined offices of commissioner and clerk or deputy clerk. This was the intent of sections 631 and 751 of title 28. (See the fifteenth paragraph of the reviser's note to the latter section, H. Rept. No. 308, April 25, 1947, p. A90, to accompany H.R. 3214, 80th Cong.)

REFERENCES IN TEXT

Subsections (j) and (k) of this section, referred to in subsec. (e), probably mean subsecs. (j) and (k) prior to amendment by Pub. L. 103–353, § 2(c)(1), (2), Oct. 13, 1994, 108 Stat. 3169, which redesignated subsec. (k) as (j) and struck out former subsec. (j).

AMENDMENTS

1994—Subsec. (j). Pub. L. 103–353, § 2(c), redesignated subsec. (k) as (j), substituted ''chapter 43 of title 38'' for ''the terms of subsection (i) of this section'', and struck out former subsec. (j) which related to uncompensated leave of absence for magistrate inducted into the Armed Forces and reinstatement as magistrate in regular service.

Subsecs. (k), (*l*). Pub. L. 103–353, § 2(c)(2), redesignated subsecs. (k) and (*l*) as (j) and (k), respectively.

1990—Subsec. (f). Pub. L. 101–650 substituted ''180'' for ''60''.

1989—Subsec. (b)(1). Pub. L. 101–45 struck out ''and he is a member in good standing of the bar of the highest court of the State in which he is to serve, or, in the case of an individual appointed to serve—

''(A) in the District of Columbia, a member in good standing of the bar of the United States district court for the District of Columbia; or

''(B) in the Commonwealth of Puerto Rico, a member in good standing of the bar of the Supreme Court of Puerto Rico, and in the Virgin Islands of the United States, a member in good standing of the bar of the district court of the Virgin Islands;'' after ''Virgin Islands of the United States,'' and struck out ''the first sentence of'' before ''this paragraph''.

1988—Subsec. (e). Pub. L. 100–659 substituted ''(k)'' for ''(j)'' in introductory text, ''(j)'' for ''(i)'' in par. (3), and ''(i)'' for ''(h)'' in par. (5).

Subsec. (*l*). Pub. L. 100–702 added subsec. (*l*).

1986—Subsec. (d). Pub. L. 99–651 substituted ''Except as otherwise provided in sections 375 and 636(h) of this title, no'' for ''No'', and ''a majority'' for ''the unanimous'', and inserted ''which is taken upon the magistrate's attaining age seventy and upon each subsequent anniversary thereof,'' after ''courts,''.

1982—Subsec. (b)(1). Pub. L. 97–230 substituted ''He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and he is a member'' for ''He is, and has been for at least five years, a member''.

1979—Subsec. (a). Pub. L. 96–82, § 3(a), substituted ''Where the conference deems it desirable, a magistrate may be designated to serve in one or more districts adjoining the district for which he is appointed'' and ''Such a designation shall be made by the concurrence of a majority of the judges of each of the district courts involved and shall specify the duties to be performed by the magistrate in the adjoining district or districts'' for ''Where an area under the administration of the National Park Service, or the United States Fish and Wildlife Service, or any other Federal agency, extends into two or more judicial districts and it is deemed desirable by the conference that the territorial jurisdiction of a magistrate's appointment include the entirety of such area, the appointment or reappointment shall be made by the concurrence of a majority of all judges of the district courts of the judicial districts involved, and where there is no such concurrence by the concurrence of the chief judges of such district courts''.

Subsec. (b). Pub. L. 96–82, § 3(b), substituted ''appointed or reappointed to serve'' for ''appointed or serve'' in provisions preceding par. (1), inserted '', and has been for at least 5 years,'' after ''He is'' in provisions of par. (1) preceding subpar. (A), struck out subpar. (C) relating to service by members an good standing of the bar of the highest court of one of the two or more States where the area involved is under the administration of the National Park Service, the United States Fish and Wildlife Service, or any other Federal agency that extends to two or more States.

Subsec. (b)(5). Pub. L. 96–82, § 3(c), added par. (5).

Subsec. (f). Pub. L. 96–82, § 3(d)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsecs. (g) to (k). Pub. L. 96–82, § 3(d)(1), redesignated former subsecs. (f) to (j) as (g) to (k), respectively.

1978—Subsec. (c). Pub. L. 95–598 directed the amendment of subsec. (c) by substituting ''of the conference,'' for ''of the conference, a part-time referee in bankruptcy or'' and ''magistrate and'' for ''magistrate and part-time referee in bankruptcy,'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Subsec. (a). Pub. L. 94–520, § 2(1), (2), inserted ''and the district court of the Virgin Islands'' after ''United States district court'', and provided that in the case of a magistrate appointed by the district court of the Virgin Islands, this chapter was to apply as though the appointing court were a United States District Court.

Subsec. (b). Pub. L. 94–520, § 2(3), provided that a magistrate appointed under this chapter to serve in the Virgin Islands, must be a member in good standing of the bar of the district court of the Virgin Islands.

1968—Pub. L. 90–578 revised provisions of this section generally as described for subsecs. (a) to (j) hereunder, substituting provisions for appointment and tenure of magistrates for appointment and tenure of commissioners.

Subsec. (a). Pub. L. 90–578 provided for determination of number of appointees by the conference, rather than by the district court, authorized the determination of location of service, omitted as superseded by existing provisions prior provisions for appointments for certain specified national parks, required appointments in a district court with more than one judge to be concurred in by majority of all the judges, and by the chief judge in absence of such concurrence, required such concurrence of judges of district courts or concurrence of chief judges in absence of such concurrence by the judges where appointments are for an area under administration of the National Park Service, or the United States Fish and Wildlife Service, or any other Federal agency, which extends into more than one judicial district which should be served in its entirety by one magistrate, and omitted last par. prescribing appointment record and notice. See subsec. (g) of this section.

Subsec. (b). Pub. L. 90–578 added subsec. (b). Prior provisions which were eliminated prohibited holding dual offices when the person held a civil or military office or employment under the United States or was employed by a Federal justice or judge, but such restriction was made inapplicable to a part-time referee in bankruptcy, or to a clerk or deputy clerk of a Federal court when approved by the Director and compensated in an aggregate amount fixed by the Director for performance of dual duties. See subsec. (c) of this section.

Subsec. (c). Pub. L. 90–578 incorporated provisions of former subsec. (b) of this section in provisions designated as subsec. (c), omitted express restriction

against holding dual offices when employed by a Federal justice or judge, provided for approval of the conference with respect to part-time service as a magistrate of part-time referee in bankruptcy or clerk or deputy clerk of a Federal court, formerly requiring approval of the Director as to service of clerk or deputy clerk of court as a commissioner, made former provisions as to aggregate amount of compensation for service as clerk or deputy clerk of court and commissioner applicable to part-time service as magistrate of part-time referee in bankruptcy, clerk and deputy clerk of court, and authorized appointment of retired military personnel, except National Guard disbursing officers who are on a full-time salary basis, as United States magistrates. Former subsec. (c) which provided for a four year term of office of commissioner unless sooner removed by the district court. See subsecs. (e) and (h) of this section.

Subsec. (d). Pub. L. 90–578 added subsec. (d).

Subsec. (e). Pub. L. 90–578 substituted provisions designated as subsec. (e) for term of office of eight and four years for full-time and part-time officers and for expiration of term of office for provisions of former subsec. (c) of this section for term of four years unless sooner removed by the district court.

Subsec. (f). Pub. L. 90–578 added subsec. (f).

Subsec. (g). Pub. L. 90–578 incorporated provisions of last par. of former subsec. (a) of this section in provisions designated as subsec. (g) and provided expressly for appointment by a judge or judges of a district court.

Subsecs. (h) to (j). Pub. L. 90–578 added subsecs. (h) to (j).

1956—Subsec. (a). Act July 25, 1956, provided for two United States Commissioners for the Cumberland Gap National Historical Park.

1952—Subsec. (a). Act July 9, 1952, provided for two United States Commissioners for the Great Smoky Mountains National Park, in place of one.

1949—Subsec. (b). Act May 24, 1949, amended second sentence generally. Prior to amendment, second sentence read as follows: ''This subsection shall not apply to a referee in bankruptcy nor shall it apply to a clerk or deputy clerk of a court of the United States whose appointment as commissioner is approved by the Director of the Administrative Office of the United States Courts.''

CHANGE OF NAME

Section 321 of Pub. L. 101–650 provided that: ''After the enactment of this Act [Dec. 1, 1990], each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–651 effective Jan. 1, 1987, see section 203 of Pub. L. 99–651, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3(g) of Pub. L. 96–82 provided that: ''The amendment made by subsection (c) of this section [amending this section] shall not take effect until 30 days after the meeting of the Judicial Conference of the United States next following the effective date of this Act [Oct. 10, 1979].'' [The meeting of the Judicial Conference took place on Mar. 5 and 6, 1980.]

EFFECTIVE DATE OF 1968 AMENDMENT

Section 403 of Pub. L. 90–578 provided that: ''Except as otherwise provided by sections 401 and 402 of this title [set out as Appointment of Magistrates and Applicable Law notes below], this Act [amending this chapter and sections 202, 3006A, 3041, 3043, 3045, 3060, 3102, 3116, 3184, 3191, 3195, 3401, 3402, 3569, and 3771 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] shall take effect on the date of its enactment [Oct. 17, 1968].''

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96–82 provided: ''That this Act [amending this section, sections 604, 633, 634, 635, 636, and 1915 of this title, and section 3401 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] may be cited as the 'Federal Magistrate Act of 1979'.''

SHORT TITLE

Section 1 of Pub. L. 90–578 provided: ''That this Act [amending this chapter and sections 202, 3006A, 3041, 3043, 3045, 3060, 3102, 3116, 3184, 3191, 3195, 3401, 3402, 3569, and 3771 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] may be cited as the 'Federal Magistrates Act'.''

SEPARABILITY

Section 501 of Pub. L. 90–578 provided that: ''If any provision of this Act [amending this chapter and sections 202, 3006A, 3041, 3043, 3045, 3060, 3102, 3116, 3184, 3191, 3195, 3401, 3402, 3569, and 3771 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of its application to other persons and circumstances shall not be affected.''

DUE CONSIDERATION BY MERIT SELECTION PANELS OF WOMEN, BLACKS, HISPANICS, AND OTHER MINORITIES

Section 3(e) of Pub. L. 96–82 provided that: ''The merit selection panels established under section 631(b)(5) of title 28, United States Code, in recommending persons to the district court, shall give due consideration to all qualified individuals, especially such groups as women, blacks, Hispanics, and other minorities.''

MAGISTRATES SERVING PRIOR TO PROMULGATION OF MAGISTRATE SELECTION STANDARDS AND PROCEDURES BY JUDICIAL CONFERENCE; REAPPOINTMENT; CERTIFICATION AS QUALIFIED

Section 3(f) of Pub. L. 96–82 provided that: ''Magistrates [now United States magistrate judges] serving prior to the promulgation of magistrate selection standards and procedures by the Judicial Conference of the United States may only exercise the jurisdiction conferred under the amendment made by section 2 of this Act [enacting section 636(c) of this title] after having been reappointed under such standards and procedures or after having been certified as qualified to exercise such jurisdiction by the judicial council of the circuit in which the magistrate serves.''

JUDICIAL CONFERENCE STUDY OF THE FUTURE OF THE MAGISTRATE SYSTEM

Section 9 of Pub. L. 96–82 provided for a study by the Judicial Conference of the United States to begin within 90 days after the effective date of Pub. L. 96–82, which was approved Oct. 10, 1979, and to be completed and made available to Congress within 24 months thereafter respecting the future of the magistrate system.

AUTHORIZATION OF APPROPRIATIONS

Section 10 of Pub. L. 96–82 provided that: ''Such sums as may be necessary to carry out the purposes of this Act [see Short Title of 1979 Amendment note above] are hereby authorized to be appropriated for expenditure on or after October 1, 1979.''

APPOINTMENT OF MAGISTRATES

Section 401 of Pub. L. 90–578 provided that:

''(a) No individual may serve as a United States commissioner within any judicial district after the date on which a United States magistrate [now United States magistrate judge] assumes office in such judicial district.

''(b) An individual serving as a United States commissioner within any judicial district on the date of enactment of this Act [Oct. 17, 1968] who is a member in good standing of the bar of the highest court of any State may be appointed to the office of United States magistrate for an initial term, and may be reappointed to such office for successive terms, notwithstanding his failure to meet the bar membership qualification imposed by section 631(b)(1) of chapter 43, title 28, United States Code: *Provided, however*, That any appointment or reappointment of such an individual must be by unanimous vote of all the judges of the appointing district court or courts.''

APPLICABLE LAW

Section 402 of Pub. L. 90–578 provided that:

''(a) All provisions of law relating to the powers, duties, jurisdiction, functions, service, compensation, and facilities of United States commissioners, as such provisions existed on the day preceding the date of enactment of this Act [Oct. 17, 1968], shall continue in effect in each judicial district until but not on or after (1) the date on which the first United States magistrate [now United States magistrate judge] assumes office within such judicial district pursuant to section 631 of chapter 43, title 28, United States Code, as amended by this Act, or (2) the third anniversary of the date of enactment of this Act [Oct. 17, 1968], whichever date is earlier.

''(b) On and after the date on which the first United States magistrate assumes office within any judicial district pursuant to section 631 of chapter 43, title 28, United States Code, as amended by this Act, or the third anniversary of the date of enactment of this Act [Oct. 17, 1968], whichever date is earlier—

''(1) the provisions of chapter 43, title 28, United State Code, as amended by this Act [this chapter], shall be effective within such judicial district except as otherwise specifically provided by section 401(b) of this title [set out as Appointment of Magistrates note above]; and

''(2) within such judicial district every reference to a United States commissioner contained in any previously enacted statute of the United States (other than sections 8331(1)(E), 8332(i), 8701(a)(7), and 8901(1)(G) of title 5), any previously promulgated rule of any court of the United States, or any previously promulgated regulation of any executive department or agency of the United States, shall be deemed to be a reference to a United States magistrate duly appointed under section 631 of chapter 43, title 28, United States Code, as amended by this Act.

''(c) The administrative powers and duties of the Director of the Administrative Office of the United States Courts with respect to United States commissioners under the provisions of chapter 41, title 28, United States Code, as such provisions existed on the day preceding the date of enactment of this Act [Oct. 17, 1968], shall continue in effect until no United States commissioner remains in service.''

SPECIAL COMMISSIONER FOR GRAND CANYON NATIONAL PARK; APPOINTMENT; JURISDICTION; COMPENSATION

Pub. L. 86–258, Sept. 14, 1959, 73 Stat. 546, required the United States District Court for the District of Arizona to appoint a special commissioner for the Grand Canyon National Park, Arizona, and provided for the term, jurisdiction, and salary of the commissioner.

JURISDICTIONAL LIMITATION OF COMMISSIONER HOLDING OFFICE ON JULY 9, 1952

Section 2 of act July 9, 1952, provided that the jurisdiction of the United States commissioner for the Great Smoky Mountains National Park on July 9, 1952, would be limited to the portion of the park situated in North Carolina.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 372, 377, 604, 636, 751 of this title; title 5 section 8331.

§ 632. Character of service

(a) Full-time United States magistrates may not engage in the practice of law, and may not engage in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(b) Part-time United States magistrates shall render such service as judicial officers as is required by law. While so serving they may engage in the practice of law, but may not serve as counsel in any criminal action in any court of the United States, nor act in any capacity that is, under such regulations as the conference may establish, inconsistent with the proper discharge of their office. Within such restrictions, they may engage in any other business, occupation, or employment which is not inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers.

(June 25, 1948, ch. 646, 62 Stat. 916; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1110.)

AMENDMENTS

1968—Pub. L. 90–578 substituted provisions as to character of service of full-time and part-time United States magistrates for former provisions prescribing jurisdiction and powers of national park commissioners and practice and procedure before such officers. See section 636 of this title.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

§ 633. Determination of number, locations, and salaries of magistrates

(a) SURVEYS BY THE DIRECTOR.—

(1) The Director shall, within one year immediately following the date of the enactment of the Federal Magistrates Act, make a careful survey of conditions in judicial districts to determine (A) the number of appointments of full-time magistrates and part-time magistrates required to be made under this chapter to provide for the expeditious and effective administration of justice, (B) the locations at which such officers shall serve, and (C) their respective salaries under section 634 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient.

(2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the populations to be served, the transportation and communications facilities available, the amount and distribution of business of the type expected to arise before officers appointed under this chapter (including such matters as may be assigned under section 636(b) of this chapter), and any other material factors. The Director shall give consideration to suggestions from any interested parties, including district judges, United States commissioners or officers appointed under this chapter, United States attorneys, bar associations, and other parties having relevant experience or information.

(3) The surveys shall be made with a view toward creating and maintaining a system of full-time United States magistrates. However, should the Director find, as a result of any such surveys, areas in which the employment of a full-time magistrate would not be feasible or desirable, he shall recommend the appointment of part-time United States magistrates in such numbers and at such locations as may be required to permit prompt and efficient issuance of process and to permit individuals charged with criminal offenses against the United States to be brought before a judicial officer of the United States promptly after arrest.

(b) DETERMINATION BY THE CONFERENCE.—Upon the completion of the initial surveys required by subsection (a) of this section, the Director shall report to the district courts, the councils, and the conference his recommendations concerning the number of full-time magistrates and part-time magistrates, their respective locations, and the amount of their respective salaries under section 634 of this title. The district courts shall advise their respective councils, stating their recommendations and the reasons therefor; the councils shall advise the conference, stating their recommendations and the reasons therefor, and shall also report to the conference the recommendations of the district courts. The conference shall determine, in the light of the recommendations of the Director, the district courts, and the councils, the number of full-time United States magistrates and part-time United States magistrates, the locations at which they shall serve, and their respective salaries. Such determinations shall take effect in each judicial district at such time as the district court for such judicial district shall determine, but in no event later than one year after they are promulgated.

(c) CHANGES IN NUMBER, LOCATIONS, AND SALARIES.—Except as otherwise provided in this chapter, the conference may, from time to time, in the light of the recommendations of the Director, the district courts, and the councils, change the number, locations, and salaries of full-time and part-time magistrates, as the expeditious administration of justice may require.

(June 25, 1948, ch. 646, 62 Stat. 916; Aug. 13, 1954, ch. 728, § 1(a), (b), 68 Stat. 704; Pub. L. 85–276, §§ 1, 2, Sept. 2, 1957, 71 Stat. 600; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1111; Pub. L. 96–82, § 4, Oct. 10, 1979, 93 Stat. 645; Pub. L. 99–651, title II, § 202(d), Nov. 14, 1986, 100 Stat. 3648.)

REFERENCES IN TEXT

Date of the enactment of the Federal Magistrates Act, referred to in subsec. (a)(1), means Oct. 17, 1968, the date of enactment of Pub. L. 90–578.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–651 substituted ''section 634'' for ''section 643''.

1979—Subsec. (c). Pub. L. 96–82 struck out provision that determinations of the conference changing the number, locations, and salaries of full-time and part-time magistrates take effect sixty days after they are promulgated.

1968—Pub. L. 90–578 substituted provisions for determination of number, locations, and salaries of magistrates, comprising subsecs. (a) to (c) of this section, relating to: surveys by the Director; determination by the conference; and changes in number, locations, and salaries'', respectively, for prior provisions for fees and expenses of United States commissioners, prescribing in undesignated introductory provisions a $10,500 limitation for any one calendar year for certain enumerated services rendered, and in former subsec. (c) for actual and necessary office expenses, including compensation of a necessary clerical assistant, of United States commissioners performing full time duty in office and not engaged in practice of law, now covered in sections 634 and 635 of this title.

1957—Subsec. (a). Pub. L. 85–276, § 1, placed in subsec. (a) provisions of former subsec. (b) relating to limitation of compensation of commissioners and, among other charges, increased fees and compensation of commissioners.

Subsec. (b). Pub. L. 85–276, § 2, repealed subsec. (b) which limited compensation of commissioners.

1954—Act Aug. 13, 1954, inserted ''and expenses'' after ''Fees'' in section catchline.

Subsec. (c). Act Aug. 13, 1954, added subsec. (c).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–651 effective Jan. 1, 1987, see section 203 of Pub. L. 99–651, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 634 of this title.

§ 634. Compensation

(a) Officers appointed under this chapter shall receive, as full compensation for their services,

salaries to be fixed by the conference pursuant to section 633, at rates for full-time United States magistrates up to an annual rate equal to 92 percent of the salary of a judge of the district court of the United States, as determined pursuant to section 135, and at rates for part-time magistrates of not less than an annual salary of $100, nor more than one-half the maximum salary payable to a full-time magistrate. In fixing the amount of salary to be paid to any officer appointed under this chapter, consideration shall be given to the average number and the nature of matters that have arisen during the immediately preceding period of five years, and that may be expected thereafter to arise, over which such officer would have jurisdiction and to such other factors as may be material. Disbursement of salaries shall be made by or pursuant to the order of the Director.

(b) Except as provided by section 8344, title 5, relating to reductions of the salaries of reemployed annuitants under subchapter III of chapter 83 of such title and unless the office has been terminated as provided in this chapter, the salary of a full-time United States magistrate shall not be reduced, during the term in which he is serving, below the salary fixed for him at the beginning of that term.

(c) All United States magistrates, effective upon their taking the oath or affirmation of office, and all necessary legal, clerical, and secretarial assistants employed in the offices of full-time United States magistrates shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III (relating to civil service retirement) of chapter 83, chapter 87 (relating to Federal employees' group life insurance), and chapter 89 (relating to Federal employees' health benefits program) of title 5. Part-time magistrates shall not be excluded from coverage under these chapters solely for lack of a prearranged regular tour of duty. A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1112; Pub. L. 92–428, Sept. 21, 1972, 86 Stat. 721; Pub. L. 94–520, § 1, Oct. 17, 1976, 90 Stat. 2458; Pub. L. 95–598, title II, § 232, Nov. 6, 1978, 92 Stat. 2665; Pub. L. 96–82, § 8(b), Oct. 10, 1979, 93 Stat. 647; Pub. L. 98–353, title I, § 108(a), title II, § 210, July 10, 1984, 98 Stat. 342, 351; Pub. L. 100–202, § 101(a) [title IV, § 408(b)], Dec. 22, 1987, 101 Stat. 1329, 1329–27; Pub. L. 100–702, title X, § 1003(a)(4), Nov. 19, 1988, 102 Stat. 4665.)

HISTORICAL AND REVISION NOTES

Based on sections 29, 72, 74, 80h, 103, 104, 117h, 117j, 132, 132a, 133, 175, 176, 198h, 198j, 204h, 204j, 256f, 256h, 379, 380, 395h, 395j, 403c–9, 403c–11, 403h–7, 403h–9, 404c–7, 404c–9, 408*o*, and 408q of title 16, U.S.C., 1940 ed., Conservation (May 7, 1894, ch. 72, § 7, 28 Stat. 75; Apr. 17, 1900, ch. 192, § 1, 31 Stat. 133; Apr. 20, 1904, ch. 1400, §§ 9, 11, 33 Stat. 189; Mar. 2, 1907, ch. 2516, § 2, 34 Stat. 1218; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 22, 1914, ch. 264, §§ 9, 11, 38 Stat. 701; June 30, 1916, ch. 197, §§ 9, 11, 39 Stat. 246; Aug. 21, 1916, ch. 368, §§ 9, 11, 39 Stat. 523, 524; June 2, 1920, ch. 218, §§ 11, 13, 41 Stat. 734; Mar. 4, 1923, ch. 295, 42 Stat. 1560; Apr. 25, 1928, ch. 434, §§ 9, 11, 45 Stat. 461; Apr. 26, 1928, ch. 438, §§ 9, 11, 45 Stat. 465; Mar. 2, 1929, ch. 583, §§ 9, 11, 45 Stat. 1539; Apr. 19, 1930, ch. 200, §§ 9, 11, 46 Stat. 229; June 25, 1935, ch. 309, §§ 2, 3, 49 Stat. 422; Aug. 19, 1937, ch. 703, §§ 9, 11, 50 Stat. 702, 703; June 25, 1938, ch. 684, § 2, 52 Stat. 1164; June 28, 1938, ch. 778, § 1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, § 2, 54 Stat. 43; Mar. 6, 1942, ch. 150, §§ 7, 9, 56 Stat. 135; Mar. 6, 1942, ch. 151, §§ 7, 9, 56 Stat. 137; Apr. 29, 1942, ch. 264, §§ 7, 9, 56 Stat. 260, 261; June 5, 1942, ch. 341, §§ 7, 9, 56 Stat. 319; Apr. 23, 1946, ch. 202, § 4, 60 Stat. 120; June 24, 1946, ch. 463, § 5, 60 Stat. 303).

Section consolidates provisions of sections 29, 72, 74, 80h, 103, 104, 117h, 117j, 132, 132a, 133, 175, 176, 198h, 198j, 204h, 204j, 256f, 256h, 379, 380, 395h, 395j, 403c–9, 403c–11, 403h–7, 403h–9, 404c–7, 404c–9, 408*o* and 408q of title 16, Conservation, relating to salary and fees of park commissioners with changes in arrangement and phraseology necessary to effect consolidation.

The provisions of some of these sections that the park commissioner should be "paid an annual salary, as appropriated for by Congress, payable quarterly" were rewritten upon advice of the Judicial Conference Committee on the Revision of the Judicial Code appointed by the Chief Justice of the United States, in order to place administration supervision of commissioners upon the district court and the Judicial Conference of the United States.

The provisions of some of these sections for deposit of fees, costs, expenses, fines, and penalties with the clerk of district court were rewritten to provide merely that he shall account for the same as public moneys.

The provisions of some of these sections with reference to salaries of the United States attorney and his assistants and the United States marshal and his deputies were omitted as covered by sections 508 [now 548] and 552 [see Prior Provisions note for that section] of this title.

SENATE REVISION AMENDMENT

As finally enacted, section 158d of title 16, U.S.C., which was derived from act May 15, 1947, ch. 55, § 4, 61 Stat. 91, 92, was an additional source of this section and was accordingly included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–702 inserted at end "A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court."

1987—Subsec. (a). Pub. L. 100–202 amended first sentence generally. Prior to amendment, first sentence read as follows: "Officers appointed under this chapter shall receive as full compensation for their services salaries to be fixed by the conference pursuant to section 633 of this title, at rates for full-time and part-time United States magistrates not to exceed rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361) as adjusted by section 461 of this title except that the salary of a part-time United States magistrate shall not be less than $100 nor more than one-half the maximum salary payable to a full-time magistrate."

1984—Subsec. (a). Pub. L. 98–353, § 108(a), substituted "rates determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351–361) as adjusted by section 461 of this title" for "the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,".

Subsec. (c). Pub. L. 98–353, § 210, substituted "subchapter III" for "subsection III".

1979—Subsec. (c). Pub. L. 96–82 inserted reference to legal assistants.

1978—Subsec. (a). Pub. L. 95–598 directed the amendment of subsec. (a) by substituting "not to exceed

$48,500 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of this title,'' for ''for full-time and part-time United States magistrates not to exceed the rates now or hereafter provided for full-time and part-time referees in bankruptcy, respectively, referred to in section 40a of the Bankruptcy Act (11 U.S.C. 68(a)), as amended,'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Subsec. (a). Pub. L. 94–520 substituted provision fixing the maximum annual salary of a part-time magistrate appointed under this chapter at one-half the maximum salary payable to a full-time magistrate for a former provision that fixed such annual salaries at $15,000 per year and provided that the salary of a full-time magistrate was not to exceed 75% of the annual salary of a United States District Court judge.

1972—Subsec. (a). Pub. L. 92–428 substituted limits of compensation for full-time and part-time United States magistrates at rates not exceeding those of full-time and part-time referees in bankruptcy, with exceptions that the salary of a part-time United States magistrate shall not be less than $100 nor more than $15,000 per annum and that the salary of a full-time United States magistrate shall not exceed 75 per cent of the salary of a judge of a district court of the United States, for provisions fixing maximum limits for full-time and part-time United States magistrates at $22,500 and $11,000, respectively, and minimum limit for part-time United States magistrates at $100 per annum.

1968—Pub. L. 90–578 substituted provisions for compensation of United States magistrates, comprising subsecs. (a) to (c) of this section and relating to: limitation on amount of compensation and consideration of certain factors for its determination; reduction of salaries of full-time magistrates; and consideration as judicial branch officers and employees of United States magistrates and necessary clerical and secretarial assistants, for prior provisions for salaries of park commissioners and disposition of fees, fines, and costs collected as public moneys.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–202 effective Oct. 1, 1988, and any salary affected by the amendment to be adjusted at beginning of first applicable pay period commencing on or after such date, see section 101(a) [title IV, § 408(d)] of Pub. L. 100–202, set out as a note under section 153 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 108(a) of Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

SALARY INCREASES

1987—Maximum salaries of U.S. magistrates (full-time) and U.S. magistrates (part-time) increased respectively to $72,500 and $36,200 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

CONTINUATION OF MAXIMUM RATES OF SALARY OF FULL-TIME AND PART-TIME UNITED STATES MAGISTRATES IN EFFECT ON JUNE 27, 1984

Section 108(b) of Pub. L. 98–353 provided that: ''The maximum rates for salary of full-time and part-time United States magistrates [now United States magistrate judges] in effect on June 27, 1984, shall remain in effect until changed as a result of a determination made under section 634(a) of title 28, United States Code, as amended by this Act.''

[Section 108(b) of Pub. L. 98–353 effective June 27, 1984, see section 122(c) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 633 of this title.

§ 635. Expenses

(a) Full-time United States magistrates serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrates with necessary courtrooms, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.

(b) Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrates for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrates for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such officers: *Provided, however*, That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrates for the procurement of office space.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1112; Pub. L. 96–82, § 8(a), Oct. 10, 1979, 93 Stat. 646.)

HISTORICAL AND REVISION NOTES

Prior section 663.—Based on title 28, U.S.C., 1940 ed., §§ 597, 597a, 597b, 597c (May 28, 1896, ch. 252, §§ 21, 24, 29

Stat. 184, 186; Aug. 1, 1946, ch. 721, §§1–4, 60 Stat. 752, 753).

The provision of section 597c of title 28, U.S.C., 1940 ed., excepting commissioners in the Territory of Alaska was omitted as unnecessary since this exception is implicit in the revised section. The words ''in each judicial district'' limit the section to the commissioners in the districts enumerated in chapter 5 which includes Hawaii, Puerto Rico, and District of Columbia but omits Alaska, Canal Zone, [Guam] and Virgin Islands.

Salaries of park commissioners are provided by section 634 of this title.

Changes were made in phraseology.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–82 inserted reference to the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary.

1968—Pub. L. 90–578 substituted provisions relating to expenses for provisions prescribing residence for park commissioners. See section 631(b)(3) of this title.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636 of this title.

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction; and

(5) the power to enter a sentence for a class A misdemeanor, or a class B or C misdemeanor not covered by paragraph (4), in a case in which the parties have consented.

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial[1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

(2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other

[1] So in original. Probably should be ''post-trial''.

part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

(5) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) In a proceeding before a magistrate, any of the following acts or conduct shall constitute a contempt of the district court for the district wherein the magistrate is sitting: (1) disobedience or resistance to any lawful order, process, or writ; (2) misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same; (3) failure to produce, after having been ordered to do so, any pertinent document; (4) refusal to appear after having been subpenaed or, upon appearing, refusal to take the oath or affirmation as a witness, or, having taken the oath or affirmation, refusal to be examined according to law; or (5) any other act or conduct which if committed before a judge of the district court would constitute contempt of such court. Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this section an order requiring such person to appear before a judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a judge of the court, or commit such person upon the conditions applicable in the case of defiance of the process of the district court or misconduct in the presence of a judge of that court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a), (b), or (c) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual

is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 631.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1113; Pub. L. 92–239, §§ 1, 2, Mar. 1, 1972, 86 Stat. 47; Pub. L. 94–577, § 1, Oct. 21, 1976, 90 Stat. 2729; Pub. L. 95–144, § 2, Oct. 28, 1977, 91 Stat. 1220; Pub. L. 96–82, § 2, Oct. 10, 1979, 93 Stat. 643; Pub. L. 98–473, title II, § 208, Oct. 12, 1984, 98 Stat. 1986; Pub. L. 98–620, title IV, § 402(29)(B), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 99–651, title II, § 201(a)(2), Nov. 14, 1986, 100 Stat. 3647; Pub. L. 100–659, § 4(c), Nov. 15, 1988, 102 Stat. 3918; Pub. L. 100–690, title VII, § 7322, Nov. 18, 1988, 102 Stat. 4467; Pub. L. 100–702, title IV, § 404(b)(1), title X, § 1014, Nov. 19, 1988, 102 Stat. 4651, 4669; Pub. L. 101–650, title III, § 308(a), Dec. 1, 1990, 104 Stat. 5112; Pub. L. 104–317, title II, §§ 201, 202(b), 207, Oct. 19, 1996, 110 Stat. 3848–3850.)

Historical and Revision Notes

Prior jurisdiction, powers, and procedure provisions in section 632.—Based on sections 27, 66, 67, 68, 80f, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5, and 408m of title 16, U.S.C., 1940 ed., Conservation (May 7, 1894, ch. 72, § 5, 28 Stat. 74; Apr. 20, 1904, ch. 1400, § 6, 33 Stat. 188; Mar. 2, 1907, ch. 2516, §§ 1, 2, 34 Stat. 1218; Mar. 3, 1911, ch. 230, 36 Stat. 1086; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 22, 1914, ch. 264, § 6, 38 Stat. 700; June 30, 1916, ch. 197, § 6, 39 Stat. 245; Aug. 21, 1916, ch. 368, § 6, 39 Stat. 523; June 2, 1920, ch. 218, §§ 7, 8, 41 Stat. 733; Apr. 25, 1928, ch. 434, § 6, 45 Stat. 460; Apr. 26, 1928, ch. 438, § 6, 45 Stat. 464; Apr. 19, 1930, ch. 200, § 6, 4 Stat. 228; May 2, 1932, ch. 155, § 3, 47 Stat. 145; June 25, 1935, ch. 309, § 1, 49 Stat. 422; Aug. 19, 1937, ch. 703, §§ 5, 6, 50 Stat. 702; June 25, 1938, ch. 684, § 1, 52 Stat. 1164; June 28, 1938, ch. 778, § 1, 52 Stat. 1213; Mar. 4, 1940, ch. 40, § 2, 54 Stat. 43; Mar. 6, 1942, ch. 150, § 5, 56 Stat. 134; Mar. 6, 1942, ch. 151, § 5, 56 Stat. 137; Apr. 29, 1942, ch. 264, § 5, 56 Stat. 260; June 5, 1942, ch. 341, § 5, 56 Stat. 318; Apr. 23, 1946, ch. 202, § 2, 60 Stat. 120; June 24, 1946, ch. 463, § 2, 60 Stat. 303).

Section consolidates provisions of sections 27, 66, 67, 68, 80f, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5 and 408m of title 16, U.S.C., 1940 ed., relating to jurisdiction and powers of park commissioners with necessary changes in arrangement and phraseology. For other provisions of such sections, see Distribution Table.

The provisions of sections 27, 66, 67, 68, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5 and 408m of title 16, U.S.C., 1940 ed., relating to the powers of park commissioners respecting issuance of warrants of arrest and other process were omitted and are recommended for repeal as covered by sections 3041 and 3141 of revised title 18 (H.R. 1600, 80th Cong.), and Rules, 4, 5(c), and 9 of the new Federal Rules of Criminal Procedure.

Provisions in sections 27, 66, 67, 68, 100, 117e, 129, 172, 181b, 204e, 256d, 376, 395e, 403c–5, 403c–6, 403h–5, 404c–5 and 408m of title 16, U.S.C., 1940 ed., for arrest without warrant for violation of law or regulation within a national park were also omitted and are recommended for repeal as covered by section 3054 of revised title 18 (H.R. 2200, 79th Cong.), Rule 4 of the Federal Rules of Criminal Procedure and Rule 4 of the Federal Rules of Civil Procedure.

Senate Revision Amendment

As finally enacted, section 158b of Title 16, U.S.C., which was derived from act May 15, 1947, ch. 55, § 2, 61 Stat. 92, was an additional source of this section, and such act was accordingly included by Senate amendment in the schedule of repeals. No change in the text of the section was necessary as the result of inclusion of such section 158b. See 80th Congress Senate Report No. 1559.

As finally enacted, act May 15, 1947, ch. 57, 61 Stat. 92, which amended section 403c–5 of Title 16, U.S.C., was an additional source of this section, and such act was accordingly included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

Prior oaths, acknowledgments, affidavits, and depositions provisions in section 637.—Based on title 28, U.S.C., 1940 ed., §§ 525, 758 (R.S. § 945; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

This section consolidates part of section 525 with section 758 of title 28, U.S.C., 1940 ed. The provision of said section 525 empowering clerks and deputy clerks to administer oaths is incorporated in section 953 of this title. The provision of said section 758 that acknowledgments of bail and affidavits should have the same effect as if taken before judges was omitted as surplusage.

The exception as to Alaska, provided in section 591 of title 28, U.S.C., 1940 ed., and referred to in section 525 of title 28, U.S.C., 1940 ed., was omitted as unnecessary since section 108 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and section 1119 of the Compiled Laws of Alaska, 1933, give commissioners all powers of notaries public. See also reviser's notes to sections 631 and 633 of this title.

Word ''acknowledgments'' was inserted to make it clear that commissioners, like justices of the peace, can take acknowledgments as well as oaths, affidavits, etc.

The authority to take depositions was included to conform to Federal Rules of Civil Procedure, Rule 28.

Changes were made in phraseology.

References in Text

The Rules of Criminal Procedure for the United States District Courts, referred to in subsec. (a)(1), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Federal Rules of Civil Procedure for the United States district courts, referred to in subsecs. (b)(2) and (c)(3), are set out in the Appendix to this title.

Amendments

1996—Subsec. (a)(3). Pub. L. 104–317, § 202(b)(1), substituted a semicolon for '', and'' at end.

Subsec. (a)(4), (5). Pub. L. 104–317, § 202(b)(2), added pars. (4) and (5) and struck out former par. (4) which read as follows: ''the power to enter a sentence for a misdemeanor or infraction with the consent of the parties.''

Subsec. (c)(3). Pub. L. 104–317, § 207(1)(A), substituted ''The consent of the parties'' for ''In this circumstance, the consent of the parties''.

Subsec. (c)(4) to (7). Pub. L. 104–317, § 207(1)(B), (C), redesignated pars. (6) and (7) as (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment.

''(5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave

to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States.''

Subsec. (d). Pub. L. 104–317, § 207(2), struck out '', and for the taking and hearing of appeals to the district courts,'' after ''officers serving under this chapter''.

Subsec. (f). Pub. L. 104–317, § 201, substituted ''subsection (a), (b), or (c)'' for ''subsection (a) or (b)'' in first sentence.

1990—Subsec. (c)(2). Pub. L. 101–650 substituted ''the availability of a magistrate to exercise'' for ''their right to consent to the exercise of'' in first sentence and amended third sentence generally. Prior to amendment, third sentence read as follows: ''Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate.''

1988—Subsec. (a)(4). Pub. L. 100–690 added par. (4).

Subsec. (c)(7). Pub. L. 100–702, § 1014, amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''The magistrate shall determine, taking into account the complexity of the particular matter referred to the magistrate, whether the record in the proceeding shall be taken, pursuant to section 753 of this title, by electronic sound recording means, by a court reporter appointed or employed by the court to take a verbatim record by shorthand or by mechanical means, or by an employee of the court designated by the court to take such a verbatim record. Notwithstanding the magistrate's determination, (A) the proceeding shall be taken down by a court reporter if any party so requests, (B) the proceeding shall be recorded by a means other than a court reporter if all parties so agree, and (C) no record of the proceeding shall be made if all parties so agree. Reporters referred to in this paragraph may be transferred for temporary service in any district court of the judicial circuit for reporting proceedings under this subsection, or for other reporting duties in such court.''

Subsec. (d). Pub. L. 100–702, § 404(b)(1), substituted ''section 2072 of this title'' for ''section 3402 of title 18, United States Code''.

Subsec. (h). Pub. L. 100–659 inserted ''section 377 of this title or in'' after ''annuity set forth in'' and ''which are applicable to such magistrate'' after ''title 5'' in second sentence.

1986—Subsec. (h). Pub. L. 99–651 added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–473 substituted ''issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial'' for ''impose conditions of release under section 3146 of title 18''.

Subsec. (c)(4). Pub. L. 98–620 struck out ''expeditious and'' before ''inexpensive''.

1979—Subsec. (c). Pub. L. 96–82, § 2(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d) to (g). Pub. L. 96–82, § 2(1), redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1977—Subsec. (f). Pub. L. 95–144 added subsec. (f).

1976—Subsec. (b). Pub. L. 94–577 completely revised provisions under which additional duties may be assigned to a United States Magistrate by allowing, among other additional duties, the assignment of pretrial matters, dispositive motions, and service as a special master.

1972—Pub. L. 92–239, § 2, substituted ''Jurisdiction, powers, and temporary assignment'' for ''Jurisdiction and powers'' in section catchline.

Subsec. (e). Pub. L. 92–239, § 1, added subsec. (e).

1968—Pub. L. 90–578 substituted provisions declaratory of jurisdiction and powers of United States magistrates for prior provisions respecting rendition of accounts by United States commissioners.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 404(b)(1) of Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–651 effective Jan. 1, 1987, see section 203 of Pub. L. 99–651, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 375, 376, 377, 631, 633 of this title; title 7 section 2149; title 19 section 1915; title 46 sections 4311, 12309.

§ 637. Training

The Federal Judicial Center shall conduct periodic training programs and seminars for both full-time and part-time United States magistrates, including an introductory training program for new magistrates, to be held within one year after initial appointment.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114.)

AMENDMENTS

1968—Pub. L. 90–578 substituted provisions for periodic training programs and seminars for United States magistrates for prior authorization of United States commissioners to administer oaths and take bail, acknowledgements, affidavits, and depositions, now incorporated in section 636(a)(2) of this title.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

§ 638. Dockets and forms; United States Code; seals

(a) The Director shall furnish to United States magistrates adequate docket books and forms

prescribed by the Director. The Director shall also furnish to each such officer a copy of the current edition of the United States Code.

(b) All property furnished to any such officer shall remain the property of the United States and, upon the termination of his term of office, shall be transmitted to his successor in office or otherwise disposed of as the Director orders.

(c) The Director shall furnish to each United States magistrate appointed under this chapter an official impression seal in a form prescribed by the conference. Each such officer shall affix his seal to every jurat or certificate of his official acts without fee.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 528, 528a (June 28, 1906, ch. 3573, 34 Stat. 546; July 10, 1946, ch. 548, 60 Stat. 525).

Section consolidates section 528 and part of section 528a of title 28, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Provisions of section 528a of title 28, U.S.C., 1940 ed., relating to dockets and forms, are incorporated in section 639 of this title.

Words ''Director of the Administrative Office of the United States Courts'' were substituted for ''Attorney General'', contained in section 528 of title 28, U.S.C., 1940 ed., in view of Act Aug. 7, 1939, ch. 501, § 6, 53 Stat. 1226, 28 U.S.C., 1940 ed., following § 446, giving the Directors supervision of court administrative matters.

Changes in phraseology were made.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–578 incorporated in provisions designated as subsec. (a) provisions of first par. of former section 639 of this title, substituting ''United States magistrates'' for prior designation as ''United States Commissioners'', specifying that the copy of the United States Code be a current edition, and dispensing with approval by the chief judge of the district court for a copy of such Code.

Subsec. (b). Pub. L. 90–578 incorporated in provisions designated as subsec. (b) provisions of the second par. of former section 639 of this title.

Subsec. (c). Pub. L. 90–578 designated existing provisions as subsec. (c), and substituted ''United States magistrate'' for ''United States commissioner'', provision for appointment under this chapter rather than after July 10, 1946, provision that the form of the seal be prescribed by the conference rather than the Director, and ''without fee'' for ''without additional fee''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

§ 639. Definitions

As used in this chapter—

(1) ''Conference'' shall mean the Judicial Conference of the United States;

(2) ''Council'' shall mean the Judicial Council of the Circuit;

(3) ''Director'' shall mean the Director of the Administrative Office of the United States Courts;

(4) ''Full-time magistrate'' shall mean a full-time United States magistrate;

(5) ''Part-time magistrate'' shall mean a part-time United States magistrate; and

(6) ''United States magistrate'' and ''magistrate'' shall mean both full-time and part-time United States magistrates.

(June 25, 1948, ch. 646, 62 Stat. 917; Pub. L. 90–578, title I, § 101, Oct. 17, 1968, 82 Stat. 1114.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 528a (July 10, 1946, ch. 548, 60 Stat. 525).

Provisions of section 528a of title 28, U.S.C., 1940 ed., for furnishing seal is included in section 638 of this title.

Changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90–578 substituted definition provisions for prior requirements obligating the Director to furnish docket books and forms to United States commissioners and, with approval of the chief judge of the district court, a copy of the United States Code, declaring such property to remain United States property, and calling for transmission of such property to successors in office or for its disposal as directed by the Director, now incorporated in section 638(a) and (b) of this title.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of this title.

CHAPTER 44—ARBITRATION

Sec.
651. Authorization of arbitration.
652. Jurisdiction.
653. Powers of arbitrator; arbitration hearing.
654. Arbitration award and judgment.
655. Trial de novo.
656. Certification of arbitrators.
657. Compensation of arbitrators.
658. District courts that may authorize arbitration.

§ 651. Authorization of arbitration

(a) AUTHORITY OF CERTAIN DISTRICT COURTS.—Each United States district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. A district court described in section 658(1) may refer any such action to arbitration as set forth in section 652(a). A district court described in section 658(2) may refer only such actions to arbitration as are set forth in section 652(a)(1)(A).

(b) TITLE 9 NOT AFFECTED.—This chapter shall not affect title 9.

(Added Pub. L. 100–702, title IX, §901(a), Nov. 19, 1988, 102 Stat. 4659.)

EFFECTIVE DATE

Section 907 of title IX of Pub. L. 100–702 provided that: ''This title and the amendments made by this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title] shall take effect 180 days after the date of enactment of this Act [Nov. 19, 1988].''

Section 906 of Pub. L. 100–702, as amended by Pub. L. 103–192, §1(a), Dec. 14, 1993, 107 Stat. 2292, provided that, effective Dec. 31, 1994, this chapter and the item relating to this chapter in the table of chapters at the beginning of part III of this title were repealed, prior to repeal by Pub. L. 103–420, §3(b), Oct. 25, 1994, 108 Stat. 4345.

Section 2 of Pub. L. 103–192 provided that this chapter and the item relating to this chapter in the table of chapters at the beginning of part III of this title continued on or after Dec. 14, 1993, as if they had not been repealed by section 906 of Pub. L. 100–702, formerly set out above, as such section was in effect on the day before Dec. 14, 1993.

MODEL PROCEDURES

Section 902 of title IX of Pub. L. 100–702 provided that: ''The Judicial Conference of the United States may develop model rules relating to procedures for arbitration under chapter 44, as added by section 901 of this Act. No model rule may supersede any provision of such chapter 44, this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title], or any law of the United States.''

REPORTS BY DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS AND BY FEDERAL JUDICIAL CENTER

Section 903 of Pub. L. 100–702 provided that:

''(a) ANNUAL REPORT BY DIRECTOR OF ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts shall include in the annual report of the activities of the Administrative Office required under section 604(a)(3) [28 U.S.C. 604(a)(3)], statistical information about the implementation of chapter 44, as added by section 901 of this Act.

''(b) REPORT BY FEDERAL JUDICIAL CENTER.—Not later than 5 years after the date of enactment of this Act [Nov. 19, 1988], the Federal Judicial Center, in consultation with the Director of the Administrative Office of the United States Courts, shall submit to the Congress a report on the implementation of chapter 44, as added by section 901 of this Act, which shall include the following:

''(1) A description of the arbitration programs authorized by such chapter, as conceived and as implemented in the judicial districts in which such programs are authorized.

''(2) A determination of the level of satisfaction with the arbitration programs in those judicial districts by a sampling of court personnel, attorneys, and litigants whose cases have been referred to arbitration.

''(3) A summary of those program features that can be identified as being related to program acceptance both within and across judicial districts.

''(4) A description of the levels of satisfaction relative to the cost per hearing of each program.

''(5) Recommendations to the Congress on whether to terminate or continue chapter 44, or, alternatively, to enact an arbitration provision in title 28, United States Code, authorizing arbitration in all Federal district courts.''

EFFECT ON JUDICIAL RULEMAKING POWERS

Section 904 of title IX of Pub. L. 100–702 provided that: ''Nothing in this title [enacting this chapter and provisions set out as notes under this section and section 652 of this title], or in chapter 44, as added by section 901 of this Act, is intended to abridge, modify, or enlarge the rule making powers of the Federal judiciary.''

AUTHORIZATION OF APPROPRIATIONS

Section 905 of Pub. L. 100–702, as amended by Pub. L. 103–192, §1(b), Dec. 14, 1993, 107 Stat. 2292; Pub. L. 103–420, §3(a), Oct. 25, 1994, 108 Stat. 4345; Pub. L. 105–53, §1, Oct. 6, 1997, 111 Stat. 1173, provided that: ''There are authorized to be appropriated for each fiscal year to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 652 of this title.

§652. Jurisdiction

(a) ACTIONS THAT MAY BE REFERRED TO ARBITRATION.—(1) Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of this section, and section 901(c) of the Judicial Improvements and Access to Justice Act, a district court that authorizes arbitration under section 651 may—

(A) allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it if the parties consent to arbitration, and

(B) require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of $100,000 or such lesser amount as the district court may set, exclusive of interest and costs.

(2) For purposes of paragraph (1)(B), a district court may presume damages are not in excess of $100,000 unless counsel certifies that damages exceed such amount.

(b) ACTIONS THAT MAY NOT BE REFERRED WITHOUT CONSENT OF PARTIES.—Referral to arbitration under subsection (a)(1)(B) may not be made—

(1) of an action based on an alleged violation of a right secured by the Constitution of the United States, or

(2) if jurisdiction is based in whole or in part on section 1343 of this title.

(c) EXCEPTIONS FROM ARBITRATION.—Each district court shall establish by local rule procedures for exempting, sua sponte or on motion of a party, any case from arbitration in which the objectives of arbitration would not be realized—

(1) because the case involves complex or novel legal issues,

(2) because legal issues predominate over factual issues, or

(3) for other good cause.

(d) SAFEGUARDS IN CONSENT CASES.—In any civil action in which arbitration by consent is allowed under subsection (a)(1)(A), the district court shall by local rule establish procedures to ensure that—

(1) consent to arbitration is freely and knowingly obtained, and

(2) no party or attorney is prejudiced for refusing to participate in arbitration.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4659.)

REFERENCES IN TEXT

Section 901(c) of the Judicial Improvements and Access to Justice Act, referred to in subsec. (a)(1), is section 901(c) of Pub. L. 100–702, which is set out as a note below.

EXCEPTION TO LIMITATION ON MONEY DAMAGES

Section 901(c) of Pub. L. 100–702 provided that: ''Notwithstanding section 652 [28 U.S.C. 652] (as added by subsection (a) of this section), establishing a limitation of $100,000 in money damages with respect to cases referred to arbitration, a district court listed in section 658 [28 U.S.C. 658] (as added by subsection (a) of this section), whose local rule on the date of the enactment of this Act [Nov. 19, 1988] provides for a limitation on money damages, with respect to such cases, of not more than $150,000, may continue to apply the higher limitation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 653 of this title.

§ 653. Powers of arbitrator; arbitration hearing

(a) POWERS.—An arbitrator to whom an action is referred under section 652 shall have, within the judicial district of the district court which referred the action to arbitration, the power—

(1) to conduct arbitration hearings,

(2) to administer oaths and affirmations, and

(3) to make awards.

(b) TIME FOR BEGINNING ARBITRATION HEARING.—An arbitration hearing under this chapter shall begin within a time period specified by the district court, but in no event later than 180 days after the filing of an answer, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court. The 180-day and 30-day periods specified in the preceding sentence may be modified by the court for good cause shown.

(c) SUBPOENAS.—Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4660.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in the Appendix to this title.

§ 654. Arbitration award and judgment

(a) FILING AND EFFECT OF ARBITRATION AWARD.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall, promptly after the arbitration hearing is concluded, be filed with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo under section 655. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(b) SEALING OF ARBITRATION AWARD.—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case—

(1) except as necessary for the court to determine whether to assess costs or attorney fees under section 655,

(2) until the district court has entered final judgment in the action or the action has been otherwise terminated, or

(3) except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act.

(c) TAXATION OF COSTS.—The district court may by rule allow for the inclusion of costs as provided in section 1920 of this title as a part of the arbitration award.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4660.)

REFERENCES IN TEXT

Section 903(b) of the Judicial Improvements and Access to Justice Act, referred to in subsec. (b)(3), is section 903(b) of Pub. L. 100–702, which is set out as a note under section 651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 655 of this title.

§ 655. Trial de novo

(a) TIME FOR DEMAND.—Within 30 days after the filing of an arbitration award with a district court under section 654, any party may file a written demand for a trial de novo in the district court.

(b) RESTORATION TO COURT DOCKET.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar which is no later than that which a party otherwise would have had, are preserved.

(c) LIMITATION ON ADMISSION OF EVIDENCE.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

(1) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence, or

(2) the parties have otherwise stipulated.

(d) TAXATION OF ARBITRATOR FEES AS COST.—(1)(A) A district court may provide by rule that, in any trial de novo under this section, arbitra-

tor fees paid under section 657 may be taxed as costs against the party demanding the trial de novo.

(B) Such rule may provide that a party demanding a trial de novo under subsection (a), other than the United States or its agencies or officers, shall deposit a sum equal to such arbitrator fees as advanced payment of such costs, unless the party is permitted to proceed in forma pauperis.

(2) Arbitrator fees shall not be taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) shall be returned to the party demanding the trial de novo, if—

(A) the party demanding the trial de novo obtains a final judgment more favorable than the arbitration award, or

(B) the court determines that the demand for the trial de novo was made for good cause.

(3) Any arbitrator fees taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) that is not returned to the party demanding the trial de novo, shall be paid to the Treasury of the United States.

(4) Any rule under this subsection shall provide that no penalty for demanding a trial de novo, other than that provided in this subsection, shall be assessed by the court.

(e) ASSESSMENT OF COSTS AND ATTORNEY FEES.—In any trial de novo demanded under subsection (a) in which arbitration was done by consent of the parties, a district court may assess costs, as provided in section 1920 of this title, and reasonable attorney fees against the party demanding the trial de novo if—

(1) such party fails to obtain a judgment, exclusive of interest and costs, in the court which is substantially more favorable to such party than the arbitration award, and

(2) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4661.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c)(1), are set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 656. Certification of arbitrators

(a) STANDARDS FOR CERTIFICATION.—Each district court listed in section 658 shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

(1) shall take the oath or affirmation described in section 453, and

(2) shall be subject to the disqualification rules of section 455.

(b) TREATMENT OF ARBITRATOR AS INDEPENDENT CONTRACTOR AND SPECIAL GOVERNMENT EMPLOYEE.—An arbitrator is an independent contractor and is subject to the provisions of sections 201 through 211 of title 18 to the same extent as such provisions apply to a special Government employee of the executive branch. A person may not be barred from the practice of law because such person is an arbitrator.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662.)

§ 657. Compensation of arbitrators

(a) COMPENSATION.—The district court may, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator shall receive for services rendered in each case.

(b) TRANSPORTATION ALLOWANCES.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 655 of this title.

§ 658. District courts that may authorize arbitration

The district courts for the following judicial districts may authorize the use of arbitration under this chapter:

(1) Northern District of California, Middle District of Florida, Western District of Michigan, Western District of Missouri, District of New Jersey, Eastern District of New York, Middle District of North Carolina, Western District of Oklahoma, Eastern District of Pennsylvania, and Western District of Texas.

(2) Ten additional judicial districts, which shall be approved by the Judicial Conference of the United States. The Judicial Conference shall give notice of the 10 districts approved under this paragraph to the Federal Judicial Center and to the public.

(Added Pub. L. 100–702, title IX, § 901(a), Nov. 19, 1988, 102 Stat. 4662.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 651, 656 of this title.

CHAPTER 45—SUPREME COURT

Sec.
671. Clerk.
672. Marshal.
673. Reporter.
674. Librarian.
675. Law clerks and secretaries.
676. Printing and binding.
677. Administrative Assistant to the Chief Justice.

AMENDMENTS

1972—Pub. L. 92–238, § 2, Mar. 1, 1972, 86 Stat. 46, added item 677.

CROSS REFERENCES

General provisions applicable to court officers and employees, see sections 951 et seq. of this title.

§ 671. Clerk

(a) The Supreme Court may appoint and fix the compensation of a clerk and one or more

deputy clerks. The clerk shall be subject to removal by the Court. Deputy clerks shall be subject to removal by the clerk with the approval of the Court or the Chief Justice of the United States.

[(b) Repealed. Pub. L. 92–310, title II, § 206(c), June 6, 1972, 86 Stat. 203.]

(c) The clerk may appoint and fix the compensation of necessary assistants and messengers with the approval of the Chief Justice of the United States.

(d) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him. He shall make annual returns thereof to the Court under regulations prescribed by it.

(June 25, 1948, ch. 646, 62 Stat. 918; Pub. L. 88–279, § 1, Mar. 10, 1964, 78 Stat. 158; Pub. L. 92–310, title II, § 206(c), June 6, 1972, 86 Stat. 203.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 325, 326, 327, 541 and 542 (Feb. 22, 1875, ch. 95, §§ 2, 3, 18 Stat. 333; Mar. 3, 1883, ch. 143, 22 Stat. 631; Mar. 15, 1898, ch. 68, § 8, 30 Stat. 317; Mar. 3, 1911, ch. 231, §§ 219, 220, 221, 291, 36 Stat. 1152, 1153, 1167; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

This section consolidates sections 541 and 542 of title 28, U.S.C., 1940 ed., with parts of sections 325, 326 and 327 of such title.

The provisions in said section 325 relating to appointment of a marshal and reporter are incorporated in sections 672 and 673 of this title.

The provisions in section 327 of title 28, U.S.C., 1940 ed., relating to duties and liabilities of the clerk's deputies are incorporated in section 954 of this title.

The provision of section 326 of title 28, U.S.C., 1940 ed., that a duly certified copy of the clerk's bond should be competent evidence in any court, is incorporated in section 1737 of this title.

The provision that the clerk shall be subject to removal by the Court is new. Section 327 of title 28, U.S.C., 1940 ed., contained a similar provision as to deputies, but fixed no term of office for the clerk and made no provision for his removal. The Supreme Court held, in 1839, that a district judge had power to remove his clerk at pleasure in absence of any law fixing the clerk's tenure. *In re Hennen*, 38 U.S. 230, 13 Pet. 230, 10 L.Ed. 138. (See, also *Myers v. U.S.*, 1926, 47 S.Ct. 21, 272 U.S. 52, 71 L.Ed. 160.)

The provision in section 326 of title 28, U.S.C., 1940 ed., that the clerk's bond be not less than $5,000 and not more than $20,000 was omitted. The Supreme Court should have wide discretion in such administrative matters. (See Hearings before Appropriations Committee, House of Representatives, 78th Cong., 2d sess., on Judiciary Appropriation Bill for 1945, page 102.)

A provision of section 326 of title 28, U.S.C., 1940 ed., that a renewed or augmented bond should be required upon the Attorney General's motion and after thirty days' notice was omitted. The manner of requiring such bond is left to the Court's discretion by the revised section.

A further provision of section 326 of title 28, U.S.C., 1940 ed., that the failure to furnish such renewed or augmented bond should vacate the clerk's office was omitted as unnecessary, since the clerk is removable by the Court under this section.

The references in section 541 of title 28, U.S.C., 1940 ed., to return "under oath" to be made "on the 1st day of January of each year, or thirty days thereafter" and "on a form prescribed by the Attorney General", were omitted as fully covered by the revised language "annual returns" under "regulations prescribed by the Court". Verification seems unnecessary especially as clerks of the courts of appeals are not required to submit similar returns under oath (see section 711 of this title). "Court" was substituted for "Attorney General", since the latter's powers and functions in court administrative matters have been transferred to the Director of the Administration Office of the United States Courts. (See sections 604 and 607 of this title.) The Director, however, exercises no authority in Supreme Court matters.

Section 542 of title 28, U.S.C., 1940 ed., provided that the clerk "shall not retain", out of fees received, more than $6,000 annually above clerk hire and expenses; that the surplus should be paid into the Treasury. Such indirect and unusual provision is simplified in this section by providing that his salary shall be fixed by the Court. Such salary limitation is omitted as inconsistent with larger salaries paid other clerks of courts.

The provisions that the Court shall fix the compensation of deputy clerks, and that the clerk shall fix the compensation of assistants and messengers with the approval of the Chief Justice, are new. Current appropriation Acts providing that the compensation of officers and employees of the Supreme Court, other than clerk and reporter shall be fixed by the court, unnecessarily burden the court with administrative details. Provision for allowance and approval of payments of compensation and office expenses by the clerk upon allowance and approval by the Chief Justice, instead of by the Court, was inserted with the approval of the Judicial Conference Committee on Revision of the Judicial Code as not inconsistent with section 542 of title 28, U.S.C., 1940 ed.

References in sections 541 and 542 of title 28, U.S.C., 1940 ed., to certification of expenses by the justices and for audit and allowances by the General Accounting Office, were omitted as unnecessary in view of this section.

Changes were made in phraseology.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–310 repealed subsec. (b) which related to bond of Clerk of Supreme Court.

1964—Subsec. (c). Pub. L. 88–279 struck out provision for disbursement by clerk of compensation of clerk, his deputies, assistants, and messengers and the necessary expenses of office from the fees collected by clerk, upon allowance and approval by Chief Justice of the United States.

Subsec. (d). Pub. L. 88–279 substituted "moneys collected by him" for "emoluments of his office over and above his lawful disbursements".

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4 of Pub. L. 88–279 provided that: "The amendments proposed in this Act [amending this section and section 672 of this title] shall become effective only when funds have been appropriated and are available to pay the salaries and other expenses of the clerk's office."

APPROPRIATIONS

Section 3 of Pub. L. 88–279 provided that: "There are hereby authorized to be appropriated annually such sums as are necessary to carry out the provisions of this Act [amending this section and section 672 of this title]."

CROSS REFERENCES

Fees of clerk to be fixed by Supreme Court, see section 1911 of this title.

Oath of clerk and deputies, see section 951 of this title.

§ 672. Marshal

(a) The Supreme Court may appoint a marshal, who shall be subject to removal by the Court, and may fix his compensation.

(b) The marshal may, with the approval of the Chief Justice of the United States, appoint and fix the compensation of necessary assistants and other employees to attend the Court, and necessary custodial employees.

(c) The marshal shall:

(1) Attend the Court at its sessions;

(2) Serve and execute all process and orders issued by the Court or a member thereof;

(3) Take charge of all property of the United States used by the Court or its members;

(4) Disburse funds appropriated for work upon the Supreme Court building and grounds under the jurisdiction of the Architect of the Capitol upon certified vouchers submitted by the Architect;

(5) Disburse funds appropriated for the purchase of books, pamphlets, periodicals and other publications, and for their repair, binding, and rebinding, upon vouchers certified by the librarian of the Court;

(6) Pay the salaries of the Chief Justice, associate justices, and all officers and employees of the Court and disburse other funds appropriated for disbursement, under the direction of the Chief Justice;

(7) Pay the expenses of printing briefs and travel expenses of attorneys in behalf of persons whose motions to appear in forma pauperis in the Supreme Court have been approved and when counsel have been appointed by the Supreme Court, upon vouchers certified by the clerk of the Court;

(8) Oversee the Supreme Court Police.

(June 25, 1948, ch. 646, 62 Stat. 918; Pub. L. 88–279, § 2, Mar. 10, 1964, 78 Stat. 158; Pub. L. 97–390, § 2, Dec. 29, 1982, 96 Stat. 1958.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 325, 331, and section 13d of title 40, U.S.C., 1940 ed., Public Buildings, Property and Works (Mar. 3, 1911, ch. 231, §§ 219, 224, 36 Stat. 1152, 1153; April 11, 1928, ch. 358, 45 Stat. 424; May 7, 1934, ch. 222, § 4, 48 Stat. 668).

This section consolidates part of section 325 of title 28, U.S.C., 1940 ed., with section 331 of such title and section 13d of title 40, U.S.C., 1940 ed.

Provisions of section 325 of title 28, U.S.C., 1940 ed., relating to appointment of clerk and reporter of the Supreme Court are incorporated in sections 671 and 673 of this title.

Provision of section 331 of title 28, U.S.C., 1940 ed., fixing the marshal's salary at "not to exceed $5,500 per annum" was omitted and the court given authority to fix the salary in conformity with sections 671 and 673 of this title relating to the clerk and the reporter.

Part of subsection (c)(5) is new. It recognizes the propriety of certification by the Court Librarian of vouchers for expenditures for the library. (See reviser's note under section 674 of this title.)

The marshal's duties as superintendent of the Supreme Court building are incorporated in section 13c of title 40, U.S.C., 1940 ed.

Changes were made in phraseology.

AMENDMENTS

1982—Subsec. (c)(8). Pub. L. 97–390 added par. (8).

1964—Subsec. (c)(6). Pub. L. 88–279, § 2(a), struck out "except the clerk, his deputies and employees," after "employees of the Court".

Subsec. (c)(7). Pub. L. 88–279, § 2(b), added par. (7).

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–279 effective upon appropriation and availability of funds to pay salaries and other expenses of the clerk's office, see section 4 of Pub. L. 88–279, set out as a note under section 671 of this title.

APPROPRIATIONS

Annual appropriations to carry out amendment of this section by Pub. L. 88–279, see section 3 of Pub. L. 88–279, set out as a note under section 671 of this title.

§ 673. Reporter

(a) The Supreme Court may appoint and fix the compensation of a reporter of its decisions who shall be subject to removal by the Court.

(b) The reporter may appoint and fix the compensation of necessary professional and clerical assistants and other employees, with the approval of the Court or the Chief Justice of the United States.

(c) The reporter shall, under the direction of the Court or the Chief Justice, prepare the decisions of the Court for publication in bound volumes and advance copies in pamphlet installments.

The reporter shall determine the quality and size of the paper, type, format, proofs and binding subject to the approval of the Court or the Chief Justice.

(June 25, 1948, ch. 646, 62 Stat. 919.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 325, 332, and 333 (Mar. 3, 1911, ch. 231, §§ 219, 225, 226, 36 Stat. 1152, 1153; July 1, 1922, ch. 267, §§ 1, 2, 42 Stat. 816; May 29, 1926, ch. 425, § 1, 44 Stat. 677).

This section consolidates sections 332 and 333 of title 28, U.S.C., 1940 ed., with part of section 325 of such title.

Provisions of section 325 of title 28, U.S.C., 1940 ed., relating to appointment of clerk and marshal of the Supreme Court are incorporated in sections 671 and 672 of this title.

The provision as to tenure is new and is added to insure consistency with other revised sections relating to tenure of court officers.

The provisions of section 333 of title 28, U.S.C., 1940 ed., fixing the reporter's salary at $8,000 per annum were omitted and the Court given authority to fix the salary in conformity with sections 671 and 672 of this title relating to the clerk and the marshal.

Provisions of section 333 of title 28, U.S.C., 1940 ed., for allowance of stationery, supplies, equipment, and office rent are omitted as obsolete. Offices are now provided in the Supreme Court building and supplies are furnished by the marshal.

The last sentence of section 333 of title 28, U.S.C., 1940 ed., relating to the payment of the reporter's expenses from appropriation for the Supreme Court, was omitted as surplusage.

The revised section makes specific the implied power to fix the compensation of the reporter's assistants.

The provision in section 332 of title 28, U.S.C., 1940 ed., authorizing the Public Printer to do the printing referred to in such section, was omitted as unnecessary. (See section 111 of title 44, U.S.C., 1940 ed., Public Printing and Documents.)

Authority for making an appropriation to carry into effect the provisions of this section relating to compensation and allowances of the reporter, compensation of his assistants, and preparation of the decisions of the Supreme Court for publication, is contained in section 336 of title 28, U.S.C., 1940 ed. (Acts July 1, 1922, ch. 267, § 5, 42 Stat. 818; May 29, 1926, ch. 425, § 3, 44 Stat. 678), which is omitted, but not repealed, as unnecessary in this revision.

§ 674. Librarian

(a) The Supreme Court may appoint a librarian, whose salary it shall fix, and who shall be subject to removal by the Court.

(b) The librarian shall, with the approval of the Chief Justice, appoint necessary assistants

and fix their compensation and make rules governing the use of the library.

(c) He shall select and acquire by purchase, gift, bequest, or exchange, such books, pamphlets, periodicals, microfilm and other processed copy as may be required by the Court for its official use and for the reasonable needs of its bar.

(d) The librarian shall certify to the marshal for payment vouchers covering expenditures for the purchase of such books and other material, and for binding, rebinding and repairing the same.

(June 25, 1948, ch. 646, 62 Stat. 919; Pub. L. 92–310, title II, § 206(d), June 6, 1972, 86 Stat. 203.)

HISTORICAL AND REVISION NOTES

This section gives statutory recognition to the office of librarian. For many years the Court has appointed its librarian directly through the Chief Justice, rather than through the marshal. Other members of the library staff are appointed by the librarian, with the approval of the Chief Justice.

Under this section the marshal will not be required to certify to expenditures for some 2,000 books bought for the library each year but this will be the duty of the librarian.

AMENDMENTS

1972—Subsec. (d). Pub. L. 92–310 struck out sentence which required the librarian to furnish a bond.

§ 675. Law clerks and secretaries

The Chief Justice of the United States, and the associate justices of the Supreme Court may appoint law clerks and secretaries whose salaries shall be fixed by the Court.

(June 25, 1948, ch. 646, 62 Stat. 919.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1926 ed., § 328 (June 1, 1922, ch. 204, title II, 42 Stat. 614; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1081; May 28, 1924, ch. 204, title II, 43 Stat. 218; Feb. 27, 1925, ch. 364, title II, 43 Stat. 1028).

Section is derived from Appropriation Acts for fiscal years cited in the credits. It was omitted from the 1934 and 1940 editions of the U.S. Code because it was considered to be probably of a temporary nature. This section is consistent with other provisions authorizing the appointment of similar personnel for circuit and district judges.

The 1942 appropriation act (July 2, 1942, ch. 472, title IV, 56 Stat. 501) made provision for "all other officers and employees, whose compensation shall be fixed by the Court, except as otherwise provided by law and who may be assigned by the Chief Justice to any office or work of the Court."

The salary limitation of $3,600 was omitted and the Court authorized to fix law clerks' salaries. Current appropriation acts provide that salaries of the Court's officers and employees, except the clerk and reporter, shall be fixed by the Court.

See section 711 et seq. and section 751 et seq., of this title, relating to appointment of law clerks and secretaries to circuit and district judges.

Changes were made in phraseology.

§ 676. Printing and binding

(a) The printing and binding for the Supreme Court, including the printing and binding of individual copies, advance pamphlet installments, and bound volumes, of its decisions, whether requisitioned or ordered by the Court or any of its officers or by any other office or agency, and whether paid for by, or charged to the appropriation for, the Court or any other office or agency, shall be done by the printer or printers whom the Court or the Chief Justice of the United States may select, unless it shall otherwise order.

(b) Whenever advance pamphlet installments and bound volumes of the Court's decisions are printed by a private printer, an adequate number of copies for distribution in accordance with the requirements of section 411 of this title and for sale to the public shall be provided and made available for these purposes in such manner and at such prices as may be determined from time to time by the Supreme Court or the Chief Justice of the United States, in lieu of compliance by the Public Printer and the Superintendent of Documents with the requirements of sections 411 and 412 of this title with respect to such copies. Pending distribution or sale, such copies shall be the property of the United States and shall be held in the custody of the marshal or such other person, organization, or agency, as the Supreme Court or the Chief Justice of the United States may designate.

(June 25, 1948, ch. 646, 62 Stat. 919; May 24, 1949, ch. 139, § 74, 63 Stat. 100; Oct. 31, 1951, ch. 655, § 45, 65 Stat. 725.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 354 (Feb. 27, 1925, ch. 364, title II, 43 Stat. 1028; Apr. 29, 1926, ch. 195, title II, 44 Stat. 344; Feb. 24, 1927, ch. 189, title II, 44 Stat. 1194; Feb. 15, 1928, ch. 57, title II, 45 Stat. 79; Jan. 25, 1929, ch. 102, title II, 45 Stat. 1109; Apr. 18, 1930, ch. 184, title II, 46 Stat. 188; Feb. 23, 1931, ch. 280, title II, 46 Stat. 1323; July 1, 1932, ch. 361, title II, 47 Stat. 490; Mar. 1, 1933, ch. 144, title II, 47 Stat. 1382; Apr. 7, 1934, ch. 104, title II, 48 Stat. 539).

The section was expanded to include the printing and binding of the official edition of the court's decisions, thus making possible an economy in the expenditure of Government funds by having the printing and binding done by the same printer.

Subsection (b) of the revised section was supplied to conform to sections 411 and 412 of this title.

1949 ACT

This section corrects a grammatical error in subsection (a) of section 676 of title 28, U.S.C.

AMENDMENTS

1951—Subsec. (b). Act Oct. 31, 1951, inserted "of this title" in two places.

1949—Subsec. (a). Act May 24, 1949, inserted "whom" between "printers" and "the Court".

§ 677. Administrative Assistant to the Chief Justice

(a) The Chief Justice of the United States may appoint an Administrative Assistant who shall serve at the pleasure of the Chief Justice and shall perform such duties as may be assigned to him by the Chief Justice. The salary payable to the Administrative Assistant shall be fixed by the Chief Justice at a rate which shall not exceed the salary payable to the Director of the Administrative Office of the United States Courts. The Administrative Assistant may elect to bring himself within the same retirement program available to the Director of the Admin-

istrative Office of the United States Courts, as provided by section 611 of this title, by filing a written election with the Chief Justice within the time and in the manner prescribed by section 611.

(b) The Administrative Assistant, with the approval of the Chief Justice, may appoint and fix the compensation of necessary employees. The Administrative Assistant and his employees shall be deemed employees of the Supreme Court.

(Added Pub. L. 92–238, § 1, Mar. 1, 1972, 86 Stat. 46.)

CHAPTER 47—COURTS OF APPEALS

Sec.
711. Clerks and employees.
712. Law clerks and secretaries.
713. Librarians.
714. Criers and messengers.
715. Staff attorneys and technical assistants.

AMENDMENTS

1982—Pub. L. 97–164, title I, § 120(b)(2), (c)(2), Apr. 2, 1982, 96 Stat. 33, substituted ''Librarians'' for ''Criers, bailiffs and messengers'' in item 713 and added items 714 and 715.

CROSS REFERENCES

General provisions applicable to court officers and employees, see section 951 et seq. of this title.

United States marshals to be marshals of the courts of appeals, see section 566 of this title.

§ 711. Clerks and employees

(a) Each court of appeals may appoint a clerk who shall be subject to removal by the court.

(b) The clerk, with the approval of the court, may appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

(c) The clerk shall pay into the Treasury all fees, costs and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(June 25, 1948, ch. 646, 62 Stat. 920.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 221 and 222, 544 and 546 and District of Columbia Code, 1940 ed., § 11–204 (Mar. 3, 1891, ch. 517, § 2, 26 Stat. 826; Feb. 9, 1893, ch. 74, § 4, 27 Stat. 435; July 30, 1894, ch. 172, § 1, 28 Stat. 160; June 6, 1900, ch. 791, § 1, 31 Stat. 639; Mar. 3, 1901, ch. 854, § 224, 31 Stat. 1224; June 30, 1902, ch. 1329, 32 Stat. 528; Mar. 3, 1911, ch. 231, §§ 124, 125, 36 Stat. 1132; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; June 1, 1922, ch. 204, title II, 42 Stat. 616; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 21, 1928, ch. 659, 45 Stat. 645).

This section consolidates section 546 of title 28, U.S.C., 1940 ed., with parts of sections 221, 222, and 544 of such title and a part of section 11–204 of the District of Columbia Code, 1940 ed. Other provisions of such sections are incorporated in sections 604, 713, 954, 956, 961, and 962 of this title. Some provisions of section 11–204 of the District of Columbia Code, 1940 ed., were retained in that code. (See reviser's note under section 604 of this title.)

Discrepancies between such section 11–204 of District of Columbia Code, 1940 ed., and the more general provisions of title 28 were eliminated by adopting the more general provisions.

Words ''Director of the Administrative Office of the United States Courts'' were substituted for ''Attorney General,'' in view of the act of Aug. 7, 1939, ch. 501, § 6, 53 Stat. 1226, 28 U.S.C., 1940 ed., following § 446.

A provision that the returns should be filed annually was changed to place the times of accounting within the discretion of the Director of the Administrative Office of the United States Courts, who has supervision over such accounts. (See section 604 of this title.)

This section is in harmony with section 671 of this title as to accounting similarly by the Clerk of the Supreme Court.

''Court of appeals'' was substituted for ''circuit court of appeals'' to conform to section 43 of this title.

The provision that each clerk shall be removable by the court is new. Section 222 of title 28, U.S.C., 1940 ed., provided that deputies might be removed at the pleasure of the clerk, subject to the court's approval, and there was no term of office specified for the clerk and no provision for his removal.

The words ''and other necessary employees'' were added in subsection (b) to supply an omission of existing law and to give statutory authority for the appointment of necessary employees for which compensation is annually appropriated.

Changes were made in phraseology.

CROSS REFERENCES

Compensation and expenses of clerks of court, their deputies, etc., see section 604 of this title.

Oath and bond of clerk and deputies, see section 951 of this title.

§ 712. Law clerks and secretaries

Circuit judges may appoint necessary law clerks and secretaries. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(June 25, 1948, ch. 646, 62 Stat. 920; Pub. L. 100–702, title X, § 1003(a)(3), Nov. 19, 1988, 102 Stat. 4665.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 222a (Mar. 3, 1911, ch. 231, § 118a, as added June 17, 1930, ch. 509, 46 Stat. 774).

Provision of section 222a of title 28, U.S.C., 1940 ed., relating to compensation of law clerks is incorporated in section 604 of this title. (See reviser's note under such section.)

Words ''with the approval of the Attorney General,'' were omitted to confer on circuit judges the same authority given Supreme Court justices under section 675 of this title.

The provision for appointment of secretaries is new. Existing law fixes compensation of secretaries but makes no provision for their appointment. (See section 604 of this title and reviser's note thereunder.)

Changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100–702 inserted at end ''A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.''

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

§ 713. Librarians

(a) Each court of appeals may appoint a librarian who shall be subject to removal by the court.

(b) The librarian, with the approval of the court, may appoint necessary library assistants in such numbers as the Director of the Administrative Office of the United States Courts may approve. The librarian may remove such library assistants with the approval of the court.

(June 25, 1948, ch. 646, 62 Stat. 920; May 24, 1949, ch. 139, § 75, 63 Stat. 100; Pub. L. 97–164, title I, § 120(b)(1), Apr. 2, 1982, 96 Stat. 33.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 547, and section 11–204 of District of Columbia Code, 1940 ed., (Mar. 3, 1891, ch. 517, § 9, 26 Stat. 829; Feb. 9, 1893, ch. 74, § 4, 27 Stat. 435; July 30, 1894, ch. 172, § 1, 28 Stat. 160; Mar. 3, 1901, ch. 854, § 224, 31 Stat. 1224; June 30, 1902, ch. 1329, 32 Stat. 528; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 23, 1912, ch. 350, 37 Stat. 412; Feb. 22, 1921, ch. 70, § 7, 41 Stat. 1144; Mar. 4, 1923, ch. 265, 42 Stat. 1488; May 21, 1928, ch. 659, 45 Stat. 645).

Section consolidates parts of section 11–204 of the District of Columbia Code, 1940 ed., and section 547 of title 28, U.S.C., 1940 ed.

The Judicial Code provided for the appointment of assistants and messengers in the Supreme Court, criers and ''persons to wait upon juries'' in the district courts, a messenger in the Court of Customs and Patent Appeals, and a bailiff and a chief messenger in the Court of Claims (see title 28, U.S.C., 1940 ed., §§ 9, 244, 305, 331) and also provided (see same title, § 547) that criers, bailiffs and messengers of the courts of appeals should be allowed the same compensation as allowed for similar services in the district courts, but did not provide for the appointment of said criers, bailiffs and messengers. This section authorizes such appointments.

The provisions of section 224 of title 28, U.S.C., 1940 ed., that the United States marshal shall provide for the expenses of criers, bailiffs and messengers for the circuit courts of appeals are superseded by sections 601–610 of this title vesting such functions in the Administrative Office of the United States Courts.

Provisions of section 11–204 of District of Columbia Code, 1940 ed., relating to appointment and compensation of clerk of the United States Court of Appeals for the District of Columbia are incorporated in sections 711 and 604 of this title, respectively. Other provisions of such section were retained in the District of Columbia Code. (See reviser's note under section 604 of this title.)

Compensation of bailiffs is provided by section 755 of this title. Other provisions of section 547 of title 28, U.S.C., 1940 ed., relating to compensation of criers, clerks, and messengers are incorporated in section 604 of this title.

Marshal for the Court of Appeals for the District of Columbia was authorized by the District of Columbia Appropriation Act of June 29, 1937, 50 Stat. 378.

The duties of criers and bailiffs are made specific consistently with section 755 of this title, and existing administrative practice.

The removal provisions are added to make this section consistent with the same provisions in other sections relating to tenure of court officers.

Changes in phraseology and arrangement were made.

1949 ACT

This section corrects typographical errors in section 713 of title 28, U.S.C.

AMENDMENTS

1982—Pub. L. 97–164 substituted ''Librarians'' for ''Criers, bailiffs, and messengers'' in section catchline.

Subsec. (a). Pub. L. 97–164 struck out ''and necessary library assistants'' after ''Each court of appeals may appoint a librarian''.

Subsec. (b). Pub. L. 97–164 substituted ''The librarian, with the approval of the court, may appoint necessary library assistants in such numbers as the Director of the Administrative Office of the United States Courts may approve'' for ''Each court of appeals, except the Court of Appeals for the District of Columbia, may appoint a crier and such messengers as may be necessary, all of whom shall be subject to removal by the court'' and ''The librarian may remove such library assistants with the approval of the court'' for ''The crier shall also perform the duties of bailiff and messenger''.

Subsecs. (c), (d). Pub. L. 97–164 struck out subsecs. (c) and (d) which had provided, respectively, that the Court of Appeals for the District of Columbia could appoint a marshal, who would attend the court at its sessions, be custodian of its courthouse, have supervision over its custodial employees, take charge of all property of the United States used by the court or its employees, and perform such other duties as the court might direct, that the court could also appoint necessary messengers who would be subject to removal by the court, that the United States marshal of the district in which a court of appeals was sitting or in which a circuit judge was present in chambers, could, with the approval of the court or judge, employ necessary bailiffs, that the bailiffs would attend the court, preserve order, and perform such other necessary duties as the court, judge or marshal might direct, and that such bailiffs would receive the same compensation as bailiffs employed for the district courts. See section 714 of this title.

1949—Act May 24, 1949, inserted subsection designation (b) preceding second par. and renumbered former subsecs. (b) and (c) as (c) and (d), respectively.

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 this title.

CONTINUATION OF SERVICE OF MARSHAL FOR COURT OF APPEALS FOR DISTRICT OF COLUMBIA; APPLICABILITY OF OTHER LAW TO COURT DURING SUCH INDIVIDUAL'S SERVICE

Pub. L. 98–620, title IV, § 415, Nov. 8, 1984, 98 Stat. 3364, provided that: ''Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982 [Pub. L. 97–164, enacted Apr. 2, 1982], was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act [Nov. 8, 1984], so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia.''

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

§ 714. Criers and messengers

(a) Each court of appeals may appoint a crier who shall be subject to removal by the court.

(b) The crier, with the approval of the court, may appoint necessary messengers in such number as the Director of the Administrative Office of the United States Courts may approve. The crier may remove such messengers with the approval of the court. The crier shall also perform the duties of bailiff and messenger.

(Added Pub. L. 97–164, title I, § 120(c)(1), Apr. 2, 1982, 96 Stat. 33.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

APPLICABILITY OF THIS SECTION TO COURT OF APPEALS FOR DISTRICT OF COLUMBIA DURING CONTINUED SERVICE OF MARSHAL FOR COURT IN OFFICE ON APR. 2, 1982

Subsec. (a) of this section not applicable to the Court of Appeals for the District of Columbia during the continued service as Marshal for such Court of any individual who was serving in such office under section 713(c) of this title as of Apr. 2, 1982, see section 415 of Pub. L. 98–620, set out as a note under section 713 of this title.

§ 715. Staff attorneys and technical assistants

(a) The chief judge of each court of appeals, with the approval of the court, may appoint a senior staff attorney, who shall be subject to removal by the chief judge with the approval of the court.

(b) The senior staff attorney, with the approval of the chief judge, may appoint necessary staff attorneys and secretarial and clerical employees in such numbers as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of staff attorneys exceed the number of positions expressly authorized in an annual appropriation Act. The senior staff attorney may remove such staff attorneys and secretarial and clerical employees with the approval of the chief judge.

(c) The chief judge of the Court of Appeals for the Federal Circuit, with the approval of the court, may appoint a senior technical assistant who shall be subject to removal by the chief judge with the approval of the court.

(d) The senior technical assistant, with the approval of the court, may appoint necessary technical assistants in such number as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of technical assistants in the Court of Appeals for the Federal Circuit exceed the number of circuit judges in regular active service within such circuit. The senior technical assistant may remove such technical assistants with the approval of the court.

(Added Pub. L. 97–164, title I, § 120(c)(1), Apr. 2, 1982, 96 Stat. 34.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 49—DISTRICT COURTS

Sec.
751. Clerks.
752. Law clerks and secretaries.
753. Reporters.
754. Receivers of property in different districts.
755. Criers and bailiffs.
756. Power to appoint.

CROSS REFERENCES

General provisions applicable to court officers and employees, see section 951 et seq. of this title.

§ 751. Clerks

(a) Each district court may appoint a clerk who shall be subject to removal by the court.

(b) The clerk may appoint, with the approval of the court, necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies, clerical assistants and employees shall be subject to removal by the clerk with the approval of the court.

(c) The clerk of each district court shall reside in the district for which he is appointed, except that the clerk of the district court for the District of Columbia and the Southern District of New York may reside within twenty miles thereof. The district court may designate places within the district for the offices of the clerk and his deputies, and their official stations.

(d) A clerk of a district court or his deputy or assistant shall not receive any compensation or emoluments through any office or position to which he is appointed by the court, other than that received as such clerk, deputy or assistant, whether from the United States or from private litigants.

This subsection shall not apply to clerks or deputy clerks appointed as United States commissioners pursuant to section 631 of this title.

(e) The clerk of each district court shall pay into the Treasury all fees, costs and other moneys collected by him, except naturalization fees listed in section 742 of Title 8 and uncollected fees not required by Act of Congress to be prepaid.

He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.

(June 25, 1948, ch. 646, 62 Stat. 920; Pub. L. 96–417, title V, § 504, Oct. 10, 1980, 94 Stat. 1743.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 6, 7, 8, 524, 557, 567, 568, and 569, sections 644 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and section 11–401 of the District of Columbia Code, 1940 ed. (R.S. § 833; June 20, 1874, ch. 328, § 2, 18 Stat. 109; May 28, 1896, ch. 252, § 8, 29 Stat. 181; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1901, ch. 854, § 174, 31 Stat. 1218; June 28, 1902, ch. 1301, § 1, 32 Stat. 475; June 30, 1902, ch. 1329, 32 Stat. 527; June 30, 1906, ch. 3914, § 1, 34 Stat. 754; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, §§ 3, 4, 291, 36 Stat. 1087, 1167; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 2, 1917, ch. 145, § 41, 39 Stat. 965; Feb. 26, 1919, ch. 49, §§ 1, 4, 9, 40 Stat. 1182, 1183; Feb. 11, 1921, ch. 46, 41 Stat. 1099; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412, 1413; June 10, 1921, ch. 18, §§ 301, 310, 42 Stat. 23, 25; June 16, 1921, ch. 23, § 1, 42 Stat. 41; July 9, 1921, ch. 42, § 313, 42 Stat. 119; June 1, 1922, ch. 204, Title II, 42 Stat. 614, 616; Jan. 3, 1923, ch. 21 title II, 42 Stat. 1084; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat.

158; June 25, 1936, ch. 804, 49 Stat. 1921; Mar. 26, 1938, ch. 51, § 2, 52 Stat. 118; June 16, 1938, ch. 465, 52 Stat. 752; June 14, 1941, ch. 203, §§ 1, 2, 55 Stat. 251).

This section consolidates provisions of section 11–401 of the District of Columbia Code, 1940 ed., sections 644 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and title 28, U.S.C., 1940 ed., sections 6, 7, 8, 524, 557, 567, 568, and 569 relating to district court clerks. Other provisions of such sections 8 and 524 are incorporated in sections 505 [now 545], 541 [see 561], and 954 of this title and other provisions of such section 11–401 of the District of Columbia Code have been retained in such Code.

Words ''with the approval of the court'' were substituted for ''Attorney General.'' The power to approve appointment of court officers is more properly a judicial one. (See section 711 of this title.)

The provision in section 6 of title 28, U.S.C., 1940 ed., that the clerk be appointed by the district judge or senior judge where there was more than one member of the court was changed and the power vested in the court.

The provisions of section 644 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to compensation of clerks and deputy clerks were omitted as covered by section 604 of this title. Other provisions of said section 644 are incorporated in section 753 of this title.

Provision for similar officers in Alaska, Canal Zone, and the Virgin Islands is made by sections 106, 1349, and 1405y, respectively, of title 48, U.S.C., 1940 ed. A part of section 863 of said title 48, was retained in title 48. For remainder of such section, see Distribution Table.

Words in sections 6 and 7 of title 28, U.S.C., 1940 ed., ''Except as otherwise provided for by law,'' were omitted as obsolete and superfluous.

References in section 7 of title 28, U.S.C., 1940 ed., that the clerk recommend appointment of deputies and clerical assistants were omitted as unnecessary.

The provision that each clerk shall be subject to removal by the court is new. No tenure was provided for by title 28, U.S.C., 1940 ed., but said title contained provisions that other clerks should hold office during the pleasure of the courts which appointed them, and that deputies should hold office during the pleasure of the clerks. The Supreme Court held, in 1839, that a judge of a district court could remove the clerk thereof at pleasure in absence of any law fixing the clerk's tenure. *In re Hennen*, 38 U.S. 230, 13 Pet. 230, 10 L.Ed. 138. (See also, *Meyers v. U.S.*, 47 S.Ct. 21, 272 U.S. 52, 71 L.Ed. 160.)

Words ''circuit or'' after ''Every clerk of the'' in section 524 of title 28, U.S.C., 1940 ed., were omitted because of the abolition of the circuit courts by act Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167, title 28, U.S.C., 1940 ed., § 430.

The provisions in section 524 of title 28, U.S.C., 1940 ed., that the clerk shall give his personal attention to his official duties, and declaring his office vacant upon removal from his district or neglect of duty, were omitted as covered by the removal provision of this section.

The provision permitting the clerk of the district court for the District of Columbia to reside within twenty miles of the District of Columbia was added because of the relatively small and congested area of the District, as a result of which few federal officers are appointed from the District or reside therein.

The provision in subsection (b) of this section authorizing judges to designate the places for maintaining offices by the clerks was added because of many special provisions, in sections 141–196 of title 28, U.S.C., 1940 ed., for the maintenance of offices by the clerks of the district courts at various particular places. These provisions have been omitted, on revision, as covered by the more general provisions of this section. For residence requirements of United States attorneys and marshals, see sections 505 [now 545] and 541 [see 561] of this title.

A provision that a breach of section 569 of title 28, U.S.C., 1940 ed., should be deemed a vacation of the offender's appointment, was omitted as covered by the removal provision of this section.

The provision of section 569 of title 28, U.S.C., 1940 ed., limiting the compensation of a clerk who is appointed United States commissioner, to $3,000 a year for both offices was omitted as obsolete. The proper adjustment of the compensation of such clerks is an administrative matter more appropriately regulated by the Director of the Administrative Office under the Supervision of the Judicial Conference of the United States. (See section 604 of this title.)

Reference in sections 557, 567 and 568 of title 28, U.S.C., 1940 ed., to accounting by district court clerks in Alaska, were omitted as covered by sections 106 and 107 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to duties of those clerks.

References in sections 557 and 567 of title 28, U.S.C., 1940 ed., to the clerk of the district court of the United States for the District of Columbia, were omitted as covered by words ''The clerk of each district court of the United States.''

As revised, this section is in harmony with the provisions in chapters 45 and 47 of this title relating to accounting by the clerk of the Supreme Court and clerks of the courts of appeals.

Provisions as to time and method of accounting and settlement of accounts were omitted as covered by chapter 41 of this title giving the Director of the Administrative Office of the United States Courts supervision over such accounts, and of chapter 2, Audit and Settlement of Accounts, of title 31, U.S.C., 1940 ed., Money and Finance.

Provisions as to particular fees and moneys to be accounted for were omitted as covered by words ''all fees, costs and other moneys.'' Included in such provisions was a provision as to naturalization fees, but a later act, now appearing in section 742 of title 8, U.S.C., 1940 ed., Aliens and Nationality, provided a different method of accounting and an exception expressly referring to such section was inserted in this section.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 742 of Title 8, referred to in subsec. (e), was repealed by act June 27, 1952, ch. 477, title IV, § 403(a)(42), 66 Stat. 280. See section 1455 of Title 8, Aliens and Nationality.

AMENDMENTS

1980—Subsec. (f). Pub. L. 96–417 added subsec. (f).

CHANGE OF NAME

Reference to United States commissioners deemed to be reference to United States magistrates pursuant to Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1108. See chapter 43 (§ 631 et seq.) of this title.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

CROSS REFERENCES

Compensation and expenses of clerks, deputies, etc., see section 604 of this title.

Oath and bond of clerks and deputies, see sections 951 and 963 of this title.

Powers and duties of clerks and deputies, see section 956 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 752. Law clerks and secretaries

District judges may appoint necessary law clerks and secretaries subject to any limitation

on the aggregate salaries of such employees which may be imposed by law. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(June 25, 1948, ch. 646, 62 Stat. 921; Pub. L. 86–221, Sept. 1, 1959, 73 Stat. 452; Pub. L. 100–702, title X, § 1003(a)(3), Nov. 19, 1988, 102 Stat. 4665.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 5b and 128 (Mar. 3, 1911, ch. 231, § 118b, as added Feb. 17, 1936, ch. 75, 49 Stat. 1140; May 14, 1940, ch. 189, title IV, 54 Stat. 210; June 28, 1941, ch. 258, title IV, 55 Stat. 301; July 2, 1942, ch. 472, title IV, 56 Stat. 504).

This section consolidates provisions of sections 5b and 128 of title 28, U.S.C., 1940 ed., relating to appointment of law clerks for district judges.

Words in section 128 of title 28, U.S.C., 1940 ed., ''but there shall not be appointed more than thirty-five of such law clerks during the first fiscal year of the enactment of this section'' were omitted as executed and obsolete. Words ''Thereafter such number in excess of thirty-five per year shall be limited by necessity of each case as hereinabove provided'' were also deleted as superseded by section 5b of said title and obsolete. The Director of the Administrative Office has expressed such views. Chief judge of the circuit was substituted for senior circuit judge to conform to section 44 of this title.

Provisions of section 128 of title 28, U.S.C., 1940 ed., relating to salary, or compensation of such clerks are incorporated in section 604 of this title. (See reviser's note under that section.)

The provisions in section 5b of title 28, U.S.C., 1940 ed., that district judges shall not appoint more than three law clerks in any one circuit was not repeated in the Judiciary Appropriation Acts, 1944, 1945, and 1946, 57 Stat. 242, 58 Stat. 357, 59 Stat. 196, ch. 129. The Director of the Administrative Office for United States Courts advises that as a matter of fact, more than three law clerks are serving district judges in several of the circuits at the present time. Consequently the limitation is omitted from this section.

The provision for appointment of secretaries is new. Existing law fixes compensation of secretaries but makes no provision for their appointment. (See section 604 of this title and reviser's note thereunder.)

Minor changes were made in phraseology.

SENATE REVISION AMENDMENT

As finally enacted, sections 374c and 374d of Title 28, U.S.C., 1946 ed., which were derived from act July 23, 1947, ch. 300, §§ 1, 2, 61 Stat. 409, were an additional source of this section. Hence, by Senate amendment, the section was changed to conform with such sections, and such act was included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Pub. L. 100–702 inserted at end ''A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.''

1959—Pub. L. 86–221 substituted provision permitting district judges to appoint necessary law clerks and secretaries subject to aggregate salary limitations for provisions permitting a district judge to appoint a secretary and also a law clerk upon certification of necessity by the chief judge of the circuit and permitting the chief judge of a district court having five or more district judges to appoint an assistant secretary.

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 753. Reporters

(a) Each district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands shall appoint one or more court reporters.

The number of reporters shall be determined by the Judicial Conference of the United States.

The qualifications of such reporters shall be determined by standards formulated by the Judicial Conference. Each reporter shall take an oath faithfully to perform the duties of his office.

Each such court, with the approval of the Director of the Administrative Office of the United States Courts, may appoint additional reporters for temporary service not exceeding three months, when there is more reporting work in the district than can be performed promptly by the authorized number of reporters and the urgency is so great as to render it impracticable to obtain the approval of the Judicial Conference.

If any such court and the Judicial Conference are of the opinion that it is in the public interest that the duties of reporter should be combined with those of any other employee of the court, the Judicial Conference may authorize such a combination and fix the salary for the performance of the duties combined.

(b) Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. The regulations promulgated pursuant to the preceding sentence shall prescribe the types of electronic sound recording or other means which may be used. Proceedings to be recorded under this section include (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court as[1] may be requested by any party to the proceeding.

The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years.

The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken

[1] So in original. Probably should be ''or as''.

have been certified by him and filed with the clerk as provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

The reporter or other designated individual shall promptly delivery to the clerk for the records of the court a certified copy of any transcript so made.

The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record.

The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

(c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

(d) The Judicial Conference shall prescribe records which shall be maintained and reports which shall be filed by the reporters. Such records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts, and may include records showing:

(1) the quantity of transcripts prepared;

(2) the fees charged and the fees collected for transcripts;

(3) any expenses incurred by the reporters in connection with transcripts;

(4) the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and

(5) such other information as the Judicial Conference may require.

(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States. For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence. All supplies shall be furnished by the reporter at his own expense.

(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes. Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.

(g) If, upon the advice of the chief judge of any district court within the circuit, the judicial council of any circuit determines that the number of court reporters provided such district court pursuant to subsection (a) of this section is insufficient to meet temporary demands and needs and that the services of additional court reporters for such district court should be provided the judges of such district court (including the senior judges thereof when such senior judges are performing substantial judicial services for such court) on a contract basis, rather than by appointment of court reporters as otherwise provided in this section, and such judicial council notifies the Director of the Administrative Office, in writing, of such determination, the Director of the Administrative Office is authorized to and shall contract, without regard to section 3709 of the Revised Statutes of the United States, as amended (41 U.S.C. 5), with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds, after consultation with the chief judge of the district court, will best serve the needs of such district court.

(June 25, 1948, ch. 646, 62 Stat. 921; Oct. 31, 1951, ch. 655, § 46, 65 Stat. 726; June 28, 1955, ch. 189, § 3(c), 69 Stat. 176; Pub. L. 85–462, § 3(c), June 20, 1958, 72 Stat. 207; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 86–568, title I, § 116(c), July 1, 1960, 74 Stat. 303; Pub. L. 89–163, Sept. 2, 1965, 79 Stat. 619; Pub. L. 89–167, Sept. 2, 1965, 79 Stat. 647; Pub. L. 91–272, § 14, June 2, 1970, 84 Stat. 298; Pub. L. 91–545, Dec. 11, 1970, 84 Stat. 1412; Pub. L. 97–164, title IV, § 401(a), Apr. 2, 1982, 96 Stat. 56; Pub. L. 104–317, title III, § 305, Oct. 19, 1996, 110 Stat. 3852.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 9a(a), (b), (c), (d), and section 644 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 5a, as added Jan. 20, 1944, ch. 3, § 1(a), (b), (c), (d), 58 Stat. 5, 6, 7; Mar. 4, 1921, ch. 161, § 1, 41 Stat.

1412; July 9, 1921, ch. 42, § 313, 42 Stat. 119; June 1, 1922, ch. 204, title II, 42 Stat. 614, 616; Jan. 3, 1923, ch. 21, title II, 52 Stat. 1084; Feb. 12, 1925, ch. 220, 43 Stat. 890).

Section consolidates section 9a(a), (b), (c), (d) of title 28, U.S.C., 1940 ed., and part of section 644 of title 48, U.S.C., 1940 ed., relating to reporters.

The provisions of section 644 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, relating to clerks and deputy clerks, were incorporated in section 751 of this title. The provision of said section 644 fixing the salary of the reporter at $1,200 per annum was omitted as inconsistent with this section. Certain other provisions of said section 644 were also omitted. (See reviser's note under section 751 of this title.)

Words ''including the District Court of the United States for the District of Columbia, and the district courts in the territories and insular possessions'' were omitted as covered by ''Each district court in the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands.'' (See reviser's note under section 88 of this title.) The courts in Hawaii and Puerto Rico are district courts of the United States under definitive section 451 of this title.

Words ''for the performance of the duties combined'' were substituted for ''therefor, as provided by subsection (c) hereof, any provision of law to the contrary notwithstanding''.

Subsections (e) and (f) of this section incorporate part of the provisions of subsection 9a(c) of title 28, U.S.C., 1940 ed. The other provisions of said subsection are incorporated in sections 550 [see Prior Provisions note under that section] and 1915 of this title.

The last paragraph of subsection (b) of this section was revised to conform with the language of section 556 of title 28, U.S.C., 1940 ed., providing for inspection of books in the offices of clerks of district courts. Such section 556 will be omitted, however, as more properly coverable by rule of court.

References in Text

The Criminal Justice Act, referred to in subsec. (f), probably means Pub. L. 88–455, Aug. 20, 1964, 78 Stat. 552, as amended, known as the Criminal Justice Act of 1964, which is classified to section 3006A of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under section 3006A of Title 18.

Amendments

1996—Subsec. (e). Pub. L. 104–317 inserted ''For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence.'' after first sentence.

1982—Subsec. (b). Pub. L. 97–164, amended subsec. (b) generally, substituting provisions permitting proceedings to be recorded using electronic sound recording, or any other method, subject to the approval and authorization of the Judicial Conference and of the presiding judge, for provisions requiring that an official court reporter attend each session of the court and every other proceeding designated by rule or order of the court or one of the judges.

1970—Subsec. (e). Pub. L. 91–272, § 14(1), struck out provisions limiting to the $3,000 to $7,630 range the annual salary paid to reporters.

Subsec. (f). Pub. L. 91–545 restricted authorization of United States to pay fees for transcripts furnished in criminal proceedings to transcripts furnished to persons proceeding under the Criminal Justice Act.

Subsec. (g). Pub. L. 91–272, § 14(2), added subsec. (g)

1965—Subsec. (b). Pub. L. 89–163 made provision for recording of proceedings in United States District Courts by means of electronic sound recording devices, made subject to the Judicial Conference the types of electronic sound recording means used by the reporters, made electronic sound recordings of proceedings on arraignment, plea, and sentence in a criminal case when properly certified by the court reporter admissible evidence to establish the record of that part of the proceedings, required the transcribing of arraignments in addition to the criminal proceedings already required to be transcribed, and waived the transcribing requirement for arraignments, pleas, and sentencing proceedings when such proceedings have been electronically recorded and such records certified and filed as provided in this subsection.

Subsec. (f). Pub. L. 89–167 provided for payment by United States of fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis if trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

1960—Subsec. (e). Pub. L. 86–568 increased maximum annual salary from $7,095 to $7,630.

1958—Subsec. (a). Pub. L. 85–508 struck out provisions which related to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for State of Alaska.

Subsec. (e). Pub. L. 85–462 increased maximum annual salary from $6,450 to $7,095.

1955—Subsec. (e). Act June 28, 1955, increased maximum annual salary from $6,000 to $6,450.

1951—Subsec. (a). Act Oct. 31, 1951, inserted reference to District Court of Guam in first par.

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 this title.

Effective Date of 1960 Amendment

Amendment by Pub. L. 86–568 effective on the first day of the first pay period which begins on or after July 1, 1960, see section 122 of Pub. L. 86–568.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see Pub. L. 85–508, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

Savings Provision

Section 401(b) of Pub. L. 97–164 provided that: ''The regulations promulgated by the Judicial Conference pursuant to subsection (b) of section 753 of title 28, as amended by subsection (a) of this section, shall not take effect before one year after the effective date of this Act [Oct. 1, 1982]. During the one-year period after the date of the enactment of this Act [Apr. 2, 1982], the Judicial Conference shall experiment with the different methods of recording court proceedings. Prior to the effective date of such regulations, the law and regulations in effect the day before the date of enactment of this Act shall remain in full force and effect.''

Termination of United States District Court for the District of the Canal Zone

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

Salary Limitation for Court Reporters

1967—Pub. L. 90–206, title II, § 213(c), Dec. 16, 1967, 81 Stat. 635, inserted a new salary limitation for court re-

porters effective the first pay period which begins on or after Oct. 1, 1967, which reflected the respective applicable pay increases provided by section 202(a) of Pub. L. 90–206 in corresponding rates of compensation for particular officers and employees of the government.

1966—Pub. L. 89–504, title II, § 202(c), July 18, 1966, 80 Stat. 294, inserted a new salary limitation for court reporters effective the first pay period which begins on or after July 1, 1966, which reflected the respective applicable pay increases provided by section 102(a) of title I of Pub. L. 89–504 in corresponding rates of compensation for particular officers and employees of the government.

1965—Pub. L. 89–301, § 12(c), Oct. 29, 1965, 79 Stat. 1122, inserted a new salary limitation for court reporters which reflected the applicable pay increases provided by section 2(a) of Pub. L. 89–301 in corresponding rates of compensation for particular government officers and employees.

1964—Pub. L. 88–426, title IV, § 402(c), Aug. 14, 1964, 78 Stat. 434, inserted a new salary limitation for court reporters which reflected the applicable pay increases provided by title I of Pub. L. 88–426 in corresponding rates of compensation for particular government officers and employees.

1962—Pub. L. 87–793, title VI, § 1004(c), Oct. 11, 1962, 76 Stat. 866, inserted a new salary limitation for court reporters effective for the pay period beginning on or after Oct. 11, 1962, and ending immediately prior to the first pay period beginning on or after Jan. 1, 1964, and provided for a second salary limitation effective for the first pay period beginning on or after Jan. 1, 1964, which reflected applicable pay increases provided by title II of Pub. L. 87–793 in corresponding rates of compensation for particular government officers and employees.

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 754. Receivers of property in different districts

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

(June 25, 1948, ch. 646, 62 Stat. 922.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 117 (Mar. 3, 1911, ch. 231, § 56, 36 Stat. 1102).

Word ''action'' was substituted for ''suit'', in view of Rule 2 of the Federal Rules of Civil Procedure.

Section 117 of title 28, U.S.C., 1940 ed., applied to land or other property of a fixed character lying in different States within the same circuit. Words ''property, real, personal or mixed, situated in different districts'', were inserted to broaden the scope of this section to cover all property in different districts without respect to situs ''within different states within same judicial circuit''.

The revised section permits the receiver appointed by any district court to control all property of the defendant in whatever district the property is situated. The provisions of section 117 of title 28, U.S.C., 1940 ed., for divesting the receiver's jurisdiction and control of property in other districts upon disapproval by the circuit court of appeals or a judge thereof of the circuit embracing the district of appointment was omitted as unnecessary in view of sections 1292 and 2107 of this title. Said section 1292 provides for review of the order of appointment and the directions of the reviewing court will control the receiver.

Provisions of section 117 of title 28, U.S.C., 1940 ed., relating to process are the basis of section 1692 of this title.

Under section 117 of title 28, U.S.C., 1940 ed., failure to file copies of the complaint and order of appointment in any district where part of the property was located divested the receiver of jurisdiction over all the property except that part located in the State where the suit was brought. This has been changed by limiting the exception to the district where the copies are not filed. Obviously the election of the receiver not to take control of property in one district ought not to preclude his control in those districts in which he did file such copies.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Capacity to sue or be sued, see rule 17, Appendix to this title.

CROSS REFERENCES

Mismanagement of property by receiver, criminal penalty, see section 1911 of Title 18, Crimes and Criminal Procedure.

Process and orders affecting property in different districts, see section 1692 of this title.

§ 755. Criers and bailiffs

Each district judge may appoint a crier for the court in which he presides who shall perform also the duties of bailiff and messenger. A crier may perform also the duties of law clerk if he is qualified to do so and the district judge who appointed him designates him to serve as a crier-law clerk. A crier designated to serve as a crier-law clerk shall receive the compensation of a law clerk, but only so much of that compensation as is in excess of the compensation to which he would be entitled as a crier shall be deemed the compensation of a law clerk for the purposes of any limitation imposed by law upon the aggregate salaries of law clerks and secretaries appointed by a district judge.

Each United States marshal may employ, with the approval of the judge, not exceeding four bailiffs as the district judge may determine, to attend the court, maintain order, wait upon the grand and petit juries, and perform such other necessary duties as the judge or marshal may direct.

If the position of crier or bailiff is to be filled by the appointment of a person who has not previously served as either crier or bailiff, preference in the appointment shall be given to a person who has served in the military or naval forces of the United States in time of war and who has been honorably discharged therefrom, if in the opinion of the appointing officer such person is as well qualified as any other available person to perform to the satisfaction of the appointing officer all the duties of the position.

(June 25, 1948, ch. 646, 62 Stat. 923; Pub. L. 89–281, Oct. 21, 1965, 79 Stat. 1012; Pub. L. 100–690, title VII, § 7608(b), Nov. 18, 1988, 102 Stat. 4515.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 9, 595, 596 (R.S. § 715; Mar. 3, 1905, ch. 1487, 33 Stat. 1259; Mar. 3, 1911, ch. 231, § 5, 36 Stat. 1088; June 1, 1922, ch. 204, title II, 42 Stat. 617; Jan. 3, 1923, ch. 21, title II, 42 Stat. 1084; May 28, 1924, ch. 204, title II, 43 Stat. 221; May 14, 1940, ch. 189, title III, 54 Stat. 204; June 28, 1941, ch. 258, title III, 55 Stat. 295; July 2, 1942, ch. 472, title III, 56 Stat. 486; July 1, 1943, ch. 182, title II, 57 Stat. 286; June 28, 1944, ch. 294, title II, 58 Stat. 410; Dec. 7, 1944, ch. 522, §§ 1, 2, 58 Stat. 796; May 21, 1945, ch. 129, title II, 59 Stat. 184).

Section consolidates parts of sections 9, 595, and 596 of title 28, U.S.C., 1940 ed. The other provisions of such sections appear in section 604 of this title.

Compensation of criers and other court attendants, except bailiffs under section 604 of this title, will be fixed by the Director of the Administrative Office of the United States Courts.

AMENDMENTS

1988—Pub. L. 100–690 struck out third par. which provided each bailiff an allowance of $6 a day for services to be paid only for actual attendance when court was in session or judge or jury was present.

1965—Pub. L. 89–281 inserted provisions to first par. permitting a crier to perform duties of law clerk if he is qualified to do so and district judge who appointed him designates him to serve as a crier-law clerk, specifying that a crier-law clerk shall receive compensation of a law clerk, and requiring that only so much of that compensation as is in excess of compensation to which he would be entitled as a crier shall be deemed compensation of a law clerk for purposes of any limitation imposed by law upon aggregate salaries of law clerks and secretaries appointed by a district judge.

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

§ 756. Power to appoint

Whenever a majority of the district judges of any district court cannot agree upon the appointment of any officer of such court, the chief judge shall make such appointment.

(June 25, 1948, ch. 646, 62 Stat. 923.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 375 (Mar. 3, 1911, ch. 231, § 260, 36 Stat. 1161; Feb. 25, 1919, ch.29, § 6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422; May 11, 1944, ch. 192, §§ 1, 3, 58 Stat. 218, 219).

Only part of section 375 of title 28, U.S.C., 1940 ed., appears in this section. The remainder is incorporated in sections 136, 294 and 371 of this title.

The term ''chief judge'' was substituted for ''senior district judge''. (See reviser's note under section 136 of this title.)

Minor changes in phraseology were made.

[CHAPTER 50—OMITTED]

CODIFICATION

Chapter 50, consisting of sections 771 to 775, which was added by Pub. L. 95–598, title II, § 233(a), Nov. 6, 1978, 92 Stat. 2665, and which related to bankruptcy courts, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 51—UNITED STATES COURT OF FEDERAL CLAIMS

Sec.
791. Clerk.
[792, 793. Repealed.]
794. Law clerks and secretaries.
795. Bailiffs and messengers.
796. Reporting of court proceedings.
797. Recall of retired judges.
798. Places of holding court; appointment of special masters.

AMENDMENTS

1992—Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''UNITED STATES COURT OF FEDERAL CLAIMS'' for ''UNITED STATES CLAIMS COURT'' as chapter heading.

1984—Pub. L. 98–620, title IV, § 416(b), Nov. 8, 1984, 98 Stat. 3364, added item 798.

1982—Pub. L. 97–164, title I, § 121(b), (c)(2), (d)(2), (f)(2), (g)(2), Apr. 2, 1982, 96 Stat. 34–36, substituted ''UNITED STATES CLAIMS COURT'' for ''COURT OF CLAIMS'' as chapter heading and, in analysis of sections in the chapter, struck out item 792 ''Commissioners'' substituted ''Law clerks and secretaries'' for ''Stenographers and clerical employees'' in item 794, substituted ''Bailiffs and messengers'' for ''Bailiff and messenger'' in item 795, and substituted ''judges'' for ''commissioners'' in item 797.

1972—Pub. L. 92–375, § 1, Aug. 10, 1972, 86 Stat. 529, added item 797.

1970—Pub. L. 91–272, § 15(b), June 2, 1970, 84 Stat. 298, added item 796.

1954—Act Sept. 3, 1954, ch. 1263, § 40, 68 Stat. 1240, struck out item 793 ''Reporter-commissioners; stenographers''.

CROSS REFERENCES

General provisions applicable to court officers and employees, see section 951 et seq. of this title.

§ 791. Clerk

(a) The United States Court of Federal Claims may appoint a clerk, who shall be subject to removal by the court. The clerk, with the approval of the court, may appoint necessary deputies and employees in such numbers as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies and employees shall be subject to removal by the clerk with the approval of the court.

(b) The clerk shall pay into the Treasury all fees, costs and other moneys collected by him. He shall make returns thereof to the Director of the Administrative Office of the United States Courts under regulations prescribed by him.

(c) On the first day of every regular session of Congress, the clerk shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, showing the dates and amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered, and a statement of the costs taxed in each case.

(June 25, 1948, ch. 646, 62 Stat. 923; Pub. L. 97–164, title I, § 121(a), Apr. 2, 1982, 96 Stat. 34; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 244, 248, 283a and 289 (Mar. 3, 1911, ch. 231, §§ 139, 143, 183, 36 Stat. 1136, 1142; June 10, 1921, ch. 18, §§ 301, 302, 310, 42 Stat. 23, 25, Mar. 3, 1933, ch. 212, title II, § 19, 47 Stat. 1519; May 10, 1934, ch. 277, § 512(b), 48 Stat. 759).

This section consolidates a part of sections 244 and 248 with sections 283a and 289, all of title 28, U.S.C., 1940 ed.

Provisions in section 248 of title 28, U.S.C., 1940 ed., for distribution by the clerk of copies of the court's decisions is incorporated in section 415 of this title.

Certain provisions of section 244 of title 28, U.S.C., 1940 ed., relating to the bailiff and the chief messenger of the Court of Claims, and powers and duties of the clerk, his deputies and assistants, are incorporated in sections 795 and 956 of this title.

A provision in section 244 of title 28, U.S.C., 1940 ed., relating to the oath of the clerk of such court was omitted as covered by section 951 of this title.

Word ''clerk'' was substituted for ''chief clerk'' to harmonize with such designation of clerks of all other courts.

Provision that such officers shall be under the direction of the court in the performance of their duties was omitted as superfluous.

Provision in section 244 of title 28, U.S.C., 1940 ed., that the clerk and assistant shall be subject to removal by the Court was substituted for the grounds of misconduct or incapacity. This change is in harmony with like provisions as to the clerks of other courts.

Section 289 of title 28, U.S.C., 1940 ed., required the Attorney General to duplicate the reporting to Congress of judgments which are furnished by the clerk. The revised section eliminates such duplication by requiring the clerk to transmit the information to Congress.

Words ''Director of the Administrative Office of the United States Courts'' were substituted for ''Attorney General,'' in view of the act of August 7, 1939, ch. 501, § 6, 53 Stat. 1226, 28 U.S.C., 1940 ed., following § 446.

As revised, this section is consistent with similar provisions as to clerks of district courts and the courts of appeals in chapters 47 and 49 of this title.

Changes in phraseology were made.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Subsec. (a). Pub. L. 97–164 substituted ''The United States Claims Court may appoint a clerk, who shall be subject to removal by the court'' for ''The Court of Claims may appoint a clerk and an assistant clerk, each of whom shall be subject to removal by the court'' and ''The clerk, with the approval of the court, may appoint necessary deputies and employees in such numbers as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies and employees shall be subject to removal by the clerk with the approval of the court'' for ''The court shall report any such removal and the cause thereof to Congress as soon as possible''.

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 this title.

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 this title.

CROSS REFERENCES

Compensation and expenses of clerks of court, their deputies, etc., see section 604 of this title.

Oath and bond of clerks and deputies, see section 951 of this title.

[§ 792. Repealed. Pub. L. 97–164, title I, § 121(b), Apr. 2, 1982, 96 Stat. 34]

Section, acts June 25, 1948, ch. 646, 62 Stat. 923; July 28, 1953, ch. 253, § 4(a), 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 41, 68 Stat. 1240; Aug. 14, 1964, Pub. L. 88–426, title IV, § 403(h), 78 Stat. 434; Oct. 15, 1966, Pub. L. 89–681, § 3, 80 Stat. 959; Dec. 16, 1967, Pub. L. 90–206, title II, § 213(e), 81 Stat. 635; Aug. 9, 1975, Pub. L. 94–82, title II, § 205(b)(7), 89 Stat. 423; July 20, 1977, Pub. L. 95–69, § 3, 91 Stat. 274, provided for appointment by Court of Claims and compensation of sixteen commissioners.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

[§ 793. Repealed. July 28, 1953, ch. 253, § 6, 67 Stat. 226]

Section, act June 25, 1948, ch. 646, 62 Stat. 924, related to appointment of reporter-commissioners by Court of Claims and employment of stenographers therefor.

§ 794. Law clerks and secretaries

The judges of the United States Court of Federal Claims may appoint necessary law clerks and secretaries, in such numbers as the Judicial Conference of the United States may approve for district judges, subject to any limitation of the aggregate salaries of such employees which may be imposed by law. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

(June 25, 1948, ch. 646, 62 Stat. 924; Pub. L. 97–164, title I, § 121(c)(1), Apr. 2, 1982, 96 Stat. 34; Pub. L. 100–702, title X, § 1003(a)(3), Nov. 19, 1988, 102 Stat. 4665; Pub. L. 102–572, title IX, §§ 902(a)(1), 905, Oct. 29, 1992, 106 Stat. 4516, 4517.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 270 (Feb. 24, 1925, ch. 301, § 2, 43 Stat. 965; May 29, 1928, ch. 852, § 711, 45 Stat. 882; June 23, 1930, ch. 573, § 1, 46 Stat. 799; Oct. 16, 1941, ch. 443, 55 Stat. 741).

The first sentence of the revised section makes express provision for appointment of stenographers and necessary clerical employees.

Other provisions of section 270 of title 28, U.S.C., 1940 ed., are incorporated in sections 456 and 792 of this title.

Specific provision for $5 per diem for stenographers is omitted as unnecessary and inconsistent with section 962 of this title. Travel and subsistence allowances of Government employees are governed by sections 822–833 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and inserted ''for district judges'' after ''may approve'' in first sentence.

1988—Pub. L. 100–702 inserted at end ''A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.''

1982—Pub. L. 97–164 substituted ''Law clerks and secretaries'' for ''Stenographers and clerical employees'' as section catchline and, in text, substituted ''The judges of the United States Claims Court may appoint necessary law clerks and secretaries, in such numbers as the Judicial Conference of the United States may approve, subject to any limitation of the aggregate salaries of such employees which may be imposed by law'' for ''The Court of Claims shall appoint stenographers and other clerical employees in such numbers as may be necessary each of whom shall be subject to removal by the court''.

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 this title.

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 this title.

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

§ 795. Bailiffs and messengers

The chief judge of United States Court of Federal Claims, with the approval of the court, may appoint necessary bailiffs and messengers, in such numbers as the Director of the Administrative Office of the United States Courts may approve, each of whom shall be subject to removal by the chief judge, with the approval of the court.

(June 25, 1948, ch. 646, 62 Stat. 924; Pub. L. 97–164, title I, § 121(d)(1), Apr. 2, 1982, 96 Stat. 35; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 244 (Mar. 3, 1911, ch. 231, § 139, 36 Stat. 1136).

The provision in section 244 of title 28, U.S.C., 1940 ed., that the bailiff should serve 4 years unless sooner removed by the court for cause, was changed by omitting the 4-year tenure and removal ''for cause'' requirement. As revised this section conforms with sections relating to the similar court officers.

Term ''chief messenger'' in section 244 of title 28, U.S.C., 1940 ed., was changed to ''messenger'' as the court has but one messenger.

A provision of section 244 of title 28, U.S.C., 1940 ed., providing for appointment of a clerk and assistant is incorporated in section 791 of this title, and a provision thereof, relating to powers and duties of the clerk, his deputies and assistants, is incorporated in section 956 of this title.

The second paragraph was added to conform with sections 713, 755, and 834 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''Bailiffs and messengers'' for ''Bailiff and messenger'' in section catchline and, in text, substituted ''The chief judge of United States Claims Court, with the approval of the court, may appoint necessary bailiffs and messengers, in such numbers as the Director of the Administrative Office of the United States Courts may approve, each of whom shall be subject to removal by the chief judge, with the approval of the court'' for ''The Court of Claims may appoint a bailiff and a messenger who shall be subject to removal by the court'' and struck out provision that the bailiff attend the court, preserve order, and perform such other necessary duties as the court might direct.

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 this title.

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 this title.

CROSS REFERENCES

Compensation and expenses of court officers and employees, see section 604 of this title.

§ 796. Reporting of court proceedings

Subject to the approval of the United States Court of Federal Claims, the Director of the Administrative Office of the United States Courts is authorized to contract for the reporting of all proceedings had in open court, and in such contract to fix the terms and conditions under which such reporting services shall be performed, including the terms and conditions under which transcripts shall be supplied by the contractor to the court and to other persons, departments, and agencies.

(Added Pub. L. 91–272, § 15(a), June 2, 1970, 84 Stat. 298; amended Pub. L. 97–164, title I, § 121(e), Apr. 2, 1982, 96 Stat. 35; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''Subject to the approval of the United States Claims Court, the Director of the Administrative Office of the United States Courts'' for ''The 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 this title.

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 this title.

§ 797. Recall of retired judges

(a) Any judge of the United States Court of Federal Claims who has retired from regular active service under subchapter III of chapter 83, or chapter 84, of title 5 shall be known and designated as a senior judge and may perform duties as a judge when recalled pursuant to subsection (b) of this section.

(b) The chief judge of the Court of Federal Claims may, whenever he deems it advisable, recall any senior judge, with such judge's consent, to perform such duties as a judge and for such period of time as the chief judge may specify.

(c) Any senior judge performing duties pursuant to this section shall not be counted as a judge for purposes of the number of judgeships authorized by section 171 of this title.

(d) Any senior judge, while performing duties pursuant to this section, shall be paid the same allowances for travel and other expenses as a judge in active service. Such senior judge shall also receive from the Court of Federal Claims supplemental pay in an amount sufficient, when added to his retirement annuity, to equal the salary of a judge in active service for the same period or periods of time. Such supplemental pay shall be paid in the same manner as the salary of a judge.

(Added Pub. L. 92–375, § 2, Aug. 10, 1972, 86 Stat. 529; amended Pub. L. 97–164, title I, § 121(f)(1), Apr. 2, 1982, 96 Stat. 35; Pub. L. 99–651, title II,

§ 202(c), Nov. 14, 1986, 100 Stat. 3648; Pub. L. 102–572, title IX, §§ 902(a), 904(b), Oct. 29, 1992, 106 Stat. 4516, 4517.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572, § 902(a)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (b). Pub. L. 102–572, § 902(a)(2), substituted ''Court of Federal Claims'' for ''Claims Court''.

Subsec. (d). Pub. L. 102–572, §§ 902(a)(2), 904(b), substituted ''Court of Federal Claims'' for ''Claims Court'' and struck out ''civil service'' before ''retirement annuity''.

1986—Subsec. (a). Pub. L. 99–651 inserted reference to chapter 84 of title 5.

1982—Pub. L. 97–164 substituted ''judges'' for ''commissioners'' in section catchline.

Subsec. (a). Pub. L. 97–164 substituted ''Any judge of the United States Claims Court who has retired from regular active service under subchapter III of chapter 83 of title 5 shall be known and designated as a senior judge and may perform duties as a judge when recalled pursuant to subsection (b) of this section'' for ''Any commissioner who has retired from regular active service under the Civil Service Retirement Act shall be known and designated as a senior commissioner and may perform duties as a commissioner when recalled pursuant to subsection (b) of this section''.

Subsec. (b). Pub. L. 97–164 substituted ''The chief judge of the Claims Court may, whenever he deems it advisable, recall any senior judge, with such judge's consent, to perform such duties as a judge and for such period of time as the chief judge may specify'' for ''The United States Court of Claims, whenever it deems such action advisable, may recall any senior commissioner, with the latter's acquiescence, to perform such duties as a commissioner and for such period of time as the court may specify''.

Subsec. (c). Pub. L. 97–164 substituted ''Any senior judge performing duties pursuant to this section shall not be counted as a judge for purposes of the number of judgeships authorized by section 171 of this title'' for ''Any senior commissioner performing duties pursuant to this section shall not be counted as a commissioner for purposes of the number of commissioner positions authorized by section 792 of this title''.

Subsec. (d). Pub. L. 97–164 substituted ''judge'' for ''commissioner'' wherever appearing, ''Such senior judge'' for ''He'', and ''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 this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–651 effective Jan. 1, 1987, see section 203 of Pub. L. 99–651, set out as a note under section 155 of this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 375 of this title.

§ 798. Places of holding court; appointment of special masters

(a) The United States Court of Federal Claims is authorized to use facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.

(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge of the Court of Federal Claims may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.

(c) The chief judge of the Court of Federal Claims may appoint special masters to assist the court in carrying out its functions. Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.

(Added Pub. L. 98–620, title IV, § 416(a), Nov. 8, 1984, 98 Stat. 3364; amended Pub. L. 102–572, title IX, §§ 902(a)(2), 906(a), (b), Oct. 29, 1992, 106 Stat. 4516–4518.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572, § 906(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The United States Claims Court is hereby authorized to utilize facilities and hold court in Washington, District of Columbia, and in four locations outside of the Washington, District of Columbia metropolitan area, for the purpose of conducting trials and such other proceedings as may be appropriate to executing the court's functions. The Director of the Administrative Office of the United States Courts shall designate such locations and provide for such facilities.''

Subsec. (b). Pub. L. 102–572, § 906(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 102–572, §§ 902(a)(2), 906(b)(1), redesignated former subsec. (b) as (c) and substituted ''Court of Federal Claims'' for ''Claims Court''.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1292 of this title.

[CHAPTER 53—REPEALED]

[§§ 831 to 834. Repealed. Pub. L. 97–164, title I, § 122(a), Apr. 2, 1982, 96 Stat. 36]

Section 831, act June 25, 1948, ch. 646, 62 Stat. 924, authorized Court of Customs and Patent Appeals to appoint a clerk, assistant clerks, stenographic law clerks, clerical assistants, and other necessary employees, and set out duties of clerk.

Section 832, acts June 25, 1948, ch. 646, 62 Stat. 924; May 24, 1949, ch. 139, § 76, 63 Stat. 101, authorized Court of Customs and Patent Appeals to appoint a marshal and set out duties of that marshal.

Section 833, act June 25, 1948, ch. 646, 62 Stat. 925, authorized Court of Customs and Patent Appeals to appoint a reporter and set out duties of that reporter.

Section 834, act June 25, 1948, ch. 646, 62 Stat. 925, authorized Court of Customs and Patent Appeals to appoint necessary bailiffs and messengers and set out duties of those bailiffs and messengers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 55—COURT OF INTERNATIONAL TRADE

Sec.
871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees.
872. Criers, bailiffs, and messengers.

AMENDMENTS

1986—Pub. L. 99–466, § 3(b)(3), Oct. 14, 1986, 100 Stat. 1191, struck out item 872 ''Marshal and deputy marshals'' and redesignated item 873 as 872.

1980—Pub. L. 96–417, title V, § 501(16), Oct. 10, 1980, 94 Stat. 1742, substituted in chapter heading ''COURT OF INTERNATIONAL TRADE'' for ''CUSTOMS COURT''.

1959—Pub. L. 86–243, § 1, Sept. 9, 1959, 73 Stat. 474, included chief deputy clerk and assistant clerk in item 871, substituted ''Marshal and deputy marshals'' for ''Marshal; appointment'' in item 872, and added item 873.

1949—Act May 24, 1949, ch. 139, § 77, 63 Stat. 101, inserted ''; appointment'' in item 872.

CROSS REFERENCES

General provisions applicable to court officers and employees, see section 951 et seq. of this title.

§ 871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees

The Court of International Trade may appoint a clerk, a chief deputy clerk, an assistant clerk, deputy clerks, and such deputies, assistants, and other employees as may be necessary for the effective dispatch of the business of the court, who shall be subject to removal by the court.

(June 25, 1948, ch. 646, 62 Stat. 925; Pub. L. 86–243, § 1, Sept. 9, 1959, 73 Stat. 474; Pub. L. 96–417, title V, § 501(17), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on section 6 of title 19, U.S.C., 1940 ed., Customs Duties (May 4, 1923, ch. 251, § 2, 42 Stat. 1453; Jan. 13, 1925, ch. 76, 43 Stat. 748; May 28, 1926, ch. 411, § 1, 44 Stat. 669; June 17, 1930, ch. 497, title IV, §§ 518, 649, 46 Stat. 737, 762).

Section is based on the last two sentences of section 6 of title 19, U.S.C., 1940 ed., which provided for appointment by the Attorney General in conformity with the civil service laws. This and other administrative powers of the Department of Justice with respect to the courts were transferred to the Administrative Office of the United States Courts by section 446 of title 28, U.S.C., 1940 ed., which is section 604 of this title. The revised section vests the power of appointment in the chief judge to conform with section 253 of this title and rules 5 and 22 of the Rules of the Customs Court adopted May 29, 1936.

Changes were made in phraseology.

AMENDMENTS

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

1959—Pub. L. 86–243 included chief deputy clerk and assistant clerk in section catchline, transferred the appointing authority from the chief judge to the Customs Court, provided for appointment of a chief deputy clerk, an assistant clerk and deputy clerks and for power of removal and deleted reference to the civil service laws with respect to appointments.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

SAVINGS PROVISION

Section 4 of Pub. L. 86–243 provided that: ''Nothing contained in the amendments made by this Act [enacting section 873 and amending this section and sections 253, 550, and 872 of this title] shall be construed to deprive any person serving on the date of enactment of this Act [Sept. 9, 1959] as an officer or employee of the Customs Court of any rights, privileges, or civil service status, if any, to which such person is entitled under the laws of the United States or regulations thereunder.''

CROSS REFERENCES

Compensation and expenses of clerks of court, their deputies, etc., see section 604 of this title.

Oath and bond of clerks and deputies, see section 951 of this title.

§ 872. Criers, bailiffs, and messengers

The Court of International Trade may appoint such criers as it may require for said court, which criers shall also perform the duties of bailiffs and messengers and such other duties as the court directs and shall be subject to removal by the court.

(Added Pub. L. 86–243, § 1, Sept. 9, 1959, 73 Stat. 474, § 873; amended Pub. L. 96–417, title V, § 501(19), Oct. 10, 1980, 94 Stat. 1742; renumbered § 872, Pub. L. 99–466, § 3(b)(2), Oct. 14, 1986, 100 Stat. 1191.)

PRIOR PROVISIONS

A prior section 872, acts June 25, 1948, ch. 646, 62 Stat. 925; May 24, 1949, ch. 139, § 78, 63 Stat. 101; Sept. 9, 1959, Pub. L. 86–243, § 1, 73 Stat. 474; Oct. 10, 1980, Pub. L. 96–417, title V, § 501(18), 94 Stat. 1742, related to a marshal and deputy marshals, prior to repeal by Pub. L. 99–466, §§ 3(b)(1), 4, Oct. 14, 1986, 100 Stat. 1191, effective 60 days after Oct. 14, 1986.

AMENDMENTS

1986—Pub. L. 99–466 renumbered section 873 of this title as this section.

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

SAVINGS PROVISION

Enactment of section by Pub. L. 86–243 not to deprive Customs Court officers or employees of any rights, privileges, or civil service status, see section 4 of Pub. L. 86–243, set out as a note under section 871 of this title.

[§ 873. Renumbered § 872]

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

Sec.
951. Oath of office of clerks and deputies.

Sec.
[952. Repealed.]
953. Administration of oaths and acknowledgments.
954. Vacancy in clerk position; absence of clerk.
955. Practice of law restricted.
956. Powers and duties of clerks and deputies.
957. Clerks ineligible for certain offices.
958. Persons ineligible as receivers.
959. Trustees and receivers suable; management; State laws.
960. Tax liability.
961. Office expenses of clerks.
[962. Repealed.]
963. Courts defined.

SENATE REVISION AMENDMENT

This chapter was renumbered ''57'', but without change in its section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1996—Pub. L. 104–317, title II, § 204(b), Oct. 19, 1996, 110 Stat. 3850, substituted ''Vacancy in clerk position; absence of clerk'' for ''Death of clerk; duties of deputies'' in item 954.

1972—Pub. L. 92–310, title II, § 206(e)(2), (f)(2), June 6, 1972, 86 Stat. 203, struck out item 952 ''Bonds of clerks and deputies'', and struck out ''and remedies against'' before ''deputies'' in item 954.

1968—Pub. L. 90–623, § 4, Oct. 22, 1968, 82 Stat. 1315, struck out item 962 ''Traveling expenses''.

1949—Act May 24, 1949, ch. 139, § 78a, 63 Stat. 101, struck out ''by clerks'' after ''law'' in item 955.

CROSS REFERENCES

General provisions applicable to court officers and employees, see section 951 et seq. of this title.

§ 951. Oath of office of clerks and deputies

Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: ''I, _____ _____, having been appointed _____, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God.''

(June 25, 1948, ch. 646, 62 Stat. 925.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 512 (R.S., § 794; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Section 512 of title 28, U.S.C., 1940 ed., applied only to the Clerk of the Supreme Court and clerks and deputies of the district courts.

This section is applicable to the Supreme Court and to all courts established by act of Congress.

The last sentence of section 512 of title 28, U.S.C., 1940 ed., reading ''The words 'So help me God.' shall be omitted in all cases where an affirmation is admitted instead of an oath,'' was omitted as unnecessary because on affirmation such words would not be included. As revised, the section conforms with section 453 of this title providing for the form of judicial oath.

Minor changes were made in phraseology.

[§ 952. Repealed. Pub. L. 92–310, title II, § 206(e)(1), June 6, 1972, 86 Stat. 203]

Section, act June 25, 1948, ch. 646, 62 Stat. 926, related to bonds of clerks and deputies.

§ 953. Administration of oaths and acknowledgments

Each clerk of court and his deputies may administer oaths and affirmations and take acknowledgments.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 264, 523 and 525, section 1114(a) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and District of Columbia Code, 1940 ed., § 11–402 (R.S. § 799; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1901, ch. 854, § 178, 31 Stat. 1219; June 30, 1902, ch. 1329, 32 Stat. 527; Mar. 3, 1911, ch. 231, §§ 158, 291, 36 Stat. 1139, 1167; Feb. 10, 1939, ch. 2, § 1114(a), 53 Stat. 160; Oct. 21, 1942, ch. 619, title V, § 504(a)(c), 56 Stat. 957; Feb. 25, 1944, ch. 63, title V, § 503, 58 Stat. 72).

This section consolidates a part of section 525, sections 264 and 523 of title 28, U.S.C., 1940 ed., part of section 1114(a) of title 26, U.S.C., 1940 ed., section 11–402 of the District of Columbia Code, 1940 ed.,

As respects acknowledgments, sections 264, 523 and 525 of title 28, U.S.C., 1940 ed., and section 11–402 of District of Columbia Code, 1940 ed., referred only to the Court of Claims and the District Court for the District of Columbia. However, section 555 of said title 28, before amendment in 1944, provided for the collection of a fee by district court clerks for taking acknowledgments. The 1944 amendment provided for the fixing of fees by the Judicial Conference of the United States. If notaries and other minor officials may take acknowledgments there seems to be no reason why clerks of Federal courts and their deputies should not have such power.

Words ''Except as provided in section 591 of this title,'' in section 525 of title 28, U.S.C., 1940 ed., were omitted. Under such section 591, the provisions of such section 525 were inapplicable to the Territory of Alaska, but a later act of June 6, 1900, ch. 786, § 7, 31 Stat. 324, section 106 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, provided that clerks of the District Court for Alaska should perform the duties required or authorized to be performed by clerks of United States courts in other districts.

Provisions of section 525 of title 28, U.S.C., 1940 ed., relating to United States commissioners are incorporated in section 637 of this title.

Provisions of section 264 of title 28, U.S.C., 1940 ed., and section 1114(a) of title 26, U.S.C., 1940 ed., relating to administration of oaths and acknowledgments by judges, are incorporated in section 459 of this title. For distribution of other provisions of such section 1114(a) of title 26, see Distribution Table.

Changes in phraseology were made.

SENATE REVISION AMENDMENT

Those provisions of this section which related to the Tax Court were eliminated by Senate amendment, therefore section 1114(a) of Title 26, U.S.C., Internal Revenue Code, was not a part of the source of this section upon final enactment. The Senate amendments also eliminated section 1114(a) of the Internal Revenue Code from the schedule of repeals. See 80th Congress Senate Report No. 1559.

§ 954. Vacancy in clerk position; absence of clerk

When the office of clerk is vacant, the deputy clerks shall perform the duties of the clerk in the name of the last person who held that office. When the clerk is incapacitated, absent, or otherwise unavailable to perform official duties, the deputy clerks shall perform the duties of the clerk in the name of the clerk. The court may designate a deputy clerk to act temporarily as clerk of the court in his or her own name.

(June 25, 1948, ch. 646, 62 Stat. 926; Pub. L. 92–310, title II, §206(f), June 6, 1972, 86 Stat. 203; Pub. L. 104–317, title II, §204(a), Oct. 19, 1996, 110 Stat. 3850.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§8, 222 and 327 (Mar. 3, 1911, ch. 231, §§4, 125, 221, 36 Stat. 1087, 1132, 1153).

Section consolidates parts of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed.

Sections 8, 222 and 327 of title 28, U.S.C., 1940 ed., related only to district courts, courts of appeals and the Supreme Court, respectively. This section applies to all Federal courts and is in conformity with section 548 [546] of this title relating to death of a United States marshal.

The provision for continuance of the salary of the clerk of the Supreme Court until his successor is appointed and qualifies was inserted to preserve existing law as declared in the unpublished opinion of Chief Justice Taft, March 23, 1932 (filed in the Department of Justice), with respect to a deceased clerk of the Supreme Court.

Other provisions of sections 8, 222 and 327 of title 28, U.S.C., 1940 ed., are incorporated in sections 671, 711, and 751 of this title.

AMENDMENTS

1996—Pub. L. 104–317 substituted ''Vacancy in clerk position; absence of clerk'' for ''Death of clerk; duties of deputies'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''Upon the death of any clerk of court, his deputy or deputies shall execute the duties of the deceased clerk in his name until his successor is appointed and qualifies.

''The compensation of a deceased clerk of the Supreme Court may be paid to his personal representatives until his successor is appointed and qualifies.''

1972—Pub. L. 92–310 struck out ''and remedies against'' before ''deputies'' in section catchline and repealed provisions which related to the default or misfeasance of a deputy in connection with the bond of a deceased clerk of a Federal court.

§955. Practice of law restricted

The clerk of each court and his deputies and assistants shall not practice law in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§395 and 396 (Mar. 3, 1911, ch. 231, §§273, 274, 36 Stat. 1164).

Section consolidates parts of sections 395 and 396 of title 28, U.S.C., 1940 ed. The remainder, relating to United States marshals and their deputies, is incorporated in section 556 of this title.

Sections 395 and 396 of title 28, U.S.C., 1940 ed., have been extended to include all clerks, deputies, and assistants.

The revised section substitutes as simpler and more appropriate, the prohibition against practice of law ''in any court of the United States.'' (See reviser's note under section 556 of this title.)

For explanation of provisions omitted from sections 395 and 396 of title 28, U.S.C., 1940 ed., also see reviser's note under section 556 of this title.

Changes in phraseology were made.

§956. Powers and duties of clerks and deputies

The clerk of each court and his deputies and assistants shall exercise the powers and perform the duties assigned to them by the court.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§221, 244, 304 and 305 (Mar. 3, 1911, ch. 231, §§124, 139, 191, 192, 36 Stat. 1132, 1136, 1144; June 16, 1930, ch. 494, 46 Stat. 589).

This section contains only a part of sections 221, 244, 304 and 305 of title 28, U.S.C., 1940 ed. The other provisions of such sections are incorporated in sections 604, 711, 831, 833, 834, 957 and 1926 of this title.

Sections 221, 244, 304 and 305 of title 28, U.S.C., 1940 ed., related to the clerks of the circuit courts of appeals, the Court of Claims and the Court of Customs and Patent Appeals.

The phrase ''assigned to them by the court'' was substituted for the indefinite provision of section 221 of title 28, U.S.C., 1940 ed., that the clerk of each circuit court of appeals ''shall exercise the same powers and perform the same duties * * * as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.''

This section is new insofar as it affects the Clerk of the Supreme Court and clerks of the district courts and the Customs Court. Existing law does not prescribe the powers and duties of those clerks. The duties of the clerk of the Customs Court have been prescribed by the rules of such court adopted May 29, 1936.

Changes were made in phraseology.

§957. Clerks ineligible for certain offices

A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

(June 25, 1948, ch. 646, 62 Stat. 926; Pub. L. 95–598, title II, §234, Nov. 6, 1978, 92 Stat. 2667; Pub. L. 97–164, title I, §122(b), Apr. 2, 1982, 96 Stat. 36; Pub. L. 98–353, title I, §109, July 10, 1984, 98 Stat. 342.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§127, 304 (Mar. 3, 1911, ch. 231, §§68, 191, 36 Stat. 1105, 1144).

Section consolidates section 127 with part of 304 of title 28, U.S.C., 1940 ed.

Provisions of section 304 of title 28, U.S.C., 1940 ed., relating to appointment, powers, duties, and compensation of the clerk of the Court of Customs and Patent Appeals, and table of fees are incorporated in sections 604, 831, 956 and 1926 of this title.

Appointment and compensation of masters for district courts, see Rule 53(a) of the Federal Rules of Civil Procedure.

The words ''commissioner'' and ''referee'' did not appear in section 127 of title 28, U.S.C., 1940 ed. They were added to subsection (a) to remove possible ambiguity.

Words ''by the court or any judge thereof'' in section 304 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Words ''or assistant clerks'' and ''in any case'' were added in subsection (b) to make the section applicable to that officer and consistent with the prohibition in this section against deputies of district court clerks.

Minor changes were made in phraseology.

AMENDMENTS

1984—Pub. L. 98–353 struck out ''district'' before ''court''.

1982—Pub. L. 97–164 struck out designation ''(a)'' before ''A clerk of a district court'' and struck out subsec. (b) which had provided that the clerk or assistant clerk of the Court of Customs and Patent Appeals could not be appointed a commissioner, master, or referee in any case.

1978—Pub. L. 95–598 directed the amendment of section by inserting ''or bankruptcy court'' after ''district court'', which amendment did not become effective pur-

suant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

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 this title.

CROSS REFERENCES

For provision against the appointment of certain officers as receivers, see section 958 of this title.

§ 958. Persons ineligible as receivers

A person holding any civil or military office or employment under the United States or employed by any justice or judge of the United States shall not at the same time be appointed a receiver in any case in any court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 926.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 527 (May 28, 1896, ch. 252, § 20, 29 Stat. 184; Dec. 28, 1945, ch. 592, 59 Stat. 659).

Provisions of section 527 of title 28, U.S.C., 1940 ed., relating to ineligibility of various persons as United States commissioner appear as section 631 of this title. Words ''janitor of any Government building'' were omitted as covered by words ''person holding any civil or military employment under the United States'' used in the revised section.

The general language of the revised section was substituted for the provisions of section 527 of title 28, U.S.C., 1940 ed., enumerating certain officers and employees.

The exception of Alaska by reference to ''section 591 of this title'' in section 527 of title 28, U.S.C., 1940 ed., was omitted as surplusage. Alaska is excluded by reason of the words ''any court of the United States'' which are limited by definitive section 451 of this title.

Changes in phraseology were made.

§ 959. Trustees and receivers suable; management; State laws

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

(June 25, 1948, ch. 646, 62 Stat. 926; Pub. L. 95–598, title II, § 235, Nov. 6, 1978, 92 Stat. 2667.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 124, 125 (Mar. 3, 1911, ch. 231, §§ 65, 66, 36 Stat. 1104).

Section consolidates part of section 124 of title 28, U.S.C., 1940 ed., with section 125 of the same title. The criminal penalty for violation of said section 124 is incorporated in section 1911 of Title 18, Crimes and Criminal Procedure.

Section was extended and made applicable to trustees and debtors in possession. The provision at the end of subsection (a) for preserving the right to a jury trial was added to clarify the intent of section 125 of title 28, U.S.C., 1940 ed., as construed in *Vany v. Receiver of Toledo, St. L. and K.C. R.R. Co.*, C.C. 1895, 67 F. 379.

Changes in phraseology were made.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–598 substituted ''Except as provided in section 1166 of title 11, a trustee'' for ''A trustee''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Capacity to sue or be sued, see rule 17, Appendix to this title.

CROSS REFERENCES

Mismanagement of property by receiver, criminal penalty, see section 1911 of Title 18, Crimes and Criminal Procedure.

Process and orders affecting property in different districts, see section 1692 of this title.

Receivers of property in different districts, jurisdiction, see section 754 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 754 of this title.

§ 960. Tax liability

Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

(June 25, 1948, ch. 646, 62 Stat. 927.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 124a (June 18, 1934, ch. 585, 48 Stat. 993).

A proviso in section 124a of title 28, U.S.C., 1940 ed., relating to taxes accruing prior to the effective date of the 1934 act, was omitted as obsolete.

References in section 124a of title 28, U.S.C., 1940 ed., to specific officers was omitted as covered by the words ''Any officers.''

Word ''Federal'' was added before ''State'' in recognition of the liability of such officers for Federal taxes under the revenue laws.

Changes in phraseology were made.

§ 961. Office expenses of clerks

Each clerk of court shall be allowed his necessary office expenses when authorized by the Director of the Administrative Office of the United States Courts.

(June 25, 1948, ch. 646, 62 Stat. 927.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 544, 563 (Mar. 3, 1891, ch. 517, § 2, 26 Stat. 826; Feb. 26, 1919, ch. 49, § 5, 40

Stat. 1182; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; June 1, 1922, ch. 204, title II, 42 Stat. 616; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921).

Section consolidates parts of sections 544 and 563 of title 28, U.S.C., 1940 ed. For remainder of such sections, see Distribution Table.

Changes were made in phraseology.

[§962. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 663]

Section, act June 25, 1948, ch. 646, 62 Stat. 927, related to traveling expenses and subsistence for officers and employees of the courts of the United States and of the Administrative Office of the United States Courts.

§963. Courts defined

As used in this chapter, unless the context indicates otherwise, the words ''court'' and ''courts'' include the Supreme Court of the United States and the courts enumerated in section 610 of this title.

(June 25, 1948, ch. 646, 62 Stat. 927.)

HISTORICAL AND REVISION NOTES

This section was included to embrace the Supreme Court and all courts under the supervision of the Administrative Office of the United States Courts. See section 610 of this title and reviser's note thereunder.

CHAPTER 58—UNITED STATES SENTENCING COMMISSION

Sec.
991. United States Sentencing Commission; establishment and purposes.
992. Terms of office; compensation.
993. Powers and duties of Chair.
994. Duties of the Commission.
995. Powers of the Commission.
996. Director and staff.
997. Annual report.
998. Definitions.

AMENDMENTS

1994—Pub. L. 103–322, title XXVIII, §280005(c)(1), Sept. 13, 1994, 108 Stat. 2097, substituted ''Chair'' for ''Chairman'' in item 993.

§991. United States Sentencing Commission; establishment and purposes

(a) There is established as an independent commission in the judicial branch of the United States a United States Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process, shall appoint the voting members of the Commission, by and with the advice and consent of the Senate, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chair and three of whom shall be designated by the President as Vice Chairs. At least three of the members shall be Federal judges selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States. Not more than four of the members of the Commission shall be members of the same political party, and of the three Vice Chairs, no more than two shall be members of the same political party. The Attorney General, or the Attorney General's designee, shall be an ex officio, nonvoting member of the Commission. The Chair, Vice Chairs, and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown.

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(Added Pub. L. 98–473, title II, §217(a), Oct. 12, 1984, 98 Stat. 2017; amended Pub. L. 99–22, §1(1), Apr. 15, 1985, 99 Stat. 46; Pub. L. 103–322, title XXVIII, §280005(a), (c)(1), (2), Sept. 13, 1994, 108 Stat. 2096, 2097; Pub. L. 104–294, title VI, §604(b)(11), Oct. 11, 1996, 110 Stat. 3507.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–294 made technical correction to directory language of Pub. L. 103–322. See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–322, §280005(c)(1), (2), in second sentence, substituted ''Chair'' for ''Chairman'' and in fifth sentence, substituted ''the Attorney General's designee'' for ''his designee''.

Pub. L. 103–322, §280005(a), as amended by Pub. L. 104–294, in second sentence, substituted ''and three of whom shall be designated by the President as Vice Chairs.'' for the period at end, in fourth sentence, substituted '', and of the three Vice Chairs, no more than two shall be members of the same political party.'' for the period at end, and in last sentence, substituted ''Chair, Vice Chairs,'' for ''Chairman''.

1985—Subsec. (a). Pub. L. 99–22 struck out ''in regular active service'' after ''Federal judges''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Chapter effective Oct. 12, 1984, see section 235(a)(1)(B)(i) of Pub. L. 98–473, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

COMPOSITION OF MEMBERS OF COMMISSION DURING FIRST FIVE-YEAR PERIOD

For provisions directing that, notwithstanding the provisions of this section, during the five-year period

following Oct. 12, 1984, the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members, see section 235(b)(5) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 994 of this title.

§ 992. Terms of office; compensation

(a) The voting members of the United States Sentencing Commission shall be appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

(1) two members, including the Chair, serve terms of six years;

(2) three members serve terms of four years; and

(3) two members serve terms of two years.

(b)(1) Subject to paragraph (2)—

(A) no voting member of the Commission may serve more than two full terms; and

(B) a voting member appointed to fill a vacancy that occurs before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term.

(2) A voting member of the Commission whose term has expired may continue to serve until the earlier of—

(A) the date on which a successor has taken office; or

(B) the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member's term expired.

(c) The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms of office at the annual rate at which judges of the United States courts of appeals are compensated. The voting members of the Commission, other than the Chair and Vice Chairs, shall hold full-time positions until the end of the first six years after the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, and shall be compensated at the annual rate at which judges of the United States courts of appeals are compensated. Thereafter, the voting members of the Commission, other than the Chair and Vice Chairs,,[1] shall hold part-time positions and shall be paid at the daily rate at which judges of the United States courts of appeals are compensated. A Federal judge may serve as a member of the Commission without resigning the judge's appointment as a Federal judge.

(d) Sections 44(c) and 134(b) of this title (relating to the residence of judges) do not apply to any judge holding a full-time position on the Commission under subsection (c) of this section.

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2018; amended Pub. L. 99–646, §§ 4, 6(a), Nov. 10, 1986, 100 Stat. 3592; Pub. L. 102–349, § 1, Aug. 26, 1992, 106 Stat. 933; Pub. L. 103–322, title XXVIII, § 280005(b), (c)(1), (3), Sept. 13, 1994, 108 Stat. 2096, 2097.)

[1] So in original.

REFERENCES IN TEXT

Section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, referred to in subsec. (c), is section 235(a)(1)(B)(ii) of Pub. L. 98–473, which is set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, § 280005(c)(1), substituted ''Chair'' for ''Chairman''.

Subsec. (c). Pub. L. 103–322, § 280005(b), (c)(3), amended first sentence generally, substituting ''The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms'' for ''The Chairman of the Commission shall hold a full-time position and shall be compensated during the term'', in second sentence, substituted ''Chair and Vice Chairs'' for ''Chairman'', in third sentence, substituted ''Chair and Vice Chairs,'' for ''Chairman'', and in last sentence, substituted ''the judge's appointment'' for ''his appointment''.

1992—Subsec. (b). Pub. L. 102–349 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No voting member may serve more than two full terms. A voting member appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.''

1986—Subsec. (c). Pub. L. 99–646, § 4, substituted ''section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984'' for ''section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983''.

Subsec. (d). Pub. L. 99–646, § 6(a), added subsec. (d).

COMMENCEMENT OF TERMS OF FIRST MEMBERS OF COMMISSION

For provisions directing that, for purposes of subsec. (a) of this section, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of Pub. L. 98–473, see section 235(a)(2) of Pub. L. 98–473, both of which are set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 993. Powers and duties of Chair

The Chair shall—

(a) call and preside at meetings of the Commission, which shall be held for at least two weeks in each quarter after the members of the Commission hold part-time positions; and

(b) direct—

(1) the preparation of requests for appropriations for the Commission; and

(2) the use of funds made available to the Commission.

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2019; amended Pub. L. 99–22, § 1(2), Apr. 15, 1985, 99 Stat. 46; Pub. L. 99–646, § 5, Nov. 10, 1986, 100 Stat. 3592; Pub. L. 103–322, title XXVIII, § 280005(c)(1), Sept. 13, 1994, 108 Stat. 2097.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''Chair'' for ''Chairman'' in section catchline and introductory provisions.

1986—Subsec. (b)(2). Pub. L. 99–646 struck out provision that, before appointment of first Chairman, Administrative Office of the United States Courts may make requests for appropriations for Commission.

1985—Subsec. (b)(2). Pub. L. 99–22 inserted provision authorizing the Administrative Office of the United States Courts to make requests for appropriations for the Commission before the appointment of the first Chairman of the Commission.

§ 994. Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of this title and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11)[1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

(b)(1) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

(2) If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, have any relevance to the nature, extent, place of service, or other incidents[2] of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) the grade of the offense;

(2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;

(4) the community view of the gravity of the offense;

(5) the public concern generated by the offense;

(6) the deterrent effect a particular sentence may have on the commission of the offense by others; and

(7) the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents[2] of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) age;

(2) education;

(3) vocational skills;

(4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;

(5) physical condition, including drug dependence;

(6) previous employment record;

(7) family ties and responsibilities;

[1] See References in Text note below.

[2] So in original. Probably should be ''incidence''.

(8) community ties;
(9) role in the offense;
(10) criminal history; and
(11) degree of dependence upon criminal activity for a livelihood.

The Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

(e) The Commission shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant.

(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code, shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and—

(1) has been convicted of a felony that is—
(A) a crime of violence; or
(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.); and

(2) has previously been convicted of two or more prior felonies, each of which is—
(A) a crime of violence; or
(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

(1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;
(2) committed the offense as part of a pattern of criminal conduct from which the defendant derived a substantial portion of the defendant's income;
(3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;
(4) committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted; or
(5) committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 and 960), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

(k) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

(*l*) The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect—

(1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of—
(A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and
(B) multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average

sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States Code.

(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.

(*o*) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

(q) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. Such report shall be based upon consideration of a variety of alternatives, including—

(1) modernization of existing facilities;

(2) inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and

(3) use of existing Federal facilities, such as those currently within military jurisdiction.

(r) The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(s) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in—

(1) the community view of the gravity of the offense;

(2) the public concern generated by the offense; and

(3) the deterrent effect particular sentences may have on the commission of the offense by others.

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

(u) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.

(v) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(w) The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed (other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline) a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendations for legislation that the Commission concludes is warranted by that analysis.

(x) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

(y) The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to

the Government of any imprisonment, supervised release, or probation sentence that is ordered.

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2019; amended Pub. L. 99–217, § 3, Dec. 26, 1985, 99 Stat. 1728; Pub. L. 99–363, § 2, July 11, 1986, 100 Stat. 770; Pub. L. 99–570, title I, §§ 1006(b), 1008, Oct. 27, 1986, 100 Stat. 3207–7; Pub. L. 99–646, §§ 6(b), 56, Nov. 10, 1986, 100 Stat. 3592, 3611; Pub. L. 100–182, §§ 16(b), 23, Dec. 7, 1987, 101 Stat. 1269, 1271; Pub. L. 100–690, title VII, §§ 7083, 7103(b), 7109, Nov. 18, 1988, 102 Stat. 4408, 4417, 4419; Pub. L. 103–322, title II, § 20403(b), title XXVIII, § 280005(c)(4), title XXXIII, § 330003(f)(1), Sept. 13, 1994, 108 Stat. 1825, 2097, 2141.)

REFERENCES IN TEXT

Paragraphs (6) and (11) of section 3563(b) of title 18, referred to in subsec. (a)(1)(E), were renumbered paragraphs (5) and (10), respectively, of section 3563(b) by Pub. L. 104–132, title II, § 203(2)(B), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(E), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Maritime Drug Law Enforcement Act, referred to in subsec. (h)(1)(B), (2)(B), is Pub. L. 96–350, Sept. 15, 1980, 94 Stat. 1159, as amended, which is classified generally to chapter 38 (§ 1901 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1901 of Title 46, Appendix, and Tables.

AMENDMENTS

1994—Subsec. (h)(1)(B), (2)(B). Pub. L. 103–322, § 330003(f)(1), substituted ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)'' for ''section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)''.

Subsec. (i)(2). Pub. L. 103–322, § 280005(c)(4), substituted ''the defendant'' for ''he'' and ''the defendant's'' for ''his''.

Subsec. (y). Pub. L. 103–322, § 20403(b), added subsec. (y).

1988—Subsec. (a)(1)(E). Pub. L. 100–690, § 7103(b), added subpar. (E).

Subsec. (n). Pub. L. 100–690, § 7083, substituted ''as a minimum sentence'' for ''as minimum sentence''.

Subsec. (p). Pub. L. 100–690, § 7109, amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: ''The Commission, at or after the beginning of a regular session of Congress but not later than the first day of May, shall report to the Congress any amendments of the guidelines promulgated pursuant to subsection (a)(1), and a report of the reasons therefor, and the amended guidelines shall take effect one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress.''

1987—Subsec. (r). Pub. L. 100–182, § 23(a), substituted ''two years'' for ''one year''.

Subsec. (s). Pub. L. 100–182, § 23(b), struck out at end: ''Within one hundred and eighty days of the filing of such petition the Commission shall provide written notice to the defendant whether or not it has approved the petition. If the petition is disapproved the written notice shall contain the reasons for such disapproval. The Commission shall submit to the Congress at least annually an analysis of such written notices.''

Subsec. (w). Pub. L. 100–182, § 16(b), inserted ''(other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline)'' after ''each sentence imposed''.

1986—Subsec. (a)(2)(C). Pub. L. 99–363, § 2(1)(B), amended subpar. (C) generally, inserting ''3564,'' after ''3563(c),''.

Subsec. (a)(2)(D) to (F). Pub. L. 99–363, § 2(1)(A), (C), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (a)(3). Pub. L. 99–570, § 1006(b), inserted ''and revocation of supervised release'' after ''supervised release''.

Pub. L. 99–363, § 2(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''guidelines or general policy statements regarding the appropriate use of the probation revocation provisions set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of probation or supervised release set forth in sections 3563(c), 3564(d), and 3583(e) of title 18.''

Subsec. (b). Pub. L. 99–363, § 2(3), designated existing provisions as pars. (1) and (2), and in par. (2) substituted ''the greater of 25 percent or 6 months, except that, if the maximum term of the range is 30 years or more, the maximum may be life imprisonment'' for ''25 per centum''.

Subsec. (b)(2). Pub. L. 99–646, § 56, substituted ''that, if the minimum'' for ''that, if the maximum''.

Subsec. (h). Pub. L. 99–646, § 6(b)(1), (2), substituted ''guidelines specify'' for ''guidelines will specify'' and struck out ''by section 3581(b) of title 18, United States Code,'' after ''term authorized'' in introductory text.

Subsec. (i). Pub. L. 99–646, § 6(b)(2), substituted ''guidelines specify'' for ''guidelines will specify''.

Subsecs. (n) to (t). Pub. L. 99–570, § 1008(1), (2), added subsec. (n) and redesignated former subsecs. (n) to (t) as (*o*) to (u), respectively.

Subsec. (u). Pub. L. 99–646, § 6(b)(3), which directed that subsec. (t) be amended by inserting ''in what circumstances and'' after ''specify'' and striking out ''that are outside the applicable guideline ranges'' after ''terms of imprisonment'', was executed to subsec. (u) to reflect the probable intent of Congress and the intervening redesignation of subsec. (t) as (u) by Pub. L. 99–570.

Pub. L. 99–570, § 1008(2), redesignated subsec. (t) as (u).

Subsecs. (v) to (x). Pub. L. 99–570, § 1008(2), redesignated former subsecs. (u) to (w) as (v) to (x), respectively.

1985—Subsec. (q). Pub. L. 99–217 substituted ''not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect'' for ''within three years of the date of enactment of the Sentencing Reform Act of 1983''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

CRIME AGAINST INTELLECTUAL PROPERTY; SENTENCING GUIDELINES

Pub. L. 105–147, § 2(g), Dec. 16, 1997, 111 Stat. 2680, provided that:

''(1) Under the authority of the Sentencing Reform Act of 1984 (Public Law 98–473; 98 Stat. 1987) [see Tables for classification] and section 21 of the Sentencing Act of 1987 (Public Law 100–182; 101 Stat. 1271; 18 U.S.C. 994 note) (including the authority to amend the sentencing guidelines and policy statements), the United States Sentencing Commission shall ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime and to adequately reflect the additional considerations set forth in paragraph (2) of this subsection.

''(2) In implementing paragraph (1), the Sentencing Commission shall ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed.''

ENHANCED PENALTY FOR OFFENSES AGAINST PROPERTY AT NATIONAL CEMETERIES

Pub. L. 105–101, Nov. 19, 1997, 111 Stat. 2202, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Veterans' Cemetery Protection Act of 1997'.

''SEC. 2. SENTENCING FOR OFFENSES AGAINST PROPERTY AT NATIONAL CEMETERIES.

''(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to provide a sentencing enhancement of not less than 2 levels for any offense against the property of a national cemetery.

''(b) COMMISSION DUTIES.—In carrying out subsection (a), the Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of an offense described in that subsection are—

''(1) appropriately severe; and

''(2) reasonably consistent with other relevant directives and with other Federal sentencing guidelines.

''(c) DEFINITION OF NATIONAL CEMETERY.—In this section, the term 'national cemetery' means a cemetery—

''(1) in the National Cemetery System established under section 2400 of title 38, United States Code; or

''(2) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.''

OFFENSES INVOLVING FLUNITRAZEPAM; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–305, §2(b)(3), Oct. 13, 1996, 110 Stat. 3808, provided that:

''(A) AMENDMENT OF SENTENCING GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend, as appropriate, the sentencing guidelines for offenses involving flunitrazepam.

''(B) SUMMARY.—The United States Sentencing Commission shall submit to the Congress—

''(i) a summary of its review under subparagraph (A); and

''(ii) an explanation for any amendment to the sentencing guidelines made under subparagraph (A).

''(C) SERIOUS NATURE OF OFFENSES.—In carrying out this paragraph, the United States Sentencing Commission shall ensure that the sentencing guidelines for offenses involving flunitrazepam reflect the serious nature of such offenses.''

MANUFACTURE OF METHAMPHETAMINE; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–237, title II, §203(b), Oct. 3, 1996, 110 Stat. 3102, provided that: ''The United States Sentencing Commission shall amend the sentencing guidelines to ensure that the manufacture of methamphetamine in violation of section 403(d)(2) of the Controlled Substances Act [21 U.S.C. 843(d)(2)], as added by subsection (a), is treated as a significant violation.''

ENHANCED PENALTY FOR TRAFFICKING IN METHAMPHETAMINE

Pub. L. 104–237, title III, §301, Oct. 3, 1996, 110 Stat. 3105, provided that:

''(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements to provide for increased penalties for unlawful manufacturing, importing, exporting, and trafficking of methamphetamine, and other similar offenses, including unlawful possession with intent to commit any of those offenses, and attempt and conspiracy to commit any of those offenses. The Commission shall submit to Congress explanations therefor and any additional policy recommendations for combating methamphetamine offenses.

''(b) IN GENERAL.—In carrying out this section, the Commission shall ensure that the sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a) and any recommendations submitted under such subsection reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine, including—

''(1) the rapidly growing incidence of methamphetamine abuse and the threat to public safety such abuse poses;

''(2) the high risk of methamphetamine addiction;

''(3) the increased risk of violence associated with methamphetamine trafficking and abuse; and

''(4) the recent increase in the illegal importation of methamphetamine and precursor chemicals.''

ENHANCED PENALTIES FOR OFFENSES INVOLVING CERTAIN LISTED CHEMICALS

Pub. L. 104–237, title III, §302(c), Oct. 3, 1996, 110 Stat. 3105, provided that:

''(1) IN GENERAL.—The United States Sentencing Commission shall, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], as though the authority of that section had not expired, amend the sentencing guidelines to increase by at least two levels the offense level for offenses involving list I chemicals under—

''(A) section 401(d)(1) and (2) of the Controlled Substances Act (21 U.S.C 841(d)(1) and (2)); and

''(B) section 1010(d)(1) and (3) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)(1) and (3)).

''(2) REQUIREMENT.—In carrying out this subsection, the Commission shall ensure that the offense levels for offenses referred to in paragraph (1) are calculated proportionally on the basis of the quantity of controlled substance that reasonably could have been manufactured in a clandestine setting using the quantity of the list I chemical possessed, distributed, imported, or exported.''

ENHANCED PENALTY FOR DANGEROUS HANDLING OF CONTROLLED SUBSTANCES

Pub. L. 104–237, title III, §303, Oct. 3, 1996, 110 Stat. 3106, provided that:

''(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall determine whether the Sentencing Guidelines adequately punish the offenses described in subsection (b) and, if not, promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of such an offense.

''(b) OFFENSE.—The offense referred to in subsection (a) is a violation of section 401(d), 401(g)(1), 403(a)(6), or 403(a)(7) of the Controlled Substances Act (21 U.S.C. 841(d), 841(g)(1), 843(a)(6), and 843(a)(7)), in cases in which in the commission of the offense the defendant violated—

''(1) subsection (d) or (e) of section 3008 of the Solid Waste Disposal Act [42 U.S.C. 6928(d), (e)] (relating to handling hazardous waste in a manner inconsistent with Federal or applicable State law);

''(2) section 103(b) of the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. 9603(b)] (relating to failure to notify as to the release of a reportable quantity of a hazardous substance into the environment);

''(3) section 301(a), 307(d), 309(c)(2), 309(c)(3), 311(b)(3), or 311(b)(5) of the Federal Water Pollution Control Act [33 U.S.C. 1311(a), 1317(d), 1319(c)(2), (3), 1321(b)(3), (5)] (relating to the unlawful discharge of pollutants or hazardous substances, the operation of a source in violation of a pretreatment standard, and the failure to notify as to the release of a reportable quantity of a hazardous substance into the water); or

''(4) section 5124 of title 49, United States Code (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material).''

ALIEN SMUGGLING; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–208, div. C, title II, § 203(e), Sept. 30, 1996, 110 Stat. 3009–566, provided that:

''(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for offenders convicted of offenses related to smuggling, transporting, harboring, or inducing aliens in violation of section 274(a)(1)(A) or (2) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), (2)(B)) in accordance with this subsection.

''(2) REQUIREMENTS.—In carrying out this subsection, the Commission shall, with respect to the offenses described in paragraph (1)—

''(A) increase the base offense level for such offenses at least 3 offense levels above the applicable level in effect on the date of the enactment of this Act [Sept. 30, 1996];

''(B) review the sentencing enhancement for the number of aliens involved (U.S.S.G. 2L1.1(b)(2)), and increase the sentencing enhancement by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

''(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

''(D) impose an additional appropriate sentencing enhancement upon an offender with 2 or more prior felony convictions arising out of separate and prior prosecutions for offenses that involved the same or similar underling [sic] conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

''(E) impose an appropriate sentencing enhancement on a defendant who, in the course of committing an offense described in this subsection—

''(i) murders or otherwise causes death, bodily injury, or serious bodily injury to an individual;

''(ii) uses or brandishes a firearm or other dangerous weapon; or

''(iii) engages in conduct that consciously or recklessly places another in serious danger of death or serious bodily injury;

''(F) consider whether a downward adjustment is appropriate if the offense is a first offense and involves the smuggling only of the alien's spouse or child; and

''(G) consider whether any other aggravating or mitigating circumstances warrant upward or downward sentencing adjustments.

''(3) EMERGENCY AUTHORITY TO SENTENCING COMMISSION.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], as though the authority under that Act had not expired.''

FRAUDULENT USE OF GOVERNMENT-ISSUED DOCUMENTS; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–208, div. C, title II, § 211(b), Sept. 30, 1996, 110 Stat. 3009–569, provided that:

''(1) IN GENERAL.—Pursuant to the Commission's authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for offenders convicted of violating, or conspiring to violate, sections 1028(b)(1), 1425 through 1427, 1541 through 1544, and 1546(a) of title 18, United States Code, in accordance with this subsection.

''(2) REQUIREMENTS.—In carrying out this subsection, the Commission shall, with respect to the offenses referred to in paragraph (1)—

''(A) increase the base offense level for such offenses at least 2 offense levels above the level in effect on the date of the enactment of this Act [Sept. 30, 1996];

''(B) review the sentencing enhancement for number of documents or passports involved (U.S.S.G. 2L2.1(b)(2)), and increase the upward adjustment by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

''(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

''(D) impose an additional appropriate sentencing enhancement upon an offender with 2 or more prior felony convictions arising out of separate and prior prosecutions for offenses that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category; and

''(E) consider whether any other aggravating or mitigating circumstances warrant upward or downward sentencing adjustments.

''(3) EMERGENCY AUTHORITY TO SENTENCING COMMISSION.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], as though the authority under that Act had not expired.''

INVOLUNTARY SERVITUDE; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–208, div. C, title II, § 218(b), (c), Sept. 30, 1996, 110 Stat. 3009–573, 3009–574, provided that:

''(b) REVIEW OF SENTENCING GUIDELINES.—The United States Sentencing Commission shall ascertain whether there exists an unwarranted disparity—

''(1) between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses in effect on the date of the enactment of this Act [Sept. 30, 1996]; and

''(2) between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for alien smuggling offenses in effect on the date of the enactment of this Act and after the amendment made by subsection (a) [amending sections 1581, 1583, 1584, and 1588 of Title 18, Crimes and Criminal Procedure].

''(c) AMENDMENT OF SENTENCING GUIDELINES.—

''(1) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review its guidelines on sentencing for peonage, involuntary servitude, and slave trade offenses under sections 1581 through 1588 of title 18, United States Code, and shall amend such guidelines as necessary to—

''(A) reduce or eliminate any unwarranted disparity found under subsection (b) that exists between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses and alien smuggling offenses;

''(B) ensure that the applicable guidelines for defendants convicted of peonage, involuntary servitude, and slave trade offenses are sufficiently stringent to deter such offenses and adequately reflect the heinous nature of such offenses; and

''(C) ensure that the guidelines reflect the general appropriateness of enhanced sentences for defendants whose peonage, involuntary servitude, or slave trade offenses involve—

''(i) a large number of victims;

''(ii) the use or threatened use of a dangerous weapon; or

''(iii) a prolonged period of peonage or involuntary servitude.

''(2) EMERGENCY AUTHORITY TO SENTENCING COMMISSION.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], as though the authority under that Act had not expired.''

PENALTIES FOR CONSPIRING WITH OR ASSISTING AN ALIEN TO COMMIT AN OFFENSE UNDER THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

Pub. L. 104–208, div. C, title III, §333, Sept. 30, 1996, 110 Stat. 3009–634, provided that:

''(a) REVIEW OF GUIDELINES.—Not later than 6 months after the date of the enactment of this Act [Sept. 30, 1996], the United States Sentencing Commission shall conduct a review of the guidelines applicable to an offender who conspires with, or aids or abets, a person who is not a citizen or national of the United States in committing any offense under section 1010 of the Controlled Substance[s] Import and Export Act (21 U.S.C. 960).

''(b) REVISION OF GUIDELINES.—Following such review, pursuant to section 994(p) of title 28, United States Code, the Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines to ensure an appropriately stringent sentence for such offenders.''

ENHANCED PENALTIES FOR FAILURE TO DEPART, ILLEGAL REENTRY, AND PASSPORT AND VISA FRAUD

Pub. L. 104–208, div. C, title III, §334, Sept. 30, 1996, 110 Stat. 3009–635, provided that:

''(a) FAILING TO DEPART.—The United States Sentencing Commission shall promptly promulgate, pursuant to section 994 of title 28, United States Code, amendments to the sentencing guidelines to make appropriate increases in the base offense level for offenses under section[s] 242(e) and 276(b) of the Immigration and Nationality Act (8 U.S.C. 1252(e) and 1326(b)) to reflect the amendments made by section 130001 of the Violent Crime Control and Law Enforcement Act of 1994 [Pub. L. 103–322].

''(b) PASSPORT AND VISA OFFENSES.—The United States Sentencing Commission shall promptly promulgate, pursuant to section 994 of title 28, United States Code, amendments to the sentencing guidelines to make appropriate increases in the base offense level for offenses under chapter 75 of title 18, United States Code[,] to reflect the amendments made by section 130009 of the Violent Crime Control and Law Enforcement Act of 1994.''

MANDATORY VICTIM RESTITUTION; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–132, title II, §208, Apr. 24, 1996, 110 Stat. 1240, provided that: ''Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this subtitle [subtitle A (§§201–211) of title II of Pub. L. 104–132, see Short Title of 1996 Amendment note set out under section 3551 of Title 18, Crimes and Criminal Procedure] and the amendments made by this subtitle.''

INTERNATIONAL TERRORISM; AMENDMENT OF SENTENCING GUIDELINES

Pub. L. 104–132, title VII, §730, Apr. 24, 1996, 110 Stat. 1303, provided that: ''The United States Sentencing Commission shall forthwith, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], as though the authority under that section had not expired, amend the sentencing guidelines so that the chapter 3 adjustment relating to international terrorism only applies to Federal crimes of terrorism, as defined in section 2332b(g) of title 18, United States Code.''

DETERRENT AGAINST TERRORIST ACTIVITY DAMAGING FEDERAL INTEREST COMPUTER

Pub. L. 104–132, title VIII, §805, Apr. 24, 1996, 110 Stat. 1305, provided that:

''(a) REVIEW.—Not later than 60 calendar days after the date of enactment of this Act [Apr. 24, 1996], the United States Sentencing Commission shall review the deterrent effect of existing guideline levels as they apply to paragraphs (4) and (5) of section 1030(a) of title 18, United States Code.

''(b) REPORT.—The United States Sentencing Commission shall prepare and transmit a report to the Congress on the findings under the study conducted under subsection (a).

''(c) AMENDMENT OF GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the sentencing guidelines to ensure any individual convicted of a violation of paragraph (4) or (5) of section 1030(a) of title 18, United States Code, is imprisoned for not less than 6 months.''

SEX CRIMES AGAINST MINORS

Pub. L. 104–71, §§1–4, Dec. 23, 1995, 109 Stat. 774, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Sex Crimes Against Children Prevention Act of 1995'.

''SEC. 2. INCREASED PENALTIES FOR CERTAIN CONDUCT INVOLVING THE SEXUAL EXPLOITATION OF CHILDREN.

''The United States Sentencing Commission shall amend the sentencing guidelines to—

''(1) increase the base offense level for an offense under section 2251 of title 18, United States Code, by at least 2 levels; and

''(2) increase the base offense level for an offense under section 2252 of title 18, United States Code, by at least 2 levels.

''SEC. 3. INCREASED PENALTIES FOR USE OF COMPUTERS IN SEXUAL EXPLOITATION OF CHILDREN.

''The United States Sentencing Commission shall amend the sentencing guidelines to increase the base offense level by at least 2 levels for an offense committed under section 2251(c)(1)(A) or 2252(a) of title 18, United States Code, if a computer was used to transmit the notice or advertisement to the intended recipient or to transport or ship the visual depiction.

''SEC. 4. INCREASED PENALTIES FOR TRANSPORTATION OF CHILDREN WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.

''The United States Sentencing Commission shall amend the sentencing guidelines to increase the base offense level for an offense under section 2423(a) of title 18, United States Code, by at least 3 levels.''

Pub. L. 102–141, title VI, §632, Oct. 28, 1991, 105 Stat. 876, provided that:

''(1) Pursuant to its authority under section 994 of title 28, United States Code, the Sentencing Commission shall promulgate guidelines, or amend existing or proposed guidelines as follows:

''(A) Guideline 2G2.2 to provide a base offense level of not less than 15 and to provide at least a 5 level increase for offenders who have engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.

''(B) Guideline 2G2.4 to provide that such guideline shall apply only to offense conduct that involves the simple possession of materials proscribed by chapter 110 of title 18, United States Code and guideline 2G2.2 to provide that such guideline shall apply to offense conduct that involves receipt or trafficking (including, but not limited to transportation, distribution, or shipping).

''(C) Guideline 2G2.4 to provide a base offense level of not less than 13, and to provide at least a 2 level

increase for possessing 10 or more books, magazines, periodicals, films, video tapes or other items containing a visual depiction involving the sexual exploitation of a minor.

''(D) Section 2G3.1 to provide a base offense level of not less than 10.

''(2)(A) Notwithstanding any other provision of law, the Sentencing Commission shall promulgate the amendments mandated in subsection (1) by November 1, 1991, or within 30 days after enactment [Oct. 28, 1991], whichever is later. The amendments to the guidelines promulgated under subsection (1) shall take effect November 1, 1991, or 30 days after enactment, and shall supersede any amendment to the contrary contained in the amendments to the sentencing guidelines submitted to the Congress by the Sentencing Commission on or about May 1, 1991.

''(B) The provisions of section 944(x) [994(x)] of title 28, United States Code, shall not apply to the promulgation or amendment of guidelines under this section.''

Pub. L. 101–647, title III, § 321, Nov. 29, 1990, 104 Stat. 4817, provided that: ''The United States Sentencing Commission shall amend existing guidelines for sentences involving sexual crimes against children, including offenses contained in chapter 109A of title 18, so that more substantial penalties may be imposed if the Commission determines current penalties are inadequate.''

COCAINE AND CRACK SENTENCES AND SENTENCES FOR MONEY LAUNDERING AND OTHER UNLAWFUL ACTIVITY; REDUCTION OF SENTENCING DISPARITIES

Pub. L. 104–38, Oct. 30, 1995, 109 Stat. 334, provided that:

''SECTION 1. DISAPPROVAL OF AMENDMENTS RELATING TO LOWERING OF CRACK SENTENCES AND SENTENCES FOR MONEY LAUNDERING AND TRANSACTIONS IN PROPERTY DERIVED FROM UNLAWFUL ACTIVITY.

''In accordance with section 994(p) of title 28, United States Code, amendments numbered 5 and 18 of the 'Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary', submitted by the United States Sentencing Commission to Congress on May 1, 1995, are hereby disapproved and shall not take effect.

''SEC. 2. REDUCTION OF SENTENCING DISPARITY.

''(a) RECOMMENDATIONS.—

''(1) IN GENERAL.—The United States Sentencing Commission shall submit to Congress recommendations (and an explanation therefor), regarding changes to the statutes and sentencing guidelines governing sentences for unlawful manufacturing, importing, exporting, and trafficking of cocaine, and like offenses, including unlawful possession, possession with intent to commit any of the forgoing [sic] offenses, and attempt and conspiracy to commit any of the forgoing [sic] offenses. The recommendations shall reflect the following considerations—

''(A) the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine;

''(B) high-level wholesale cocaine traffickers, organizers, and leaders, of criminal activities should generally receive longer sentences than low-level retail cocaine traffickers and those who played a minor or minimal role in such criminal activity;

''(C) if the Government establishes that a defendant who traffics in powder cocaine has knowledge that such cocaine will be converted into crack cocaine prior to its distribution to individual users, the defendant should be treated at sentencing as though the defendant had trafficked in crack cocaine; and

''(D) an enhanced sentence should generally be imposed on a defendant who, in the course of an offense described in this subsection—

''(i) murders or causes serious bodily injury to an individual;

''(ii) uses a dangerous weapon;

''(iii) uses or possesses a firearm;

''(iv) involves a juvenile or a woman who the defendant knows or should know to be pregnant;

''(v) engages in a continuing criminal enterprise or commits other criminal offenses in order to facilitate his drug trafficking activities;

''(vi) knows, or should know, that he is involving an unusually vulnerable person;

''(vii) restrains a victim;

''(viii) traffics in cocaine within 500 feet of a school;

''(ix) obstructs justice;

''(x) has a significant prior criminal record; or

''(xi) is an organizer or leader of drug trafficking activities involving five or more persons.

''(2) RATIO.—The recommendations described in the preceding subsection [probably should be ''paragraph''] shall propose revision of the drug quantity ratio of crack cocaine to powder cocaine under the relevant statutes and guidelines in a manner consistent with the ratios set for other drugs and consistent with the objectives set forth in section 3553(a) of title 28 [probably should be ''title 18''] United States Code.

''(b) STUDY.—No later than May 1, 1996, the Department of Justice shall submit to the Judiciary Committees of the Senate and House of Representatives a report on the charging and plea practices of Federal prosecutors with respect to the offense of money laundering. Such study shall include an account of the steps taken or to be taken by the Justice Department to ensure consistency and appropriateness in the use of the money laundering statute. The Sentencing Commission shall submit to the Judiciary Committees comments on the study prepared by the Department of Justice.''

PENALTIES FOR INTENTIONAL TRANSMISSION OF HIV; SENTENCING GUIDELINES

United States Sentencing Commission to conduct study and submit, not later than 6 months after Sept. 13, 1994, report to Committees on the Judiciary of Senate and House of Representatives concerning revision of sentencing guidelines that relate to offenses in which HIV infected individual engages in sexual activity if individual knows that he or she is infected with HIV and intends, through such sexual activity, to expose another to HIV, see section 14011(c) of Title 42, The Public Health and Welfare.

INCREASED PENALTIES FOR DRUG-DEALING IN ''DRUG-FREE'' ZONES

Pursuant to authority under this section, United States Sentencing Commission to amend sentencing guidelines to provide appropriate enhancement for defendant convicted of violating section 860 of Title 21, Food and Drugs, see section 14051 of Title 42, The Public Health and Welfare.

ENHANCED PENALTIES FOR ILLEGAL DRUG USE IN FEDERAL PRISONS AND FOR SMUGGLING DRUGS INTO FEDERAL PRISONS

Pursuant to authority under this section, United States Sentencing Commission to amend sentencing guidelines to appropriately enhance penalty for person convicted under section 844 of Title 21, Food and Drugs, involving simple possession of controlled substance within Federal prison or other Federal detention facility, or under section 841(b) of Title 21, involving smuggling of controlled substance into Federal prison or other Federal detention facility or distribution or intended distribution of controlled substance within Federal prison or other Federal detention facility, see section 14052(b) of Title 42, The Public Health and Welfare.

ENHANCED PENALTIES FOR REPEAT SEX OFFENDERS

Section 40111(b) of Pub. L. 103–322 provided that: ''The Sentencing Commission shall implement the amend-

ment made by subsection (a) [enacting section 2247 of Title 18, Crimes and Criminal Procedure] by promulgating amendments, if appropriate, in the sentencing guidelines applicable to chapter 109A [of Title 18] offenses.''

AGGRAVATED SEXUAL ABUSE OR SEXUAL ABUSE; SENTENCING GUIDELINES; REPORT ON FEDERAL RAPE SENTENCING

Section 40112 of Pub. L. 103–322 provided that:

''(a) AMENDMENT OF SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend, where necessary, its sentencing guidelines on aggravated sexual abuse under section 2241 of title 18, United States Code, or sexual abuse under section 2242 of title 18, United States Code, as follows:

''(1) The Commission shall review and promulgate amendments to the guidelines, if appropriate, to enhance penalties if more than 1 offender is involved in the offense.

''(2) The Commission shall review and promulgate amendments to the guidelines, if appropriate, to reduce unwarranted disparities between the sentences for sex offenders who are known to the victim and sentences for sex offenders who are not known to the victim.

''(3) The Commission shall review and promulgate amendments to the guidelines to enhance penalties, if appropriate, to render Federal penalties on Federal territory commensurate with penalties for similar offenses in the States.

''(4) The Commission shall review and promulgate amendments to the guidelines, if appropriate, to account for the general problem of recidivism in cases of sex offenses, the severity of the offense, and its devastating effects on survivors.

''(b) REPORT.—Not later than 180 days after the date of enactment of this Act [Sept. 13, 1994], the United States Sentencing Commission shall review and submit to Congress a report containing an analysis of Federal rape sentencing, accompanied by comment from independent experts in the field, describing—

''(1) comparative Federal sentences for cases in which the rape victim is known to the defendant and cases in which the rape victim is not known to the defendant;

''(2) comparative Federal sentences for cases on Federal territory and sentences in surrounding States; and

''(3) an analysis of the effect of rape sentences on populations residing primarily on Federal territory relative to the impact of other Federal offenses in which the existence of Federal jurisdiction depends upon the offense's being committed on Federal territory.''

APPLICABILITY OF MANDATORY MINIMUM PENALTIES IN CERTAIN CASES; SENTENCING COMMISSION AUTHORITY

Section 80001(b) of Pub. L. 103–322 provided that:

''(1) IN GENERAL.—(A) The United States Sentencing Commission (referred to in this subsection as the 'Commission'), under section 994(a)(1) and (p) of title 28—

''(i) shall promulgate guidelines, or amendments to guidelines, to carry out the purposes of this section [amending section 3553 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 3553 of Title 18] and the amendment made by this section; and

''(ii) may promulgate policy statements, or amendments to policy statements, to assist in the application of this section and that amendment.

''(B) In the case of a defendant for whom the statutorily required minimum sentence is 5 years, such guidelines and amendments to guidelines issued under subparagraph (A) shall call for a guideline range in which the lowest term of imprisonment is at least 24 months.

''(2) PROCEDURES.—If the Commission determines that it is necessary to do so in order that the amendments made under paragraph (1) may take effect on the effective date of the amendment made by subsection (a) [see Effective Date of 1994 Amendment note set out under section 3553 of Title 18], the Commission may promulgate the amendments made under paragraph (1) in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], as though the authority under that section had not expired.''

ENHANCED PENALTY FOR USE OF SEMIAUTOMATIC FIREARM DURING CRIME OF VIOLENCE OR DRUG TRAFFICKING CRIME

Section 110501 of Pub. L. 103–322 provided that:

''(a) AMENDMENT TO SENTENCING GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement of the punishment for a crime of violence (as defined in section 924(c)(3) of title 18, United States Code) or a drug trafficking crime (as defined in section 924(c)(2) of title 18, United States Code) if a semiautomatic firearm is involved.

''(b) SEMIAUTOMATIC FIREARM.—In subsection (a), 'semiautomatic firearm' means any repeating firearm that utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round and that requires a separate pull of the trigger to fire each cartridge.''

ENHANCED PENALTY FOR SECOND OFFENSE OF USING EXPLOSIVE TO COMMIT FELONY

Section 110502 of Pub. L. 103–322 provided that: ''Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate amendments to the sentencing guidelines to appropriately enhance penalties in a case in which a defendant convicted under section 844(h) of title 18, United States Code, has previously been convicted under that section.''

ENHANCED PENALTY FOR USING FIREARM IN COMMISSION OF COUNTERFEITING OR FORGERY

Section 110512 of Pub. L. 103–322 provided that: ''Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of a felony under chapter 25 of title 18, United States Code, if the defendant used or carried a firearm (as defined in section 921(a)(3) of title 18, United States Code) during and in relation to the felony.''

ENHANCED PENALTIES FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS

Section 110513 of Pub. L. 103–322 provided that: ''Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to—

''(1) appropriately enhance penalties in cases in which a defendant convicted under section 922(g) of title 18, United States Code, has 1 prior conviction by any court referred to in section 922(g)(1) of title 18 for a violent felony (as defined in section 924(e)(2)(B) of that title) or a serious drug offense (as defined in section 924(e)(2)(A) of that title); and

''(2) appropriately enhance penalties in cases in which such a defendant has 2 prior convictions for a violent felony (as so defined) or a serious drug offense (as so defined).''

ENHANCED PENALTIES FOR FELONIES PROMOTING INTERNATIONAL TERRORISM

Section 120004 of Pub. L. 103–322 provided that: ''The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an appro-

priate enhancement for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.''

ENHANCED PENALTY FOR SOLICITATION OF MINOR TO COMMIT CRIME

Section 140008 of Pub. L. 103–322 provided that:

''(a) DIRECTIVE TO SENTENCING COMMISSION.—(1) The United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide that a defendant 21 years of age or older who has been convicted of an offense shall receive an appropriate sentence enhancement if the defendant involved a minor in the commission of the offense.

''(2) The Commission shall provide that the guideline enhancement promulgated pursuant to paragraph (1) shall apply for any offense in relation to which the defendant has solicited, procured, recruited, counseled, encouraged, trained, directed, commanded, intimidated, or otherwise used or attempted to use any person less than 18 years of age with the intent that the minor would commit a Federal offense.

''(b) RELEVANT CONSIDERATIONS.—In implementing the directive in subsection (a), the Sentencing Commission shall consider—

''(1) the severity of the crime that the defendant intended the minor to commit;

''(2) the number of minors that the defendant used or attempted to use in relation to the offense;

''(3) the fact that involving a minor in a crime of violence is frequently of even greater seriousness than involving a minor in a drug trafficking offense, for which the guidelines already provide a two-level enhancement; and

''(4) the possible relevance of the proximity in age between the offender and the minor(s) involved in the offense.''

ENHANCED PENALTY FOR POSSESSION OR DISTRIBUTION OF DRUGS AT TRUCK STOPS OR SAFETY REST AREAS

Section 180201(c) of Pub. L. 103–322 provided that: ''Pursuant to its authority under section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182] (28 U.S.C. 994 note), the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide an appropriate enhancement of punishment for a defendant convicted of violating section 409 of the Controlled Substances Act [21 U.S.C. 849], as added by subsection (b).''

CRIMES AGAINST THE ELDERLY; SENTENCING GUIDELINES

Section 240002 of Pub. L. 103–322, as amended by Pub. L. 104–294, title VI, § 604(b)(10), Oct. 11, 1996, 110 Stat. 3507, provided that:

''(a) IN GENERAL.—Pursuant to its authority under the Sentencing Reform Act of 1984 [chapter II (§§ 211–239) of title II) of Pub. L. 98–473, see Short Title note set out under section 3551 of Title 18, Crimes and Criminal Procedure] and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below] (including its authority to amend the sentencing guidelines and policy statements) and its authority to make such amendments on an emergency basis, the United States Sentencing Commission shall ensure that the applicable guideline range for a defendant convicted of a crime of violence against an elderly victim is sufficiently stringent to deter such a crime, to protect the public from additional crimes of such a defendant, and to adequately reflect the heinous nature of such an offense.

''(b) CRITERIA.—In carrying out subsection (a), the United States Sentencing Commission shall ensure that—

''(1) the guidelines provide for increasingly severe punishment for a defendant commensurate with the degree of physical harm caused to the elderly victim;

''(2) the guidelines take appropriate account of the vulnerability of the victim; and

''(3) the guidelines provide enhanced punishment for a defendant convicted of a crime of violence against an elderly victim who has previously been convicted of a crime of violence against an elderly victim, regardless of whether the conviction occurred in Federal or State court.

''(c) DEFINITIONS.—In this section—

''(1) 'crime of violence' means an offense under section 113, 114, 1111, 1112, 1113, 1117, 2241, 2242, or 2244 of title 18, United States Code.

''(2) 'elderly victim' means a victim who is 65 years of age or older at the time of an offense.''

ENHANCED PENALTIES FOR FRAUD AGAINST OLDER VICTIMS; REPORT TO CONGRESS

Section 250003 of Pub. L. 103–322 provided that:

''(a) REVIEW.—The United States Sentencing Commission shall review and, if necessary, amend the sentencing guidelines to ensure that victim related adjustments for fraud offenses against older victims over the age of 55 are adequate.

''(b) REPORT.—Not later than 180 days after the date of enactment of this Act [Sept. 13, 1994], the Sentencing Commission shall report to Congress the result of its review under subsection (a).''

ENHANCED PENALTY FOR HATE CRIMES

Section 280003 of Pub. L. 103–322 provided that:

''(a) DEFINITION.—In this section, 'hate crime' means a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

''(b) SENTENCING ENHANCEMENT.—Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes. In carrying out this section, the United States Sentencing Commission shall ensure that there is reasonable consistency with other guidelines, avoid duplicative punishments for substantially the same offense, and take into account any mitigating circumstances that might justify exceptions.''

INCREASED PENALTIES IN MAJOR BANK CRIME CASES

Pub. L. 101–647, title XXV, § 2507, Nov. 29, 1990, 104 Stat. 4862, provided that:

''(a) INCREASED PENALTIES.—Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide that a defendant convicted of violating, or conspiring to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code, or section 1341 or 1343 affecting a financial institution (as defined in section 20 of title 18, United States Code), shall be assigned not less than offense level 24 under chapter 2 of the sentencing guidelines if the defendant derives more than $1,000,000 in gross receipts from the offense.

''(b) AMENDMENTS TO SENTENCING GUIDELINES.—If the sentencing guidelines are amended after the effective date of this section [Nov. 29, 1990], the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.''

GUIDELINES RELATING TO METHAMPHETAMINE OFFENSES

Pub. L. 101–647, title XXVII, § 2701, Nov. 29, 1990, 104 Stat. 4912, provided that: ''The United States Sentencing Commission is instructed to amend the existing guidelines for offenses involving smokable crystal methamphetamine under section 401(b) of the Con-

trolled Substances Act (21 U.S.C. 841(b)) so that convictions for offenses involving smokable crystal methamphetamine will be assigned an offense level under the guidelines which is two levels above that which would have been assigned to the same offense involving other forms of methamphetamine.''

GUIDELINES RELATING TO OFFENSES SUBSTANTIALLY JEOPARDIZING SAFETY AND SOUNDNESS OF FEDERALLY INSURED FINANCIAL INSTITUTIONS

Pub. L. 101–73, title IX, §961(m), Aug. 9, 1989, 103 Stat. 501, provided that: ''Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide for a substantial period of incarceration for a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, that substantially jeopardizes the safety and soundness of a federally insured financial institution.''

PENALTIES FOR IMPORTATION OF CONTROLLED SUBSTANCES BY AIRCRAFT AND OTHER VESSELS

Section 6453 of Pub. L. 100–690 provided that:

''(a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)) under circumstances in which—

''(1) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance; or

''(2) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance,

shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

''(A) two levels greater than the level that would have been assigned had the offense not been committed under circumstances set forth in (A) or (B) [(1) or (2)] above; and

''(B) in no event less than level 26.

''(b) EFFECT OF AMENDMENT.—If the sentencing guidelines are amended after the effective date of this section [Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.''

ENHANCED PENALTIES FOR DRUG OFFENSES INVOLVING CHILDREN

Section 6454 of Pub. L. 100–690 provided that:

''(a) IN GENERAL.—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating sections 405, 405A, or 405B of the Controlled Substances Act (21 U.S.C. 845, 845a or 845b) [now 21 U.S.C. 859, 860, 861] involving a person under 18 years of age shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

''(1) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

''(2) in no event less than level 26.

''(b) EFFECTS OF AMENDMENT.—If the sentencing guidelines are amended after the effective date of this section [Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

''(c) MULTIPLE ENHANCEMENTS.—The guidelines referred to in subsection (a), as promulgated or amended under such subsection, shall provide that an offense that could be subject to multiple enhancements pursuant to such subsection is subject to not more than one such enhancement.''

DRUG OFFENSES WITHIN FEDERAL PRISONS; SENTENCING GUIDELINES

Section 6468(c), (d) of Pub. L. 100–690 provided that:

''(c) Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1791(a)(1) of title 18, United States Code, and punishable under section 1791(b)(1) of that title as so redesignated, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

''(1) two levels greater than the level that would have been assigned had the offense not been committed in prison; and

''(2) in no event less than level 26.

''(d) If the sentencing guidelines are amended after the effective date of this section [Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in subsection (c) so as to achieve a comparable result.''

COMMON CARRIER OPERATION UNDER INFLUENCE OF ALCOHOL OR DRUGS; SENTENCING GUIDELINES

Section 6482(c) of Pub. L. 100–690 provided that:

''(1) Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [Pub. L. 100–182, set out below], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that—

''(A) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which death results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 26; and

''(B) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which serious bodily injury results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 21.

''(2) If the sentencing guidelines are amended after the effective date of this section [Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in paragraph (1) so as to achieve a comparable result.''

EMERGENCY GUIDELINES PROMULGATION AUTHORITY

Section 21 of Pub. L. 100–182 provided that:

''(a) IN GENERAL.—In the case of—

''(1) an invalidated sentencing guideline;

''(2) the creation of a new offense or amendment of an existing offense; or

''(3) any other reason relating to the application of a previously established sentencing guideline, and determined by the United States Sentencing Commission to be urgent and compelling;

the Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of title 28 and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress under section 994(p) of title 28, United States Code.

''(b) EXPIRATION OF AUTHORITY.—The authority of the Commission under paragraphs (1) and (2) of subsection (a) shall expire on November 1, 1989. The authority of the Commission to promulgate and distribute guidelines under paragraph (3) of subsection (a) shall expire on May 1, 1988.''

SUBMISSION TO CONGRESS OF INITIAL SENTENCING GUIDELINES

Provisions directing that the United States Sentencing Commission submit to Congress within 30 months of Oct. 12, 1984, the initial sentencing guidelines promulgated pursuant to subsec. (a)(1) of this section, see section 235(a)(1)(B)(i) of Pub. L. 98–473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF SENTENCING GUIDELINES

Sentencing guidelines promulgated pursuant to this section effective when U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, Congress has examined the guidelines, and section 212(a)(2) of Pub. L. 98–473 takes effect [Nov. 1, 1987], see section 235(a)(1)(B)(ii) of Pub. L. 98–473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

STUDIES OF IMPACT AND OPERATION OF SENTENCING GUIDELINE SYSTEM; REPORTING REQUIREMENTS

Section 236 of Pub. L. 98–473 provided that:

''(a)(1) Four years after the sentencing guidelines promulgated pursuant to section 994(a)(1), and the provisions of sections 3581, 3583, and 3624 of title 18, United States Code, go into effect, the General Accounting Office shall undertake a study of the guidelines in order to determine their impact and compare the guidelines system with the operation of the previous sentencing and parole release system, and, within six months of the undertaking of such study, report to the Congress the results of its study.

''(2) Within one month of the start of the study required under subsection (a), the United States Sentencing Commission shall submit a report to the General Accounting Office, all appropriate courts, the Department of Justice, and the Congress detailing the operation of the sentencing guideline system and discussing any problems with the system or reforms needed. The report shall include an evaluation of the impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration, and shall be issued by affirmative vote of a majority of the voting members of the Commission.

''(b) The Congress shall review the study submitted pursuant to subsection (a) in order to determine—

''(1) whether the sentencing guideline system has been effective;

''(2) whether any changes should be made in the sentencing guideline system; and

''(3) whether the parole system should be reinstated in some form and the life of the Parole Commission extended.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 995, 998 of this title; title 18 sections 3143, 3552, 3553, 3582, 3583, 3621, 3622, 5037; title 29 sections 504, 1111; title 42 sections 14051, 14052.

§ 995. Powers of the Commission

(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;

(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for Level 6 of the Senior Executive Service Schedule (5 U.S.C. 5382);

(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chair;

(4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(6) without regard to 31 U.S.C. 3324, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(7) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of 31 U.S.C. 1342, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;

(8) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

(11) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(12) establish a research and development program within the Commission for the purpose of—

(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and

(B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

(14) publish data concerning the sentencing process;

(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences

to the factors set forth in section 3553(a) of title 18, United States Code;

(16) collect systematically and disseminate information regarding effectiveness of sentences imposed;

(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy;

(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties;

(22) perform such other functions as are required to permit Federal courts to meet their responsibilities under section 3553(a) of title 18, United States Code, and to permit others involved in the Federal criminal justice system to meet their related responsibilities;

(23) retain private attorneys to provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of Justice; and the Commission may in its discretion pay reasonable attorney's fees to private attorneys employed by it out of its appropriated funds. When serving as officers or employees of the United States, such private attorneys shall be considered special government employees as defined in section 202(a) of title 18; and

(24) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code.

(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a)(1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b). The Commission shall, with respect to its activities under subsections (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), to the extent practicable, utilize existing resources of the Administrative Office of the United States Courts and the Federal Judicial Center for the purpose of avoiding unnecessary duplication.

(c) Upon the request of the Commission, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994, the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

(e) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2024; amended Pub. L. 100–690, title VII, §§ 7104, 7105, 7106(b), Nov. 18, 1988, 102 Stat. 4418; Pub. L. 101–650, title III, § 325(b)(5), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 103–322, title XXVIII, § 280005(c)(1), Sept. 13, 1994, 108 Stat. 2097.)

REFERENCES IN TEXT

The provisions of title 28, United States Code, with respect to tort claims, referred to in subsec. (a)(7), are classified generally to section 1346(b) and chapter 171 (§ 2671 et seq.) of this title.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–322 substituted "Chair" for "Chairman".

1990—Subsec. (a)(22). Pub. L. 101–650 struck out "and" after semicolon at end.

1988—Subsec. (a)(2). Pub. L. 100–690, § 7105, substituted "Level 6 of the Senior Executive Service Schedule (5 U.S.C. 5382)" for "grade 18 of the General Schedule pay rates (5 U.S.C. 5332)".

Subsec. (a)(23). Pub. L. 100–690, § 7104, added par. (23).

Subsec. (a)(24). Pub. L. 100–690, § 7106(b), added par. (24).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 998 of this title.

§ 996. Director and staff

(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to the Staff Director by the Commission.

(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 45 (Incentive Awards), 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), and 89 (Health Insurance).

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026; amended Pub. L. 100–690, title VII, § 7106(c), Nov. 18, 1988, 102 Stat. 4418; Pub. L. 101–650, title III, § 325(b)(6), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 103–322, title XXVIII, § 280005(c)(5), Sept. 13, 1994, 108 Stat. 2097.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–322 substituted "the Staff Director" for "him" after "assigned to".

1990—Subsec. (b). Pub. L. 101–650 substituted "and 89 (Health Insurance)" for "89 (Health Insurance), and 91 (Conflicts of Interest)".

1988—Subsec. (b). Pub. L. 100–690 inserted reference to chapter 45 (Incentive Awards).

§ 997. Annual report

The Commission shall report annually to the Judicial Conference of the United States, the Congress, and the President of the United States on the activities of the Commission.

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

§ 998. Definitions

As used in this chapter—

(a) ''Commission'' means the United States Sentencing Commission;

(b) ''Commissioner'' means a member of the United States Sentencing Commission;

(c) ''guidelines'' means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and

(d) ''rules and regulations'' means rules and regulations promulgated by the Commission pursuant to section 995 of this title.

(Added Pub. L. 98–473, title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

PART IV—JURISDICTION AND VENUE

Chap.		Sec.
81.	**Supreme Court**	**1251**
83.	**Courts of Appeals**	**1291**
85.	**District Courts; Jurisdiction**	**[1] 1331**
87.	**District Courts; Venue**	**1391**
89.	**District Courts; Removal of Cases from State Courts**	**1441**
91.	**United States Court of Federal Claims**	**1491**
[93.	**Repealed.]**	
95.	**Court of International Trade**	**1581**
97.	**Jurisdictional Immunities of Foreign States**	**1602**
99.	**General Provisions**	**1631**

AMENDMENTS

1992—Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' as item for chapter 91.

1982—Pub. L. 97–164, title I, §§ 133(j)(1), 134, title III, § 301(b), Apr. 2, 1982, 96 Stat. 41, 55, substituted ''United States Claims Court'' for ''Court of Claims'' in item for chapter 91, struck out item for chapter 93 ''Court of Customs and Patent Appeals'', and added item for chapter 99.

1980—Pub. L. 96–417, title V, § 501(20), Oct. 10, 1980, 94 Stat. 1742, substituted ''Court of International Trade'' for ''Customs Court'' in item for chapter 95.

1978—Pub. L. 95–598, title II, § 241(b), Nov. 6, 1978, 92 Stat. 2671, directed the addition of item for chapter 90, ''District Courts and Bankruptcy Courts'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Pub. L. 94–583, § 4(b), Oct. 21, 1976, 90 Stat. 2897, added item for chapter 97.

CROSS REFERENCES

District of Columbia courts, jurisdiction, see Title 11 of District of Columbia Code.

Judicial power of the United States, see Const. Art. 3, §§ 1, 2, and U.S. Const. Amend. 11.

Tax Court jurisdiction, see section 7441 et seq. of Title 26, Internal Revenue Code.

[1] So in original. Probably should be ''1330''.

CHAPTER 81—SUPREME COURT

Sec.
1251. Original jurisdiction.
[1252. Repealed.]
1253. Direct appeals from decisions of three-judge courts.
1254. Courts of appeals; certiorari; certified questions.
[1255, 1256. Repealed.]
1257. State courts; certiorari.
1258. Supreme Court of Puerto Rico; certiorari.
1259. Court of Appeals for the Armed Forces; certiorari.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, § 924(d)(2)(B), Oct. 5, 1994, 108 Stat. 2832, substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item 1259.

1988—Pub. L. 100–352, §§ 1, 2(c), 5(a), June 27, 1988, 102 Stat. 662, 663, struck out item 1252 ''Direct appeals from decisions invalidating Acts of Congress'', struck out ''appeal;'' after ''certiorari;'' in item 1254, and struck out ''appeal;'' after ''State courts;'' in item 1257 and after ''of Puerto Rico;'' in item 1258.

1983—Pub. L. 98–209, § 10(a)(2), Dec. 6, 1983, 97 Stat. 1406, added item 1259.

1982—Pub. L. 97–164, title I, § 123, Apr. 2, 1982, 96 Stat. 36, struck out item 1255 ''Court of Claims; certiorari; certified questions'' and item 1256 ''Court of Customs and Patent Appeals; certiorari''.

1961—Pub. L. 87–189, § 2, Aug. 30, 1961, 75 Stat. 417, added item 1258.

DEFINITIONS OF COURTS AND JUDGES

Section 32 of act June 25, 1948, as amended by act May 24, 1949, ch. 139, § 127, 63 Stat. 107, provided:

''(a) All laws of the United States in force on September 1, 1948, in which reference is made to a 'circuit court of appeals'; 'senior circuit judge'; 'senior district judge'; 'presiding judge'; 'chief justice', except when reference to the Chief Justice of the United States is intended; or 'justice', except when used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice, are hereby amended by substituting 'court of appeals' for 'circuit court of appeals'; 'chief judge of the circuit' for 'senior circuit judge'; 'chief judge of the district court' for 'senior district judge'; 'chief judge' for 'presiding judge'; 'chief judge' for 'chief justice', except when reference to the Chief Justice of the United States is intended; and 'judge' for 'justice', except when the latter term is used with respect to a justice of the Supreme Court of the United States in his capacity as such or as a circuit justice.

''(b) All laws of the United States in force on September 1, 1948, in which reference is made to the Supreme Court of the District of Columbia or to the District Court of the United States for the District of Columbia are amended by substituting 'United States District Court for the District of Columbia' for such designations.

''(c) All laws of the United States in force on September 1, 1948, in which reference is made to the 'Conference of Senior Circuit Judges', or to the 'Judicial Conference of Senior Circuit Judges' are amended by substituting 'Judicial Conference of the United States' for such designations.

''(d) This section shall not be construed to amend historical references to courts or judicial offices which have no present or future application to such courts or offices.''

RULES OF THE SUPREME COURT

Procedure generally, on appeal to or in Supreme Court, see Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Bail upon review, see rule 46, Title 18, Appendix, Crimes and Criminal Procedure.

Stay of execution, and relief pending review, see rule 38.

CROSS REFERENCES

Procedure and particular proceedings, generally, see sections 1651 et seq. and 2201 et seq. of this title.

§ 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

(June 25, 1948, ch. 646, 62 Stat. 927; Pub. L. 95–393, § 8(b), Sept. 30, 1978, 92 Stat. 810.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 341, 371(7), (8) (Mar. 3, 1911, ch. 231, §§ 233, 256, 36 Stat. 1156, 1160; Oct. 6, 1917, ch. 97, § 2, 40 Stat. 395; June 10, 1922, ch. 216, § 2, 42 Stat. 635).

This section reconciles provisions of sections 341 and 371(7), (8) of title 28, U.S.C., 1940 ed., with Article 3, section 2 and Amendment 11 of the Constitution.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., were not wholly consistent with such constitutional provisions. Said section 341 provided that the Supreme Court should have original jurisdiction of controversies between a State and citizens of other States or aliens, whereas the 11th Amendment prohibits an action in any Federal Court against a State by citizens of another State or aliens.

The original jurisdiction conferred on the Supreme Court by Article 3, section 2, of the Constitution is not exclusive by virtue of that provision alone. Congress may provide for or deny exclusiveness. *Ames v. Kansas*, 1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 442; *U.S. v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota*, D.C. Minn., 1939, 27 F.Supp. 167, affirmed 125 F.2d 636.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., did not confer expressly exclusive jurisdiction on the Supreme Court in civil cases between States, *Louisiana v. Texas*, 1899, 20 S.Ct. 251, 176 U.S. 1, 44 L.Ed. 347, as has been provided in subsection (a)(1) of the revised section. The language at the beginning of said section 341, for which said subsection has been substituted, was ambiguous and made it appear that an action by a State against the United States would be within the exclusive jurisdiction of the Supreme Court. However, in *U.S. v. Louisiana*, 1887, 8 S.Ct. 17, 123 U.S. 32, 31 L.Ed. 69, the Supreme Court, in a case appealed from the Court of Claims, held to the contrary.

So, also, in actions by the United States to condemn lands of a State or to enforce penalties for violation of a Federal statute against a State-owned utility, the United States district courts have jurisdiction. See *United States v. State of Utah*, 1931, 51 S.Ct. 438, 283 U.S. 64, 75 L.Ed. 844; *United States v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota*, D.C.Minn. 1939, 27 F.Supp. 167, affirmed 125 F.2d 636; *United States v. State of California*, 1936, 56 S.Ct. 421, 297 U.S. 175, 80 L.Ed. 567.

The intent of section 371(7), (8) of title 28, U.S.C., 1940 ed., that the jurisdiction of the courts of the United States should be exclusive of the courts of the States in controversies to which a State is a party, and suits against ambassadors, public ministers, consuls and vice consuls, is preserved and clarified by this section and section 1351 of this title.

The revised section preserves existing law with reference to foreign ambassadors, other public ministers and consuls. Under subsection (a)(2) the Supreme Court has exclusive jurisdiction of actions or proceedings against the ambassadors or public ministers of other nations.

Under subsection (b)(1) the Supreme Court has original but not exclusive jurisdiction of actions or proceedings brought by such ambassadors or other public ministers or to which consuls or vice consuls of other nations are parties.

Section 1351 of this title gives to United States district courts, exclusive of the courts of the States, jurisdiction of civil actions against such consuls and vice consuls.

This section and said section 1351 of this title have no application to ambassadors, public ministers, consuls or vice consuls representing the United States. See *Milward v. McSaul*, D.C.S.D.N.Y. 1846, 17 Fed.Cas.No. 9,623 and *State of Ohio ex rel. Popovici v. Alger*, 1930, 50 S.Ct. 154, 280 U.S. 379, 74 L.Ed. 489.

Changes were made in phraseology.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–393, § 8(b)(1), designated introductory provision of subsec. (a) and (a)(1) as (a), and struck out "(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations".

Subsec. (b)(1). Pub. L. 95–393, § 8(b)(2), substituted "to which ambassadors, other public ministers, consuls, or" for "brought by ambassadors or other public ministers of foreign states or to which consuls or".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–393 effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

STATUTES GOVERNING WRITS OF ERROR TO APPLY TO APPEALS

Act Jan. 31, 1928, ch. 14, § 2, 45 Stat. 54, amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, § 23, 62 Stat. 990, provided that "All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error." See also, notes preceding section 1 of this title.

RULES OF THE SUPREME COURT

Procedure in original actions, see rule 17, Appendix to this title.

CROSS REFERENCES

Controversies involving pollution of waters, jurisdiction of actions by States, see section 466g–1 of Title 33, Navigation and Navigable Waters.

Jury trial in original actions at law in Supreme Court against citizens of the United States, see section 1872 of this title.

Original jurisdiction—

District Court of all suits against consuls and vice-consuls, see section 1351 of this title.

Supreme Court, see, also, Const. Art. 3, § 2, Cl. 2.

Writs, see section 1651 of this title.

[§ 1252. Repealed. Pub. L. 100–352, § 1, June 27, 1988, 102 Stat. 662]

Section, acts June 25, 1948, ch. 646, 62 Stat. 928; Oct. 31, 1951, ch. 655, § 47, 65 Stat. 726; July 7, 1958, Pub. L. 85–508, § 12(e), (f), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86–3, § 14(a), 73 Stat. 10, provided for direct appeals to Supreme Court from decisions invalidating Acts of Congress.

EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

(June 25, 1948, ch. 646, 62 Stat. 928.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§47, 47a, 380 and 380a (Mar. 3, 1911, ch. 231, §§210, 266, 36 Stat. 1150, 1162; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38, Stat. 220; Feb. 13, 1925, ch. 229, §1, 43 Stat. 938; Aug. 24, 1937, ch. 754, §3, 50 Stat. 752).

This section consolidates the provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., relating to direct appeals from decisions of three-judge courts involving orders of the Interstate Commerce Commission or holding State or Federal laws repugnant to the Constitution of the United States.

For distribution of other provisions of the sections on which this revised section is based, see Distribution Table.

The language in section 380 of title 28, U.S.C., 1940 ed., referring to restraining the enforcement or execution of an order made by an administrative board or a State officer was omitted as covered by this revised section and section 2281 of this title.

Words in section 380a of title 28, U.S.C., 1940 ed., ''This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law,'' were omitted as unnecessary.

Section 217 of title 7, U.S.C., 1940 ed., Agriculture, provides for a three-judge court in proceedings to suspend or restrain the enforcement of orders of the Secretary of Agriculture under the Packers and Stockyards Act of 1921.

The final proviso of section 502 of title 33, U.S.C., 1940 ed., Navigation and Navigable Waters, for direct appeal in certain criminal cases for failure to alter bridges obstructing navigation, is recommended for express repeal in view of its implied repeal by section 345 of title 28, U.S.C., 1940 ed. (See *U.S. v. Belt*, 1943, 63 S.Ct. 1278, 319 U.S. 521, 87 L.Ed. 1559. See reviser's note under section 1252 of this title.)

Section 28 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 44 of title 49, U.S.C., 1940 ed., Transportation, are identical and provide for convening of a three-judge court to hear and determine civil cases arising under the Sherman anti-trust law and the Interstate Commerce Act, respectively, wherein the United States is plaintiff and when the Attorney General deems such cases of general public importance.

Section 401(d) of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radiotelegraphs, made the provisions of sections 28 and 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, sections 44 and 45 of title 49, U.S.C., 1940 ed., Transportation, and section 345(1) of title 28, U.S.C., 1940 ed., relating to three-judge courts and direct appeals, applicable to orders of the Federal Communications Commission enforcing the Communications Act of 1934.

RULES OF THE SUPREME COURT

Procedure on appeal, see Appendix to this title.

Stays, see rule 23.

FEDERAL RULES OF CIVIL PROCEDURE

Stay of proceedings to enforce judgment, see rule 62, Appendix to this title.

CROSS REFERENCES

Direct appeals from three-judge courts—
- Antitrust laws, see section 29 of Title 15, Commerce and Trade.
- Communications Act of 1934, see section 402 of Title 47, Telegraphs, Telephones, and Radiographs.
- Packers and Stockyards Act, see section 217 of Title 7, Agriculture.

Quorum of Supreme Court justices absent, see section 2109 of this title.

Time for appeal or certiorari, see section 2101 of this title.

Writs, see section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2101 of this title.

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, ch. 646, 62 Stat. 928; Pub. L. 100–352, §2(a), (b), June 27, 1988, 102 Stat. 662.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§346 and 347 (Mar. 3, 1911, ch. 231, §§239, 240, 36 Stat. 1157; Feb. 13, 1925, ch. 229, §1, 43 Stat. 938; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of title 28, U.S.C., 1940 ed.

Words ''or in the United States Court of Appeals for the District of Columbia'' and ''or of the United States Court of Appeals for the District of Columbia'' in sections 346 and 347 of title 28, U.S.C., 1940 ed., were omitted. (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of title 28, U.S.C., 1940 ed., ''and with like effect as if the case had been brought there with unrestricted appeal'', and the words of section 346 of such title ''in the same manner as if it had been brought there by appeal''. The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement.

AMENDMENTS

1988—Pub. L. 100–352, §2(b), struck out ''appeal;'' after ''certiorari;'' in section catchline.

Pars. (2), (3). Pub. L. 100–352, §2(a), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United

States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7 of Pub. L. 100–352 provided that: ''The amendments made by this Act [amending sections 1254, 1257, 1258, 2101, 2104, and 2350 of this title, section 437h of Title 2, The Congress, section 136w of Title 7, Agriculture, section 1631e of Title 22, Foreign Relations and Intercourse, section 652 of Title 25, Indians, section 988 of Title 33, Navigation and Navigable Waters, section 1652 of Title 43, Public Lands, and sections 719, 743, and 1105 of Title 45, Railroads, and repealing sections 1252 and 2103 of this title] shall take effect ninety days after the date of the enactment of this Act [June 27, 1988], except that such amendments shall not apply to cases pending in the Supreme Court on the effective date of such amendments or affect the right to review or the manner of reviewing the judgment or decree of a court which was entered before such effective date.''

RULES OF THE SUPREME COURT

Procedure generally on appeal, writ of certiorari, or certification of questions, see Appendix to this title.

Stays, see rule 23.

FEDERAL RULES OF CIVIL PROCEDURE

Power of appellate court to stay proceedings not limited by rule 62, see rule 62(g), Appendix to this title.

CROSS REFERENCES

Quorum of Supreme Court justices, see section 2109 of this title.

Review generally, see section 2101 et seq. of this title.

Review of appeals of orders relating to use of pesticide chemicals and raw agricultural commodities, see section 346a of Title 21, Food and Drugs.

Time for appeal or certiorari, see section 2101 of this title.

Writs, see section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1334, 1452, 2350 of this title; title 2 section 437g; title 5 sections 1508, 7123; title 7 sections 136n, 194, 228b–3; title 8 section 1324b; title 11 section 305; title 12 sections 1467a, 1786, 1818, 2266; title 15 sections 21, 29, 45, 57a, 77i, 78aa, 79x, 79y, 80a–42, 80a–43, 80b–13, 687a, 687e, 717r, 1193, 1262, 1474, 1710, 1719, 2060, 2618, 3416; title 16 sections 79*l*, 825*l*, 825p; title 20 sections 1070c–3, 1104h, 1111h, 1234g, 1412, 1416, 2727, 7372, 7711, 8896; title 21 sections 346a, 348, 355, 360g, 360kk, 371; title 22 sections 2740, 2851, 3086; title 23 section 131; title 25 section 4161; title 26 sections 3310, 7482; title 27 section 204; title 29 sections 160, 210, 660, 667, 1578; title 30 section 816; title 31 section 6717; title 33 sections 520, 988; title 38 sections 1984, 7292; title 40 section 333; title 42 sections 263a, 263b, 291h, 504, 1316, 1320a–7a, 1320a–8, 2022, 2689*l*, 3027, 3414, 3785, 5311, 5405, 6029, 6306, 6869, 8412; title 45 section 153; title 47 section 402; title 49 sections 1153, 30161, 31141, 32503, 32904, 32909, 46110, 60119.

[§§ 1255, 1256. Repealed. Pub. L. 97–164, title I, § 123, Apr. 2, 1982, 96 Stat. 36]

Section 1255, act June 25, 1948, ch. 646, 62 Stat. 928, authorized Supreme Court to review cases in Court of Claims by writ of certiorari and by certification of questions of law.

Section 1256, act June 25, 1948, ch. 646, 62 Stat. 928, authorized Supreme Court to review cases in Court of Customs and Patent Appeals by writ of certiorari.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term ''highest court of a State'' includes the District of Columbia Court of Appeals.

(June 25, 1948, ch. 646, 62 Stat. 929; Pub. L. 91–358, title I, § 172(a)(1), July 29, 1970, 84 Stat. 590; Pub. L. 100–352, § 3, June 27, 1988, 102 Stat. 662.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 344 (Mar. 3, 1911, ch. 231, §§ 236, 237, 36 Stat. 1156; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 6, 1916, ch. 448, § 2, 39 Stat. 726; Feb. 17, 1922, ch. 54, 42 Stat. 366; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 937; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Provisions of section 344 of title 28, U.S.C., 1940 ed., relating to procedure for review of decisions of State courts are incorporated in section 2103 of this title. Other provisions of such section 344 of title 28, U.S.C., 1940 ed., are incorporated in section 2106 of this title.

The revised section applies in both civil and criminal cases. In *Twitchell v. Philadelphia*, 1868, 7 Wall. 321, 19 L.Ed. 223, it was expressly held that the provisions of section 25 of the Judiciary Act of 1789, 1 Stat. 85, on which title 28, U.S.C., 1940 ed., § 344, is based, applied to criminal cases, and many other Supreme Court decisions impliedly involve the same holding inasmuch as the Court has taken jurisdiction of criminal cases on appeal from State courts. See, for example, *Herndon v. Georgia*, 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530 and *Ashcraft v. Tennessee*, 1944, 64 S.Ct. 921, 322 U.S. 143, 88 L.Ed. 1192.

Provision, in section 344(b) of title 28, U.S.C., 1940 ed., for review and determination on certiorari ''with the same power and authority and with like effect as if brought up by appeal'' was omitted as unnecessary. The scope of review under this section is unrestricted.

Words ''and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied,'' in said section 344(b), were omitted as surplusage.

The last sentence in said section 344(b) relating to the right to relief under both subsections of said section 344, was omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100–352 struck out ''appeal;'' before ''certiorari'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

''(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

''(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

''(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is

drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

''For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals.''

1970—Pub. L. 91–358 provided that for the purposes of this section, the term ''highest court of a State'' includes the District of Columbia Court of Appeals.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 199(a) of title I of Pub. L. 91–358 provided that: ''The effective date of this title (and the amendments made by this title) [enacting sections 1363, 1451, and 2113 of this title and amending this section, sections 292 and 1869 of this title, section 5102 of Title 5, Government Organization and Employees, and section 260a of Title 42, The Public Health and Welfare] shall be the first day of the seventh calendar month which begins after the date of the enactment of this Act [July 29, 1970].''

RULES OF THE SUPREME COURT

Jurisdiction on writ of certiorari, see rules 10 to 16, Appendix to this title.

CROSS REFERENCES

Determination on review, see section 2106 of this title.

Quorum of Supreme Court justices absent, disposition of case, see section 2109 of this title.

Review of State court decisions—

Priority of criminal cases, see section 2102 of this title.

Procedure and effect, see section 2104 of this title.

Time for appeal or certiorari, see section 2101 of this title.

Writs, see section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 3207; title 16 section 2633.

§ 1258. Supreme Court of Puerto Rico; certiorari

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(Added Pub. L. 87–189, § 1, Aug. 30, 1961, 75 Stat. 417; amended Pub. L. 100–352, § 4, June 27, 1988, 102 Stat. 662.)

AMENDMENTS

1988—Pub. L. 100–352 struck out ''appeal;'' before ''certiorari'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

''(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

''(2) By appeal, where is drawn in question the validity of a statute of the Commonwealth of Puerto Rico on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

''(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 3207; title 16 section 2633.

§ 1259. Court of Appeals for the Armed Forces; certiorari

Decisions of the United States Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under section 867(a)(1) of title 10.

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under section 867(a)(2) of title 10.

(3) Cases in which the Court of Appeals for the Armed Forces granted a petition for review under section 867(a)(3) of title 10.

(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Appeals for the Armed Forces granted relief.

(Added Pub. L. 98–209, § 10(a)(1), Dec. 6, 1983, 97 Stat. 1405; amended Pub. L. 101–189, div. A, title XIII, § 1304(b)(3), Nov. 29, 1989, 103 Stat. 1577; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(C), (2)(A), Oct. 5, 1994, 108 Stat. 2832.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in section catchline and wherever appearing in text.

1989—Pub. L. 101–189 substituted ''section 867(a)(1)'' for ''section 867(b)(1)'' in par. (1), ''section 867(a)(2)'' for ''section 867(b)(2)'' in par. (2), and ''section 867(a)(3)'' for ''section 867(b)(3)'' in par. (3).

EFFECTIVE DATE

Section effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 867a.

CHAPTER 83—COURTS OF APPEALS

Sec.
1291. Final decisions of district courts.
1292. Interlocutory decisions.
[1293. Repealed.]
1294. Circuits in which decisions reviewable.
1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit.
1296. Review of certain agency actions.

AMENDMENTS

1996—Pub. L. 104–331, § 3(a)(2), Oct. 26, 1996, 110 Stat. 4069, added item 1296.

1984—Pub. L. 98–620, title IV, § 402(29)(C), Nov. 8, 1984, 98 Stat. 3359, struck out item 1296 ''Precedence of cases in the United States Court of Appeals for the Federal Circuit''.

1982—Pub. L. 97–164, title I, § 127(b), Apr. 2, 1982, 96 Stat. 39, added items 1295 and 1296.

1978—Pub. L. 95–598, title II, § 236(b), Nov. 6, 1978, 92 Stat. 2667, directed the addition of item 1293, ''Bankruptcy appeals'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1961—Pub. L. 87–189, § 4, Aug. 30, 1961, 75 Stat. 417, struck out item 1293 ''Final decisions of Puerto Rico and Hawaii Supreme Courts''.

FEDERAL RULES OF APPELLATE PROCEDURE

Appeal to a court of appeals, see rules 3 and 4, Appendix to this title.

Joint or consolidated appeals to a court of appeals, see rule 3.

Record on appeal to a court of appeals, see rule 10.

FEDERAL RULES OF CRIMINAL PROCEDURE

Application of rules, see note by Advisory Committee under rule 54, Title 18, Appendix, Crimes and Criminal Procedure.

Bail upon review, see rule 46.

Stay of execution and relief pending review, see rule 38.

CROSS REFERENCES

Jurisdiction of courts and appeals in particular matters, see Historical and Revision Notes under section 1291 of this title.

Procedure and particular proceedings, generally, see sections 1651 et seq. and 2201 et seq. of this title.

Vesting and liquidation of Bulgarian, Hungarian, and Rumanian property, final orders or decrees of district courts of the United States reviewable as provided in this chapter, see section 1631e of Title 22, Foreign Relations and Intercourse.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 22 section 1631e; title 29 sections 1813, 1853, 1854; title 42 section 300gg–22.

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 48, 65 Stat. 726; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 97–164, title I, § 124, Apr. 2, 1982, 96 Stat. 36.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 225(a), 933(a)(1), and section 1356 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and sections 61 and 62 of title 7 of the Canal Zone Code (Mar. 3, 1911, ch. 231, § 128, 36 Stat. 1133; Aug. 24, 1912, ch. 390, § 9, 37 Stat. 566; Jan. 28, 1915, ch. 22, § 2, 38 Stat. 804; Feb. 7, 1925, ch. 150, 43 Stat. 813; Sept. 21, 1922, ch. 370, § 3, 42 Stat. 1006; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 936; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; May 17, 1932, ch. 190, 47 Stat. 158; Feb. 16, 1933, ch. 91, § 3, 47 Stat. 817; May 31, 1935, ch. 160, 49 Stat. 313; June 20, 1938, ch. 526, 52 Stat. 779; Aug. 2, 1946, ch. 753, § 412(a)(1), 60 Stat. 844).

This section rephrases and simplifies paragraphs ''First'', ''Second'', and ''Third'' of section 225(a) of title 28, U.S.C., 1940 ed., which referred to each Territory and Possession separately, and to sections 61 and 62 of the Canal Zone Code, section 933(a)(1) of said title relating to jurisdiction of appeals in tort claims cases, and the provisions of section 1356 of title 48, U.S.C., 1940 ed., relating to jurisdiction of appeals from final judgments of the district court for the Canal Zone.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term ''district courts of the United States.'' (See definitive section 451 of this title.)

Paragraph ''Fourth'' of section 225(a) of title 28, U.S.C., 1940 ed., is incorporated in section 1293 of this title.

Words ''Fifth. In the United States Court for China, in all cases'' in said section 225(a) were omitted. (See reviser's note under section 411 of this title.)

Venue provisions of section 1356 of title 48, U.S.C., 1940 ed., are incorporated in section 1295 of this title.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1295 of this title.

In addition to the jurisdiction conferred by this chapter, the courts of appeals also have appellate jurisdiction in proceedings under Title 11, Bankruptcy, and jurisdiction to review:

(1) Orders of the Secretary of the Treasury denying an application for, suspending, revoking, or annulling a basic permit under chapter 8 of title 27;

(2) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;

(3) Orders of the Secretary of the Army under sections 504, 505 and 516 of title 33, U.S.C., 1940 ed., Navigation and Navigable Waters;

(4) Orders of the Civil Aeronautics Board under chapter 9 of title 49, except orders as to foreign air carriers which are subject to the President's approval;

(5) Orders under chapter 1 of title 7, refusing to designate boards of trade as contract markets or suspending or revoking such designations, or excluding persons from trading in contract markets;

(6) Orders of the Federal Power Commission under chapter 12 of title 16;

(7) Orders of the Federal Security Administrator under section 371(e) of title 21, in a case of actual controversy as to the validity of any such order, by any person adversely affected thereby;

(8) Orders of the Federal Power Commission under chapter 15B of title 15;

(9) Final orders of the National Labor Relations Board;

(10) Cease and desist orders under section 193 of title 7;

(11) Orders of the Securities and Exchange Commission;

(12) Orders to cease and desist from violating section 1599 of title 7;

(13) Wage orders of the Administrator of the Wage and Hour Division of the Department of Labor under section 208 of title 29;

(14) Orders under sections 81r and 1641 of title 19, U.S.C., 1940 ed., Customs Duties.

The courts of appeals also have jurisdiction to enforce:

(1) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System, and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;

(2) Final orders of the National Labor Relations Board;

(3) Orders to cease and desist from violating section 1599 of title 7.

The Court of Appeals for the District of Columbia also has jurisdiction to review orders of the Post Office Department under section 576 of title 39 relating to discriminations in sending second-class publications by freight; Maritime Commission orders denying transfer to foreign registry of vessels under subsidy contract; sugar allotment orders; decisions of the Federal Communications Commission granting or refusing applications for construction permits for radio stations, or for radio station licenses, or for renewal or modification of radio station licenses, or suspending any radio operator's license.

Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–164, § 124, inserted ''(other than the United States Court of Appeals for the Federal Circuit)'' after ''The court of appeals'' and inserted provision that the jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

1958—Pub. L. 85–508 struck out provisions which gave courts of appeals jurisdiction of appeals from District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1951—Act Oct. 31, 1951, inserted reference to District Court of Guam.

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 this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c.16 as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

FEDERAL RULES OF APPELLATE PROCEDURE

Procedure on appeal, see rule 1 et seq., Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Procedure on appeal, see rules 38 and 46(a)(2), Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Antitrust Civil Process Act judicial proceedings subject to appeal pursuant to this section, see section 1314 of Title 15, Commerce and Trade.

Criminal cases, direct appeals to Supreme Court, and appeals to courts of appeals, see section 3731 of Title 18, Crimes and Criminal Procedure.

Direct appeals to Supreme Court, see section 1253 of this title.

Prize cases, allowance of appeal, see section 7680 of Title 10, Armed Forces.

Time for appeal, see section 2107 of this title.

Trade-mark actions, appellate jurisdiction, see section 1121 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1295, 1334, 1452, 2072 of this title; title 11 section 305; title 15 sections 29, 57b–1, 78aa, 79y, 80a–43, 80b–14, 1314, 1719; title 16 sections 825p, 1456; title 18 section 3145; title 31 section 3733; title 42 sections 2000e–5, 3414; title 45 sections 153, 719, 743, 1105; title 50 App. section 17.

§ 1292. Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however*, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from an interlocutory order or decree described in subsection (a) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order a statement that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 49, 65 Stat. 726; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 85–919, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 97–164, § 125, Apr. 2, 1982, 96 Stat. 36; Pub. L. 98–620, title IV, § 412, Nov. 8, 1984, 98 Stat. 3362; Pub. L. 100–702, title V, § 501, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102–572, title I, § 101, title IX, §§ 902(b), 906(c), Oct. 29, 1992, 106 Stat. 4506, 4516, 4518.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 225(b), 227, 227a, and section 61 of title 7 of the Canal Zone Code (Mar. 3, 1911, ch. 231, §§ 128, 129, 36 Stat. 1133, 1134; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 937; Feb. 28, 1927, ch. 228, 44 Stat. 1261; Apr. 3, 1926, ch. 102, 44 Stat. 233; May 20, 1926, ch. 347, § 13(a), 44 Stat. 587; Apr. 11, 1928, ch. 354, § 1, 45 Stat. 422; May 17, 1932, ch. 190, 47 Stat. 158).

Section consolidates sections 225(b), 227 and part of 227a of title 28, U.S.C., 1940 ed., with necessary changes in phraseology to effect the consolidation.

The second paragraph of section 225(b) of title 28, U.S.C., 1940 ed., relating to review of decisions of the district courts, under section 9 of the Railway Labor Act (section 159 of title 45), was omitted as covered by section 1291 of this title.

Words in section 227 of title 28, U.S.C., 1940 ed., "or decree," after "interlocutory order," were deleted, in view of Rule 65 of the Federal Rules of Civil Procedure, using only the word "order."

Provisions of sections 227 and 227a of title 28, U.S.C., 1940 ed., relating to stay of proceedings pending appeal were omitted as superseded by Federal Rules of Civil Procedure, Rule 73.

Provisions of section 227 of title 28, U.S.C., 1940 ed., requiring an additional bond by the district court as a condition of appeal were omitted in view of Federal Rules of Civil Procedure, Rule 73.

Words in section 227 of title 28, U.S.C., 1940 ed., "and sections 346 and 347 of this title shall apply to such cases in the circuit courts of appeals as to other cases therein," at the end of the first sentence of section 227 of title 28, U.S.C., 1940 ed., were deleted as fully covered by section 1254 of this title, applicable to any case in a court of appeals. Other procedural provisions of said section 227 were omitted as covered by section 2101 et seq. of this title.

In subsection (4), which is based on section 227a of title 28, U.S.C., 1940 ed., words "civil actions" were substituted for "suits in equity" and word "judgments" was substituted for "decree," in view of Rules 2 and 54 of the Federal Rules of Civil Procedure.

The provision of sections 227 and 227a of title 28, U.S.C., 1940 ed., that appeal must be taken within thirty days after entry of order, decree or judgment is incorporated in section 2107 of this title.

The provisions of section 227a of title 28, U.S.C., 1940 ed., relating to stay of proceedings pending appeal, were omitted as superseded by Rule 73 of the Federal Rules of Civil Procedure.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term "district courts of the United States." (See definitive section 451 of this title.) Consequently the specific reference in section 225 of title 28, U.S.C., 1940 ed., to "the United States district courts for Hawaii" was omitted.

The District Court for the District of Puerto Rico is not enumerated in section 225(b) of title 28, U.S.C., 1940

ed., nevertheless subsection (2) of the revised section does not except such court. Thus in conformity with the last sentence of section 864, title 48, U.S.C., 1940 ed. For distribution of said section 864, see Distribution Table.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1294 of this title.

AMENDMENTS

1992—Subsec. (d)(2). Pub. L. 102–572, §§902(b)(1), 906(c), substituted ''When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims'' for ''When any judge of the United States Claims Court''.

Subsec. (d)(3). Pub. L. 102–572, §902(b)(2), substituted ''Court of Federal Claims'' for ''Claims Court'' in two places.

Subsec. (d)(4). Pub. L. 102–572, §902(b), substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in subpar. (A) and ''Court of Federal Claims'' for ''Claims Court'' in two places in subpar. (B).

Subsec. (e). Pub. L. 102–572, §101, added subsec. (e).

1988—Subsec. (d)(4). Pub. L. 100–702 added par. (4).

1984—Subsec. (b). Pub. L. 98–620, §412(a), inserted ''which would have jurisdiction of an appeal of such action'' after ''The Court of Appeals''.

Subsec. (c)(1). Pub. L. 98–620, §412(b), inserted ''or (b)'' after ''(a)''.

1982—Subsec. (a). Pub. L. 97–164, §125(a)(1), substituted ''Except as provided in subsections (c) and (d) of this section, the courts'' for ''The courts'' in introductory provisions.

Subsec. (a)(4). Pub. L. 97–164, §125(a)(2), (3), struck out par. (4) which related to judgments in civil actions for patent infringement which were final except for accounting.

Subsecs. (c), (d). Pub. L. 97–164, §125(b), added subsecs. (c) and (d).

1958—Pub. L. 85–919 designated existing provisions as subsec. (a) and added subsec. (b).

Par. (1). Pub. L. 85–508 struck out reference to District Court for Territory of Alaska. See section 81A of this title which established a United States District Court for the State of Alaska.

1951—Par. (1). Act Oct. 31, 1951, inserted reference to District Court of Guam.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 101 of Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

Amendment by sections 902(b) and 906(c) of 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 this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 502 of title V of Pub. L. 100–702 provided that: ''The amendment made by section 501 [amending this section] shall apply to any action commenced in the district court on or after the date of enactment of this title [Nov. 19, 1988].''

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 this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 3831 and 3841 to 3843 of Title 22, Foreign Relations and Intercourse.

FEDERAL RULES OF CIVIL PROCEDURE

Stay of proceedings on appeal, see rule 62, Appendix to this title.

CROSS REFERENCES

Direct review in Supreme Court, see section 1253 of this title.

Time for appeal, see section 2107 of this title.

Writs in aid of jurisdiction, power to issue, see section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256, 798, 1291, 1294, 1295, 1334, 1452 of this title; title 9 section 15; title 11 section 305; title 15 sections 29, 78aa, 79y, 80a–43, 80b–14; title 16 sections 825p, 1456; title 18 section 3626; title 42 section 2000e–5; title 45 sections 719, 743, 1105.

[§ 1293. Repealed. Pub. L. 87–189, § 3, Aug. 30, 1961, 75 Stat. 417]

Section, acts June 25, 1948, ch. 646, 62 Stat. 929; Mar. 18, 1959, Pub. L. 86–3, §14(b), 73 Stat. 10, provided for appeal from supreme court of Puerto Rico to court of appeals for first circuit. See section 1258 of this title.

A subsequent section 1293, added Pub. L. 95–598, title II, §236(a), Nov. 6, 1978, 92 Stat. 2667, which related to bankruptcy appeals, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1294. Circuits in which decisions reviewable

Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;

(2) From the United States District Court for the District of the Canal Zone, to the Court of Appeals for the Fifth Circuit;

(3) From the District Court of the Virgin Islands, to the Court of Appeals for the Third Circuit;

(4) From the District Court of Guam, to the Court of Appeals for the Ninth Circuit.

(June 25, 1948, ch. 646, 62 Stat. 930; Oct. 31, 1951, ch. 655, §50(a), 65 Stat. 727; Pub. L. 85–508, §12(g), July 7, 1958, 72 Stat. 348; Pub. L. 86–3, §14(c), Mar. 18, 1959, 73 Stat. 10; Pub. L. 87–189, §5, Aug. 30, 1961, 75 Stat. 417; Pub. L. 95–598, title II, §237, Nov. 6, 1978, 92 Stat. 2667; Pub. L. 97–164, title I, §126, Apr. 2, 1982, 96 Stat. 37.)

HISTORICAL AND REVISION NOTES

Based on section 1141(b)(1)(2)(3) of title 26, U.S.C., 1940 ed., Internal Revenue Code, title 28, U.S.C., 1940 ed., §225(d) and sections 645, 864, 865, 1356, and 1392 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and section 61 of title 7 of the Canal Zone Code (Apr. 12, 1900, ch. 191, §35, 31 Stat. 85; Mar. 3, 1911, ch. 231, §128, 36 Stat. 1133; Aug. 24, 1912, ch. 390, §9, 37 Stat. 566; Mar. 2, 1917, ch. 145, §§42, 43, 39 Stat. 966; Mar. 3, 1917, ch. 171, §2, 39 Stat. 1132; Sept. 21, 1922, ch. 370, §3, 42 Stat. 1006; Feb. 13, 1925, ch. 229, §§1, 13, 43 Stat. 936, 942; Feb. 26, 1926, ch. 27, §1002, 44 Stat. 110; Jan. 31, 1928, ch. 14, §1,

45 Stat. 54; May 17, 1932, ch. 190, 47 Stat. 158; Feb. 16, 1933, ch. 91, §3, 47 Stat. 817; May 10, 1934, ch. 277, §519, 48 Stat. 760; Feb. 10, 1939, ch. 2, §1141(b)(1)(2)(3), 53 Stat. 164).

Section consolidates the venue provisions of sections 645, 864, 1356, and 1392 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions with sections 1141(b)(1)(2)(3) to title 26, U.S.C., 1940 ed., Internal Revenue and sections 225(d) and 865 of said title 48. Other provisions of said section 864, not incorporated in this section and sections 41 and 119 of this title, were retained in title 48. Other provisions of said section 1356 are incorporated in section 1291 of this title. Other provisions of said section 1392 were also retained in title 48.

Paragraph (3) of section 1141(b) of title 26, U.S.C., 1940 ed., was omitted as executed. It made such subsection applicable to all decisions of the Board of Tax Appeals (Tax Court) rendered on and after May 10, 1934.

Provisions of section 225(d) of title 28, U.S.C., 1940 ed., for review of the decisions of the United States Court for China were omitted. (See reviser's note under section 411 of this title.)

Subsection (b) rephrases and rearranges the relevant provisions of section 1141(b)(1)(2)(3) of title 26, U.S.C., 1940 ed.

Specific reference to the United States district courts for the districts of Hawaii, Puerto Rico and District of Columbia was omitted as unnecessary, these courts being embraced in the definition of ''a district court of the United States'' contained in section 451 of this title.

Administrative orders, referred to in reviser's note under section 1291 of this title, are reviewable and enforceable in the following circuits:

ORDERS REVIEWABLE

(1) Alcoholic permit orders—in the District of Columbia or in the circuit where the applicant or permittee resides or has his principal place of business;

(2) Antitrust and unfair trade orders—in the circuit where unlawful act occurred or petitioner resides or carries on business;

(3) Bridge alteration; cost orders—in the circuit where bridge is wholly or partly located;

(4) Civil aeronautics orders—in the District of Columbia or circuit where petitioner resides or has his principal place of business;

(5) Commodity exchange orders—in the circuit where board of trade has its principal place of business or in circuit where petitioner for review of exclusion order carries on business;

(6) Electric and water power orders—in the District of Columbia or circuit where licensee or public utility to which order relates is located or has its principal place of business;

(7) Food, drug and cosmetic orders—in the circuit where person adversely affected resides or has his principal place of business;

(8) Gas orders—in the District of Columbia or circuit where company to which order relates is located or has its principal place of business;

(9) National Labor Relations Board's final orders—in the District of Columbia or circuit where unfair labor practice occurred or violator resides or transacts business;

(10) Packers cease and desist orders—in the circuit where packer has his principal place of business;

(11) Radio license decisions—in the District of Columbia;

(12) Securities and Exchange Commission orders—in the District of Columbia or circuit where petitioner resides or has his principal place of business;

(13) Seed orders—in the circuit where violator resides or has his principal place of business;

(14) Wage orders—in the District of Columbia or circuit where petitioner resides or has his principal place of business;

(15) Foreign Trade Zones Board orders—in the circuit where the Zone is located;

(16) Customhouse broker licenses—in circuit where applicant or licensee resides or has his principal place of business.

ORDERS ENFORCEABLE

(1) Antitrust and unfair trade orders—in the circuit where unlawful act occurred or person allegedly committing unlawful act resides or carries on business;

(2) National Labor Relations Board's final orders—in the circuit where unfair labor practice occurred or violator resides or transacts business;

(3) Seed orders—in the circuit where violator resides or has his principal place of business.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1292 of this title.

Changes were made in phraseology.

By Senate amendment, this section was renumbered ''1294'', and subsec. (b), which related to the Tax Court, was eliminated. Therefore, as finally enacted, section 1141(b)(1)(2)(3) of Title 26, U.S.C., Internal Revenue Code 1939, was not one of the sources of this section. The Senate amendments also eliminated section 1141 of the Internal Revenue Code 1939 from the schedule of repeals. See Senate Report No. 1559.

AMENDMENTS

1982—Pub. L. 97–164 substituted ''Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions'' for ''Appeals from reviewable decisions'' in introductory provisions.

1978—Pub. L. 95–598 directed the amendment of section by substituting ''district, bankruptcy, and territorial'' for ''district and territorial'' and by adding pars. (5) and (6) relating to panels designated under section 160(a) of this title and bankruptcy courts, respectively, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1961—Pars. (4), (5). Pub. L. 87–189 redesignated par. (5) as (4) and repealed former par. (4) which provided that appeals from the Supreme Court of Puerto Rico should be taken to the Court of Appeals for the First Circuit. See section 1258 of this title.

1959—Pars. (4) to (6). Pub. L. 86–3 redesignated pars. (5) and (6) as (4) and (5), respectively, and repealed former par. (4) which provided that appeals from the Supreme Court of Hawaii should be taken to the Court of Appeals for the Ninth Circuit. See section 91 of this title and notes thereunder.

1958—Par. (2). Pub. L. 85–508 redesignated par. (3) as (2) and repealed former par. (2) which provided that appeals from the District Court for the Territory of Alaska or any division thereof should be taken to the Court of Appeals for the Ninth Circuit. See section 81A of this title which establishes a United States District Court for the State of Alaska.

Pars. (3) to (7). Pub. L. 85–508 redesignated pars. (4) to (7) as (3) to (6), respectively.

1951—Par. (7). Act Oct. 31, 1951, added par. (7).

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 this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–3 effective on admission of State of Hawaii into the Union, see note set out under section 91 of this title. Admission of Hawaii into the Union was accomplished Aug. 25, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 25 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as notes preceding section 491 of Title 48, Territories and Insular Possessions.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc.

No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Administrative orders, circuits where reviewable and enforceable, see reviser's note for this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1295 of this title; title 15 sections 77v, 78aa, 79y, 80a–43, 80b–14; title 45 sections 719, 743, 1105.

§ 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—

(1) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1338 of this title, except that a case involving a claim arising under any Act of Congress relating to copyrights, exclusive rights in mask works, or trademarks and no other claims under section 1338(a) shall be governed by sections 1291, 1292, and 1294 of this title;

(2) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), 1346(e), or 1346(f) of this title or under section 1346(a)(2) when the claim is founded upon an Act of Congress or a regulation of an executive department providing for internal revenue shall be governed by sections 1291, 1292, and 1294 of this title;

(3) of an appeal from a final decision of the United States Court of Federal Claims;

(4) of an appeal from a decision of—

(A) the Board of Patent Appeals and Interferences of the Patent and Trademark Office with respect to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and any such appeal shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;

(B) the Commissioner of Patents and Trademarks or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. 1071); or

(C) a district court to which a case was directed pursuant to section 145 or 146 of title 35;

(5) of an appeal from a final decision of the United States Court of International Trade;

(6) to review the final determinations of the United States International Trade Commission relating to unfair practices in import trade, made under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337);

(7) to review, by appeal on questions of law only, findings of the Secretary of Commerce under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (relating to importation of instruments or apparatus);

(8) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461);

(9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5;

(10) of an appeal from a final decision of an agency board of contract appeals pursuant to section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1));

(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

(14) of an appeal under section 523 of the Energy Policy and Conservation Act.

(b) The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the Federal Circuit for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)). The head of each executive department or agency shall make any referral under this section within one hundred and twenty days after the receipt of a copy of the final appeal decision.

(c) The Court of Appeals for the Federal Circuit shall review the matter referred in accordance with the standards specified in section 10(b) of the Contract Disputes Act of 1978. The court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.

(Added Pub. L. 97–164, title I, § 127(a), Apr. 2, 1982, 96 Stat. 37; amended Pub. L. 98–622, title II, § 205(a), Nov. 8, 1984, 98 Stat. 3388; Pub. L. 100–418,

title I, § 1214(a)(3), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 100–702, title X, § 1020(a)(3), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 102–572, title I, § 102(c), title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4507, 4516.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a)(7), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

Section 211 of the Economic Stabilization Act of 1970, referred to in subsec. (a)(11), is section 211 of Pub. L. 91–379, title II, as amended, formerly set out as an Economic Stabilization Program note under section 1904 of Title 12, Banks and Banking.

Section 5 of the Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(12), is section 5 of Pub. L. 93–159, as amended, which was classified to section 754 of Title 15, Commerce and Trade, and was omitted from the Code.

Section 506(c) of the Natural Gas Policy Act of 1978, referred to in subsec. (a)(13), is classified to section 3416(c) of Title 15.

Section 523 of the Energy Policy and Conservation Act, referred to in subsec. (a)(14), is classified to section 6393 of Title 42, The Public Health and Welfare.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–572, § 902(b)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (a)(11) to (14). Pub. L. 102–572, § 102(c), added pars. (11) to (14).

1988—Subsec. (a)(1). Pub. L. 100–702 inserted '', exclusive rights in mask works,'' after ''copyrights''.

Subsec. (a)(7). Pub. L. 100–418 substituted ''U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States'' for ''headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States''.

1984—Subsec. (a)(4)(A). Pub. L. 98–622 substituted ''Patent Appeals and'' for ''Appeals or the Board of Patent''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 102(c) of Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

Amendment by section 902(b)(1) of 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 this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–622 applicable to all United States patents granted before, on, or after Nov. 8, 1984, and to all applications for United States patents pending on or filed after that date, except as otherwise provided, see section 106 of Pub. L. 98–622, set out as a note under section 103 of Title 35, Patents.

Amendment by Pub. L. 98–622 effective three months after Nov. 8, 1984, see section 207 of Pub. L. 98–622, set out as a note under section 7 of Title 35.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

ABOLITION OF TEMPORARY EMERGENCY COURT OF APPEALS

Section 102(d), (e) of Pub. L. 102–572 provided that:

''(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 [Pub. L. 91–379, formerly set out as a note under section 1904 of Title 12, Banks and Banking] is abolished, effective 6 months after the date of the enactment of this Act [Oct. 29, 1992].

''(e) PENDING CASES.—(1) Any appeal which, before the effective date of abolition described in subsection (d), is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

''(2) Any case which, before the effective date of abolition described in subsection (d), has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and, notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.''

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1291, 1292, 1294 of this title; title 41 section 607.

§ 1296. Review of certain agency actions

(a) JURISDICTION.—Subject to the provisions of chapter 179, the United States Court of Appeals for the Federal Circuit shall have jurisdiction over a petition for review of a final decision under chapter 5 of title 3 of—

(1) an appropriate agency (as determined under section 454 of title 3);

(2) the Federal Labor Relations Authority made under part D of subchapter II of chapter 5 of title 3, notwithstanding section 7123 of title 5; or

(3) the Secretary of Labor or the Occupational Safety and Health Review Commission, made under part C of subchapter II of chapter 5 of title 3.

(b) FILING OF PETITION.—Any petition for review under this section must be filed within 30 days after the date the petitioner receives notice of the final decision.

(Added Pub. L. 104–331, § 3(a)(1), Oct. 26, 1996, 110 Stat. 4068.)

PRIOR PROVISIONS

A prior section 1296, added Pub. L. 97–164, title I, § 127(a), Apr. 2, 1982, 96 Stat. 39, related to precedence of cases in United States Court of Appeals for the Federal Circuit, prior to repeal by Pub. L. 98–620, title IV, § 402(29)(C), Nov. 8, 1984, 98 Stat. 3359.

EFFECTIVE DATE

Section 3(d) of Pub. L. 104–331 provided that: ''The amendments made by this section [enacting this sec-

tion and sections 1413 and 3901 to 3908 of this title and amending sections 1346 and 2402 of this title] shall take effect on October 1, 1997.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3902, 3903, 3905 of this title; title 3 sections 425, 435, 451, 454 of this title.

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.
1330. Actions against foreign states.
1331. Federal question.
1332. Diversity of citizenship; amount in controversy; costs.
1333. Admiralty, maritime and prize cases.
1334. Bankruptcy cases and proceedings.
1335. Interpleader.
1336. Surface Transportation Board's orders.
1337. Commerce and antitrust regulations; amount in controversy, costs.
1338. Patents, plant variety protection, copyrights, mask works, trade-marks, and unfair competition.
1339. Postal matters.
1340. Internal revenue; customs duties.
1341. Taxes by States.
1342. Rate orders of State agencies.
1343. Civil rights and elective franchise.
1344. Election disputes.
1345. United States as plaintiff.
1346. United States as defendant.
1347. Partition action where United States is joint tenant.
1348. Banking association as party.
1349. Corporation organized under federal law as party.
1350. Alien's action for tort.
1351. Consuls, vice consuls, and members of a diplomatic mission as defendant.
1352. Bonds executed under federal law.
1353. Indian allotments.
1354. Land grants from different states.
1355. Fine, penalty or forfeiture.
1356. Seizures not within admiralty and maritime jurisdiction.
1357. Injuries under Federal laws.
1358. Eminent domain.
1359. Parties collusively joined or made.
1360. State civil jurisdiction in actions to which Indians are parties.
1361. Action to compel an officer of the United States to perform his duty.
1362. Indian tribes.
1363. Jurors' employment rights.
1364. Direct actions against insurers of members of diplomatic missions and their families.
1365. Senate actions.
1366. Construction of references to laws of the United States or Acts of Congress.
1367. Supplemental jurisdiction.
1368. Counterclaims in unfair practices in international trade.

AMENDMENTS

1995—Pub. L. 104–88, title III, §305(a)(4), Dec. 29, 1995, 109 Stat. 944, substituted ''Surface Transportation Board's'' for ''Interstate Commerce Commission's'' in item 1336.

1994—Pub. L. 103–465, title III, §321(b)(3)(B), Dec. 8, 1994, 108 Stat. 4947, added item 1368.

1990—Pub. L. 101–650, title III, §310(b), Dec. 1, 1990, 104 Stat. 5114, added item 1367.

1988—Pub. L. 100–702, title X, §1020(a)(7), Nov. 19, 1988, 102 Stat. 4672, substituted ''Actions'' for ''Action'' in item 1330, inserted a period after ''question'' in item 1331, substituted ''plant variety protection, copyrights, mask works, trade-marks,'' for ''copyrights, and trademarks'' in item 1338, and inserted ''and elective franchise'' in item 1343.

1986—Pub. L. 99–336, §6(a)(1)(A), June 19, 1986, 100 Stat. 638, renumbered item 1364 ''Senate actions'' and item 1364 ''Construction of references to laws of the United States or Acts of Congress'' as items 1365 and 1366, respectively.

1984—Pub. L. 98–353, title I, §101(b), July 10, 1984, 98 Stat. 333, substituted ''cases'' for ''matters'' in item 1334.

1980—Pub. L. 96–486, §2(b), Dec. 1, 1980, 94 Stat. 2369, struck out ''; amount in controversy; costs.'' after ''question'' in item 1331.

1978—Pub. L. 95–598, title II, §238(b), Nov. 6, 1978, 92 Stat. 2668, directed the substitution of ''Bankruptcy appeals'' for ''Bankruptcy matters and proceedings'' in item 1334, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Pub. L. 95–572, §6(b)(2), Nov. 2, 1978, 92 Stat. 2457, added item 1363 and redesignated former item 1363 ''Construction of references to laws of the United States or Acts of Congress'', as 1364.

Pub. L. 95–521, title VII, §705(f)(2), Oct. 26, 1978, 92 Stat. 1880, added item 1364 ''Senate actions''.

Pub. L. 95–486, §9(c), Oct. 20, 1978, 92 Stat. 1634, substituted ''Commerce and antitrust regulations; amount in controversy, costs'' for ''Commerce and antitrust regulations'' in item 1337.

Pub. L. 95–393, §§7(b), 8(a)(2), Sept. 30, 1978, 92 Stat. 810, substituted ''Consuls, vice consuls, and members of a diplomatic mission as defendant'' for ''Consuls and vice consuls as defendants'' in item 1351 and added item 1364 ''Direct actions against insurers of members of diplomatic missions and their families''.

1976—Pub. L. 94–583, §2(b), Oct. 21, 1976, 90 Stat. 2891, added item 1330.

1970—Pub. L. 91–358, title I, §172(c)(2), July 29, 1970, 84 Stat. 591, added item 1363.

1966—Pub. L. 89–635, §2, Oct. 10, 1966, 80 Stat. 880, added item 1362.

1962—Pub. L. 87–748, §1(b), Oct. 5, 1962, 76 Stat. 744, added item 1361.

1958—Pub. L. 85–554, §4, July 25, 1958, 72 Stat. 415, inserted ''costs'' in items 1331 and 1332.

1953—Act Aug. 15, 1953, ch. 505, §3, 67 Stat. 589, added item 1360.

FEDERAL RULES OF CIVIL PROCEDURE

Procedure, generally, in district courts, see Appendix to this title.

Jurisdictional grounds, statement required in claim for relief, see rule 8.

Parties, see rules 17 to 25.

Process and service, see rules 4 and 5.

FEDERAL RULES OF CRIMINAL PROCEDURE

Procedure, generally, in district courts, see Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Admiralty and maritime jurisdiction, see section 740 of Title 46, Appendix, Shipping.

Amendment of pleadings to show jurisdiction, see section 1653 of this title.

Costs on dismissal for lack of jurisdiction, see section 1919 of this title.

Criminal jurisdiction of district courts, see section 3231 et seq. of Title 18, Crimes and Criminal Procedure.

Criminal procedure, see section 3001 et seq. of Title 18.

District of Columbia district court, additional jurisdiction, see D.C. Code §11–501.

Guam, jurisdiction of district court, see section 1424 of Title 48, Territories and Insular Possessions.

Immigration, jurisdiction of district courts, see section 1329 of Title 8, Aliens and Nationality.

Jurisdiction in suits to recover share of expenses against handlers of agricultural commodities regardless of amount in controversy, see section 610 of Title 7, Agriculture.

Jurisdiction of district courts in particular matters, see table in reviser's note for section 1332 of this title.

Naturalization, judicial review by district courts of denial of application, see section 1421 of Title 8, Aliens and Nationality.

Process, see section 1691 et seq. of this title.

Removal of cases from state courts, see sections 1441 et seq. of this title.

Virgin Islands, jurisdiction of district court, see sections 1612 and 1613 of Title 48, Territories and Insular Possessions.

§ 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.

(Added Pub. L. 94–583, § 2(a), Oct. 21, 1976, 90 Stat. 2891.)

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as a note under section 1602 of this title.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(June 25, 1948, ch. 646, 62 Stat. 930; Pub. L. 85–554, § 1, July 25, 1958, 72 Stat. 415; Pub. L. 94–574, § 2, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 96–486, § 2(a), Dec. 1, 1980, 94 Stat. 2369.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Jurisdiction of federal questions arising under other sections of this chapter is not dependent upon the amount in controversy. (See annotations under former section 41 of title 28, U.S.C.A., and 35 C.J.S., p. 833 et seq., §§ 30–43. See, also, reviser's note under section 1332 of this title.)

Words "wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs," were added to conform to rulings of the Supreme Court. See construction of provision relating to jurisdictional amount requirement in cases involving a Federal question in *United States v. Sayward*, 16 S.Ct. 371, 160 U.S. 493, 40 L.Ed. 508; *Fishback v. Western Union Tel. Co.*, 16 S.Ct. 506, 161 U.S. 96, 40 L.Ed. 630; and *Halt v. Indiana Manufacturing Co.*, 1900, 20 S.Ct. 272, 176 U.S. 68, 44 L.Ed. 374.

Words "all civil actions" were substituted for "all suits of a civil nature, at common law or in equity" to conform with Rule 2 of the Federal Rules of Civil Procedure.

Words "or treaties" were substituted for "or treaties made, or which shall be made under their authority," for purposes of brevity.

The remaining provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1332, 1341, 1342, 1345, 1354, and 1359 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1980—Pub. L. 96–486 struck out "; amount in controversy; costs" in section catchline, struck out minimum amount in controversy requirement of $10,000 for original jurisdiction in federal question cases which necessitated striking the exception to such required minimum amount that authorized original jurisdiction in actions brought against the United States, any agency thereof, or any officer or employee thereof in an official capacity, struck out provision authorizing the district court except where express provision therefore was made in a federal statute to deny costs to a plaintiff and in fact impose such costs upon such plaintiff where plaintiff was adjudged to be entitled to recover less than the required amount in controversy, computed without regard to set-off or counterclaim and exclusive of interests and costs, and struck out existing subsection designations.

1976—Subsec. (a). Pub. L. 94–574 struck out $10,000 jurisdictional amount where action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

1958—Pub. L. 85–554 included costs in section catchline, designated existing provisions as subsec. (a), substituted "$10,000" for "$3,000", and added subsec. (b).

EFFECTIVE DATE OF 1980 AMENDMENT; APPLICABILITY

Section 4 of Pub. L. 96–486 provided: "This Act [amending this section and section 2072 of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 1 of this title] shall apply to any civil action pending on the date of enactment of this Act [Dec. 1, 1980]."

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85–554 provided that: "This Act [amending this section and sections 1332 and 1345 of this title] shall apply only in the case of actions commenced after the date of the enactment of this Act [July 25, 1958]."

CROSS REFERENCES

Controversies involving pollution of waters, jurisdiction of actions by States, see section 466g–1 of Title 33, Navigation and Navigable Waters.

Convention on the Settlement of Investment Disputes, exclusive jurisdiction of district courts over actions and proceedings for enforcement of arbitration awards under the Convention, regardless of amount in controversy, see section 1650a of Title 22, Foreign Relations and Intercourse.

Federal Deposit Insurance Corporation as party, see section 1819 of Title 12, Banks and Banking.

Federal reserve bank as party, see section 632 of Title 12.

International Finance Corporation as party, see section 282f of Title 22, Foreign Relations and Intercourse.

International or foreign banking transactions, see section 632 of Title 12, Banks and Banking.

Reclamation projects, compensation for rights-of-way, see section 945b of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1441 of this title; title 15 section 2064; title 22 section 6082; title 25 section 416a; title 42 section 405; title 49 section 10709.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word ''States'', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

(June 25, 1948, ch. 646, 62 Stat. 930; July 26, 1956, ch. 740, 70 Stat. 658; Pub. L. 85–554, § 2, July 25, 1958, 72 Stat. 415; Pub. L. 88–439, § 1, Aug. 14, 1964, 78 Stat. 445; Pub. L. 94–583, § 3, Oct. 21, 1976, 90 Stat. 2891; Pub. L. 100–702, title II, §§ 201(a), 202(a), 203(a), Nov. 19, 1988, 102 Stat. 4646; Pub. L. 104–317, title II, § 205(a), Oct. 19, 1996, 110 Stat. 3850.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1341, 1342, 1345, 1354, and 1359 of this title. (See reviser's notes under said sections.)

Jurisdiction conferred by other sections of this chapter, except section 1335, is not dependent upon diversity of citizenship. (See annotations under former section 41 of title 28, U.S.C.A., and 35 C.J.S., p. 833 et seq. §§ 30–43. See, also, reviser's note under section 1331 of this title.) As to citizenship of bank where jurisdiction depends upon diversity of citizenship, see section 1348 of this title.

Words ''all civil actions'' were substituted for ''all suits of a civil nature, at common law or in equity'' in order to conform to Rule 2 of the Federal Rules of Civil Procedure.

Words ''or citizens of the District of Columbia, Territory of Hawaii, or Alaska, and any State or Territory'' which were inserted by the amendatory act April 20, 1940, are omitted. The word ''States'' is defined in this section and enumeration of the references is unnecessary.

The revised section conforms with the views of Philip F. Herrick, United States Attorney, Puerto Rico, who observed that the act of April 20, 1940, permitted action between a citizen of Hawaii and of Puerto Rico, but not between a citizen of New York and Puerto Rico, in the district court.

This changes the law to insure uniformity. The 1940 amendment applied only to the provision as to controversies between ''citizens of different States.'' The new definition in subsection (b) extends the 1940 amendment to apply to controversies between citizens of the Territories or the District of Columbia, and foreign states or citizens or subjects thereof.

The diversity of citizenship language of section 41(1) of title 28, U.S.C., 1940 ed., as amended in 1940, was described as ambiguous in *McGarry v. City of Bethlehem*, 45 F.Supp. 385, 386. In that case the 1940 amendment was held unconstitutional insofar as it affected the District of Columbia. However, two other district courts upheld the amendment. *Winkler v. Daniels*, D.C.Va. 1942, 43 F.Supp. 265; *Glaeser v. Acacia Mutual Life Ass'n.*, D.C.Cal. 1944, 55 F.Supp. 925.

This section is intended to cover all diversity of citizenship instances in civil actions in accordance with the judicial construction of the language in the original section 41(1) of title 28, U.S.C., 1940 ed. Therefore, the revised language covers civil actions between—

Citizens of a State, and citizens of other States and foreign states or citizens or subjects thereof;

Citizens of a Territory or the District of Columbia, and foreign states or citizens or subjects thereof;

Citizens of different States;

Citizens of different Territories;

Citizens of a State, and citizens of Territories;

Citizens of a State or Territory, and citizens of the District of Columbia;

Citizens of a State, and foreign states or citizens or subjects thereof.

The revised section removes an uncertainty referred to in the McGarry case, supra, as to whether Congress intended to permit citizens of the Territories or the District of Columbia to sue a State or Territory itself rather than the citizens thereof. The court observed that ''Congress could hardly have had such intention.''

The sentence ''The foregoing provisions as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section'' was omitted as unnecessary. Those paragraphs are (2)–(28) of said section 41 of title 28, U.S.C., 1940 ed., which are revised and incorporated in this chapter and, except for those relating to actions against the United States and interpleader, contains no provision as to a sum or value necessary to confer jurisdiction. Consequently the omitted sentence is covered by excluding such requirement.

Section 41(1) of title 28, U.S.C., 1940 ed., as originally enacted, purported to include all jurisdictional provisions relating to the district courts. Subsequently,

many special jurisdictional provisions were enacted and incorporated in other titles of the U.S.C., 1940 ed., as follows:

Title	*Section*
7	209
7	210
7	216
7	292
7	499g
7	608a(6)
7	608c(15)(B)
7	610(b)(2)
7	648
7	1175
7	1365–1367
7	1376
7	1508(c)
8	164
8	701
8	903
9	4
9	8
9	9
11	11(a)
11	46
11	205(a)(*l*)
11	401
11	511
11	512
11	514–516
11	711
11	712
11	811
11	812
11	1011
11	1012
11	1013
11	1200
12	93
12	195
12	632
15	4
15	9
15	15
15	25
15	26
15	31
15	53
15	68e
15	77t
15	77v
15	77vvv
15	78u(e)
15	78u(f)
15	78aa
15	79k(d)(e)
15	79r(f)(g)
15	80a–25
15	80a–34
15	80a–35
15	80a–41(c)(e)
15	80a–43
15	80b–14
15	97
15	99
15	433
15	715d(c)
15	715i
15	717s
15	717u
16	10
16	583e
16	820
16	825m
16	825n
16	825p
17	26
17	34
21	193
21	332
21	355
25	314
25	345
26	3633
26	3800
27	207
29	101
29	103–109
29	160(e)
29	216
29	217
30	188
31	232
33	495
33	918
33	921
35	63
35	66
35	67
35	72a
35	90
38	445
40	257
40	270b
40	361
41	113(b)(2)
42	405(c)(5)(g)
43	546
43	1062
45	56
45	88
45	89
45	153(p)
45	159
45	185
45	228j4
45	228k
45	268
45	355(f)
46	597
46	688
46	711
46	741 et seq.
46	781 et seq.
46	941(c)
46	951
46	954
46	1114(c)
46	1128d
47	11
47	13
47	33
47	36
47	207
47	401
47	406
47	407
48	242
48	245
49	5(8)
49	9
49	16(2)
49	16(9)
49	16(12)
49	17(9)
49	19a(*l*)
49	20(9)
49	23
49	26(h)
49	41(1)(3)
49	43
49	181(b)(c)
49	305(g)
49	322(b)
49	647
49	916
49	1017
49	1021

Title	*Section*
50	23
D.C. Code	11–305—11–307
D.C. Code	11–309
D.C. Code	11–324

AMENDMENTS

1996—Subsecs. (a), (b). Pub. L. 104–317 substituted ''$75,000'' for ''$50,000''.

1988—Subsec. (a). Pub. L. 100–702, § 201(a), substituted ''$50,000'' for ''$10,000'' in introductory text.

Pub. L. 100–702, § 203(a), inserted at end ''For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.''

Subsec. (b). Pub. L. 100–702, § 201(a), substituted ''$50,000'' for ''$10,000''.

Subsec. (c). Pub. L. 100–702, § 202(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided further*, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.''

1976—Subsec. (a)(2). Pub. L. 94–583 substituted ''and citizens or subjects of a foreign state;'' for '', and foreign states or citizens or subjects thereof; and''.

Subsec. (a)(3). Pub. L. 94–583 substituted ''citizens or subjects of a foreign state are additional parties; and'' for ''foreign states or citizens or subjects thereof are additional parties''.

Subsec. (a)(4). Pub. L. 94–583 added par. (4).

1964—Subsec. (c). Pub. L. 88–439 inserted proviso deeming an insurer of liability insurance, in an action to which the insurer is not joined as a party-defendant, a citizen, of the State of which the insured is a citizen, as well as the State the insurer has been incorporated by and the State where it has its principal place of business.

1958—Pub. L. 85–554 included costs in section catchline.

Subsec. (a). Pub. L. 85–554 substituted ''$10,000'' for ''$3,000''.

Subsecs. (b) to (d). Pub. L. 85–554 added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

1956—Subsec. (b). Act July 26, 1956, included the Commonwealth of Puerto Rico.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 205(b) of Pub. L. 104–317 provided that: ''The amendment made by this section [amending this section] shall take effect 90 days after the date of enactment of this Act [Oct. 19, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 201(b) of title II of Pub. L. 100–702 provided that: ''The amendments made by this section [amending this section] shall apply to any civil action commenced on or after the 180th day after the date of enactment of this title [Nov. 19, 1988].''

Section 202(b) of title II of Pub. L. 100–702 provided that: ''The amendment made by this section [amending this section] shall apply to any civil action commenced in or removed to a United States district court on or after the 180th day after the date of enactment of this title [Nov. 19, 1988].''

Section 203(b) of title II of Pub. L. 100–702 provided that: ''The amendment made by this section [amending this section] shall apply to claims in civil actions commenced in or removed to the United States district courts on or after the 180th day after the date of enactment of this title [Nov. 19, 1988].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–583 effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1602 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–439 provided that: ''The amendment made by this Act to section 1332(c), title 28, United States Code, applies only to causes of action arising after the date of enactment of this Act [Aug. 14, 1964].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–554 applicable only in the case of actions commenced after July 25, 1958, see section 3 of Pub. L. 85–554, set out as a note under section 1331 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Defenses and objections, see rule 12, Appendix to this title.

CROSS REFERENCES

Controversies involving pollution of waters, jurisdiction of actions by States, see section 466g–1 of Title 33, Navigation and Navigable Waters.

Removal of cases from State courts, see section 1441 et seq. of this title.

Venue of actions based on diversity of citizenship, see section 1391 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1367, 1446, 1603 of this title; title 42 section 9613; title 48 sections 1424, 1612, 1822.

§ 1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

(June 25, 1948, ch. 646, 62 Stat. 931; May 24, 1949, ch. 139, § 79, 63 Stat. 101.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 41(3) and 371 (3), (4) (Mar. 3, 1911, ch. 231, §§ 24, par. 3, 256, pars. 3, 4, 36 Stat. 1091, 1160; Oct. 6, 1917, ch. 97, §§ 1, 2, 40 Stat. 395; June 10, 1922, ch. 216, §§ 1, 2, 42 Stat. 634).

Section consolidates certain provisions of sections 41(3), 371(3) and 371(4) of title 28, U.S.C., 1940 ed. Other provisions of sections 41(3) and 371(4), relating to seizures, are incorporated in section 1356 of this title. (See reviser's note thereunder.)

The ''saving to suitors'' clause in sections 41(3) and 371(3) of title 28, U.S.C., 1940 ed., was changed by substituting the words ''any other remedy to which he is otherwise entitled'' for the words ''the right of a common law remedy where the common law is competent to give it.'' The substituted language is simpler and more expressive of the original intent of Congress and is in conformity with Rule 2 of the Federal Rules of Civil Procedure abolishing the distinction between law and equity.

Provisions of section 41(3) of title 28, U.S.C., 1940 ed., based on the 1917 and 1922 amendments, relating to remedies under State workmen's compensation laws, were deleted. Such amendments were held unconstitutional by the Supreme Court. (See *Knickerbocker Ice Co.*

v. Stewart, 1920, 40 S.Ct. 438, 253 U.S. 149, 64 L.Ed. 834, and *State of Washington v. W. C. Dawson & Co.*, 1924, 44 S.Ct. 302, 264 U.S. 219, 68 L.Ed. 646.)

Words ''libellant or petitioner'' were substituted for ''suitors'' to describe moving party in admiralty cases.

Changes were made in phraseology.

1949 ACT

This section amends section 1333(a)(1) of title 28, U.S.C., by substituting ''suitors'' for ''libellant or petitioner'' to conform to the language of the law in existence at the time of the enactment of the revision of title 28.

AMENDMENTS

1949—Subd. (1). Act May 24, 1949, substituted ''suitors'' for ''libellant or petitioner''.

CROSS REFERENCES

Admiralty and maritime jurisdiction of cases of damage or injury to persons or property, caused by a vessel, whether done or consummated on land, see section 740 of Title 46, Appendix, Shipping.

Admiralty suits against United States, jurisdiction, see sections 741 et seq. and 781 et seq. of Title 46, Appendix.

Jury trial in admiralty cases, see section 1873 of this title.

Limitation of vessel owner's liability, see section 181 et seq. of Title 46, Appendix.

Prize—

Generally, see section 7651 et seq. of Title 10, Armed Forces.

Jurisdiction, see section 7652 of Title 10.

Seaman, definition of, see section 10101 of Title 46, Shipping.

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under this subsection[1] (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection[1] shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

(June 25, 1948, ch. 646, 62 Stat. 931; Pub. L. 95–598, title II, § 238(a), Nov. 6, 1978, 92 Stat. 2667; Pub. L. 98–353, title I, § 101(a), July 10, 1984, 98 Stat. 333; Pub. L. 99–554, title I, § 144(e), Oct. 27, 1986, 100 Stat. 3096; Pub. L. 101–650, title III, § 309(b), Dec. 1, 1990, 104 Stat. 5113; Pub. L. 103–394, title I, § 104(b), Oct. 22, 1994, 108 Stat. 4109.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(19) and 371(6) (Mar. 3, 1911, ch. 231, §§ 24, par. 19, 256, par. 6, 36 Stat. 1093, 1160).

Changes in phraseology were made.

AMENDMENTS

1994—Subsecs. (c)(2), (d). Pub. L. 103–394, § 104(b)(2), inserted ''(other than a decision not to abstain in a proceeding described in subsection (c)(2))'' after ''subsection'' in second sentence of subsec. (c)(2) and designated that sentence and third sentence of subsec. (c)(2) as subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–394, § 104(b)(1), redesignated subsec. (d) as (e).

1990—Subsec. (c)(2). Pub. L. 101–650 inserted in second sentence ''or not to abstain'' after ''to abstain'' and ''by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title'' before period at end.

1986—Subsec. (d). Pub. L. 99–554 substituted ''and of property of the estate'' for ''and of the estate''.

1984—Pub. L. 98–353 in amending section generally, substituted ''cases'' for ''matters'' in section catchline, designated existing provision as subsec. (a), and in subsec. (a) as so designated, substituted ''Except as provided in subsection (b) of this section, the district'' for ''The district'' and ''original and exclusive jurisdiction of all cases under title 11'' for ''original jurisdiction, exclusive of the courts of the States, of all matters and proceedings in bankruptcy'', and added subsecs. (b) to (d).

1978—Pub. L. 95–598 directed the general amendment of section to relate to bankruptcy appeals, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective July 10, 1984, except that subsec. (c)(2) not applicable with respect to

[1] So in original. Probably should be a reference to subsection (c). See 1994 Amendment note below.

cases under Title 11, Bankruptcy, that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a), (b) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

JURISDICTION OVER AND TRANSFER OF BANKRUPTCY CASES AND PROCEEDINGS

Section 115 of Pub. L. 98–353 provided that:

''(a) On the date of the enactment of this Act [July 10, 1984] the appropriate district court of the United States shall have jurisdiction of—

''(1) cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11, Bankruptcy] that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2687) [formerly set out as a note preceding section 151 of this title], and

''(2) cases under title 11 of the United States Code, and proceedings arising under title 11 of the United States Code or arising in or related to cases under title 11 of the United States Code, that are pending immediately before such date in the bankruptcy courts continued by section 404(a) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2687).

''(b) On the date of the enactment of this Act [July 10, 1984], there shall be transferred to the appropriate district court of the United States appeals from final judgments, orders, and decrees of the bankruptcy courts pending immediately before such date in the bankruptcy appellate panels appointed under section 405(c) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2685) [formerly set out as a note preceding section 1471 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 156, 157, 1452 of this title.

§ 1335. Interpleader

(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(June 25, 1948, ch. 646, 62 Stat. 931.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(26) (Mar. 3, 1911, ch. 231, § 24, par. 26, as added Jan. 20, 1936, ch. 13, § 1, 49 Stat. 1096).

Words ''civil action'' were substituted for ''suits in equity''; word ''plaintiff'' was substituted for ''complainant''; and word ''judgment'' was substituted for ''decree,'' in order to make the language of this section conform with the Federal Rules of Civil Procedure.

The words ''duly verified'' following ''in the nature of interpleader,'' near the beginning of the section, were omitted. Under Rule 11 of the Federal Rules of Civil Procedure pleadings are no longer required to be verified or accompanied by affidavit unless specially required by statute. Although verification was specially required by section 41(26) of title 28, U.S.C., 1940 ed., the need therefor is not apparent.

Provisions of section 41(26)(b) of title 28, U.S.C., 1940 ed., relating to venue are the basis of section 1397 of this title. (See, also, reviser's note under said section.)

Subsections (c) and (d) of said section 41(26) relating to issuance of injunctions constitute section 2361 of this title. (See reviser's note under said section.)

Subsection (e) of such section 41(26), relating to defense in nature of interpleader and joinder of additional parties, was omitted as unnecessary, such matters being governed by the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Interpleader, injunctions and deposit in court, see rules 22, 65, and 67, Appendix to this title.

Form of complaint, see Form 18, Appendix to rules.

CROSS REFERENCES

Actions on war risk insurance claims, see section 1292 of Title 46, Appendix, Shipping.

Interpleader actions—

Process and procedure, see section 2361 of this title.

Venue, see section 1397 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1397, 2361 of this title.

§ 1336. Surface Transportation Board's orders

(a) Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Surface Transportation Board, and to enjoin or suspend, in whole or in part, any order of the Surface Transportation Board for the payment of money or the collection of fines, penalties, and forfeitures.

(b) When a district court or the United States Court of Federal Claims refers a question or issue to the Surface Transportation Board for determination, the court which referred the question or issue shall have exclusive jurisdiction of a civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, any order of the Surface Transportation Board arising out of such referral.

(c) Any action brought under subsection (b) of this section shall be filed within 90 days from the date that the order of the Surface Transportation Board becomes final.

(June 25, 1948, ch. 646, 62 Stat. 931; Pub. L. 88–513, § 1, Aug. 30, 1964, 78 Stat. 695; Pub. L. 93–584, § 1,

Jan. 2, 1975, 88 Stat. 1917; Pub. L. 97–164, title I, § 128, Apr. 2, 1982, 96 Stat. 39; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–88, title III, § 305(a)(1), (2), Dec. 29, 1995, 109 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(27), (28) (Mar. 3, 1911, ch. 231, §§ 24(27), (28), 207, 36 Stat. 1091, 1148; Oct. 22, 1913, ch. 32, 38 Stat. 219).

Words ''Except as otherwise provided by enactment of Congress'' were inserted because of certain similar cases of which the courts of appeals are given jurisdiction. (See, for example, section 21 of title 15, U.S.C., 1940 ed., Commerce and Trade.)

Words ''any civil action'' were substituted for ''all cases'' and ''cases'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1995—Pub. L. 104–88 substituted ''Surface Transportation Board's'' for ''Interstate Commerce Commission's'' in section catchline and ''Surface Transportation Board'' for ''Interstate Commerce Commission'' wherever appearing in text.

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''.

1975—Subsec. (a). Pub. L. 93–584 substituted provisions that the district courts shall have jurisdiction of civil actions to enforce, in whole or in part, orders of the Interstate Commerce Commission, and to enjoin or suspend, in whole or in part, any order of the Interstate Commerce Commission for the payment of money or the collection of fines, penalties, and forfeitures, for provisions that the district courts shall have jurisdiction of civil actions to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission.

1964—Pub. L. 88–513 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

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 this title.

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 this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.

CROSS REFERENCES

Procedure for enforcement and review of Surface Transportation Board orders, see section 2321 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1398 of this title.

§ 1337. Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however*, That the district courts shall have original jurisdiction of an action brought under section 11706 or 14706 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 11706 or 14706 of title 49, originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.

(June 25, 1948, ch. 646, 62 Stat. 931; Pub. L. 95–486, § 9(a), Oct. 20, 1978, 92 Stat. 1633; Pub. L. 96–417, title V, § 505, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 97–449, § 5(f), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 104–88, title III, § 305(a)(3), Dec. 29, 1995, 109 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(8), (23) (Mar. 3, 1911, ch. 231, § 24, pars. 8, 23, 36 Stat. 1092, 1093; Oct. 22, 1913, ch. 32, 38 Stat. 219).

Words ''civil action'' were substituted for ''suits'', in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1995—Subsecs. (a), (b). Pub. L. 104–88 substituted ''11706 or 14706'' for ''11707''.

1983—Pub. L. 97–449 substituted ''section 11707 of title 49'' for ''section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319)'' wherever appearing.

1980—Subsec. (c). Pub. L. 96–417 added subsec. (c).

1978—Pub. L. 95–486 designated existing provisions as subsec. (a), inserted proviso giving the district courts original jurisdiction of actions brought under sections 20(11) and 219 of the Interstate Commerce Act when the amounts in controversy for each receipt exceed $10,000, exclusive of interests and costs, and added subsec. (b).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 sections 607, 609; title 49 section 10709.

§ 1338. Patents, plant variety protection, copyrights, mask works, trade-marks, and unfair competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trade-mark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.

(June 25, 1948, ch. 646, 62 Stat. 931; Pub. L. 91–577, title III, § 143(b), Dec. 24, 1970, 84 Stat. 1559; Pub. L. 100–702, title X, § 1020(a)(4), Nov. 19, 1988, 102 Stat. 4671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(7) and 371(5) (Mar. 3, 1911, ch. 231, §§ 24, par. 7, 256, par. 5, 36 Stat. 1092, 1160).

Section consolidates section 41(7) with section 371 (5) of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Words ''of any civil action'' were substituted for ''all suits at law or in equity'' and ''cases'' to conform section to Rule 2 of the Federal Rules of Civil Procedure.

Word ''patents'' was substituted for ''patent-right'' in said section 371 (Fifth) of title 28, U.S.C., 1940 ed.

Similar provisions respecting suits cognizable in district courts, including those of territories and possessions. (See section 34 of title 17, U.S.C., 1940 ed., Copyrights.)

Subsection (b) is added and is intended to avoid ''piecemeal'' litigation to enforce common-law and statutory copyright, patent, and trade-mark rights by specifically permitting such enforcement in a single civil action in the district court. While this is the rule under Federal decisions, this section would enact it as statutory authority. The problem is discussed at length in *Hurn v. Oursler* (1933, 53 S.Ct. 586, 289 U.S. 238, 77 L.Ed. 1148) and in *Musher Foundation v. Alba Trading Co.* (C.C.A. 1942, 127 F.2d 9) (majority and dissenting opinions).

AMENDMENTS

1988—Pub. L. 100–702, § 1020(a)(4)(B), amended section catchline generally, inserting ''mask works,'' after ''copyrights,''.

Subsec. (c). Pub. L. 100–702, § 1020(a)(4)(A), added subsec. (c).

1970—Pub. L. 91–577 inserted references to ''plant variety protection'' in section catchline and in subsecs. (a) and (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–577 effective Dec. 24, 1970, see section 141 of Pub. L. 91–577, set out as an Effective Date note under section 2321 of Title 7, Agriculture.

CROSS REFERENCES

Amount in controversy under this section, see Historical and Revision Notes under section 1331 of this title.

Civil action to obtain patent or in case of interference, see sections 145 and 146 of Title 35, Patents.

Court of Federal Claims, jurisdiction of claims against United States for patent infringement, see section 1498 of this title.

Diversity of citizenship under this section, see Historical and Revision Notes under section 1332 of this title.

Foreign Assistance Act of 1961, jurisdiction and legal remedy for unauthorized use or disclosure of patents and technical information, see section 2356 of Title 22, Foreign Relations and Intercourse.

Infringements of—

- Copyrights and rights and remedies therefor, see section 501 et seq. of Title 17, Copyrights.
- Patents, see sections 271 et seq. and 281 et seq. of Title 35, Patents.
- Trade-marks, see sections 1057, 1114, 1115, and 1117 of Title 15, Commerce and Trade.

Jurisdiction of trade-mark actions, see section 1121 of Title 15.

Pleading and proof in patent actions for infringement, see section 282 of Title 35, Patents.

Venue—

- Patent or copyright actions, see section 1400 of this title.
- Trade-mark infringement action, see section 1391(b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1295 of this title.

§ 1339. Postal matters

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

(June 25, 1948, ch. 646, 62 Stat. 932.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(6) (Mar. 3, 1911, ch. 231, § 24, par. 6, 36 Stat. 1092).

Changes were made in phraseology.

CROSS REFERENCES

Amount in controversy immaterial in actions under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Postal laws in general, see Title 39, Postal Service.

§ 1340. Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

(June 25, 1948, ch. 646, 62 Stat. 932; Pub. L. 96–417, title V, § 501(21), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(5) (Mar. 3, 1911, ch. 231, § 24, par. 5, 36 Stat. 1092; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475).

Words ''Customs Court'' were substituted for ''Court of Customs and Patent Appeals.'' Section 41(5) of title 28, U.S.C., 1940 ed., is based on the Judicial Code of 1911. At that time the only court, other than the district courts, having jurisdiction of customs cases, was the Court of Customs Appeals which became the Court of Customs and Patent Appeals in 1929. The Customs Court was created in 1926 as a court of original jurisdiction over customs cases. (See reviser's note preceding section 251 of this title.)

Words ''any civil action'' were substituted for ''all cases'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1980—Pub. L. 96–417 redesignated the Customs Court as the Court of International Trade.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

CROSS REFERENCES

Action by the United States—
Collection of unpaid estate tax, see section 7404 of Title 26, Internal Revenue Code.
Enforcement of tax lien or subjection of property to payment of tax, see section 7403 of Title 26.
Recovery of erroneous tax refund, see section 7405 of Title 26.
Action to clear title to property upon which tax lien filed by United States, see section 7424 of Title 26.
Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.
Court of International Trade jurisdiction, see section 1581 et seq. of this title.
Customs officers' immunity from liability, see section 1513 of Title 19, Customs Duties.
Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.
Jurisdiction of action for refund by taxpayer against United States, see section 1346 of this title.
Prohibition of suits to restrain tax assessment or collection, see section 7421 of Title 26, Internal Revenue Code.
Venue—
Action for collection of internal revenue taxes, see section 1396 of this title.
Action for refund brought by taxpayer against collection officer, see section 1391 of this title.
Action for refund brought by taxpayer against United States, see section 1402 of this title.
Fines, penalties or forfeitures, generally, see section 1395 of this title.
Judicial action to enforce forfeiture under internal revenue laws, see section 7323 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7402.

§ 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

(June 25, 1948, ch. 646, 62 Stat. 932.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

This section restates the last sentence of section 41(1) of title 28, U.S.C., 1940 ed.

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1342, 1345, 1354, and 1359 of this title.

Words "at law or in equity" before "in the courts of such State" were omitted as unnecessary.

Words "civil action" were substituted for "suit" in view of Rule 2 of the Federal Rules of Civil Procedure.

Words "under State law" were substituted for "imposed by or pursuant to the laws of any State" for the same reason.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 sections 11501, 14502, 31706.

§ 1342. Rate orders of State agencies

The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing; and,

(4) A plain, speedy and efficient remedy may be had in the courts of such State.

(June 25, 1948, ch. 646, 62 Stat. 932.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

This section rearranges and restates the fourth sentence of section 41(1) of title 28, U.S.C., 1940 ed.

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1345, 1354, and 1359 of this title.

Words "at law or in equity" before "in the courts of such State" were omitted as unnecessary.

Words "civil action" were substituted for "suit," in view of Rule 2 of the Federal Rules of Civil Procedure.

Word "operation" was substituted for "enforcement, operation or execution" for the same reason.

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be con-

sidered to be a statute of the District of Columbia.

(June 25, 1948, ch. 646, 62 Stat. 932; Sept. 3, 1954, ch. 1263, § 42, 68 Stat. 1241; Pub. L. 85–315, part III, § 121, Sept. 9, 1957, 71 Stat. 637; Pub. L. 96–170, § 2, Dec. 29, 1979, 93 Stat. 1284.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(12), (13), and (14) (Mar. 3, 1911, ch. 231, § 24, pars. 12, 13, 14, 36 Stat. 1092).

Words ''civil action'' were substituted for ''suits,'' ''suits at law or in equity'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Numerous changes were made in arrangement and phraseology.

AMENDMENTS

1979—Pub. L. 96–170 designated existing provisions as subsec. (a) and added subsec. (b).

1957—Pub. L. 85–315 inserted ''and elective franchise'' in section catchline and added par. (4).

1954—Act Sept. 3, 1954, substituted ''section 1985 of Title 42'' for ''section 47 of Title 8'' wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 3 of Pub. L. 96–170 provided that: ''The amendments made by this Act [amending this section and section 1983 of Title 42, The Public Health and Welfare] shall apply with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after the date of the enactment of this Act [Dec. 29, 1979].''

CROSS REFERENCES

Generally, see section 1981 et seq. of Title 42, The Public Health and Welfare.

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Civil action for deprivation of civil rights, see section 1983 of Title 42, The Public Health and Welfare.

Civil action or injunction for deprivation of voting rights, see section 1971 of Title 42.

Conspiracy against rights of citizens constituting federal crime, see section 241 of Title 18, Crimes and Criminal Procedure.

Conspiracy to interfere with civil rights, see section 1985 of Title 42, The Public Health and Welfare.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 652 of this title.

§ 1344. Election disputes

The district courts shall have original jurisdiction of any civil action to recover possession of any office, except that of elector of President or Vice President, United States Senator, Representative in or delegate to Congress, or member of a state legislature, authorized by law to be commenced, where in it appears that the sole question touching the title to office arises out of denial of the right to vote, to any citizen offering to vote, on account of race, color or previous condition of servitude.

The jurisdiction under this section shall extend only so far as to determine the rights of the parties to office by reason of the denial of the right, guaranteed by the Constitution of the United States and secured by any law, to enforce the right of citizens of the United States to vote in all the States.

(June 25, 1948, ch. 646, 62 Stat. 932.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(15) (Mar. 3, 1911, ch. 231, § 24, par. 15, 36 Stat. 1092).

Words ''civil action'' were substituted for ''suits,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Words ''United States Senator'' were added, as no reason appears for including Representatives and excluding Senators. Moreover, the Seventeenth amendment, providing for the popular election of Senators, was adopted after the passage of the 1911 law on which this section is based.

Changes were made in phraseology.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Jurisdiction of action for damages for injuries in voting, see section 1357 of this title.

§ 1345. United States as plaintiff

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

(June 25, 1948, ch. 646, 62 Stat. 933.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1342, 1354, and 1359 of this title.

Words ''civil actions, suits or proceedings'' were substituted for ''suits of a civil nature, at common law or in equity'' in view of Rules 2 and 81(a)(7) of the Federal Rules of Civil Procedure.

Word ''agency'' was inserted in order that this section shall apply to actions by agencies of the Government and to conform with special acts authorizing such actions. (See definitive section 451 of this title.)

The phrase ''Except as otherwise provided by Act of Congress,'' at the beginning of the section was inserted to make clear that jurisdiction exists generally in district courts in the absence of special provisions conferring it elsewhere.

Changes were made in phraseology.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Jurisdiction of—

- Action against national banking association, see section 1348 of this title.
- Action for enforcement of fines, penalties, or forfeitures, see section 1355 of this title.
- Bonds executed under federal law, see section 1352 of this title.
- District courts in postal matters, see section 1339 of this title.

Third party tort liability for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

United States as party—

Generally, see section 2401 et seq. of this title.
Surface Transportation Board orders, see section 2322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1452, 1819, 2279aa–14.

§ 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.

(June 25, 1948, ch. 646, 62 Stat. 933; Apr. 25, 1949, ch. 92, § 2(a), 63 Stat. 62; May 24, 1949, ch. 139, § 80(a), (b), 63 Stat. 101; Oct. 31, 1951, ch. 655, § 50(b), 65 Stat. 727; July 30, 1954, ch. 648, § 1, 68 Stat. 589; Pub. L. 85–508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 88–519, Aug. 30, 1964, 78 Stat. 699; Pub. L. 89–719, title II, § 202(a), Nov. 2, 1966, 80 Stat. 1148; Pub. L. 91–350, § 1(a), July 23, 1970, 84 Stat. 449; Pub. L. 92–562, § 1, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 94–455, title XII, § 1204(c)(1), title XIII, § 1306(b)(7), Oct. 4, 1976, 90 Stat. 1697, 1719; Pub. L. 95–563, § 14(a), Nov. 1, 1978, 92 Stat. 2389; Pub. L. 97–164, title I, § 129, Apr. 2, 1982, 96 Stat. 39; Pub. L. 97–248, title IV, § 402(c)(17), Sept. 3, 1982, 96 Stat. 669; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 806], Apr. 26, 1996, 110 Stat. 1321, 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–331, § 3(b)(1), Oct. 26, 1996, 110 Stat. 4069.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 41(20), 931(a), 932 (Mar. 3, 1911, ch. 231, § 24, par. 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310(c), 42 Stat. 311; June 2, 1924, ch. 234, § 1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, §§ 410(a), 411, 60 Stat. 843).

Section consolidates provisions of section 41(20) conferring jurisdiction upon the district court, in civil actions against the United States, with the first sentence of section 931(a) relating to jurisdiction of the district courts in tort claims cases, and those provisions of section 932 making the provisions of said section 41(20), relating to counterclaim and set-off, applicable to tort claims cases, all of title 28, U.S.C., 1940 ed.

Provision in section 931(a) of title 28, U.S.C., 1940 ed., for trials without a jury, is incorporated in section 2402 of this revised title. For other provisions thereof, see Distribution Table.

Words ''commencing an action under this section'' in subsec. (c) of this revised section cover the provision in section 932 of title 28, U.S.C., 1940 ed., requiring that the same provisions ''for counterclaim and set-off'' shall apply to tort claims cases brought in the district courts.

The phrase in section 931(a) of title 28, U.S.C., 1940 ed., ''accruing on and after January 1, 1945'' was omitted because executed as of the date of the enactment of this revised title.

Provisions in section 41(20) of title 28, U.S.C., 1940 ed., relating to time for commencing action against United

States and jury trial constitute sections 2401 and 2402 of this title. (See reviser's notes under said sections.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., ''commenced after passage of the Revenue Act of 1921'' were not included in revised subsection (a)(1) because obsolete and superfluous. Actions under this section involving erroneous or illegal assessments by the collector of taxes would be barred unless filed within the 5-year limitation period of section 1113(a) of the Revenue Act of 1926, 44 Stat. 9, 116. (See *United States v. A. S. Kreider Co.*, 1941, 61 S.Ct. 1007, 313 U.S. 443, 85 L.Ed. 1447.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., ''if the collector of internal revenue is dead or is not in office at the time such action or proceeding is commenced'' were omitted.

The revised section retains the language of section 41(20) of title 28, U.S.C., 1940 ed., with respect to actions against the United States if the collector is dead or not in office when action is commenced, and consequently maintains the long existing distinctions in practice between actions against the United States and actions against the collector who made the assessment or collection. In the latter class of actions either party may demand a jury trial while jury trial is denied in actions against the United States. See section 2402 of this title. In reality all such actions are against the United States and not against local collectors. (See *Lowe v. United States*, 1938, 58 S.Ct. 896, 304 U.S. 302, 82 L.Ed. 1362; *Manseau v. United States*, D.C.Mich. 1943, 52 F.Supp. 395, and *Combined Metals Reduction Co. v. United States*, D.C.Utah 1943, 53 F.Supp. 739.)

The revised subsection (c)(1) omitted clause: ''but no suit pending on the 27th day of June 1898 shall abate or be affected by this provision,'' contained in section 41(20) of title 28, U.S.C., 1940 ed., as obsolete and superfluous. The words contained in section 41(20) of title 28, U.S.C., 1940 ed., ''claims growing out of the Civil War, and commonly known as 'war-claims,' or to hear and determine other claims which had been reported adversely prior to the 3d day of March 1887 by any court, department, or commission authorized to have and determine the same,'' were omitted for the same reason.

The words ''in a civil action or in admiralty,'' in subsection (a)(2), were substituted for ''either in a court of law, equity, or admiralty'' to conform to Rule 2 of the Federal Rules of Civil Procedure.

Words in section 41(20) ''in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable'' were omitted from subsection (a)(2) of this revised section as unnecessary. See reviser's note under section 1491 of this title.

For jurisdiction of The Tax Court to review claims for refunds of processing taxes collected under the unconstitutional Agriculture Adjustment Act, see sections 644–659 of title 7, U.S.C., 1940 ed., Agriculture, and the 1942 Revenue Act, Act Oct. 21, 1942, ch. 610, title V, § 510(a), (c), (d), 56 Stat. 667. (See, also, *Lamborn v. United States*, C.C.P.A. 1939, 104 F.2d 75, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.)

See, also, reviser's note under section 1491 of this title as to jurisdiction of the Court of Claims in suits against the United States generally. For venue of actions under this section, see section 1402 of this title and reviser's note thereunder.

Minor changes were made in phraseology.

SENATE REVISION AMENDMENT

The provision of title 28, U.S.C., § 932, which related to application of the Federal Rules of Civil Procedure, were originally set out in section 2676 of this revised title, but such section 2676 was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559, amendment No. 61.

1949 ACT

This section corrects typographical errors in section 1346(a)(1) of title 28, U.S.C., and in section 1346(b) of such title.

REFERENCES IN TEXT

The internal-revenue laws, referred to in subsec. (a)(1), are classified generally to Title 26, Internal Revenue Code.

Sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978, referred to in subsec. (a)(2), are classified to sections 607(g)(1) and 609(a)(1) of Title 41, Public Contracts.

Sections 6226, 6228(a), 7426, 7428, and 7429 of the Internal Revenue Code of 1986, referred to in subsec. (e), are classified to sections 6226, 6228(a), 7426, 7428, and 7429, respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–134 designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 104–331 added subsec. (g).

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1982—Subsec. (a). Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

Subsec. (e). Pub. L. 97–248 substituted ''section 6226, 6228(a), 7426, or'' for ''section 7426 or section''.

1978—Subsec. (a)(2). Pub. L. 95–563 excluded from the jurisdiction of district courts civil actions or claims against the United States founded upon any express or implied contract with the United States or for damages in cases not sounding in tort subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978.

1976—Subsec. (e). Pub. L. 94–455 inserted ''or section 7429'' and ''or section 7428 (in the case of the United States district court for the District of Columbia)'', after ''section 7426''.

1972—Subsec. (f). Pub. L. 92–562 added subsec. (f).

1970—Subsec. (a)(2). Pub. L. 91–350 specified that the term ''express or implied contracts with the United States'' includes express or implied contracts with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.

1966—Subsec. (e). Pub. L. 89–719 added subsec. (e).

1964—Subsec. (d). Pub. L. 88–519 struck out provisions which prohibited district courts from exercising jurisdiction of civil actions or claims to recover fees, salary, or compensation for official services of officers or employees of the United States.

1958—Subsec. (b). Pub. L. 85–508 struck out reference to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954—Subsec. (a)(1). Act July 30, 1954, struck out language imposing jurisdictional limitation of $10,000 on suits to recover taxes.

1951—Subsec. (d). Act Oct. 31, 1951, inserted references to ''claim'' and ''employees''.

1949—Subsec. (a)(1). Act May 24, 1949, § 80(a), inserted '', (i) if the claim does not exceed $10,000 or (ii)''.

Subsec. (b). Acts Apr. 25, 1949, and May 24, 1949, § 80(b), made a technical change to correct ''chapter 173'' to read ''chapter 171'', and inserted ''on and after January 1, 1945'' after ''for money damages''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as an Effective Date note under section 1296 of this title.

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 this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with

provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of Title 26, Internal Revenue Code.

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 this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91–350 provided that:

''(a) In addition to granting jurisdiction over suits brought after the date of enactment of this Act [July 23, 1970], the provisions of this Act [amending this section and section 1491 of this title and section 724a of former Title 31, Money and Finance] shall also apply to claims and civil actions dismissed before or pending on the date of enactment of this Act if the claim or civil action is based upon a transaction, omission, or breach that occurred not more than six years prior to the date of enactment of this Act [July 23, 1970].

''(b) The provisions of subsection (a) of this section shall apply notwithstanding a determination or judgment made prior to the date of enactment of this Act that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States described in section 1 of this Act.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 203 of title II of Pub. L. 89–719 provided that: ''The amendments made by this title [amending this section and sections 1402 and 2410 of this title] shall apply after the date of the enactment of this Act [Nov. 2, 1966].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

FEDERAL RULES OF CIVIL PROCEDURE

Costs where United States is party, see rule 54, Appendix to this title.

CROSS REFERENCES

Costs where United States is party, see section 2412 of this title.

Court of Federal Claims jurisdiction, see section 1491 et seq. of this title.

Interest on judgments against United States, see section 2411 of this title.

Jury trial denied in actions under this section, see section 2402 of this title.

Nuclear incident involving nuclear reactor of United States warship, payment of claims or judgments for bodily injury, death, or damage resulting from, see section 2211 of Title 42, The Public Health and Welfare.

Remedy under this section for damages caused by operation of motor vehicles by Government employees to be exclusive of any other civil action or proceeding, see section 2679 of this title.

Tax Court jurisdiction, see section 7441 et seq. of Title 26, Internal Revenue Code.

Time for commencing action against United States, see section 2401 of this title.

Tort claims procedure, see section 2671 et seq. of this title.

Venue of actions against United States, see section 1402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 995, 1295, 1402, 1413, 2402, 2409a, 2671, 2676, 2677, 2678, 2679, 2680, 3901, 3902, 3903, 3905 of this title; title 2 section 190g; title 3 sections 435, 451, 453; title 5 sections 3373, 3374, 8477; title 10 sections 1054, 1089; title 14 sections 821, 823a; title 16 section 450ss–3; title 22 sections 2702, 3761, 4606; title 23 section 307; title 25 sections 640d–17, 1680c; title 26 section 7422; title 29 section 938; title 32 section 509; title 38 sections 515, 1151, 7316; title 41 sections 113, 602; title 42 sections 233, 405, 2212, 2221, 2223, 2458a, 4654, 5055; title 43 section 1737; title 46 App. section 1242; title 47 section 606; title 48 section 1905; title 49 section 44309; title 50 App. sections 9, 2410.

§ 1347. Partition action where United States is joint tenant

The district courts shall have original jurisdiction of any civil action commenced by any tenant in common or joint tenant for the partition of lands where the United States is one of the tenants in common or joint tenants.

(June 25, 1948, ch. 646, 62 Stat. 933.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(25) (Mar. 3, 1911, ch. 231, § 24, par. 25, 36 Stat. 1094).

The venue provision in section 41(25) of title 28, U.S.C., 1940 ed., is incorporated in section 1399 of this title.

Words ''civil action'' were substituted for ''suits in equity,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

A change was made in phraseology.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Venue of action for partition of lands where United States is tenant in common or joint tenant, see section 1399 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409a of this title.

§ 1348. Banking association as party

The district courts shall have original jurisdiction of any civil action commenced by the United States, or by direction of any officer thereof, against any national banking associa-

tion, any civil action to wind up the affairs of any such association, and any action by a banking association established in the district for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.

All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.

(June 25, 1948, ch. 646, 62 Stat. 933.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(16) (Mar. 3, 1911, ch. 231, § 24, par. 16, 36 Stat. 1092).

Words ''any civil action'' were substituted for ''all cases,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Words ''real, personal, or mixed, and all suits in equity,'' after ''all other actions by or against them,'' were omitted as superfluous.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

CROSS REFERENCES

Amount in controversy—
- Immaterial in action other than on diverse citizenship, see Historical and Revision Notes under section 1331 of this title.
- Required in diverse citizenship action under this section, see Historical and Revision Notes under section 1332 of this title.

Jurisdiction of action by or against—
- Federal reserve bank, see section 632 of Title 12.
- Liquidating agent of national bank, see section 197 of Title 12.
- National bank receiver, see section 1345 of this title.

Powers of conservator of national bank, see section 203 of Title 12, Banks and Banking.

Prohibition on state court from enjoining national bank, see section 91 of Title 12.

Venue of action—
- Against national banking association, see section 94 of Title 12.
- By banking association to enjoin the Comptroller of the Currency, see section 1394 of this title.

§ 1349. Corporation organized under federal law as party

The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 42 (Feb. 13, 1925, ch. 229, § 12, 43 Stat. 941).

Words ''civil action'' were substituted for ''action or suit,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Minor changes were made in phraseology.

CROSS REFERENCES

Action arising under law of United States, see section 1331 of this title.

Action by agency of United States, see section 1345 of this title.

Action by or against—
- Federal land banks, see section 2012 of Title 12, Banks and Banking.
- Federal reserve banks, see section 632 of Title 12.
- National banking association, see section 1348 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1452, 2279aa–14.

§ 1350. Alien's action for tort

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(17) (Mar. 3, 1911, ch. 231, § 24, par. 17, 36 Stat. 1093).

Words ''civil action'' were substituted for ''suits,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

TORTURE VICTIM PROTECTION

Pub. L. 102–256, Mar. 12, 1992, 106 Stat. 73, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Torture Victim Protection Act of 1991'.

''SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

''(a) LIABILITY.—An individual who, under actual or apparent authority, or color of law, of any foreign nation—

''(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

''(2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death.

''(b) EXHAUSTION OF REMEDIES.—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

''(c) STATUTE OF LIMITATIONS.—No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.

''SEC. 3. DEFINITIONS.

''(a) EXTRAJUDICIAL KILLING.—For the purposes of this Act, the term 'extrajudicial killing' means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

''(b) TORTURE.—For the purposes of this Act—

''(1) the term 'torture' means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing

that individual or a third person, or for any reason based on discrimination of any kind; and

''(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—

''(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

''(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

''(C) the threat of imminent death; or

''(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.''

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

§ 1351. Consuls, vice consuls, and members of a diplomatic mission as defendant

The district courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against—

(1) consuls or vice consuls of foreign states; or

(2) members of a mission or members of their families (as such terms are defined in section 2 of the Diplomatic Relations Act).

(June 25, 1948, ch. 646, 62 Stat. 934; May 24, 1949, ch. 139, § 80(c), 63 Stat. 101; Pub. L. 95–393, § 8(a)(1), Sept. 30, 1978, 92 Stat. 810.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(18), 371(8) (Mar. 3, 1911, ch. 231, §§ 24, par. 18, 256, par. 8, 36 Stat. 1093, 1160).

Words ''civil action'' were substituted for ''suits,'' and ''all suits and proceedings'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 2 of the Diplomatic Relations Act, referred to in par. (2), is classified to section 254a of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1978—Pub. L. 95–393 substituted ''Consuls, vice consuls, and members of a diplomatic mission as defendant'' for ''Consuls and vice consuls as defendants'' in section catchline, designated existing provisions as introductory provision preceding par. (1), and in such introductory provision as so designated, substituted ''civil actions and proceedings against—'' for ''actions and proceedings against consuls or vice consuls of foreign states'', and added pars. (1) and (2).

1949—Act May 24, 1949, substituted ''of all actions and proceedings'' for ''of any civil action''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–393 effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Judicial power extended in cases affecting consuls, see Const. Art. 3, § 2, cl. 1.

§ 1352. Bonds executed under federal law

The district courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(June 25, 1948, ch. 646, 62 Stat. 934; Pub. L. 96–417, title V, § 506, Oct. 10, 1980, 94 Stat. 1743.)

HISTORICAL AND REVISION NOTES

This section is necessary to permit actions in the district courts upon any bond authorized by a law of the United States. In the absence of this new provision, such actions could not be maintained except by the United States, where the amount and other jurisdictional requisites did not exist. The new section also makes clear that it does not affect the right to prosecute such actions in State courts.

AMENDMENTS

1980—Pub. L. 96–417 inserted exception for matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96–417, set out as a note under section 251 of this title.

§ 1353. Indian allotments

The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.

The judgment in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(24) (Mar. 3, 1911, ch. 231, § 24, par. 24, 36 Stat. 1094; Dec. 21, 1911, ch. 5, 37 Stat. 46).

Words ''any civil action'' were substituted for ''all actions, suits, or proceedings,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

The sentence ''The right of appeal shall be allowed to either party as in other cases'' was omitted as covered by section 1291 of this title, relating to appeals to the court of appeals.

Changes in phraseology were made.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Jurisdiction of action for allotment, see section 345 of Title 25, Indians.

§ 1354. Land grants from different states

The district courts shall have original jurisdiction of actions between citizens of the same

state claiming lands under grants from different states.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, ch. 231, § 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1342, 1345, and 1359 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

§ 1355. Fine, penalty or forfeiture

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b)(1) A forfeiture action or proceeding may be brought in—

(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court[1] for the District of Columbia.

(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.

(d) Any court with jurisdiction over a forfeiture action pursuant to subsection (b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action.

(June 25, 1948, ch. 646, 62 Stat. 934; Pub. L. 96–417, title V, § 507, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 102–550, title XV, § 1521, Oct. 28, 1992, 106 Stat. 4062.)

[1] So in original. Probably should be capitalized.

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(9) and 371(2) (Mar. 3, 1911, ch. 231, §§ 24, par. 9, 256, par. 2, 36 Stat. 1092, 1160).

Word ''fine'' was inserted so that this section will apply to the many provisions in the United States Code for fines which are essentially civil. (See, also, section 2461 of this title and reviser's note thereunder.)

Words ''pecuniary or otherwise'' were added to make this section expressly applicable to both pecuniary and property forfeitures. The original section was so construed in *Miller v. United States*, 1870, 11 Wall. 268, 20 L.Ed. 135; *Tyler v. Defrees*, 1870, 11 Wall. 331, and *The Rosemary*, C.C.A. 1928, 26 F.2d 354, certiorari denied 49 S.Ct. 23, 278 U.S. 619, 73 L.Ed. 542.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–550 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1980—Pub. L. 96–417 inserted exception for matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96–417, set out as a note under section 251 of this title.

CROSS REFERENCES

Actions for forfeiture under customs laws, see section 1604 of Title 19, Customs Duties.

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Fines, penalties and forfeitures, proceedings, see section 2461 et seq. of this title.

Venue of action for fine, penalty, or forfeiture see section 1395 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 sections 360pp, 842.

§ 1356. Seizures not within admiralty and maritime jurisdiction

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(June 25, 1948, ch. 646, 62 Stat. 934; Pub. L. 96–417, title V, § 508, Oct. 10, 1980, 94 Stat. 1743.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(3) and 371(4) (Mar. 3, 1911, ch. 231, §§ 24, par. 3, 256, par. 4, 36 Stat. 1091, 1160; Oct. 6, 1917, ch. 97, § 1, 40 Stat. 395; June 10, 1922, ch. 216, § 1, 42 Stat. 634).

Section consolidates certain provisions of sections 41(3) and 371(4) of title 28, U.S.C., 1940 ed. Other provisions of such sections are incorporated in section 1333 of this title.

Changes were made in arrangement and phraseology.

AMENDMENTS

1980—Pub. L. 96–417 inserted exception for matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(B) of Pub. L. 96–417, set out as a note under section 251 of this title.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

Jurisdiction of—

Admiralty, maritime and prize cases, see section 1333 of this title.

Fine, penalty, or forfeiture, see section 1355 of this title.

§ 1357. Injuries under Federal laws

The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State.

(June 25, 1948, ch. 646, 62 Stat. 934.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(11) (Mar. 3, 1911, ch. 231, § 24, par. 11, 36 Stat. 1092.)

Words ''any civil action'' were substituted for ''all suits,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Minor changes were made in phraseology.

CROSS REFERENCES

Amount in controversy immaterial in action under this section, see Historical and Revision Notes under section 1331 of this title.

Diversity of citizenship immaterial in action under this section, see Historical and Revision Notes under section 1332 of this title.

§ 1358. Eminent domain

The district courts shall have original jurisdiction of all proceedings to condemn real estate for the use of the United States or its departments or agencies.

(June 25, 1948, ch. 646, 62 Stat. 935.)

HISTORICAL AND REVISION NOTES

Based on section 257 of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (Aug. 1, 1888, ch. 728, § 1, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

The venue provisions of section 257 of title 40, U.S.C., 1940 ed., are incorporated in section 1403 of this title.

Other provisions of section 257 of title 40, U.S.C., 1940 ed., are retained in said title 40.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Procedure in condemnation proceedings, see rule 71A, Appendix to this title.

CROSS REFERENCES

Amount in controversy immaterial in proceedings under this section, see Historical and Revision Notes under section 1331 of this title.

Armed forces, acquisition of property, see section 2663 of Title 10, Armed Forces.

Coast Guard, acquisition of land, see section 92 of Title 14, Coast Guard.

Condemnation of property, right of Government officials, see section 257 of Title 40, Public Buildings, Property, and Works.

Declaration of taking proceedings in eminent domain, see section 258a et seq. of Title 40.

District of Columbia, procedure in condemnation proceedings, see D.C. Code, § 16–1301 et seq.

Irrigation project, acquisition of land, see section 421 of Title 43, Public Lands.

Lumber production, acquisition of property for, see section 2664 of Title 10, Armed Forces.

Reclamation projects, compensation for rights-of-way, see section 945b of Title 43, Public Lands.

River and harbor improvements, acquisition of land, see section 591 et seq. of Title 33, Navigation and Navigable Waters.

Tennessee Valley Authority, procedure in condemnation proceedings, see section 831x of Title 16, Conservation.

Venue of eminent domain proceedings, see section 1403 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 79c.

§ 1359. Parties collusively joined or made

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

(June 25, 1948, ch. 646, 62 Stat. 935.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed. §§ 41(1) and 80 (Mar. 3, 1911, ch. 231, §§ 24(1), 37, 36 Stat. 1091, 1098; May 14, 1934, ch. 283, § 1, 48 Stat. 775; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, 54 Stat. 143).

Other provisions of section 41(1) of title 28, U.S.C., 1940 ed., are incorporated in sections 1331, 1332, 1341, 1342, 1345, and 1354 of this title.

Provisions of section 80 of title 28, U.S.C., 1940 ed., for payment of costs upon dismissal of an action for lack of jurisdiction are incorporated in section 1919 of this title. Other provisions of said section 80 appear in section 1447 of this title.

Provisions of section 80 of title 28, U.S.C., 1940 ed., for dismissal of an action not really and substantially involving a dispute or controversy within the jurisdiction of a district court, were omitted as unnecessary. Any court will dismiss a case not within its jurisdiction when its attention is drawn to the fact, or even on its own motion.

The assignee clause in section 41(1) of title 28, U.S.C., 1940 ed., ''is a jumble of legislative jargon.'' (For further references to the consequences of ''its obscure phraseology,'' see, 35 Ill. Law Rev., January 1941, pp. 569–571.)

The revised section changes this clause by confining its application to cases wherein the assignment is improperly or collusively made to invoke jurisdiction. Furthermore, the difficulty of applying the original clause is overcome and the original purpose of such clause is better served by substantially following section 80 of title 28, U.S.C., 1940 ed.

The assignee clause was incorporated in the original Judiciary Act of 1789. Such section 80 was enacted in 1875. The history of the assignee clause ''shows clearly that its purpose and effect, at the time of its enactment were to prevent the conferring of jurisdiction on the Federal courts, on grounds of diversity of citizenship, by assignment, in cases where it would not otherwise exist.'' (*Sowell v. Federal Reserve Bank*, 1925, 45 S.Ct. 528, 529, 268 U.S. 449, 453, 69 L.Ed. 1041, 1048.) Thus the purpose of the assignee clause was to prevent the manufacture of Federal jurisdiction by the device of assignment. It achieves this purpose only partially. For

example, the assignee clause excepts two types of choses in action from its coverage: (1) Foreign bill of exchange; and (2) corporate bearer paper. But this does not prevent the use of assignment of these choses in action to create the necessary diversity or alienage for jurisdictional purposes. Such section 80 does, however, prevent that. (See *Bullard v. City of Cisco*, 1933, 54 S.Ct. 177, 290 U.S. 179, 78 L.Ed. 254, 93 A.L.R. 141.) Its coverage against collusive jurisdiction is unlimited, and its approach is direct. The assignee clause, on the other hand, prevents the bona fide assignee of a chose in action within its terms from resorting to the Federal courts unless there is jurisdiction to support the assignee-plaintiff's case and a showing that there would have been jurisdiction if the assignor had brought the action in lieu of the assignee-plaintiff. Since the assignee clause deals with the bona fide assignee, there has been much litigation to determine the assignments which should or should not be within the purview of the clause. Thus the courts have thought it advisable to limit the term ''chose in action'' and exclude from its scope (1) an implied in law duty or promise, and (2) a transfer of a property interest; and to exclude an assignment by operation of law from the coverage of the clause. Intermediate assignments and reassignment also give difficulty.

FEDERAL RULES OF CIVIL PROCEDURE

Defenses and objections, pleadings allowed and form of motions, see rules 7 and 12, Appendix to this title.

Parties, see rules 17 to 25.

CROSS REFERENCES

Amendment of pleadings to show jurisdiction, see section 1653 of this title.

Costs on dismissal for lack of jurisdiction, see section 1919 of this title.

Removed cases, remand to State court for lack of jurisdiction, see section 1447 of this title.

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

(Added Aug. 15, 1953, ch. 505, § 4, 67 Stat. 589; amended Aug. 24, 1954, ch. 910, § 2, 68 Stat. 795; Pub. L. 85–615, § 2, Aug. 8, 1958, 72 Stat. 545; Pub. L. 95–598, title II, § 239, Nov. 6, 1978, 92 Stat. 2668; Pub. L. 98–353, title I, § 110, July 10, 1984, 98 Stat. 342.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–353 struck out ''or Territories'' after ''Each of the States'', struck out ''or Territory'' after ''State'' in 5 places, and substituted ''within the State'' for ''within the Territory'' in item relating to Alaska.

1978—Subsec. (a). Pub. L. 95–598 directed the amendment of subsec. (a) by substituting in the item relating to Alaska ''within the State'' for ''within the Territory'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1958—Subsec. (a). Pub. L. 85–615 gave Alaska jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in all Indian country within the Territory of Alaska.

1954—Subsec. (a). Act Aug. 24, 1954, brought the Menominee Tribe within the provisions of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

AMENDMENT OF STATE CONSTITUTIONS TO REMOVE LEGAL IMPEDIMENT; EFFECTIVE DATE

Section 6 of act Aug. 15, 1953, provided that: ''Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act [adding this section and section 1162 of Title 18, Crimes and Criminal Procedure]: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.''

CONSENT OF UNITED STATES TO OTHER STATES TO ASSUME JURISDICTION

Act Aug. 15, 1953, ch. 505, § 7, 67 Stat. 590, which gave consent of the United States to any other State not

having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this section and section 1162 of Title 18, Crimes and Criminal Procedure, to assume jurisdiction at such time and in such manner as the people of the State shall, by legislative action, obligate and bind the State to assumption thereof, was repealed by section 403(b) of Pub. L. 90–284, title IV, Apr. 11, 1968, 82 Stat. 79, such repeal not to affect any cession of jurisdiction made pursuant to such section prior to its repeal.

Retrocession of jurisdiction by State acquired by State pursuant to section 7 of Act Aug. 15, 1953, prior to its repeal, see section 1323 of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 566e, 711e, 713f, 714e, 715d, 1300b–15, 1300f, 1300i–1, 1323, 1747, 1772d, 1918.

§ 1361. Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

(Added Pub. L. 87–748, § 1(a), Oct. 5, 1962, 76 Stat. 744.)

FEDERAL RULES OF CIVIL PROCEDURE

Writ of mandamus abolished in United States district courts, but relief available by appropriate action or motion, see rule 81, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 923; title 25 section 2103; title 42 sections 300j–9, 5851, 7622.

§ 1362. Indian tribes

The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

(Added Pub. L. 89–635, § 1, Oct. 10, 1966, 80 Stat. 880.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1725.

§ 1363. Jurors' employment rights

The district courts shall have original jurisdiction of any civil action brought for the protection of jurors' employment under section 1875 of this title.

(Added Pub. L. 95–572, § 6(b)(1), Nov. 2, 1978, 92 Stat. 2457.)

PRIOR PROVISIONS

A prior section 1363 was renumbered section 1366 of this title.

EFFECTIVE DATE

Section 7 of Pub. L. 95–572 provided that:

''(a) Except as provided in subsection (b) of this section, the amendments made by this Act [enacting this section and section 1875, renumbering section 1363, relating to construction of references to laws of the United States or Acts of Congress, as section 1364, and amending sections 1863, 1865, 1866, 1869, and 1871 of this title] shall apply with respect to any grand or petit juror summoned for service or actually serving on or after the date of enactment of this Act [Nov. 2, 1978].

''(b) The amendment made by section 5 of this Act [amending section 1871 of this title] shall apply with respect to any grand or petit juror serving on or after the sixtieth day following the date of enactment of this Act [Nov. 2, 1978].''

§ 1364. Direct actions against insurers of members of diplomatic missions and their families

(a) The district courts shall have original and exclusive jurisdiction, without regard to the amount in controversy, of any civil action commenced by any person against an insurer who by contract has insured an individual, who is, or was at the time of the tortious act or omission, a member of a mission (within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254a(3))) or a member of the family of such a member of a mission, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, against liability for personal injury, death, or damage to property.

(b) Any direct action brought against an insurer under subsection (a) shall be tried without a jury, but shall not be subject to the defense that the insured is immune from suit, that the insured is an indispensable party, or in the absence of fraud or collusion, that the insured has violated a term of the contract, unless the contract was cancelled before the claim arose.

(Added Pub. L. 95–393, § 7(a), Sept. 30, 1978, 92 Stat. 809; amended Pub. L. 97–241, title II, § 203(b)(4), Aug. 24, 1982, 96 Stat. 291; Pub. L. 100–204, title I, § 138(a), Dec. 22, 1987, 101 Stat. 1347.)

CODIFICATION

Two other sections 1364 were renumbered sections 1365 and 1366 of this title.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–204 inserted '', or was at the time of the tortious act or omission,'' after ''who is''.

1982—Subsec. (a). Pub. L. 97–241 substituted ''within the meaning of section 2(3) of the Diplomatic Relations Act (22 U.S.C. 254a(3))'' for ''as defined in the Vienna Convention on Diplomatic Relations''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 138(b) of Pub. L. 100–204 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the first tortious act or omission occurring after the date of enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–241 effective Oct. 1, 1982, see section 204 of Pub. L. 97–241, set out as an Effective Date note under section 4301 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE

Section effective at end of ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95–393, set out as a note under section 254a of Title 22, Foreign Relations and Intercourse.

§ 1365. Senate actions

(a) The United States District Court for the District of Columbia shall have original juris-

diction, without regard to the amount in controversy, over any civil action brought by the Senate or any authorized committee or subcommittee of the Senate to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal or failure to comply with, any subpena or order issued by the Senate or committee or subcommittee of the Senate to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof. This section shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpena or order issued to an officer or employee of the executive branch of the Federal Government acting within his or her official capacity, except that this section shall apply if the refusal to comply is based on the assertion of a personal privilege or objection and is not based on a governmental privilege or objection the assertion of which has been authorized by the executive branch of the Federal Government.

(b) Upon application by the Senate or any authorized committee or subcommittee of the Senate, the district court shall issue an order to an entity or person refusing, or failing to comply with, or threatening to refuse or not to comply with, a subpena or order of the Senate or committee or subcommittee of the Senate requiring such entity or person to comply forthwith. Any refusal or failure to obey a lawful order of the district court issued pursuant to this section may be held by such court to be a contempt thereof. A contempt proceeding shall be commenced by an order to show cause before the court why the entity or person refusing or failing to obey the court order should not be held in contempt of court. Such contempt proceeding shall be tried by the court and shall be summary in manner. The purpose of sanctions imposed as a result of such contempt proceeding shall be to compel obedience to the order of the court. Process in any such action or contempt proceeding may be served in any judicial district wherein the entity or party refusing, or failing to comply, or threatening to refuse or not to comply, resides, transacts business, or may be found, and subpenas for witnesses who are required to attend such proceeding may run into any other district. Nothing in this section shall confer upon such court jurisdiction to affect by injunction or otherwise the issuance or effect of any subpena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such subpena or order. An action, contempt proceeding, or sanction brought or imposed pursuant to this section shall not abate upon adjournment sine die by the Senate at the end of a Congress if the Senate or the committee or subcommittee of the Senate which issued the subpena or order certifies to the court that it maintains its interest in securing the documents, answers, or testimony during such adjournment.

[(c) Repealed. Pub. L. 98–620, title IV, § 402(29)(D), Nov. 8, 1984, 98 Stat. 3359.]

(d) The Senate or any committee or subcommittee of the Senate commencing and prosecuting a civil action or contempt proceeding under this section may be represented in such action by such attorneys as the Senate may designate.

(e) A civil action commenced or prosecuted under this section, may not be authorized pursuant to the Standing Order of the Senate ''authorizing suits by Senate Committees'' (S. Jour. 572, May 28, 1928).

(f) For the purposes of this section the term ''committee'' includes standing, select, or special committees of the Senate established by law or resolution.

(Added Pub. L. 95–521, title VII, § 705(f)(1), Oct. 26, 1978, 92 Stat. 1879, § 1364; amended Pub. L. 98–620, title IV, § 402(29)(D), Nov. 8, 1984, 98 Stat. 3359; renumbered § 1365, Pub. L. 99–336, § 6(a)(1)(B), June 19, 1986, 100 Stat. 638; Pub. L. 104–292, § 4, Oct. 11, 1996, 110 Stat. 3460.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–292 substituted ''executive branch of the Federal Government acting within his or her official capacity, except that this section shall apply if the refusal to comply is based on the assertion of a personal privilege or objection and is not based on a governmental privilege or objection the assertion of which has been authorized by the executive branch of the Federal Government'' for ''Federal Government acting within his official capacity''.

1984—Subsec. (c). Pub. L. 98–620 struck out subsec. (c) which provided that in any civil action or contempt proceeding brought pursuant to this section, the court had to assign the action or proceeding for hearing at the earliest practicable date and cause the action or proceeding in every way to be expedited, and that any appeal or petition for review from any order or judgment in such action or proceeding had to be expedited in the same manner.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.

EFFECTIVE DATE

Section effective Jan. 3, 1979, see section 717 of Pub. L. 95–521, set out as a note under section 288 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 288d.

§ 1366. Construction of references to laws of the United States or Acts of Congress

For the purposes of this chapter, references to laws of the United States or Acts of Congress do not include laws applicable exclusively to the District of Columbia.

(Added Pub. L. 91–358, title I, § 172(c)(1), July 29, 1970, 84 Stat. 590, § 1363; renumbered § 1364, Pub. L. 95–572, § 6(b)(1), Nov. 2, 1978, 92 Stat. 2456; renumbered § 1366, Pub. L. 99–336, § 6(a)(1)(C), June 19, 1986, 100 Stat. 639.)

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district

courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 101–650, title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

EFFECTIVE DATE

Section 310(c) of Pub. L. 101–650 provided that: ''The amendments made by this section [enacting this section] shall apply to civil actions commenced on or after the date of the enactment of this Act [Dec. 1, 1990].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 13981.

§ 1368. Counterclaims in unfair practices in international trade.

The district courts shall have original jurisdiction of any civil action based on a counterclaim raised pursuant to section 337(c) of the Tariff Act of 1930, to the extent that it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim in the proceeding under section 337(a) of that Act.

(Added Pub. L. 103–465, title III, § 321(b)(3)(A), Dec. 8, 1994, 108 Stat. 4946.)

REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

CHAPTER 87—DISTRICT COURTS; VENUE

Sec.
1391. Venue generally.
1392. Defendants or property in different districts in same State.
[1393. Repealed.]
1394. Banking association's action against Comptroller of Currency.
1395. Fine, penalty or forfeiture.
1396. Internal revenue taxes.
1397. Interpleader.
1398. Interstate Commerce Commission's orders.
1399. Partition action involving United States.
1400. Patents and copyrights.
1401. Stockholder's derivative action.
1402. United States as defendant.
1403. Eminent domain.
1404. Change of venue.
1405. Creation or alteration of district or division.
1406. Cure or waiver of defects.
1407. Multidistrict litigation.
1408. Venue of cases under title 11.
1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11.
1410. Venue of cases ancillary to foreign proceedings.
1411. Jury trials.
1412. Change of venue.
1413. Venue of cases under chapter 5 of title 3.

AMENDMENTS

1996—Pub. L. 104–331, § 3(b)(2)(B), Oct. 26, 1996, 110 Stat. 4069, which directed amendment of table of sections for chapter 37 by adding item 1413 at end, was executed by adding item 1413 at end of table of sections for chapter 87 to reflect the probable intent of Congress.

1988—Pub. L. 100–702, title X, § 1001(a), Nov. 19, 1988, 102 Stat. 4664, struck out item 1393 ''Divisions; single defendant; defendants in different divisions''.

1984—Pub. L. 98–353, title I, § 102(b), July 10, 1984, 98 Stat. 335, added items 1408 to 1412.

1978—Pub. L. 95–598, title II, § 240(b), Nov. 6, 1978, 92 Stat. 2668, directed the addition of item 1408, ''Bankruptcy appeals'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1968—Pub. L. 90–296, § 2, Apr. 29, 1968, 82 Stat. 110, added item 1407.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue, see rules 18, 20 to 22, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Criminal cases, venue, see sections 3235 et seq. of Title 18, Crimes and Criminal Procedure.

Jurisdiction of district courts, see sections 1331 et seq. of this title, and Historical and Revision Notes for section 1332 of this title.

Process, see section 1691 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 3612.

§ 1391. Venue generally

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

(d) An alien may be sued in any district.

(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

(June 25, 1948, ch. 646, 62 Stat. 935; Pub. L. 87–748, § 2, Oct. 5, 1962, 76 Stat. 744; Pub. L. 88–234, Dec. 23, 1963, 77 Stat. 473; Pub. L. 89–714, §§ 1, 2, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 94–574, § 3, Oct. 21, 1976, 90 Stat. 2721; Pub. L. 94–583, § 5, Oct. 21, 1976, 90 Stat. 2897; Pub. L. 100–702, title X, § 1013(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101–650, title III, § 311, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102–198, § 3, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 102–572, title V, § 504, Oct. 29, 1992, 106 Stat. 4513; Pub. L. 104–34, § 1, Oct. 3, 1995, 109 Stat. 293.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 111, 112 (Mar. 3, 1911, ch. 231, §§ 50, 51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, § 1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

Section consolidates section 111 of title 28, U.S.C., 1940 ed., with part of section 112 of such title.

The portion of section 112 of title 28, U.S.C., 1940 ed., relating to venue generally constitutes this section and the parts relating to arrest of the defendant, venue and process in stockholders' actions constitute sections 1401, 1693, and 1695 of this title.

Provision in section 111 of title 28, U.S.C., 1940 ed., that a district court may proceed as to parties before it although one or more defendants do not reside in the district, and that its judgment shall be without prejudice to such absent defendants, was omitted as covered by rule 19(b) of the Federal Rules of Civil Procedure.

Word "action" was substituted for "suit" in view of Rule 2 of the Federal Rules of Civil Procedure.

Word "reside" was substituted for "whereof he is an inhabitant" for clarity inasmuch as "inhabitant" and "resident" are synonymous. (See *Ex parte Shaw*, 1892, 12 S.Ct. 935, 145 U.S. 444, 36 L.Ed. 768; *Standard Stoker Co., Inc. v. Lower*, D.C., 1931, 46 F.2d 678; *Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co.*, D.C., 1943, 49 F.Supp. 807.)

Reference to "all plaintiffs" and "all defendants" were substituted for references to "the plaintiff" and "the defendant," in view of many decisions holding that the singular terms were used in a collective sense. (See *Smith v. Lyon*, 1890, 10 S.Ct. 303, 133 U.S. 315, 33 L.Ed. 635; *Hooe v. Jamieson*, 1897, 17 S.Ct. 596, 166 U.S. 395, 41 L.Ed. 1049; and *Fetzer v. Livermore*, D.C., 1926, 15 F.2d 462.)

In subsection (c), references to defendants ''found'' within a district or voluntarily appearing were omitted. The use of the word ''found'' made section 111 of title 28, U.S.C., 1940 ed., ambiguous. The argument that an action could be brought in the district where one defendant resided and a nonresident defendant was ''found,'' was rejected in *Camp v. Gress*, 1919, 39 S.Ct. 478, 250 U.S. 308, 63 L.Ed. 997. However, this ambiguity will be obviated in the future by the omission of such reference.

Subsection (d) of this section is added to give statutory recognition to the weight of authority concerning a rule of venue as to which there has been a sharp conflict of decisions. (See *Sandusky Foundry & Machine Co. v. DeLavand*, 1918, D.C.Ohio, 251 F. 631, 632, and cases cited. See also *Keating v. Pennsylvania Co.*, 1917, D.C.Ohio, 245 F. 155 and cases cited.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to this title.

AMENDMENTS

1995—Subsec. (a)(3). Pub. L. 104–34 substituted ''any defendant is'' for ''the defendants are''.

1992—Subsec. (a)(3). Pub. L. 102–572 inserted before period at end '', if there is no district in which the action may otherwise be brought''.

1991—Subsec. (b). Pub. L. 102–198 substituted ''in (1)'' for ''if (1)''.

1990—Subsec. (a). Pub. L. 101–650, § 311(1), substituted cls. (1) to (3) for ''the judicial district where all plaintiffs or all defendants reside, or in which the claim arose''.

Subsec. (b). Pub. L. 101–650, § 311(2), substituted ''may, except as otherwise provided by law, be brought only if'' and cls. (1) to (3) for ''may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law''.

Subsec. (e). Pub. L. 101–650, § 311(3), substituted ''(2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)'' for ''or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4)''.

1988—Subsec. (c). Pub. L. 100–702 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.''

1976—Subsec. (e). Pub. L. 94–574 provided that, in actions against the United States, its agencies, or officers or employees in their official capacities, additional persons may be joined in accordance with the Federal Rules of Civil Procedure and with other venue requirements which would be applicable if the United States, its agencies, or one of its officers or employees were not a party.

Subsec. (f). Pub. L. 94–583 added subsec. (f).

1966—Subsec. (a). Pub. L. 89–714, § 1, authorized a civil action to be brought in the judicial district in which the claim arose.

Subsec. (b). Pub. L. 89–714, § 1, authorized a civil action to be brought in the judicial district in which the claim arose.

Subsec. (f). Pub. L. 89–714, § 2, repealed subsec. (f) which permitted a civil action on a tort claim arising out of the manufacture, assembly, repair, ownership, maintenance, use, or operation of an automobile to be brought in the judicial district wherein the act or omission complained of occurred. Present provisions are now contained in subsecs. (a) and (b) of this section.

1963—Subsec. (f). Pub. L. 88–234 added subsec. (f)

1962—Subsec. (e). Pub. L. 87–748 added subsec. (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(b) of title X of Pub. L. 100–702 provided that: ''The amendment made by this section [amending this section] takes effect 90 days after the date of enactment of this title [Nov. 19, 1988].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–583 effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1602 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Venue unaffected, see rule 82, Appendix to this title.

CROSS REFERENCES

Antitrust laws, actions under, see sections 15 and 22 of Title 15, Commerce and Trade.

Change of venue, see section 1404 of this title.

Diversity of citizenship, jurisdiction of district courts, see section 1332 of this title.

Place of arrest in civil action, see section 1693 of this title.

Process, see sections 1691 et seq. of this title.

Process in stockholder's derivative action, see section 1695 of this title.

Residence—

Federal National Mortgage Association as resident of District of Columbia, see section 1717 of Title 12, Banks and Banking.

International Finance Corporation as inhabitant of Federal judicial district in which principal office in United States is located, see section 282f of Title 22, Foreign Relations and Intercourse.

Saint Lawrence Seaway Development Corporation as resident of northern judicial district of New York, see section 984 of Title 33, Navigation and Navigable Waters.

Waiver of venue, see section 1406 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 53, 6103, 6104; title 19 section 1337; title 22 sections 290*l*–5, 290*o*–5; title 42 section 1973aa–2.

§ 1392. Defendants or property in different districts in same State

Any civil action, of a local nature, involving property located in different districts in the same State, may be brought in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 935; Pub. L. 104–220, § 1, Oct. 1, 1996, 110 Stat. 3023.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 113, 116 (Mar. 3, 1911, ch. 231, §§ 52, 55, 36 Stat. 1101, 1102).

Section consolidates section 113 of title 28, U.S.C., 1940 ed., with section 116 of such title.

Last sentence of section 113 of title 28, U.S.C., 1940 ed., relating to execution on judgments or decrees, was omitted as covered by section 2001 et seq. of this title.

Words ''civil action'' were substituted for ''suit'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Words of said section 113, ''against a single defendant, inhabitant of such State, must be brought in the district where he resides'' were omitted as covered by section 1391 of this title.

Words of section 116 of title 28, U.S.C., 1940 ed., ''land or other subject matter of a fixed character'' were deleted and the word ''property'' substituted for flexibility and uniformity. (See sections 754, 1692, of this title and reviser's notes thereunder.)

Words of said section 116, ''and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject matter were wholly within the district for which such court is constituted'' were omitted as surplusage and fully covered by Rule 4 of the Federal Rules of Civil Procedure. Said rule also covers the following omitted language: ''A duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides.''

Changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–220 struck out ''(b)'' before ''Any civil action'' and struck out subsec. (a) which read as follows: ''Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1973aa–2.

[§ 1393. Repealed. Pub. L. 100–702, title X, § 1001(a), Nov. 19, 1988, 102 Stat. 4664]

Section, act June 25, 1948, ch. 646, 62 Stat. 935, related to divisional venue in civil cases of a single defendant or defendants in different divisions.

EFFECTIVE DATE OF REPEAL

Section 1001(b) of Pub. L. 100–702 provided that: ''The amendments made by this section [repealing this section] take effect 90 days after the date of enactment of this Act [Nov. 19, 1988].''

§ 1394. Banking association's action against Comptroller of Currency

Any civil action by a national banking association to enjoin the Comptroller of the Currency, under the provisions of any Act of Congress relating to such associations, may be prosecuted in the judicial district where such association is located.

(June 25, 1948, ch. 646, 62 Stat. 935.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 110 (Mar. 3, 1911, ch. 231, § 49, 36 Stat. 1100).

Words ''Any civil action'' were substituted for ''All proceedings,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280. See section 321(c)(2) of Title 31, Money and Finance.

CROSS REFERENCES

Jurisdiction of district court in banking association's action against the Comptroller of the Currency, see section 1348 of this title.

§ 1395. Fine, penalty or forfeiture

(a) A civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture may be prosecuted in the district where it accrues or the defendant is found.

(b) A civil proceeding for the forfeiture of property may be prosecuted in any district where such property is found.

(c) A civil proceeding for the forfeiture of property seized outside any judicial district may be prosecuted in any district into which the property is brought.

(d) A proceeding in admiralty for the enforcement of fines, penalties and forfeitures against a vessel may be brought in any district in which the vessel is arrested.

(e) Any proceeding for the forfeiture of a vessel or cargo entering a port of entry closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, or of any vessel or vehicle conveying persons or property to or from such State or section or belonging in whole or in part to a resident thereof, may be prosecuted in any district into which the property is taken and in which the proceeding is instituted.

(June 25, 1948, ch. 646, 62 Stat. 936.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 104, 106, 107, and 108, and section 3745(c) of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, §§ 43, 45, 46, 47, 36 Stat. 1100; Feb. 10, 1939, ch. 2, § 3745(c), 53 Stat. 460).

This section consolidates section 3745(c) of title 26, U.S.C., 1940 ed., with sections 104, 106, 107, and 108 of title 28, U.S.C., 1940 ed., relating to venue in civil proceedings to recover and enforce civil fines, penalties, and forfeitures, pecuniary or otherwise. Subsection (a) is based on said section 104 of title 28 and said section 3745(c) of title 26. Subsections (b) and (c) consolidate such sections 106 and 107 of title 28. Subsection (e) is based on such section 108 of title 28.

Subsection (b) substituted words ''may be prosecuted in any district where such property is found'' for ''shall be prosecuted in the district where the seizure is made,'' to include not only property seized, but also all other property subject to forfeiture.

Words ''civil'' and ''fine'' were inserted to make this section applicable to the many provisions of the United States Code for fines essentially civil. (See reviser's note under section 1355 of this title.)

Provisions of section 3745(c) of title 26, U.S.C., 1940 ed., that such suit may be brought ''before any other court of competent jurisdiction'' were omitted as misleading surplusage, since United States district courts, under section 1355 of this title, have exclusive jurisdiction.

Subsection (d) was added for completeness and clarity.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

While section 3745(c) of Title 26, U.S.C., Internal Revenue Code, is one of the sources of this section, it was eliminated from the schedule of repeals by Senate amendment. Therefore, such section 3745(c) remains in Title 26. See 80th Congress Senate Report No. 1559.

CROSS REFERENCES

Jurisdiction of district court in action to recover fines, penalties, or forfeitures, see section 1355 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1355 of this title; title 18 sections 981, 2254; title 21 section 881; title 26 section 7410.

§ 1396. Internal revenue taxes

Any civil action for the collection of internal revenue taxes may be brought in the district where the liability for such tax accrues, in the

district of the taxpayer's residence, or in the district where the return was filed.

(June 25, 1948, ch. 646, 62 Stat. 936.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 105, and section 3744 of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, § 44, 36 Stat. 1100; Feb. 10, 1939, ch. 2, § 3744, 53 Stat. 460).

Section consolidates section 3744 of title 26, U.S.C., 1940 ed., Internal Revenue Code, with section 105 of title 28, U.S.C., 1940 ed.

Words "or in the district where the return was filed" are new. This extension of venue will permit of an action in a district easily determinable for collection of revenue earned in several districts, or States, but the return for which is filed with one collector.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

While section 3744 of Title 26, U.S.C., Internal Revenue Code [1939], is one of the sources of this section, it was eliminated from the schedule of repeals by Senate amendment. Therefore, it remains in Title 26 [I.R.C. 1939]. See 80th Congress Senate Report No. 1559.

CROSS REFERENCES

Jurisdiction of district courts in actions or proceedings under internal-revenue laws, see section 7402 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7410.

§ 1397. Interpleader

Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.

(June 25, 1948, ch. 646, 62 Stat. 936.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(26) (Mar. 3, 1911, ch. 231, § 24, par. 26, as added Jan. 20, 1936, ch. 13, § 1, 49 Stat. 1096).

Provisions of section 41(26) of title 28, U.S.C., 1940 ed., relating to jurisdiction are the basis of section 1335 of this title and other provisions thereof are incorporated in section 2361 of this title.

Words "civil action" were substituted for "suit," in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

CROSS REFERENCES

Process and procedure in interpleader actions, see section 2361 of this title.

§ 1398. Interstate Commerce Commission's orders

(a) Except as otherwise provided by law, a civil action brought under section 1336(a) of this title shall be brought only in a judicial district in which any of the parties bringing the action resides or has its principal office.

(b) A civil action to enforce, enjoin, set aside, annul, or suspend, in whole or in part, an order of the Interstate Commerce Commission made pursuant to the referral of a question or issue by a district court or by the United States Court of Federal Claims, shall be brought only in the court which referred the question or issue.

(June 25, 1948, ch. 646, 62 Stat. 936; Pub. L. 88–513, § 2, Aug. 30, 1964, 78 Stat. 695; Pub. L. 93–584, § 2, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 97–164, title I, § 130, Apr. 2, 1982, 96 Stat. 39; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 43 (Oct. 22, 1913, ch. 32, 38 Stat. 219).

This section is completely rewritten to give effect to changes recommended by the Judicial Conference of the United States.

Section 43 of title 28, U.S.C., 1940 ed., is as follows:

"§ 43. Venue of suits relating to orders of Interstate Commerce Commission.

"The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment." The amendment of section 207 of title 28, U.S.C., 1940 ed., proposed by the Judicial Conference is:

"Except as otherwise provided in the Act entitled 'An Act to Regulate Commerce', approved February 4, 1887, as amended, the venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties bringing the suit or wherein such party or any of such parties has its principal office."

The revised section substitutes the words "Except as otherwise provided by law" for the words of the conference bill, "in the act entitled 'An Act to Regulate Commerce, approved February 4, 1887, as amended'". (See section 16 of title 49, U.S.C., 1940 ed., which provides for jurisdiction and venue of actions to enforce Interstate Commerce Commission orders for the payment of money.)

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".

1975—Subsec. (a). Pub. L. 93–584 substituted provisions that civil actions under section 1336(a) of this title shall be brought only in a judicial district in which any of the parties bringing the action resides or has its principal office, for provisions that civil actions to enforce, suspend, or set aside in whole or in part orders of the Interstate Commerce Commission shall be brought in such judicial district.

1964—Pub. L. 88–513 designated existing provisions as subsec. (a) and added subsec. (b).

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 this title.

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 this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month

beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

CROSS REFERENCES

Enforcement and review of Surface Transportation Board's orders, see section 2321 et seq. of this title.

Jurisdiction of district courts in actions involving Surface Transportation Board's orders, see section 1336 of this title.

§ 1399. Partition action involving United States

Any civil action by any tenant in common or joint tenant for the partition of lands, where the United States is one of the tenants in common or joint tenants, may be brought only in the judicial district where such lands are located or, if located in different districts in the same State, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 936.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 41(25) (Mar. 3, 1911, ch. 231, § 24, par. 25, 36 Stat. 1094).

Provisions of section 41(25) of title 28, U.S.C., 1940 ed., relating to jurisdiction are the basis of section 1347 of this title.

Words ''civil action'' were substituted for ''suits in equity,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Provision with respect to property in different districts was added to conform with section 1392 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Jurisdiction of district court in partition action where United States is tenant in common or joint tenant, see section 1347 of this title.

§ 1400. Patents and copyrights

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

(June 25, 1948, ch. 646, 62 Stat. 936; Pub. L. 100–702, title X, § 1020(a)(5), Nov. 19, 1988, 102 Stat. 4671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 109, and section 35 of title 17, U.S.C., 1940 ed., Copyrights (Mar. 4, 1909, ch. 320, § 35, 35 Stat. 1084; Mar. 3, 1911, ch. 231, § 48, 36 Stat. 1100).

Section consolidates section 35 of title 17, U.S.C., 1940 ed., with part of section 109 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Subsection (b) is based on section 109 of title 28, U.S.C., 1940 ed., with the following changes:

Words ''civil action'' were substituted for ''suit,'' and words ''in law or in equity,'' after ''shall have jurisdiction'' were deleted, in view of Rule 2 of the Federal Rules of Civil Procedure.

Words in subsection (b) ''where the defendant resides'' were substituted for ''of which the defendant is an inhabitant.'' A corresponding change was made in subsection (a). Words ''inhabitant'' and ''resident,'' as respects venue, are synonymous. (See reviser's note under section 1391 of this title.)

Words ''whether a person, partnership, or corporation'' before ''has committed'' were omitted as surplusage.

The provisions of section 109 of title 28, U.S.C., 1940 ed., relating to process are incorporated in section 1694 of this title.

Jurisdiction and venue of patent suits against residents of foreign countries or persons residing in plurality of districts, see section 72a of title 35, U.S.C., 1940 ed., Patents.

SENATE REVISION AMENDMENT

Title 17 of the United States Code was enacted into positive law by act July 30, 1947, ch. 391, 61 Stat. 652, and, in such enactment, section 35 of the prior title became section 111 of the new title, and all Acts from which sections of the prior title had been derived, were repealed. Therefore, this paragraph should read: ''Based on Title 28, U.S.C., 1940 ed., § 109 (Mar. 3, 1911, ch. 231, § 48, 36 Stat. 1100), and section 111 of Title 17, U.S.C., 1946 ed., Copyrights.'' By Senate amendment, section 111 of Title 17 U.S.C., is included in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–702 inserted ''or exclusive rights in mask works'' after ''copyrights''.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see rule 4, Appendix to this title.

CROSS REFERENCES

Jurisdiction and venue of patent suits against residents of foreign countries or persons residing in plurality of districts, see sections 146 and 291 of Title 35, Patents.

Jurisdiction of district courts in patent or copyright actions, see section 1338 of this title.

Jurisdiction and legal remedy for unauthorized use or disclosure of patents and technical information, see section 2356 of Title 22, Foreign Relations and Intercourse.

Process in patent infringement action, see section 1694 of this title.

§ 1401. Stockholder's derivative action

Any civil action by a stockholder on behalf of his corporation may be prosecuted in any judicial district where the corporation might have sued the same defendants.

(June 25, 1948, ch. 646, 62 Stat. 936.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 112 (part) (Mar. 3, 1911, ch. 231, § 51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, § 1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

For disposition of other provisions of section 112 of title 28, U.S.C., 1940 ed., see reviser's note under section 1391 of this title.

Words ''civil action'' were substituted for ''suit,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Words ''other than said corporation,'' after ''same defendants,'' were omitted as superfluous. Obviously a corporation would not be suing itself.

Changes were made in phraseology.

CROSS REFERENCES

Citizenship of corporations for purposes of diversity of citizenship and removability of actions, see section 1332 of this title.

Process in stockholder's derivative action, see section 1695 of this title.

§ 1402. United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Notwithstanding the foregoing provisions of this paragraph a district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court of the district where the property is located or, if located in different districts, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 85–920, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 89–719, title II, § 202(b), Nov. 2, 1966, 80 Stat. 1149; Pub. L. 92–562, § 2, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 97–164, title I, § 131, Apr. 2, 1982, 96 Stat. 39.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 762, 931(a) (Mar. 3, 1887, ch. 359, § 5, 24 Stat. 506; Aug. 2, 1946, ch. 753, § 410(a), 60 Stat. 843).

Section consolidates the venue provisions of section 762 of title 28, U.S.C., 1940 ed., with the venue provisions of section 931(a) of such title, the latter provisions relating to tort claims cases. The jurisdictional provisions of such section 931(a) are incorporated in section 1346(b) of this title. For other provisions thereof, see Distribution Table.

Provisions of section 762 of title 28, U.S.C., 1940 ed., relating to the verification and contents of a petition filed against the United States were omitted as unnecessary. Section 265 of title 28, U.S.C., 1940 ed., relative to the petition in cases filed in the Court of Claims was also omitted from the revised title. (See, also, Rule 11 of the Federal Rules of Civil Procedure.)

Words ''civil action'' were substituted for ''suit'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–164 inserted ''in a district court'' after ''civil action'' in introductory provisions preceding par. (1). The phrase ''civil action'' also appeared in par. (2), but no change was made to reflect the probable intent of Congress as indicated on page 79 of House Report No. 97–312.

1972—Subsec. (d). Pub. L. 92–562 added subsec. (d).

1966—Subsec. (c). Pub. L. 89–719 added subsec. (c).

1958—Subsec. (a). Pub. L. 85–920 provided for venue and change of venue in tax refund suits by corporation.

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 this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, see section 203 of Pub. L. 89–719, set out as a note under section 1346 of this title.

CROSS REFERENCES

Actions on war risk insurance claims, see section 1292 of Title 46, Appendix, Shipping.

Jurisdiction and legal remedy for unauthorized use or disclosure of patents and technical information, see section 2356 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7429.

§ 1403. Eminent domain

Proceedings to condemn real estate for the use of the United States or its departments or agencies shall be brought in the district court of the district where the land is located or, if located in different districts in the same State, in any of such districts.

(June 25, 1948, ch. 646, 62 Stat. 937.)

HISTORICAL AND REVISION NOTES

Based on section 257 of title 40, U.S.C., 1940 ed., Public Buildings, Property, and Works (Aug. 1, 1888, ch. 728, § 1, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Section constitutes the first clause of the second sentence of section 257, of title 40, U.S.C., 1940 ed. The revised section is expressive of the purpose of such section 257 with necessary changes in phraseology.

The jurisdiction provision of section 257 of title 40, U.S.C., 1940 ed., is incorporated in section 1358 of this title.

The remainder of section 257 of title 40, U.S.C., 1940 ed., is retained in said title 40.

Provision with respect to property in different districts was added to conform with section 1392 of this title.

See, also, section 1392 of this title which fixes venue of an action involving property in different districts in the same State.

CROSS REFERENCES

Jurisdiction of district courts in eminent domain proceedings, see section 1358 of this title.

Venue of action involving property in different districts in same state, see section 1392 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 79c; title 42 section 2222.

§ 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) As used in this section, the term ''district court'' includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term ''district'' includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 87–845, § 9, Oct. 18, 1962, 76A Stat. 699; Pub. L. 104–317, title VI, § 610(a), Oct. 19, 1996, 110 Stat. 3860.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 119, 163 (Mar. 3, 1911, ch. 231, § 58, 36 Stat. 1103; Sept. 8, 1916, ch. 475, § 5, 39 Stat. 851).

Section consolidates sections 119 and 163 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology and substance.

Section 119 of title 28, U.S.C., 1940 ed., related only to transfer of cases from one division to another on stipulation of the parties.

Subsection (a) was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper. As an example of the need of such a provision, see *Baltimore & Ohio R. Co. v. Kepner*, 1941, 62 S.Ct. 6, 314 U.S. 44, 86 L.Ed. 28, which was prosecuted under the Federal Employer's Liability Act in New York, although the accident occurred and the employee resided in Ohio. The new subsection requires the court to determine that the transfer is necessary for convenience of the parties and witnesses, and further, that it is in the interest of justice to do so.

Sections 143, 172, 177, and 181 of title 28, U.S.C., 1940 ed., relating to the district courts of Arizona, Montana, New Mexico, and Ohio, contained special provisions similar to subsection (b), applicable to those States. To establish uniformity, the general language of such subsection has been drafted and the special provisions of those sections omitted.

Subsection (b) is based upon section 163 of title 28, U.S.C., 1940 ed., which applied only to the district of Maine. This revised subsection extends to all judicial districts and permits transfer of cases between divisions. Criminal cases may be transferred pursuant to Rules 19–21 of the new Federal Rules of Criminal Procedure, and the criminal provisions of said section 163 are therefore omitted.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–317 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''As used in this section, 'district court' includes the United States District Court for the District of the Canal Zone; and 'district' includes the territorial jurisdiction of that court.''

1962—Subsec. (d). Pub. L. 87–845 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 610(c) of Pub. L. 104–317 provided that: ''The amendments made by this section [amending this section and section 1406 of this title] apply to cases pending on the date of the enactment of this Act [Oct. 19, 1996] and to cases commenced on or after such date.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–845 effective Jan. 2, 1963, see section 25 of Pub. L. 87–845, set out as a note under section 14 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Venue and transfer of criminal prosecutions, see rule 18 et seq., Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Equal employment opportunity provisions, judicial district of principal office as district in which action might have been brought, see section 2000e–5 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1407 of this title; title 42 section 2000e–5.

§ 1405. Creation or alteration of district or division

Actions or proceedings pending at the time of the creation of a new district or division or transfer of a county or territory from one division or district to another may be tried in the district or division as it existed at the institution of the action or proceeding, or in the district or division so created or to which the county or territory is so transferred as the parties shall agree or the court direct.

(June 25, 1948, ch. 646, 62 Stat. 937.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 121 (Mar. 3, 1911, ch. 231, § 59, 36 Stat. 1103).

Enforcement of liens in like circumstances is provided by section 1656 of this title.

Remainder of section 121 of title 28, U.S.C., 1940 ed., is incorporated in section 3240 of revised title 18, Crimes and Criminal Procedure (H.R. 1600, 80th Cong.).

Changes were made in phraseology.

§ 1406. Cure or waiver of defects

(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) As used in this section, the term ''district court'' includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term ''district'' includes the territorial jurisdiction of each such court.

(June 25, 1948, ch. 646, 62 Stat. 937; May 24, 1949, ch. 139, § 81, 63 Stat. 101; Pub. L. 86–770, § 1, Sept.

13, 1960, 74 Stat. 912; Pub. L. 87–845, § 10, Oct. 18, 1962, 76A Stat. 699; Pub. L. 97–164, title I, § 132, Apr. 2, 1982, 96 Stat. 39; Pub. L. 104–317, title VI, § 610(b), Oct. 19, 1996, 110 Stat. 3860.)

HISTORICAL AND REVISION NOTES

1948 ACT

Subsection (a) provides statutory sanction for transfer instead of dismissal, where venue is improperly laid.

Subsection (b) is declaratory of existing law. (See *Panama R.R. Co. v. Johnson*, 1924, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 748.) It makes clear the intent of Congress that venue provisions are not jurisdictional but may be waived.

1949 ACT

This section removes an ambiguity in section 1406(a) of title 28, U.S.C., by substituting ''may'' for ''shall'', thus making it clear that the court may decline to transfer a case brought in the wrong district under circumstances where it would not be in the interest of justice to make such transfer.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–317 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''As used in this section, 'district court' includes the United States District Court for the District of the Canal Zone; and 'district' includes the territorial jurisdiction of that court.''

1982—Subsecs. (c), (d). Pub. L. 97–164 redesignated subsec. (d) as (c). Former subsec. (c), which provided that if a case within the exclusive jurisdiction of the Court of Claims were filed in a district court, the district court, if it were in the interest of justice, was required to transfer the case to the Court of Claims where the case would proceed as if it had been filed in the Court of Claims on the date that it was filed in the district court, was struck out.

1962—Subsec. (d). Pub. L. 87–845 added subsec. (d).

1960—Subsec. (c). Pub. L. 86–770 added subsec. (c).

1949—Subsec. (a). Act May 24, 1949, inserted ''dismiss, or if it be in the interest of justice''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 applicable to cases pending on Oct. 19, 1996, and to cases commenced on or after such date, see section 610(c) of Pub. L. 104–317, set out as a note under section 1404 of this title.

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 this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–845 effective Jan. 2, 1962, see section 25 of Pub. L. 87–845, set out as a note under section 14 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–770 provided in part that: ''The amendments made by sections 1 and 2 of this Act [adding subsec. (c) of this section and section 1506 of this title] shall apply to any case or proceeding pending on, or brought after, the date of enactment of this Act [Sept. 13, 1960] in the district courts or the Court of Claims.''

CROSS REFERENCES

Equal employment opportunity provisions, judicial district of principal office as district in which action might have been brought, see section 2000e–5 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2000e–5.

§ 1407. Multidistrict litigation

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however*, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee district court, such actions may be assigned by the panel to a judge or judges of such district. The judge or judges to whom such actions are assigned, the members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by—

(i) the judicial panel on multidistrict litigation upon its own initiative, or

(ii) motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. The panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any district that would be affected by the proceedings under this section, and shall be supported by findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make

thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the panel's order to transfer to the clerk of the district court from which the action is being transferred. An order denying transfer shall be filed in each district wherein there is a case pending in which the motion for transfer has been made.

(d) The judicial panel on multidistrict litigation shall consist of seven circuit and district judges designated from time to time by the Chief Justice of the United States, no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

(e) No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

(f) The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure.

(g) Nothing in this section shall apply to any action in which the United States is a complainant arising under the antitrust laws. ''Antitrust laws'' as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.C. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.C. 56); but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.C. 15a).

(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.

(Added Pub. L. 90–296, §1, Apr. 29, 1968, 82 Stat. 109; amended Pub. L. 94–435, title III, §303, Sept. 30, 1976, 90 Stat. 1396.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to this title.

Section 4C of the Clayton Act, referred to in subsec. (h), is section 4C of act Oct. 15, 1914, ch. 323, as added by Pub. L. 94–435, title III, §301, Sept. 30, 1976, 90 Stat. 1394, which is classified to section 15c of Title 15, Commerce and Trade.

AMENDMENTS

1976—Pub. L. 94–435 added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2112 of this title; title 15 section 78u; title 45 section 719.

RULES OF PROCEDURE OF THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

(Adopted February 26, 1981, effective June 1, 1981, as amended to November 2, 1998)

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I. GENERAL RULES/RULES FOR MULTIDISTRICT LITIGATION UNDER 28 U.S.C. §1407

Rule 1.1: Definitions

As used in these Rules ''Panel'' means the members of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, Title 28, United States Code.

''Clerk of the Panel'' means the official appointed by the Panel to act as Clerk of the Panel and shall include those deputized by the Clerk of the Panel to perform or assist in the performance of the duties of the Clerk of the Panel.

''Chairman'' means the Chairman of the Judicial Panel on Multidistrict Litigation appointed by the Chief Justice of the United States pursuant to Section 1407, or the member of the Panel designated by the Panel to act as Chairman in the absence or inability of the appointed Chairman.

A ''tag-along action'' refers to a civil action pending in a district court and involving common questions of fact with actions previously transferred under Section 1407.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 1.2: Practice

Where not fixed by statute or rule, the practice shall be that heretofore customarily followed by the Panel.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 1.3: Failure to Comply with Rules

The Clerk of the Panel may, when a paper submitted for filing is not in compliance with the provisions of these Rules, advise counsel of the deficiencies and a date for full compliance. If full compliance is not accomplished within the established time, the non-complying paper shall nonetheless be filed by the Clerk of the Panel but it may be stricken by order of the Chairman of the Panel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 1.4: Admission to Practice Before the Panel and Representation in Transferred Actions

Every member in good standing of the Bar of any district court of the United States is entitled without condition to practice before the Judicial Panel on Multidistrict Litigation. Any attorney of record in any action transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties to any action transferred under Section 1407 are not required to obtain local counsel in the district to which such action is transferred.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 1.5: Effect of the Pendency of an Action Before the Panel

The pendency of a motion, order to show cause, conditional transfer order or conditional remand order before the Panel concerning transfer or remand of an action pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and does not in any way limit the pretrial jurisdiction of that court. A transfer or remand pursuant to 28 U.S.C. § 1407 shall be effective when the transfer or remand order is filed in the office of the clerk of the district court of the transferee district.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 1.6: Transfer of Files

(a) Upon receipt of a certified copy of a transfer order from the clerk of the transferee district court, the clerk of the transferor district court shall forward to the clerk of the transferee district court the complete original file and a certified copy of the docket sheet for each transferred action.

(b) If an appeal is pending, or a notice of appeal has been filed, or leave to appeal has been sought under 28 U.S.C. § 1292(b) or a petition for an extraordinary writ is pending, in any action included in an order of transfer under 28 U.S.C. § 1407, and the original file or parts thereof have been forwarded to the court of appeals, the clerk of the transferor district court shall notify the clerk of the court of appeals of the order of transfer and secure the original file long enough to prepare and transmit to the clerk of the transferee district court a certified copy of all papers contained in the original file and a certified copy of the docket sheet.

(c) If the transfer order provides for the separation and simultaneous remand of any claim, cross-claim, counterclaim, or third-party claim, the clerk of the transferor district court shall retain the original file and shall prepare and transmit to the clerk of the transferee district court a certified copy of the docket sheet and copies of all papers except those relating exclusively to separated and remanded claims.

(d) Upon receipt of an order to remand from the Clerk of the Panel, the transferee district court shall prepare and send to the clerk of the transferor district court the following:

(i) a certified copy of the individual docket sheet for each action being remanded;

(ii) a certified copy of the master docket sheet, if applicable;

(iii) the entire file for each action being remanded, as originally received from the transferor district court and augmented as set out in this rule;

(iv) a certified copy of the final pretrial order, if applicable; and

(v) a ''record on remand'' to be composed of those parts of the files and records produced during coordinated or consolidated pretrial proceedings which have been stipulated to or designated by counsel as being necessary for any or all proceedings to be conducted following remand. It shall be the responsibility of counsel originally preparing or filing any document to be included in the ''record on remand'' to furnish on request sufficient copies to the clerk of the transferee district court.

(e) The Clerk of the Panel shall be notified when any files have been transmitted pursuant to this Rule.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 5.1: Keeping Records and Files

(a) The records and files of the Panel shall be kept by the Clerk of the Panel at the offices of the Panel. Records and files may be temporarily or permanently removed to such places at such times as the Panel or the Chairman of the Panel shall direct. The Clerk of the Panel may charge fees, as prescribed by the Judicial Conference of the United States, for duplicating records and files. Records and files may be transferred whenever appropriate to the Federal Records Center.

(b) In order to assist the Panel in carrying out its functions, the Clerk of the Panel shall obtain the complaints and docket sheets in all actions under consideration for transfer under 28 U.S.C. § 1407 from the clerk of each district court wherein such actions are pending. The Clerk of the Panel shall similarly obtain any other pleadings and orders that could affect the Panel's decision under 28 U.S.C. § 1407.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 5.11: Place of Filing of Papers

All papers for consideration by the Panel shall be submitted for filing to the Clerk of the Panel by mailing or delivering to:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room G–255, North Lobby
Washington, D.C. 20002–8004

No papers shall be left with or mailed to a Judge of the Panel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 5.12: Manner of Filing of Papers

(a) An original of the following papers shall be submitted for filing to the Clerk of the Panel: a proof of service pursuant to Rule 5.2(a) and (b) of these Rules, a notice of appearance pursuant to Rule 5.2(c) and (d) of these Rules, a status notice pursuant to Rules 7.2(e), 7.3(e) and 7.4(b) of these Rules, a notice of opposition pursuant to Rules 7.4(c) and 7.6(f)(ii) of these Rules, a notice of related action pursuant to Rule 7.5(e) of these Rules, an application for extension of time pursuant to Rule 6.2 of these Rules, or a notice of presentation or waiver of oral argument pursuant to Rule 16.2(a) of these Rules. An original and eleven copies of all other papers shall be submitted for filing to the Clerk of the Panel. The Clerk of the Panel may require that additional copies also be submitted for filing.

(b) When papers are submitted for filing, the Clerk of the Panel shall endorse thereon the date for filing.

(c) Copies of motions for transfer of an action or actions pursuant to 28 U.S.C. §1407 shall be filed in each district court in which an action is pending that will be affected by the motion. Copies of a motion for remand pursuant to 28 U.S.C. §1407 shall be filed in the Section 1407 transferee district court in which any action affected by the motion is pending.

(d) Papers requiring only an original may be faxed to the Panel office with prior approval of the Clerk of the Panel. No papers requiring multiple copies shall be accepted via fax.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 5.2: Service of Papers Filed

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party's last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the ''Panel Service List'' described in subsection (d) of this Rule has been received from the Clerk of the Panel, the ''Panel Service List'' shall be utilized for service of responses to motions and all other filings. In such instances, the ''Panel Service List'' shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the ''Panel Service List.''

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. §1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. §1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within eleven days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a ''Panel Service List'' containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the ''Panel Service List'' has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the ''Panel Service List'' shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 6.2: Applications for Extensions of Time

Any application for an extension of time to file a pleading or perform an act required by these Rules must be in writing, must request a specific number of additional days and may be acted upon by the Clerk of the Panel. Such an application will be evaluated in relation to the impact on the Panel's calendar as well as on the basis of the reasons set forth in support of the application. Any party aggrieved by the Clerk of the Panel's action on such application may submit its objections to the Panel for consideration. Absent exceptional circumstances, no extensions of time shall be granted to file a notice of opposition to either a conditional transfer order or a conditional remand order. All applications for extensions of time shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 7.1: Form of Papers Filed

(a) Averments in any motion seeking action by the Panel shall be made in numbered paragraphs, each of which shall be limited, as far as practicable, to a statement of a single factual averment.

(b) Responses to averments in motions shall be made in numbered paragraphs, each of which shall correspond to the number of the paragraph of the motion to which the responsive paragraph is directed. Each responsive paragraph shall admit or deny wholly or in part the averment of the motion, and shall contain the respondent's version of the subject matter when the averment or the motion is not wholly admitted.

(c) Each pleading filed shall be

(i) flat and unfolded;

(ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;

(iii) on opaque, unglazed, white paper (not onionskin);

(iv) approximately 8½ × 11 inches in size; and

(v) fastened at the top-left corner without side binding or front or back covers.

(d) The heading on the first page of each pleading shall commence not less than three inches from the top of the page. Each pleading shall bear the heading ''Before the Judicial Panel on Multidistrict Litigation,'' the identification ''MDL Docket No. ____'' and the descriptive title designated by the Panel for the litigation involved. If the Panel has not yet designated a title, an appropriate descriptive title shall be used.

(e) The final page of each pleading shall contain the name, address and telephone number of the attorney or party in active charge of the case.

(f) Except with the approval of the Panel, each brief submitted for filing with the Panel shall be limited to twenty pages, exclusive of exhibits. Absent exceptional circumstances, motions to exceed page limits shall not be granted.

(g) Exhibits exceeding a cumulative total of 50 pages shall be fastened separately from the accompanying pleading.

(h) Proposed Panel orders shall not be submitted with papers for filing.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 7.2: Motion Practice

(a) All requests for action by the Panel under 28 U.S.C. § 1407 shall be made by written motion. Every motion shall be accompanied by:

(i) a brief in support thereof in which the background of the litigation and factual and legal contentions of the movant shall be concisely stated in separate portions of the brief with citation of applicable authorities; and

(ii) a schedule giving

(A) the complete name of each action involved, not shortened by the use of references such as ''et al.'' or ''etc.'';

(B) the district court and division in which each action is pending;

(C) the civil action number of each action; and

(D) the name of the judge assigned each action, if known.

(b) The Clerk of the Panel shall notify recipients of a motion of the filing date, caption, MDL docket number, briefing schedule and pertinent Panel policies.

(c) Within twenty days after filing of a motion, all other parties shall file a response thereto. Failure of a party to respond to a motion shall be treated as that party's acquiescence to the action requested in the motion.

(d) The movant may, within five days after the lapse of the time period for filing responsive briefs, file a single brief in reply to any opposition.

(e) Motions, their accompaniments, responses, and replies shall also be governed by Rules 5.12, 5.2 and 7.1 of these Rules.

(f) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

(g) A joinder in a motion shall not add any action to the previous motion.

(h) Once a motion is filed, any responsive pleading that purports to be a ''motion'' in the docket shall be filed by the Clerk of the Panel as a response unless the ''motion'' adds an action. The Clerk of the Panel, upon designating such a pleading as a motion, shall acknowledge that designation by the distribution of a briefing schedule to all parties in the docket. Response time resulting from an additional motion shall ordinarily be extended only to those parties directly affected by the additional motion. An accelerated briefing schedule for the additional motion may be set by the Clerk of the Panel to conform with the hearing schedule established by the Chairman.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 7.3: Show Cause Orders

(a) When transfer of multidistrict litigation is being considered on the initiative of the Panel pursuant to 28 U.S.C. §1407(c)(i), an order shall be filed by the Clerk of the Panel directing the parties to show cause why the action or actions should not be transferred for coordinated or consolidated pretrial proceedings. Any party or counsel in such actions shall promptly notify the Clerk of the Panel of any other federal district court actions related to the litigation encompassed by the show cause order. Such notification shall be made for additional actions pending at the time of the issuance of the show cause order and whenever new actions are filed.

(b) Any party may file a response to the show cause order within twenty days of the filing of said order unless otherwise provided for in the order. Failure of a party to respond to a show cause order shall be treated as that party's acquiescence to the Panel action contemplated in the order.

(c) Within five days after the lapse of the time period for filing a response, any party may file a reply limited to new matters.

(d) Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(e) With respect to any action that is the subject of Panel consideration, counsel shall promptly notify the Clerk of the Panel of any development that would partially or completely moot the matter before the Panel.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 7.4: Conditional Transfer Orders for ''Tag-Along Actions''

(a) Upon learning of the pendency of a potential ''tag-along action,'' as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing or hearings and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the fifteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(d) Within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 7.5: Miscellaneous Provisions Concerning ''Tag-Along Actions''

(a) Potential ''tag-along actions'' filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential ''tag-along action'' and having reasonable anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 7.3 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential ''tag-along action'' with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer if prejudice can be shown. The inability of the Clerk of the Panel to serve a conditional transfer order on all plaintiffs or defendants or their counsel shall not render the transfer of the action void but can be submitted by such a party as a basis for moving to remand as to such party if prejudice can be shown.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was filed or came to the attention of the Panel either after the initial hearing before it or too late to be included in the initial hearing, will be treated by the Panel as a potential ''tag-along action.''

(e) Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential ''tag-along actions'' in which that party is also named or in which that counsel appears.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 7.6: Termination and Remand

In the absence of unusual circumstances—

(a) Actions terminated in the transferee district court by valid judgment, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation, shall not be remanded by the Panel and shall be dismissed by the transferee district court. The clerk of the transferee district court shall send a copy of the order terminating the action to the Clerk of the Panel but shall retain the original files and records unless otherwise directed by the transferee judge or by the Panel.

(b) Each action transferred only for coordinated or consolidated pretrial proceedings that has not been terminated in the transferee district court shall be remanded by the Panel to the transferor district for trial. Actions that were originally filed in the transferee district require no action by the Panel to be reassigned to another judge in the transferee district at the conclusion of the coordinated or consolidated pretrial proceedings affecting those actions.

(c) The Panel shall consider remand of each transferred action or any separable claim, crossclaim, counterclaim or third-party claim at or before the conclusion of coordinated or consolidated pretrial proceedings on

(i) motion of any party,

(ii) suggestion of the transferee district court, or

(iii) the Panel's own initiative, by entry of an order to show cause, a conditional remand order or other appropriate order.

(d) The Panel is reluctant to order remand absent a suggestion of remand from the transferee district court. If remand is sought by motion of a party, the motion shall be accompanied by:

(i) an affidavit reciting

(A) whether the movant has requested a suggestion of remand from the transferee district court, how the court responded to any request, and, if no such request was made, why;

(B) whether all common discovery and other pretrial proceedings have been completed in the action sought to be remanded, and if not, what remains to be done; and

(C) whether all orders of the transferee district court have been satisfactorily complied with, and if not, what remains to be done; and

(ii) a copy of the transferee district court's final pretrial order, where such order has been entered.

Motions to remand and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(e) When an order to show cause why an action or actions should not be remanded is entered pursuant to subsection (c), paragraph (iii) of this Rule, any party may file a response within twenty days of the filing of said order unless otherwise provided for in the order. Within five days of filing of a party's response, any party may file a reply brief limited to new matters. Failure of a party to respond to a show cause order regarding remand shall be treated as that party's acquiescence to the remand. Responses and replies shall be filed and served in conformity with Rules 5.12, 5.2 and 7.1 of these Rules.

(f) Conditional Remand Orders

(i) When the Panel has been advised by the transferee district judge, or otherwise has reason to believe, that pretrial proceedings in the litigation assigned to the transferee district judge are concluded or that remand of an action or actions is otherwise appropriate, an order may be entered by the Clerk of the Panel remanding the action or actions to the transferor district court. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose remand, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(ii) Any party opposing the remand shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(iii) Within fifteen days of the filing of its notice of opposition, the party opposing remand shall file a motion to vacate the conditional remand order and brief in support thereof. The Clerk of the Panel shall set the motion for hearing at the next appropriate session of the Panel. Failure to file and serve a motion and brief shall be treated as a withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(iv) Conditional remand orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(v) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

(g) Upon receipt of an order to remand from the Clerk of the Panel, the parties shall furnish forthwith to the transferee district clerk a stipulation or designation of the contents of the record or part thereof to be remanded and furnish the transferee district clerk all necessary copies of any pleading or other matter filed so as to enable the transferee district clerk to comply with the order of remand.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 16.1: Hearings

(a) Hearings shall be held as ordered by the Panel. The Panel shall convene whenever and wherever desirable or necessary in the judgment of the Chairman. The Chairman shall determine which matters shall be set for hearing at each session and the Clerk of the Panel shall give notice to counsel for all parties involved in the litigation of the time, place and subject matter of such hearing.

(b) No transfer or remand determination regarding any action pending in district court shall be made by the Panel when any party timely opposes such transfer or remand unless a

hearing has been held or unless the matter has been submitted on the briefs in accordance with Rule 16.2 of these Rules. Unless otherwise ordered by the Panel, all other matters before the Panel, such as a motion for reconsideration, shall be considered and determined upon the basis of the papers filed.

(c) Except for leave of the Panel on a showing of good cause, only those parties to actions scheduled for hearing who have filed a motion or written response to a motion or order shall be permitted to appear before the Panel and present oral argument.

(d) Counsel for those supporting transfer or remand under Section 1407 and counsel for those opposing such transfer or remand are to confer separately prior to the hearing for the purpose of organizing their arguments and selecting representatives to present all views without duplication.

(e) Unless otherwise ordered by the Panel, a maximum of thirty minutes shall be allotted for argument in each new group of actions being considered for Section 1407 treatment and a maximum of twenty minutes shall be allotted for arguments in all other matters. The time shall be divided equally among those with varying viewpoints. Counsel for the moving party or parties shall generally be heard first.

(f) So far as practicable and consistent with the purposes of Section 1407, the offering of oral testimony before the Panel shall be avoided. Accordingly, oral testimony shall not be received except upon notice, motion and order of the Panel expressly providing for it.

(g) After an action or group of actions has been set for hearing, the hearing may be continued only by order of the Panel on good cause shown.

(As amended June 14, 1988, eff. July 6, 1988; May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 16.2: Notice of Presentation or Waiver of Oral Argument, and Matters Submitted on the Briefs

(a) At such time in advance of the date of the hearing as required by the Clerk of the Panel in the notice of hearing, counsel shall notify the Clerk of the Panel in writing of one of the following: (1) counsel will waive oral argument, if all other counsel in the matter set for hearing waive oral argument; (2) counsel will present oral argument, regardless of whether any other counsel in the matter set for hearing presents oral argument; or (3) counsel waives oral argument. All notices of presentation or waiver of oral argument shall be filed and served in conformity with Rules 5.12 and 5.2 of these Rules.

(b) If all parties to a matter set for hearing waive oral argument, the matter shall be submitted for decision by the Panel on the basis of the papers filed. If a party is not present when a matter to be heard is called at the hearing, the matter shall not be rescheduled and that party's position shall be treated as submitted for decision by the Panel on the basis of the papers filed, unless otherwise ordered by the Panel.

(As amended June 14, 1988, eff. July 6, 1988; Sept. 1, 1998, eff. Nov. 2, 1998.)

II. RULES FOR MULTICIRCUIT PETITIONS FOR REVIEW UNDER 28 U.S.C. §2112(a)(3)

Rule 17.1: Random Selection

(a) Upon filing a notice of multicircuit petitions for review, the Clerk of the Panel or designated deputy shall randomly select a circuit court of appeals from a drum containing an entry for each circuit wherein a constituent petition for review is pending. Multiple petitions for review pending in a single circuit shall be allotted only a single entry in the drum. This random selection shall be witnessed by the Clerk of the Panel or a designated deputy other than the random selector. Thereafter, an order on behalf of the Panel shall be issued, signed by the random selector and the witness,

(i) consolidating the petitions for review in the court of appeals for the circuit that was randomly selected; and

(ii) designating that circuit as the one in which the record is to be filed pursuant to Rules 16 and 17 of the Federal Rules of Appellate Procedure.

(b) A consolidation of petitions for review shall be effective when the Panel's consolidation order is filed at the offices of the Panel by the Clerk of the Panel.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 25.1: Filing of Notices

(a) An original of a notice of multicircuit petitions for review pursuant to 28 U.S.C. §2112(a)(3) shall be submitted for filing to the Clerk of the Panel by the affected agency, board, commission or officer. The term ''agency'' as used in Section II of these Rules shall include agency, board, commission or officer.

(b) All notices of multicircuit petitions for review submitted by the affected agency for filing with the Clerk of the Panel shall embrace exclusively petitions for review filed in the courts of appeals within ten days after issuance of an agency order and received by the affected agency from the petitioners within that ten-day period.

(c) When a notice of multicircuit petitions for review is submitted for filing to the Clerk of the Panel, the Clerk of the Panel shall file the notice and endorse thereon the date of filing.

(d) Copies of notices of multicircuit petitions for review shall be filed by the affected agency with the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

(Added June 14, 1988, eff. July 6, 1988; amended May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 25.2: Accompaniments to Notices

(a) All notices of multicircuit petitions for review shall be accompanied by:

(i) a copy of each involved petition for review as the petition for review is defined in 28 U.S.C. §2112(a)(2); and

(ii) a schedule giving

(A) the date of the relevant agency order;

(B) the case name of each petition for review involved;

(C) the circuit court of appeals in which each petition for review is pending;

(D) the appellate docket number of each petition for review;

(E) the date of filing by the court of appeals of each petition for review; and

(F) the date of receipt by the agency of each petition for review.

(b) The schedule in Subsection (a)(ii) of this Rule shall also be governed by Rules 25.1, 25.3 and 25.4(a) of these Rules.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 25.3: Service of Notices

(a) All notices of multicircuit petitions for review shall be accompanied by proof of service by the affected agency on all other parties in all petitions for review included in the notice. Service and proof of service shall be made as provided in Rule 25 of the Federal Rules of Appellate Procedure. The proof of service shall state the name and address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and his or her last known address. The original proof of service shall be submitted by the affected agency for filing with the Clerk of the Panel and copies thereof shall be sent by the affected agency to each person included within the proof of service.

(b) The proof of service pertaining to notices of multicircuit petitions for review shall certify that copies of the notices have been mailed or otherwise delivered by the affected agency for filing to the clerk of each circuit court of appeals in which a petition for review is pending that is included in the notice.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 25.4: Form of Notices

(a) Each notice of multicircuit petitions for review shall be

(i) flat and unfolded;

(ii) plainly written, typed in double space, printed or prepared by means of a duplicating process, without erasures or interlineations which materially deface it;

(iii) on opaque, unglazed white paper (not onionskin);

(iv) approximately 8½ × 11 inches in size; and

(v) fastened at the top-left corner without side bindings or front or back covers.

(b) The heading on the first page of each notice of multicircuit petitions for review shall commence not less than three inches from the top of the page. Each notice shall bear the heading ''Notice to the Judicial Panel on Multidistrict Litigation of Multicircuit Petitions for Review,'' followed by a brief caption identifying the involved agency, the relevant agency order, and the date of the order.

(c) The final page of each notice of multicircuit petitions for review shall contain the name, address and telephone number of the individual or individuals who submitted the notice on behalf of the agency.

(Added June 14, 1988, eff. July 6, 1988; amended May 3, 1993, eff. July 1, 1993; Sept. 1, 1998, eff. Nov. 2, 1998.)

Rule 25.5: Service of Panel Consolidation Order

(a) The Clerk of the Panel shall serve the Panel's consolidation order on the affected agency through the individual or individuals, as identified in Rule 25.4(c) of these Rules, who submitted the notice of multicircuit petitions for review on behalf of the agency.

(b) That individual or individuals, or anyone else designated by the agency, shall promptly serve the Panel's consolidation order on all other parties in all petitions for review included in the Panel's consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel. Service and proof of that service shall also be governed by Rule 25.3 of these Rules.

(c) The Clerk of the Panel shall serve the Panel's consolidation order on the clerks of all circuit courts of appeals that were among the candidates for the Panel's random selection.

(Added June 14, 1988, eff. July 6, 1988; amended Sept. 1, 1998, eff. Nov. 2, 1998.)

§ 1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

(Added Pub. L. 98–353, title I, § 102(a), July 10, 1984, 98 Stat. 334.)

PRIOR PROVISIONS

A prior section 1408, added by Pub. L. 95–598, title II, § 240(a), Nov. 6, 1978, 92 Stat. 2668, which related to bankruptcy appeals, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) Except as otherwise provided in subsections (b) and (d), a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000 only in the district court for the district in which the defendant resides.

(c) Except as provided in subsection (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544(b) of title 11 in the district court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

(d) A trustee may commence a proceeding arising under title 11 or arising in or related to a case under title 11 based on a claim arising after the commencement of such case from the operation of the business of the debtor only in the district court for the district where a State or Federal court sits in which, under applicable nonbankruptcy venue provisions, an action on such claim may have been brought.

(e) A proceeding arising under title 11 or arising in or related to a case under title 11, based on a claim arising after the commencement of such case from the operation of the business of the debtor, may be commenced against the representative of the estate in such case in the district court for the district where the State or Federal court sits in which the party commencing such proceeding may, under applicable nonbankruptcy venue provisions, have brought an action on such claim, or in the district court in which such case is pending.

(Added Pub. L. 98–353, title I, § 102(a), July 10, 1984, 98 Stat. 334.)

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

§ 1410. Venue of cases ancillary to foreign proceedings

(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.

(Added Pub. L. 98–353, title I, § 102(a), July 10, 1984, 98 Stat. 335.)

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1408 of this title.

§ 1411. Jury trials

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

(Added Pub. L. 98–353, title I, § 102(a), July 10, 1984, 98 Stat. 335.)

EFFECTIVE DATE

Section effective July 10, 1984, except that subsec. (a) not applicable with respect to cases under Title 11, Bankruptcy, that are pending on July 10, 1984, or to proceedings arising in or related to such cases, see section 122(a), (b) of Pub. L. 98–353, set out as a note under section 151 of this title.

§ 1412. Change of venue

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

(Added Pub. L. 98–353, title I, § 102(a), July 10, 1984, 98 Stat. 335.)

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

§ 1413. Venue of cases under chapter 5 of title 3

Notwithstanding the preceding provisions of this chapter, a civil action under section 1346(g) may be brought in the United States district court for the district in which the employee is employed or in the United States District Court for the District of Columbia.

(Added Pub. L. 104–331, § 3(b)(2)(A), Oct. 26, 1996, 110 Stat. 4069.)

CODIFICATION

Pub. L. 104–331, § 3(b)(2)(A), which directed the amendment of chapter 37 of this title by adding this section at end, was executed by adding this section at the end of chapter 87 of this title to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as a note under section 1296 of this title.

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec.
1441. Actions removable generally.

Sec.
1442. Federal officers and agencies sued or prosecuted.[1]
1442a. Members of armed forces sued or prosecuted.
1443. Civil rights cases.
1444. Foreclosure action against United States.
1445. Nonremovable actions.
1446. Procedure for removal.
1447. Procedure after removal generally.
1448. Process after removal.
1449. State court record supplied.
1450. Attachment or sequestration; securities.
1451. Definitions.
1452. Removal of claims related to bankruptcy cases.

AMENDMENTS

1996—Pub. L. 104–317, title II, §206(b), Oct. 19, 1996, 110 Stat. 3850, inserted ''and agencies'' after ''officers'' in item 1442.

1984—Pub. L. 98–353, title I, §103(b), July 10, 1984, 98 Stat. 335, added item 1452.

1970—Pub. L. 91–358, title I, §172(d)(2), July 29, 1970, 84 Stat. 591, added item 1451.

1958—Pub. L. 85–554, §5(b), July 25, 1958, 72 Stat. 416, substituted ''Nonremovable actions'' for ''Carriers; non-removable actions'' in item 1445.

1956—Act Aug. 10, 1956, ch. 1041, §19(b), 70A Stat. 627, added item 1442a.

CROSS REFERENCES

Puerto Rico, removal of causes to United States District Court of Puerto Rico, see section 864 of Title 48, Territories and Insular Possessions.

CHAPTER REFERRED TO IN OTHER SECTION

This chapter is referred to in title 33 section 1323; title 39 section 409; title 42 section 7192.

§1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

(June 25, 1948, ch. 646, 62 Stat. 937; Pub. L. 94–583, §6, Oct. 21, 1976, 90 Stat. 2898; Pub. L. 99–336, §3(a), June 19, 1986, 100 Stat. 637; Pub. L. 100–702, title X, §1016(a), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 101–650, title III, §312, Dec. 1, 1990, 104 Stat. 5114; Pub. L. 102–198, §4, Dec. 9, 1991, 105 Stat. 1623.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§71, 114 (Mar. 3, 1911, ch. 231, §§28, 53, 36 Stat. 1094, 1101; Jan. 20, 1914, ch. 11, 38 Stat. 278; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates removal provisions of sections 71 and 114 of title 28, U.S.C., 1940 ed., and is intended to resolve ambiguities and conflicts of decisions.

Phrases such as ''in suits of a civil nature, at law or in equity,'' the words ''case,'' ''cause,'' ''suit,'' and the like have been omitted and the words ''civil action'' substituted in harmony with Rules 2 and 81(c) of the Federal Rules of Civil Procedure.

Ambiguous phrases such as ''the District Court of the United States for the proper district'' have been clarified by the substitution of the phrase ''the district and division embracing the place where such action is pending.'' (See *General Investment Co. v. Lake Shore & M.S. Ry. Co.*, 1922, 43 S.Ct. 107, 112, 260 U.S. 261, 67 L.Ed. 244 and cases cited therein.)

All the provisions with reference to removal of controversies between citizens of different States because of inability, from prejudice or local influence, to obtain justice, have been discarded. These provisions, born of the bitter sectional feelings engendered by the Civil War and the Reconstruction period, have no place in the jurisprudence of a nation since united by three wars against foreign powers. Indeed, the practice of removal for prejudice or local influence has not been employed much in recent years.

Subsection (c) has been substituted for the provision in section 71 of title 28, U.S.C., 1940 ed., ''and when in any suit mentioned in this section, there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States.''

This quoted language has occasioned much confusion. The courts have attempted to distinguish between separate and separable controversies, a distinction which is sound in theory but illusory in substance. (See 41 Harv. L. Rev. 1048; 35 Ill. L. Rev. 576.)

Subsection (c) permits the removal of a separate cause of action but not of a separable controversy unless it constitutes a separate and independent claim or cause of action within the original jurisdiction of United States District Courts. In this respect it will somewhat decrease the volume of Federal litigation.

Rules 18, 20, and 23 of the Federal Rules of Civil Procedure permit the most liberal joinder of parties, claims, and remedies in civil actions. Therefore there will be no procedural difficulty occasioned by the removal of the entire action. Conversely, if the court so desires, it may remand to the State court all nonremovable matters.

The provisions of section 71 of title 28, U.S.C., 1940 ed., with respect to removal of actions under the Fed-

[1] So in original. Does not conform to section catchline.

eral Employer's Liability Act (U.S.C., 1940 ed., title 45, Railroads, §§51–60) and actions against a carrier for loss, damage, or delay to shipments under section 20 of title 49, U.S.C., 1940 ed., Transportation, are incorporated in section 1445 of this title.

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–198 struck out comma after ''title'' and substituted ''may'' for ''may may'' before ''remand''.

1990—Subsec. (c). Pub. L. 101–650 substituted ''within the jurisdiction conferred by section 1331 of this title'' for '', which would be removable if sued upon alone'' and ''may remand all matters in which State law predominates'' for ''remand all matters not otherwise within its original jurisdiction''.

1988—Subsec. (a). Pub. L. 100–702 inserted at end ''For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.''

1986—Subsec. (e). Pub. L. 99–336 added subsec. (e).

1976—Subsec. (d). Pub. L. 94–583 added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 3(b) of Pub. L. 99–336 provided that: ''The amendment made by this section [amending this section] shall apply with respect to claims in civil actions commenced in State courts on or after the date of the enactment of this section [June 19, 1986].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–583 effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1602 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules of Civil Procedure, see rule 81, Appendix to this title.

CROSS REFERENCES

Asian Development Bank, removal of actions against, see section 285f of Title 22, Foreign Relations and Intercourse.

Citizenship of corporations for purposes of this section, see section 1332 of this title.

Federal reserve banks and banking transactions, removal of actions involving, see section 632 of Title 12, Banks and Banking.

Inter-American Development Bank, removal of actions against, see section 283f of Title 22, Foreign Relations and Intercourse.

International Finance Corporation, removal of actions against, see section 282f of Title 22.

International Monetary Fund and International Bank for Reconstruction and Development, removal of actions against, see section 286g of Title 22.

International or foreign banking, removal of suits arising out of, see section 632 of Title 12, Banks and Banking.

Securities Act, cases not removable, see section 77v of Title 15, Commerce and Trade.

Stay of State court proceedings, see section 2283 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1332 of this title; title 33 section 1323.

§ 1442. Federal officers or agencies sued or prosecuted

(a) A civil action or criminal prosecution commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for any act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(June 25, 1948, ch. 646, 62 Stat. 938; Pub. L. 104–317, title II, §206(a), Oct. 19, 1996, 110 Stat. 3850.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§76 and 77 (Mar. 3, 1911, ch. 231, §§33, 34, 36 Stat. 1097, 1098; Aug. 23, 1916, ch. 399, 39 Stat. 532).

Section consolidates sections 76 and 77 of title 28, U.S.C., 1940 ed.

The revised subsection (a)(1) is extended to apply to all officers and employees of the United States or any agency thereof. Section 76 of title 28, U.S.C., 1940 ed., was limited to revenue officers engaged in the enforcement of the criminal or revenue laws.

The procedural provisions of section 76 of title 28, U.S.C., 1940 ed., are incorporated in sections 1446 and 1447 of this title. (See reviser's notes under those sections.)

Changes were made in phraseology.

AMENDMENTS

1996—Pub. L. 104–317, §206(a)(1), inserted ''or agencies'' after ''officers'' in section catchline.

Subsec. (a). Pub. L. 104–317, §206(a)(2), struck out ''persons'' after ''following'' in introductory provisions and substituted ''The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, sued in an official or individual capacity for any act under color of such office'' for ''Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office'' in par. (1).

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules of Civil Procedure to removed actions, see rule 81, Appendix to this title.

Continuation of section under rule 81, see note by Advisory Committee under rule 81.

CROSS REFERENCES

Senate or House, suits against officers of, removal provisions applicable, see section 118 of Title 2, The Congress.

Stay of State court proceedings, see section 2283 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1452, 2279aa–14; title 14 section 823a.

§ 1442a. Members of armed forces sued or prosecuted

A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause.

(Added Aug. 10, 1956, ch. 1041, § 19(a), 70A Stat. 626.)

DERIVATION

Section was from the Uniform Code of Military Justice, act May 5, 1950, ch. 169, § 9, 64 Stat. 146, which was based on Article 117, Articles of War, act June 4, 1920, ch. 227, subch. II, § 1, 41 Stat. 811, as amended June 24, 1948, ch. 625, title II, § 242, 62 Stat. 642.

§ 1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(June 25, 1948, ch. 646, 62 Stat. 938.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 74 (Mar. 3, 1911, ch. 231, § 31, 36 Stat. 1096).

Other provisions of section 74 of title 28, U.S.C., 1940 ed., are incorporated in sections 1446 and 1447 of this title.

Words ''or in the part of the State where such suit or prosecution is pending'' after ''courts of such States,'' were omitted as unnecessary.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Appendix to this title.

Continuation of section under rule 81, see note by Advisory Committee under rule 81.

CROSS REFERENCES

Stay of State court proceedings, see section 2283 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1447 of this title.

§ 1444. Foreclosure action against United States

Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending.

(June 25, 1948, ch. 646, 62 Stat. 938; May 24, 1949, ch. 139, § 82, 63 Stat. 101.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 903 (Mar. 4, 1931, ch. 515, § 3, 46 Stat. 1529).

The procedural provisions of section 903 of title 28, U.S.C., 1940 ed., were omitted as covered by section 1446 of this title.

Changes were made in phraseology.

1949 ACT

This section corrects typographical errors in section 1444 of title 28, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, inserted ''court'' between ''State'' and ''may'', and substituted ''division'' for ''divisions''.

CROSS REFERENCES

Actions affecting property on which United States has a lien, see section 2410 of this title.

Stay of State court proceedings, see section 2283 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2410 of this title; title 26 section 7424.

§ 1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1–4 and 5–10 of the Act of April 22, 1908 (45 U.S.C. 51–54, 55–60), may not be removed to any district court of the United States.

(b) A civil action in any State court against a carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11706 or 14706 of title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds $10,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

(d) A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any district court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 939; Pub. L. 85–554, § 5, July 25, 1958, 72 Stat. 415; Pub. L. 95–473, § 2(a)(3)(A), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 95–486, § 9(b), Oct. 20, 1978, 92 Stat. 1634; Pub. L. 103–322, title IV, § 40302(e)(5), Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104–88, title III, § 305(b), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104–287, § 3, Oct. 11, 1996, 110 Stat. 3388.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 71 (Mar. 3, 1911, ch. 231, § 28, 36 Stat. 1094; Jan. 20, 1914, ch. 11, 38 Stat. 278; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

The words ''or its receivers or trustees'' were inserted in both subsections to make clear that nonremovable actions against a carrier do not become removable under section 1442 of this title when filed against court receivers or trustees.

This was the unquestioned rule prior to the act of Aug. 23, 1916, ch. 399, 39 Stat. 532, amending section 76 of title 28, U.S.C., 1940 ed., and permitting removal of actions against officers of United States courts. The cases are in conflict as to whether under that amendment the case becomes removable when the carrier is in receivership or undergoing reorganization. The revised section resolves the conflict by denying the right of removal to receivers and trustees where it would be nonexistent if the carrier were the party defendant. Thus the subject matter rather than legalistic distinctions as to the identity of the parties is made determinative consideration.

A reference in section 71 of title 28, U.S.C., 1940 ed., to sections 51–59 of title 45, U.S.C., 1940 ed., Railroads, was changed to ''51–60.'' Such sections 51–59 embraced all of chapter 2 of said title 45 when the law on which such section 71 is based was enacted, but a new section (60) was added in 1939.

Other provisions of section 71 of title 28, U.S.C., 1940 ed., appear in section 1441 of this title.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 40302 of the Violence Against Women Act of 1994, referred to in subsec. (d), is classified to section 13981 of Title 42, The Public Health and Welfare.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–287 substituted ''sections 1–4 and 5–10 of the Act of April 22, 1908 (45 U.S.C. 51–54, 55–60)'' for ''sections 51–60 of Title 45''.

1995—Subsec. (b). Pub. L. 104–88 substituted ''carrier'' for ''common carrier'' and ''11706 or 14706'' for ''11707''.

1994—Subsec. (d). Pub. L. 103–322 added subsec. (d).

1978—Subsec. (b). Pub. L. 95–486 substituted ''$10,000'' for ''$3,000''.

Pub. L. 95–473 substituted ''section 11707 of title 49'' for ''section 20 of Title 49''.

1958—Pub. L. 85–554 substituted ''Nonremovable actions'' for ''Carriers; nonremovable actions'' in section catchline and added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of Title 49, Transportation.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–554 applicable only in the case of actions commenced after July 25, 1958, see section 3 of Pub. L. 85–554, set out as a note under section 1331 of this title.

CROSS REFERENCES

Stay of State court proceedings, see section 2283 of this title.

§ 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c)(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(June 25, 1948, ch. 646, 62 Stat. 939; May 24, 1949, ch. 139, §83, 63 Stat. 101; Pub. L. 89–215, Sept. 29, 1965, 79 Stat. 887; Pub. L. 95–78, §3, July 30, 1977, 91 Stat. 321; Pub. L. 100–702, title X, §1016(b), Nov. 19, 1988, 102 Stat. 4669; Pub. L. 102–198, §10(a), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 103–465, title III, §321(b)(2), Dec. 8, 1994, 108 Stat. 4946; Pub. L. 104–317, title VI, §603, Oct. 19, 1996, 110 Stat. 3857.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§72, 74, 75, 76 (May 3, 1911, ch. 231, §§29, 31, 32, 33, 36 Stat. 1095, 1097; Aug. 23, 1916, ch. 399, 39 Stat. 532; July 30, 1977, Pub. L. 95–78, §3, 91 Stat. 321.)

Section consolidates portions of sections 74, 75, and 76 with section 72 of title 28, U.S.C., 1940 ed., with important changes of substance and phraseology.

Subsection (a), providing for the filing of the removal petition in the district court, is substituted for the requirement of sections 72 and 74 of title 28, U.S.C., 1940 ed., that the petition be filed in the State court. This conforms to the method prescribed by section 76 of title 28, U.S.C., 1940 ed., and to the recommendation of United States District Judges Calvin W. Chesnut and T. Waties Warring approved by the Committee of the Judicial Conference on the Revision of the Judicial Code.

Subsection (b) makes uniform the time for filing petitions to remove all civil actions within twenty days after commencement of action or service of process whichever is later, instead of ''at any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought to answer or plead'' as required by section 72 of title 28, U.S.C., 1940 ed. As thus revised, the section will give adequate time and operate uniformly throughout the Federal jurisdiction. The provisions of sections 74 and 76 of title 28, U.S.C., 1940 ed., for filing at any time ''before trial or final hearing'' in civil rights cases and cases involving revenue officers, court officers and officers of either House of Congress were omitted.

Subsection (c) embodies the provisions of sections 74 and 76 of title 28, U.S.C., 1940 ed., for filing the removal petition before trial and makes them applicable to all criminal prosecutions but not to civil actions. This provision was retained to protect Federal officers enforcing revenue or criminal laws from being rushed to trial in State courts before petition for removal could be filed. Words ''or final hearing'' following the words ''before trial,'' were omitted for purposes of clarity and simplification of procedure.

The provision of said section 76 of title 28, U.S.C., 1940 ed., for certificate of counsel that he has examined the proceedings and carefully inquired into all matters set forth in the petition and believes them to be true, was omitted as unnecessary and inconsistent with Rule 11 of the Federal Rules of Civil Procedure.

Subsection (d) is derived from sections 72 and 74 of title 28, U.S.C., 1940 ed., but the requirement for cost bond is limited to civil actions in conformity with the more enlightened trend of modern procedure to remove all unnecessary impediments to the administration of criminal justice. Provisions of said section 72 as to the conditions of the bond were rewritten because inappropriate when the petition for removal is filed in the Federal court.

Subsection (e) provides for notice to the adverse parties and for the filing in the State court of a copy of the petition for removal in substitution for the requirements of sections 72 and 74 of title 28, U.S.C., 1940 ed., for the filing of the removal petition in the State court. The last sentence of subsection (e) is derived from sections 72, 74 and 76 of title 28, U.S.C., 1940 ed.

Subsection (f) is derived from sections 75 and 76 of title 28, U.S.C., 1940 ed.

Since the procedure in removal cases is now governed by the Federal Rules of Civil Procedure [Rule 81(c)] and Federal Rules of Criminal Procedure [Rule 54(b)], the detailed directions of the various sections with respect to such procedure were omitted as unnecessary.

Thus the provision of section 72 of title 28, U.S.C., 1940 ed., with respect to appearance, special bail and filing the record were omitted as covered by the Federal Rules of Civil Procedure, Rules 64, 81(c).

The provisions of section 74 of title 28, U.S.C., 1940 ed., as to the effect of security and other proceedings and remedies in the State court were omitted as covered by section 1450 of this title.

The requirements of section 74 of title 28, U.S.C., 1940 ed., that the clerk of the State court shall furnish copies of pleadings and proceedings to the petitioner and that the petitioner shall file the same in the district court are covered by section 1447 of this title.

The provisions of section 74 of title 28, U.S.C., 1940 ed., requiring the adverse parties to plead anew in the district court were omitted as unnecessary in view of Federal Rules of Civil Procedure, Rule 81(c). The last sentence of such section was omitted as covered by section 1447(d) of this title.

1949 ACT

Subsection (b) of section 1446 of title 28, U.S.C., as revised, has been found to create difficulty in those States, such as New York, where suit is commenced by the service of a summons and the plaintiff's initial pleading is not required to be served or filed until later.

The first paragraph of the amendment to subsection (b) corrects this situation by providing that the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff's initial pleading.

This provision, however, without more, would create further difficulty in those States, such as Kentucky, where suit is commenced by the filing of the plaintiff's initial pleading and the issuance and service of a summons without any requirement that a copy of the pleading be served upon or otherwise furnished to the defendant. Accordingly the first paragraph of the amendment provides that in such cases the petition for removal shall be filed within 20 days after the service of the summons.

The first paragraph of the amendment conforms to the amendment of rule 81(c) of the Federal Rules of Civil Procedure, relating to removed actions, adopted by the Supreme Court on December 29, 1948, and reported by the Court to the present session of Congress.

The second paragraph of the amendment to subsection (b) is intended to make clear that the right of removal may be exercised at a later stage of the case if the initial pleading does not state a removable case but its removability is subsequently disclosed. This is declaratory of the existing rule laid down by the decisions. (See for example, *Powers v. Chesapeake etc., Ry. Co.*, 169 U.S. 92.)

In addition, this amendment clarifies the intent of section 1446(e) of title 28, U.S.C., to indicate that notice need not be given simultaneously with the filing, but may be given promptly thereafter.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (a) and (f), are set out in the Appendix to this title.

Section 337 of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1337 of Title 19, Customs Duties.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–317 substituted ''defendant or defendants'' for ''petitioner''.

1994—Subsec. (f). Pub. L. 103–465 added subsec. (f).

1991—Subsec. (c)(1). Pub. L. 102–198, § 10(a)(1), (4), substituted ''notice of'' for ''petition for'' and ''the notice'' for ''the petition''.

Subsec. (c)(2). Pub. L. 102–198, § 10(a)(1), (4), substituted ''notice of'' for ''petition for'' and substituted ''notice'' for ''petition'' in three places.

Subsec. (c)(3). Pub. L. 102–198, § 10(a)(1), (2), substituted ''notice of'' for ''petition for'' and ''prosecution is first remanded'' for ''petition is first denied''.

Subsec. (c)(4), (5). Pub. L. 102–198, § 10(a)(3), added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.

''(5) If the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.''

Subsec. (d). Pub. L. 102–198, § 10(a)(1), (4), (5), substituted ''notice of removal'' for ''petition for the removal'', struck out ''and bond'' after ''civil action'', and substituted ''notice with'' for ''petition with''.

1988—Subsec. (a). Pub. L. 100–702, § 1016(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.''

Subsec. (b). Pub. L. 100–702, § 1016(b)(2), substituted ''notice of removal'' for ''petition for removal'' in two places and inserted before period at end of second par. '', except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action''.

Subsecs. (d) to (f). Pub. L. 100–702, § 1016(b)(3), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d) which read as follows: ''Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.''

1977—Subsec. (c). Pub. L. 95–78, § 3(a), designated existing provisions as par. (1), set a period of 30 days as the maximum allowable time prior to commencement of trial and following arraignment during which time a petition for removal can be filed, provided for the grant of additional time for good cause shown, and added pars. (2) to (5).

Subsec. (e). Pub. L. 95–78, § 3(b), inserted ''for the removal of a civil action'' after ''filing of such petition''.

1965—Subsec. (b). Pub. L. 89–215 substituted ''thirty days'' for ''twenty days'' wherever appearing.

1949—Subsec. (b). Act May 24, 1949, § 83(a), provided that the petition for removal need not be filed until 20 days after the defendant has received a copy of the plaintiff's initial pleading, and provided that the petition for removal shall be filed within 20 days after the service of summons.

Subsec. (e). Act May 24, 1949, § 83(b), indicated that notice need not be given simultaneously with the filing, but may be made promptly thereafter.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as a note under section 1337 of Title 19.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–78 effective Oct. 1, 1977, see section 4 of Pub. L. 95–78, set out as an Effective Date of Pub. L. 95–78 note under section 3771 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules of Civil Procedure, see rule 81, Appendix to this title.

Continuation of section under rule 81, see note by Advisory Committee under rule 81.

CROSS REFERENCES

Stay of State court proceedings, see section 2283 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1441, 1447 of this title; title 19 section 3473; title 22 sections 283gg, 290i–7, 290k–9, 290m; title 25 sections 487, 610c, 642, 670; title 42 section 2210.

§ 1447. Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from

which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

(June 25, 1948, ch. 646, 62 Stat. 939; May 24, 1949, ch. 139, § 84, 63 Stat. 102; Pub. L. 88–352, title IX, § 901, July 2, 1964, 78 Stat. 266; Pub. L. 100–702, title X, § 1016(c), Nov. 19, 1988, 102 Stat. 4670; Pub. L. 102–198, § 10(b), Dec. 9, 1991, 105 Stat. 1626; Pub. L. 104–219, § 1, Oct. 1, 1996, 110 Stat. 3022.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 71, 72, 74, 76, 80, 81 and 83 (Mar. 3, 1911, ch. 231, §§ 28, 29, 31, 33, 37 and 38, 36 Stat. 1094–1098; Jan. 20, 1914, ch. 11, 39 Stat. 278; Aug. 23, 1916, ch. 399, 39 Stat. 532; Apr. 16, 1920, ch. 146, 41 Stat. 554; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Section consolidates procedural provisions of sections 71, 72, 74, 76, 80, 81 and 83 of title 28, U.S.C., 1940 ed., with important changes in substance and phraseology.

Subsection (a) is derived from sections 72, 76, 81 and 83 of title 28, U.S.C., 1940 ed. The remaining provisions of said section 83 are the basis of section 1448 of this title.

Subsection (b) is derived from sections 72, 74, 76 and 83 of title 28, U.S.C., 1940 ed., which have been rewritten to provide the utmost simplicity and flexibility of procedure in bringing the State court record to the district court.

[*Editorial Note.*—Subsecs. (c), (d) and (e) as originally revised and incorporated in this section read as follows:

''(c) It may order the pleadings recast and the parties realigned according to their real interest.

''(d) If any party fails to comply with its lawful orders, the district court may enter such further orders and judgments as justice requires.

''(e) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.'']

Subsections (c) and (d) are substituted for unnecessary and inconsistent procedural provisions.

Subsection (e) [now subsec. (c)] is derived from sections 71 and 80 of title 28, U.S.C., 1940 ed. Such subsection is rewritten to eliminate the cumbersome procedure of remand. Under this chapter as revised, the petition for removal under section 1446 of this chapter will be filed in the Federal court in the first instance and the right of removal determined in that court before the petition is granted.

The provisions in section 80 of title 28, U.S.C., 1940 ed., relating to actions commenced in district courts, as distinguished from actions removed thereto, are incorporated in section 1359 of this title. Other provisions of said section 80 appear in section 1919 of this title.

1949 ACT

This section strikes out subsections (c) and (d) of section 1447 of title 28, U.S.C., as covered by the Federal Rules of Civil Procedure, and adds a new subsection to such section 1447 to remove any doubt that the former law as to the finality of an order of remand to a State court is continued. This section also amends renumbered subsection (c) to remove any doubt that the former law authorizing the district court upon remand to order payment of costs is continued.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–219 substituted ''any defect other than lack of subject matter jurisdiction'' for ''any defect in removal procedure'' in first sentence.

1991—Subsec. (b). Pub. L. 102–198 substituted ''removing party'' for ''petitioner''.

1988—Subsec. (c). Pub. L. 100–702, § 1016(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.''

Subsec. (e). Pub. L. 100–702, § 1016(c)(2), added subsec. (e).

1964—Subsec. (d). Pub. L. 88–352, inserted exception provision.

1949—Subsec. (c). Act May 24, 1949, § 84(a), struck out former subsecs. (c) and (d), renumbered former subsec. (e) to be subsec. (c) and inserted at end of first sentence of new subsec. (c) ''and may order the payment of just costs''.

Subsec. (d). Act May 24, 1949, § 84(b), added subsec. (d).

EXCEPTION TO SUBSECTION (d)

Act Aug. 4, 1947, ch. 458, § 3(c), 61 Stat. 732, provides in part that the United States shall have the right to appeal from any order of remand entered in any case removed to a United States district court pursuant to the provisions of act Apr. 12, 1926, ch. 115, 44 Stat. 239. These acts referred to herein relate to restrictions on land of the Five Civilized Tribes of Oklahoma and are set out as notes under section 355 of Title 25, Indians.

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules, see rule 81, Appendix to this title.

CROSS REFERENCES

Amendment of pleadings to show jurisdiction, see section 1653 of this title.

Parties collusively joined or made, see section 1359 of this title.

Stay of State court proceedings, see section 2283 of this title.

§ 1448. Process after removal

In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.

This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case.

(June 25, 1948, ch. 646, 62 Stat. 940.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 83 (Apr. 16, 1920, ch. 146, 41 Stat. 554).

Words ''district court of the United States'' were substituted for ''United States Court,'' because only the district courts now possess jurisdiction over removed civil and criminal cases.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Application of Rules, see rule 81, Appendix to this title.

CROSS REFERENCES

Power of district court to bring before it proper parties, whether or not served with State court process, see section 1447 of this title.

§ 1449. State court record supplied

Where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any district court of the United States, and the clerk of such State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had in such district court, and all such process awarded, as if certified copies had been filed in the district court.

(June 25, 1948, ch. 646, 62 Stat. 940; May 24, 1949, ch. 139, § 85, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 78 (Mar. 3, 1911, ch. 231, § 35, 36 Stat. 1098).

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error by eliminating from section 1449 of title 28, U.S.C., the words ''any attachment or sequestration of the'', which had been inadvertently included, and inserting in lieu thereof the words, ''and the clerk of such State court, upon''.

AMENDMENTS

1949—Act May 24, 1949, substituted ''and the clerk of such State court, upon'' for ''any attachment or sequestration of the''.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of former sections 78 and 82, see note by Advisory Committee under rule 81, Appendix to this title.

CROSS REFERENCES

Writs of certiorari to State courts, see section 1447 of this title.

§ 1450. Attachment or sequestration; securities

Whenever any action is removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant in such action in the State court shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the State court.

All bonds, undertakings, or security given by either party in such action prior to its removal shall remain valid and effectual notwithstanding such removal.

All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court.

(June 25, 1948, ch. 646, 62 Stat. 940.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 79 (Mar. 3, 1911, ch. 231, § 36, 36 Stat. 1098).

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Attachment or sequestration in federal court after removal, see rule 64, Appendix to this title.

Continuation of section, see note by Advisory Committee under rule 81.

Jury trial in removal actions, see rule 81.

§ 1451. Definitions

For purposes of this chapter—

(1) The term ''State court'' includes the Superior Court of the District of Columbia.

(2) The term ''State'' includes the District of Columbia.

(Added Pub. L. 91–358, title I, § 172(d)(1), July 29, 1970, 84 Stat. 591.)

EFFECTIVE DATE

Section effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as an Effective Date of 1970 Amendment note under section 1257 of this title.

§ 1452. Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

(Added Pub. L. 98–353, title I, § 103(a), July 10, 1984, 98 Stat. 335; amended Pub. L. 101–650, title III, § 309(c), Dec. 1, 1990, 104 Stat. 5113.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–650 inserted before period at end ''by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title''.

EFFECTIVE DATE

Section effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as a note under section 151 of this title.

[CHAPTER 90—OMITTED]

CODIFICATION

Chapter 90, consisting of sections 1471 to 1482, which was added by Pub. L. 95–598, title II, § 241(a), Nov. 6, 1978, 92 Stat. 2668, and which related to district courts and bankruptcy courts, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANSITION TO NEW COURT SYSTEM

Pub. L. 95–598, title IV, § 409, Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98–249, § 1(d), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98–271, § 1(d), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98–299, § 1(d), May 25, 1984, 98 Stat. 214; Pub. L. 98–325, § 1(d), June 20, 1984, 98 Stat. 268; Pub. L. 98–353, title I, § 121(d), July 10, 1984, 98 Stat. 346, which provided

for transfer to the new court system of cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11] pending at the end of Sept. 30, 1983, in the courts of bankruptcy continued under section 404(a) of Pub. L. 95–598, with certain exceptions, and cases and proceedings arising under or related to cases under Title 11 pending at the end of July 9, 1984, and directed that civil actions pending on July 9, 1984, over which a bankruptcy court had jurisdiction on July 9, 1984, not abate, but continuation of such actions not finally determined before Apr. 1, 1985, be removed to a bankruptcy court under this chapter, and that all law books, publications, etc., furnished bankruptcy judges as of July 9, 1984, be transferred to the United States bankruptcy courts under the supervision of the Director of the Administrative Office of the United States Courts, was repealed by Pub. L. 98–353, title I, § 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984.

CHAPTER 91—UNITED STATES COURT OF FEDERAL CLAIMS

Sec.
1491. Claims against United States generally; actions involving Tennessee Valley Authority.
1492. Congressional reference cases.
[1493. Repealed.]
1494. Accounts of officers, agents or contractors.
1495. Damages for unjust conviction and imprisonment; claim against United States.
1496. Disbursing officers' claims.
1497. Oyster growers' damages from dredging operations.
1498. Patent and copyright cases.
1499. Liquidated damages withheld from contractors under Contract Work Hours and Safety Standards Act.
1500. Pendency of claims in other courts.
1501. Pensions.
1502. Treaty cases.
1503. Set-offs.
[1504. Repealed.]
1505. Indian claims.
[1506. Repealed.]
1507. Jurisdiction for certain declaratory judgments.
1508. Jurisdiction for certain partnership proceedings.
1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties.

HISTORICAL AND REVISION NOTES

1949 ACT

This section inserts in the analysis of chapter 91 of title 28, U.S.C., item 1505, corresponding to new section 1505.

AMENDMENTS

1992—Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''UNITED STATES COURT OF FEDERAL CLAIMS'' for ''UNITED STATES CLAIMS COURT'' as chapter heading.

1984—Pub. L. 98–369, div. A, title VII, § 714(g)(3), July 18, 1984, 98 Stat. 962, added item 1509.

1982—Pub. L. 97–248, title IV, § 402(c)(18)(B), Sept. 3, 1982, 96 Stat. 669, added item 1508.

Pub. L. 97–164, title I, § 133(e)(2)(B), (f), (h), (j)(2), Apr. 2, 1982, 96 Stat. 41, substituted ''UNITED STATES CLAIMS COURT'' for ''COURT OF CLAIMS'' in chapter heading, substituted ''Liquidated damages withheld from contractors under Contract Work Hours and Safety Standards Act'' for ''Penalties imposed against contractors under eight hour law'' in item 1499, and struck out items 1504 ''Tort Claims'' and 1506 ''Transfer to cure defect of jurisdiction''.

1976—Pub. L. 94–455, title XIII, § 1306(b)(9)(B), Oct. 4, 1976, 90 Stat. 1720, added item 1507.

1960—Pub. L. 86–770, § 2(b), Sept. 13, 1960, 74 Stat. 912, added item 1506.

Pub. L. 86–726, § 4, Sept. 8, 1960, 74 Stat. 856, substituted ''Patent and copyright cases'' for ''Patent cases'' in item 1498.

1954—Act Sept. 3, 1954, ch. 1263, § 43, 68 Stat. 1241, inserted ''; actions involving Tennessee Valley Authority'' in item 1491 and struck out item 1493 ''Departmental reference cases''.

1949—Act May 24, 1949, ch. 139, § 86, 63 Stat. 102, added item 1505.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

See Appendix to this title.

CROSS REFERENCES

District courts, concurrent jurisdiction of actions or claims not exceeding $10,000, see section 1346 of this title.

Organization of Court of Federal Claims, see section 171 et seq. of this title.

Procedure in Court of Federal Claims, see section 2501 et seq. of this title.

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(b)(1) Both the Unites[1] States Court of Federal Claims and the district courts of the United States shall have jurisdiction to render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids

[1] So in original. Probably should be ''United''.

or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement. Both the United States Court of Federal Claims and the district courts of the United States shall have jurisdiction to entertain such an action without regard to whether suit is instituted before or after the contract is awarded.

(2) To afford relief in such an action, the courts may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.

(3) In exercising jurisdiction under this subsection, the courts shall give due regard to the interests of national defense and national security and the need for expeditious resolution of the action.

(4) In any action under this subsection, the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.

(c) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

(June 25, 1948, ch. 646, 62 Stat. 940; July 28, 1953, ch. 253, § 7, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 44(a), (b), 68 Stat. 1241; Pub. L. 91–350, § 1(b), July 23, 1970, 84 Stat. 449; Pub. L. 92–415, § 1, Aug. 29, 1972, 86 Stat. 652; Pub. L. 95–563, § 14(i), Nov. 1, 1978, 92 Stat. 2391; Pub. L. 96–417, title V, § 509, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 97–164, title I, § 133(a), Apr. 2, 1982, 96 Stat. 39; Pub. L. 102–572, title IX, §§ 902(a), 907(b)(1), Oct. 29, 1992, 106 Stat. 4516, 4519; Pub. L. 104–320, § 12(a), Oct. 19, 1996, 110 Stat. 3874.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 250(1) (Mar. 3, 1911, ch. 231; § 145, 36 Stat. 1136).

District courts are given concurrent jurisdiction of certain claims against the United States under section 1346 of this title. (See also reviser's note under that section and section 1621 of this title relating to jurisdiction of the Tax Court.)

The proviso in section 250(1) of title 28, U.S.C., 1940 ed., relating to claims growing out of the Civil War, commonly known as "war claims," and other claims which had been reported adversely before March 3, 1887 by any court, department, or commission authorized to determine them, were omitted as obsolete.

The exception in section 250(1) of title 28, U.S.C., 1940 ed., as to pension claims appears in section 1501 of this title.

Words "in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable" were omitted as unnecessary since the Court of Claims manifestly, under this section will determine whether a petition against the United States states a cause of action. In any event, the Court of Claims has no admiralty jurisdiction, but the Suits in Admiralty Act, sections 741–752 of title 46, U.S.C., 1940 ed., Shipping, vests exclusive jurisdiction over suits in admiralty against the United States in the district courts. *Sanday & Co. v. U.S.*, 1932, 76 Ct.Cl. 370.

For additional provisions respecting jurisdiction of the court of claims in war contract settlement cases see section 114b of Title 41, U.S.C., 1940 ed., Public Contracts.

Changes were made in phraseology.

REFERENCES IN TEXT

Sections 6 and 10(a)(1) of the Contract Disputes Act of 1978, referred to in subsec. (a)(2), are classified to sections 605 and 609(a)(1), respectively, of Title 41, Public Contracts.

The Tennessee Valley Authority Act of 1933, referred to in subsec. (c), is act May 18, 1933, ch. 32, 48 Stat. 58, as amended, which is classified generally to chapter 12A (§ 831 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 831 of Title 16 and Tables.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–320, § 12(a)(2), struck out par. (3) which read as follows: "To afford complete relief on any contract claim brought before the contract is awarded, the court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. In exercising this jurisdiction, the court shall give due regard to the interests of national defense and national security."

Subsecs. (b), (c). Pub. L. 104–320, § 12(a)(1), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1992—Subsec. (a)(1). Pub. L. 102–572, § 902(a)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsec. (a)(2). Pub. L. 102–572, § 907(b)(1), inserted before period at end ", including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act".

Pub. L. 102–572, § 902(a)(2), substituted "Court of Federal Claims" for "Claims Court".

Subsec. (b). Pub. L. 102–572, § 902(a)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

1982—Subsec. (a)(1). Pub. L. 97–164 designated first two sentences of existing first undesignated paragraph as subsec. (a)(1) and substituted "United States Claims Court" for "Court of Claims".

Subsec. (a)(2). Pub. L. 97–164 designated third, fourth, and fifth sentences of existing first undesignated paragraph as par. (2) and substituted "The Claims Court" for "The Court of Claims" and "arising under section 10(a)(1) of the Contract Disputes Act of 1978" for "arising under the Contract Disputes Act of 1978".

Subsec. (a)(3). Pub. L. 97–164 added par. (3).

Subsec. (b). Pub. L. 97–164 designated existing second undesignated paragraph as subsec. (b) and substituted "United States Claims Court" for "Court of Claims", "conduct of, the Tennessee Valley Authority, or" for "actions of, the Tennessee Valley Authority, nor", "Tennessee Valley Authority Act of 1933" for "Tennessee Valley Authority Act of 1933, as amended,", and "actions by or against the Authority" for "suits by or against the Authority".

1980—Pub. L. 96–417 substituted "Court of Claims of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action" for "in suits" in second par.

1978—Pub. L. 95–563 provided that the Court of Claims would have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

1972—Pub. L. 92–415 inserted provisions authorizing the court to issue orders directing restoration to office or position, placement in appropriate duty or retirement status and correction of applicable records and to issue such orders to any United States official and to remand appropriate matters to administrative and executive bodies with proper directions.

1970—Pub. L. 91–350 specified that the term ''express or implied contracts with the United States'' includes express or implied contracts with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.

1954—Act Sept. 3, 1954, inserted ''; actions involving Tennessee Valley Authority'' in section catchline and altered the form of first par. to spell out the general jurisdiction of the Court in paragraph form rather than as clauses of the par.

1953—Act July 28, 1953, substituted ''United States Court of Claims'' for ''Court of Claims'' near beginning of section, and inserted last par.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 12(b) of Pub. L. 104–320 provided that: ''This section [amending this section and section 3556 of Title 31, Money and Finance, and enacting provisions set out as notes under this section and section 3556 of Title 31] and the amendments made by this section shall take effect on December 31, 1996 and shall apply to all actions filed on or after that date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 902(a) of 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 this title.

Section 907(b)(2) of Pub. L. 102–572 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to all actions filed before, on, or after the date of the enactment of this Act [Oct. 29, 1992], except for those actions which, before such date of enactment, have been the subject of—

''(A) a final judgment of the United States Claims Court, if the time for appeal of that judgment has expired without an appeal having been filed, or

''(B) a final judgment of the Court of Appeals for the Federal Circuit.''

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92–415 provided that: ''This Act [amending this section] shall be applicable to all judicial proceedings pending on or instituted after the date of its enactment [Aug. 29, 1972].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–350 applicable to claims and civil actions dismissed before or pending on July 23, 1970, if the claim or civil action was based upon a transaction, omission, or breach that occurred not more than six years prior to July 23, 1970, notwithstanding a determination or judgment made prior to July 23, 1970, that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States, see section 2 of Pub. L. 91–350, set out as a note under section 1346 of this title.

SAVINGS PROVISION

Section 12(e) of Pub. L. 104–320 provided that:

''(1) ORDERS.—A termination under subsection (d) [set out below] shall not terminate the effectiveness of orders that have been issued by a court in connection with an action within the jurisdiction of that court on or before December 31, 2000. Such orders shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

''(2) PROCEEDINGS AND APPLICATIONS.—(A) a termination under subsection (d) shall not affect the jurisdiction of a court of the United States to continue with any proceeding that is pending before the court on December 31, 2000.

''(B) Orders may be issued in any such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if such termination had not occurred. An order issued in any such proceeding shall continue in effect until modified, terminated, superseded, set aside, or revoked by a court of competent jurisdiction or by operation of law.

''(C) Nothing in this paragraph prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that proceeding could have been discontinued or modified absent such termination.''

SUNSET PROVISION

Section 12(d) of Pub. L. 104–320 provided that: ''The jurisdiction of the district courts of the United States over the actions described in section 1491(b)(1) of title 28, United States Code (as amended by subsection (a) of this section) shall terminate on January 1, 2001 unless extended by Congress. The savings provisions in subsection (e) [set out above] shall apply if the bid protest jurisdiction of the district courts of the United States terminates under this subsection.''

STUDY ON CONCURRENT JURISDICTION

Section 12(c) of Pub. L. 104–320 provided that: ''No earlier than 2 years after the effective date of this section [Dec. 31, 1996], the United States General Accounting Office shall undertake a study regarding the concurrent jurisdiction of the district courts of the United States and the Court of Federal Claims over bid protests to determine whether concurrent jurisdiction is necessary. Such a study shall be completed no later than December 31, 1999, and shall specifically consider the effect of any proposed change on the ability of small businesses to challenge violations of Federal procurement law.''

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

See Appendix to this title.

CROSS REFERENCES

Admiralty suits against United States, jurisdiction of district courts, see sections 741 et seq. and 781 et seq. of Title 46, Appendix, Shipping.

Costs, where United States is party, see section 2412 of this title.

District courts, concurrent jurisdiction of actions or claims not exceeding $10,000, see section 1346 of this title.

Limitation of actions, see section 2501 of this title.

Procedure in Court of Federal Claims, see section 2501 et seq. of this title.

Tax Court jurisdiction, see section 7441 et seq. of Title 26, Internal Revenue Code.

Tennessee Valley Authority, use of patents by, see section 831r of Title 16, Conservation.

War contracts, jurisdiction and procedure to enforce termination claim, see sections 113, 114 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409a of this title; title 12 section 216b; title 16 section 460jjj–2; title 20 section 1132f–10; title 22 section 3862; title 25 sections 1300i–11, 3001; title 41 sections 114, 602; title 42 sections 2297e–3, 2297h–3, 4654; title 45 section 1018; title 46 App. section 1242; title 47 section 606.

§ 1492. Congressional reference cases

Any bill, except a bill for a pension, may be referred by either House of Congress to the chief judge of the United States Court of Federal Claims for a report in conformity with section 2509 of this title.

(June 25, 1948, ch. 646, 62 Stat. 941; Pub. L. 89–681, § 1, Oct. 15, 1966, 80 Stat. 958; Pub. L. 97–164, title I, § 133(b), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 257 (Mar. 3, 1911, ch. 231, § 151, 36 Stat. 1138).

This section contains only the jurisdictional provision of section 257 of title 28, U.S.C., 1940 ed. The procedural provisions are incorporated in section 2509 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''chief judge of the United States Claims Court'' for ''chief commissioner of the Court of Claims''.

1966—Pub. L. 89–681 substituted provisions allowing any bill, except a bill for a pension, to be referred by either House of Congress to the chief commissioner of the Court of Claims for a report in conformity with section 2509 of this title for provisions giving the Court of Claims jurisdiction to report to either House of Congress on any bill referred by such House, except a bill for a pension, and to render judgment if the claim against the United States represented by the referred bill was one over which the court had jurisdiction under other Acts of Congress.

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 this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2509 of this title; title 17 section 502.

[§ 1493. Repealed. July 28, 1953, ch. 253, § 8, 67 Stat. 226]

Section, act June 25, 1948, ch. 646, 62 Stat. 941, authorized Court of Claims to give legal advice to heads of executive departments in matters referred to it by the heads, if Court had jurisdiction over the matters.

§ 1494. Accounts of officers, agents or contractors

The United States Court of Federal Claims shall have jurisdiction to determine the amount, if any, due to or from the United States by reason of any unsettled account of any officer or agent of, or contractor with, the United States, or a guarantor, surety or personal representative of any such officer, agent or contractor, and to render judgment thereof,[1] where—

(1) claimant or the person he represents has applied to the proper department of the Government for settlement of the account;

(2) three years have elapsed from the date of such application without settlement; and

(3) no suit upon the same has been brought by the United States.

(June 25, 1948, ch. 646, 62 Stat. 941; July 28, 1953, ch. 253, § 9, 67 Stat. 226; Sept. 3, 1954, ch. 1263, § 44(c), 68 Stat. 1242; Pub. L. 97–164, title I, § 133(c)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 287 (Mar. 3, 1911, ch. 231, § 180, 36 Stat. 1141; Feb. 13, 1925, ch. 229, § 3, 43 Stat. 939).

Only the jurisdictional provisions of section 287 of title 28, U.S.C., 1940 ed., are contained in this section. The procedural provisions are incorporated in section 2511 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1954—Act Sept. 3, 1954, struck out ''United States'' from name of Court of Claims.

1953—Act July 28, 1953, substituted ''United States Court of Claims'' for ''Court of Claims'', inserted ''to or from'' after ''due'', and inserted ''and to render judgment thereon,''.

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 this title.

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 this title.

CROSS REFERENCES

Procedure on accounts of officers, agents, or contractors, see section 2511 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2511 of this title.

§ 1495. Damages for unjust conviction and imprisonment; claim against United States

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.

(June 25, 1948, ch. 646, 62 Stat. 941; Pub. L. 97–164, title I, § 133(c)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on section 729 of title 18, U.S.C., 1940 ed., Crimes and Criminal Procedure (May 24, 1938, ch. 266, §§ 1–4, 52 Stat. 438).

[1] So in original. Probably should be ''thereon,''.

Only the jurisdictional provision of section 729 of title 18, U.S.C., 1940 ed., appears in this section. The remainder is incorporated in section 2513 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

CROSS REFERENCES

Procedure on claims for damages for unjust conviction and imprisonment, see section 2513 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2513 of this title.

§ 1496. Disbursing officers' claims

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim by a disbursing officer of the United States or by his administrator or executor for relief from responsibility for loss, in line of duty, of Government funds, vouchers, records or other papers in his charge.

(June 25, 1948, ch. 646, 62 Stat. 941; Pub. L. 97–164, title I, § 133(c)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 250(3) (Mar. 3, 1911, ch. 231, § 145, 36 Stat. 1136; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Words ''paymaster, quartermaster, commissary of subsistence, or other,'' preceding ''disbursing officer of the United States,'' were omitted. See *Henderson v. United States*, 1907, 42 Ct.Cl. 449 and *Hobbs v. United States*, 1881, 17 Ct.Cl. 189, holding that the term ''other disbursing officer'' extends to any disbursing officer of the executive departments of the Government.

Words ''by capture or otherwise'' were omitted as surplusage.

Words ''and for which such officer was and is held responsible,'' at the end of section 250(3) of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

CROSS REFERENCES

Allowance of credit in settlement of disbursing officers' accounts, see section 2512 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 114.

§ 1497. Oyster growers' damages from dredging operations

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages to oyster growers on private or leased lands or bottoms arising from dredging operations or use of other machinery and equipment in making river and harbor improvements authorized by Act of Congress.

(June 25, 1948, ch. 646, 62 Stat. 941; Pub. L. 97–164, title I, § 133(c), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 250a (Aug. 30, 1935, ch. 831, § 13, 49 Stat. 1049; July 13, 1943, ch. 231, 57 Stat. 553).

The proviso at the end of section 250a of title 28, U.S.C., 1940 ed., is incorporated in section 2501 of this title.

Words ''river and harbor improvements'' were substituted for ''such improvements'', in view of *Dixon v. U.S.*, 103 Ct. Cl. 160, holding that words, ''such improvements'' were not limited to the specific improvements listed in the 1935 act, but applied to any river and harbor improvements.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''growers'' for ''growers,'' in section catchline, and ''United States Claims Court'' for ''Court of Claims'' in text.

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 this title.

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 this title.

CROSS REFERENCES

Time for filing petition by oyster growers, see section 2501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2501 of this title.

§ 1498. Patent and copyright cases

(a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture. Reasonable and entire compensation shall include the owner's reasonable costs, in-

cluding reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Nothwithstanding[1] the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

For the purposes of this section, the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States prior to July 1, 1918.

A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the invention by the Government. This section shall not confer a right of action on any patentee or any assignee of such patentee with respect to any invention discovered or invented by a person while in the employment or service of the United States, where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: *Provided, however*, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

(c) The provisions of this section shall not apply to any claim arising in a foreign country.

(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government, and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement: *Provided*, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: *Provided*, *however*, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further*, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations.

[1] So in original. Probably should be ''Notwithstanding''.

(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.

(June 25, 1948, ch. 646, 62 Stat. 941; May 24, 1949, ch. 139, § 87, 63 Stat. 102; Oct. 31, 1951, ch. 655, § 50(c), 65 Stat. 727; July 17, 1952, ch. 930, 66 Stat. 757; Pub. L. 86–726, §§ 1, 4, Sept. 8, 1960, 74 Stat. 855, 856; Pub. L. 91–577, title III, § 143(d), Dec. 24, 1970, 84 Stat. 1559; Pub. L. 94–553, title I, § 105(c), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 97–164, title I, § 133(d), Apr. 2, 1982, 96 Stat. 40; Pub. L. 100–702, title X, § 1020(a)(6), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–308, § 1(a), Oct. 19, 1996, 110 Stat. 3814; Pub. L. 105–147, § 3, Dec. 16, 1997, 111 Stat. 2680.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 68 of title 35, U.S.C., 1940 ed., Patents (June 25, 1910, ch. 423, 36 Stat. 851; July 1, 1918, ch. 114, 40 Stat. 705).

Provisions contained in the second proviso of section 68 of title 35, U.S.C., 1940 ed., relating to right of the United States to any general or special defense available to defendants in patent infringement suits were omitted as unnecessary. In the absence of statutory restriction, any defense available to a private party is equally available to the United States.

Changes in phraseology were made.

1949 ACT

This amendment clarifies section 1498 of title 28, U.S.C., by restating its first paragraph to conform more closely with the original law.

REFERENCES IN TEXT

Hereafter, referred to in subsec. (b), probably means the date of enactment of Pub. L. 86–726, which was approved on Sept. 8, 1960.

The copyright laws of the United States, referred to in subsec. (b), are classified generally to Title 17, Copyrights.

Hereafter, referred to in subsec. (d), probably means after the date of enactment of Pub. L. 91–577, which was approved on Dec. 24, 1970.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–147, § 3, substituted ''action which may be brought for such infringement shall be an action by the copyright owner'' for ''remedy of the owner of such copyright shall be by action''.

1996—Subsec. (a). Pub. L. 104–308 inserted at end of first par. ''Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action if the owner is an independent inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Nothwithstanding the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such costs and fees if the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.''

1992—Subsec. (a). Pub. L. 102–572, § 902(a)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsecs. (b), (d). Pub. L. 102–572, § 902(a)(2), substituted ''Court of Federal Claims'' for ''Claims Court''.

1988—Subsec. (e). Pub. L. 100–702 added subsec. (e).

1982—Subsec. (a). Pub. L. 97–168, § 133(d)(1), substituted ''United States Claims Court'' for ''Court of Claims''.

Subsecs. (b), (d). Pub. L. 97–164, § 133(d)(2), substituted ''Claims Court'' for ''Court of Claims''.

1976—Subsec. (b). Pub. L. 94–553 substituted ''section 504(c) of title 17'' for ''section 101(b) of title 17''.

1970—Subsec. (d). Pub. L. 91–577 added subsec. (d).

1960—Pub. L. 86–726, § 4, substituted ''Patent and copyright cases'' for ''Patent cases'' in section catchline.

Pub. L. 86–726, § 1, designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1952—Act July 17, 1952, allowed Government employees to maintain patent suits against the United States in certain instances.

1951—Act Oct. 31, 1951, inserted second par.

1949—Act May 29, 1949, conformed first par. of section to original law.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(b) of Pub. L. 104–308 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to actions under section 1498(a) of title 28, United States Code, that are pending on, or brought on or after, the date of the enactment of this Act [Oct. 19, 1996].''

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 this title.

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 this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–577 effective Dec. 24, 1970, see section 141 of Pub. L. 91–577, set out as an Effective Date note under section 2321 of Title 7, Agriculture.

WAIVER OF IMMUNITY FOR MEMBERS OF CONGRESS

Section 2 of Pub. L. 86–726 provided that: ''Nothing in this Act [amending this section and section 2386 of Title 10, Armed Forces] shall be construed to in any way waive any immunity provided for Members of Congress under article I of section 6 of the Constitution of the United States.''

CROSS REFERENCES

Actions for unauthorized use of patents or disclosure of information, see section 2356 of Title 22, Foreign Relations and Intercourse.

Government interests in patents, see section 267 of Title 35, Patents.

Patented inventions incorporated in space vehicles launched by United States Government for other persons not considered use or manufacture by or for United States within subsec. (a) of this section, see section 2457(*l*) of Title 42, The Public Health and Welfare.

Use of patents by Tennessee Valley Authority, see section 831r of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 17 section 502; title 19 section 1337; title 22 section 2356; title 35 section 183; title 42 section 2457.

§ 1499. Liquidated damages withheld from contractors under Contract Work Hours and Safety Standards Act

The United States Court of Federal Claims shall have jurisdiction to render judgment upon

any claim for liquidated damages withheld from a contractor or subcontractor under section 104 of the Contract Work Hours and Safety Standards Act.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 87–581, title II, § 202(a), Aug. 13, 1962, 76 Stat. 360; Pub. L. 97–164, title I, § 133(e)(1), (2)(A), Apr. 2, 1982, 96 Stat. 40, 41; Pub. L. 101–650, title III, § 325(b)(7), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on section 324 of title 40, U.S.C., 1940 ed., Public Buildings, Property and Works (June 19, 1912, ch. 174, § 1, 37 Stat. 137).

This section contains only the jurisdictional provision in the last clause of section 324 of title 40, U.S.C., 1940 ed.

Changes in phraseology were made.

REFERENCES IN TEXT

Contract Work Hours and Safety Standards Act, referred to in section catchline and text, is title I of Pub. L. 87–581, Aug. 13, 1962, 76 Stat. 357, as amended, which is classified generally to subchapter II (§ 327 et seq.) of chapter 5 of Title 40, Public Buildings, Property, and Works. Section 104 of the Act is classified to section 330 of Title 40. For complete classification of this Act to the Code, see Short Title note set out under section 327 of Title 40 and Tables.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Pub. L. 101–650 substituted ''Hours and Safety Standards'' for ''Hours Standards'' in text.

1982—Pub. L. 97–164 substituted ''Contract Work Hours and Safety Standards Act'' for ''Contract Work Hours Standards Act'' in section catchline and ''United States Claims Court'' for ''Court of Claims'' in text.

1962—Pub. L. 87–581 amended section generally, substituting ''Liquidated damages withheld from contractors under Contract Work Hours Standards Act'' for ''Penalties imposed against contractors under eight hour law'' in section catchline, and ''liquidated damages withheld from a contractor or subcontractor under section 104 of the Contract Work Hours Standards Act'' for ''a penalty withheld from a contractor or subcontractor under section 324 of Title 40'' in text.

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 this title.

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 this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–581 effective 60 days after Aug. 13, 1962, but shall not affect contracts existing or thereafter entered into pursuant to invitations for bids outstanding on Aug. 13, 1962, see section 204 of Pub. L. 87–581, set out as an Effective Date note under section 327 of Title 40, Public Buildings, Property, and Works.

CONTINUED JURISDICTION UPON CLAIMS UNDER SECTION 324 OF TITLE 40

Section 202(b) of Pub. L. 87–581 provided that: ''The Court of Claims [now United States Court of Federal Claims] shall continue to have jurisdiction to render judgment upon any claim for a penalty withheld from a contractor or subcontractor under section 324 of title 40, United States Code, in connection with any contract subject to said section existing on the effective date of this Act [see Effective Date note set out under section 327 of Title 40, Public Buildings, Property, and Works], or thereafter entered into pursuant to invitations for bids that are outstanding at the time of the enactment of this Act [Aug. 13, 1962].''

CROSS REFERENCES

Time for filing claim, see section 330 of Title 40, Public Buildings, Property, and Works.

§ 1500. Pendency of claims in other courts

The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 97–164, title I, § 133(e)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 260 (Mar. 3, 1911, ch. 231, § 154, 36 Stat. 1138).

Words ''or in the Supreme Court on appeal therefrom'' were omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

§ 1501. Pensions

The United States Court of Federal Claims shall not have jurisdiction of any claim for a pension.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 97–164, title I, § 133(e)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 250(1) (Mar. 3, 1911, ch. 231, § 145, 36 Stat. 1136).

Section constitutes the exception in section 250(1) of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 114.

§1502. Treaty cases

Except as otherwise provided by Act of Congress, the United States Court of Federal Claims shall not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations.

(June 25, 1948, ch. 646, 62 Stat. 942; May 24, 1949, ch. 139, §88, 63 Stat. 102; Pub. L. 97–164, title I, §133(e)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §259 (Mar. 3, 1911, ch. 231, §153, 36 Stat. 1138).

Phrase ''Except as otherwise provided by enactment of Congress'' was inserted to cover cases where special Acts confer jurisdiction. (See *Sioux Tribe of Indians v. United States*, 1943, 97 Ct.Cl. 613, certiorari denied 63 S.Ct. 992, 318 U.S. 789, 87 L.Ed. 1155, and *In re United States*, 1873, 17 Wall. 439, 443, 21 L.Ed. 696.)

Words ''not pending therein on December 1, 1862,'' were omitted as obsolete.

Changes in phraseology were made.

1949 ACT

This section, in amending section 1502 of title 28, U.S.C., conforms with the provisions of act of August 13, 1946 (ch. 959, §25, 60 Stat. 1056), which affected section 153 of the Judicial Code of 1911 by striking therefrom the words ''or with Indian tribes.'' Such section 153 of the Judicial Code was the source of such section 1502.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1949—Act May 24, 1949, struck out ''or with Indian tribes'' after ''foreign nations''.

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 this title.

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 this title.

CROSS REFERENCES

Jurisdiction of court over Indian claims after Aug. 13, 1946, see section 1505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7422.

§1503. Set-offs

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any set-off or demand by the United States against any plaintiff in such court.

(June 25, 1948, ch. 646, 62 Stat. 942; Pub. L. 97–164, title I, §133(e)(1), Apr. 2, 1982, 96 Stat. 40; Pub. L. 102–572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §250(2) (Mar. 3, 1911, ch. 231, §145, 36 Stat. 1136).

The second subsection of section 250 of title 28, U.S.C., 1940 ed., is incorporated in this section. The proviso, relating to suits for fees due officers of the United States, has been incorporated in section 2501 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Counterclaims, see rule 13, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 114.

[§1504. Repealed. Pub. L. 97–164, title I, §133(f), Apr. 2, 1982, 96 Stat. 41]

Section, act June 25, 1948, ch. 646, 62 Stat. 942, directed that the Court of Claims have jurisdiction to review by appeal final judgments in the district courts in civil actions based on tort claims brought under section 1346(b) of this title if the notice of appeal filed in the district court had affixed to it a written consent on behalf of the appellees that the appeal be taken to the Court of Claims.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§1505. Indian claims

The United States Court of Federal Claims shall have jurisdiction of any claim against the United States accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska whenever such claim is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe, band or group.

(Added May 24, 1949, ch. 139, §89(a), 63 Stat. 102; amended Pub. L. 97–164, title I, §133(g), Apr. 2, 1982, 96 Stat. 41; Pub. L. 102–572, title IX, §902(a), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

1949 Act

Section 1505 is added to title 28, U.S.C., by this amendment to incorporate the act of August 13, 1946 (ch. 959, § 24, 60 Stat. 1055), which was originally classified to title 28, U.S.C., but was later transferred to title 25 of such code. Since such section 24 deals with jurisdiction of the Court of Claims it should be in title 28.

This amendatory section omits as surplusage all provisions of said section 24 except the first sentence, as being fully covered by the express provisions of sections 1503 and 2501 and other provisions of chapter 165 of title 28, U.S.C., relating to Court of Claims procedure.

The proviso of such section 24 is omitted as unnecessary since the provision conferring jurisdiction cannot in any view alter the relationship of the Government with its Indians.

The omitted language is as follows: ''In any suit brought under the jurisdiction conferred by this section the claimant shall be entitled to recover in the same manner, to the same extent, and subject to the same conditions and limitations, and the United States shall be entitled to the same defenses, both at law and in equity, and to the same offsets, counterclaims, and demands, as in cases brought in the Court of Claims under section 250 of this title: *Provided, however*, That nothing contained in this section shall be construed as altering the fiduciary or other relations between the United States and the several Indian tribes, bands, or groups.''

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court''.

1982—Pub. L. 97–164 substituted ''The United States Claims Court shall have jurisdiction'' for ''The Court of Claims shall have jurisdiction'' and ''cognizable in the Claims Court'' for ''cognizable in the 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 this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 640d–17, 1300i–11, 1776b.

[§ 1506. Repealed. Pub. L. 97–164, title I, § 133(h), Apr. 2, 1982, 96 Stat. 41]

Section, added Pub. L. 86–770, § 2(a), Sept. 13, 1960, 74 Stat. 912, provided that if a case within the exclusive jurisdiction of the district courts was filed in the Court of Claims, the Court of Claims, if it were in the interest of justice, had to transfer such case to any district court in which it could have been brought at the time such case was filed, where the case would proceed as if it had been filed in the district court on the date it was filed in the Court of Claims.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§ 1507. Jurisdiction for certain declaratory judgments

The United States Court of Federal Claims shall have jurisdiction to hear any suit for and issue a declaratory judgment under section 7428 of the Internal Revenue Code of 1986.

(Added Pub. L. 94–455, title XIII, § 1306(b)(9)(A), Oct. 4, 1976, 90 Stat. 1720; amended Pub. L. 97–164, title I, § 133(i), Apr. 2, 1982, 96 Stat. 41; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Section 7428 of the Internal Revenue Code of 1986, referred to in text, is classified to section 7428 of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1982—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 this title.

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 this title.

EFFECTIVE DATE

Section applicable with respect to pleadings filed with the United States Tax Court, the district court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976, but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as a note under section 7428 of Title 26, Internal Revenue Code.

§ 1508. Jurisdiction for certain partnership proceedings

The Court of Federal Claims shall have jurisdiction to hear and to render judgment upon any petition under section 6226 or 6228(a) of the Internal Revenue Code of 1986.

(Added Pub. L. 97–248, title IV, § 402(c)(18)(A), Sept. 3, 1982, 96 Stat. 669; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(a)(2), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Sections 6226 and 6228(a) of the Internal Revenue Code of 1986, referred to in text, are classified to sections 6226 and 6228(a) of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''Court of Federal Claims'' for ''Claims Court''.

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

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 this title.

EFFECTIVE DATE

Section applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the appli-

cability of this section to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as a note under section 6221 of Title 26, Internal Revenue Code.

§ 1509. No jurisdiction in cases involving refunds of tax shelter promoter and understatement penalties

The United States Court of Federal Claims shall not have jurisdiction to hear any action or proceeding for any refund or credit of any penalty imposed under section 6700 of the Internal Revenue Code of 1986 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 of such Code (relating to penalties for aiding and abetting understatement of tax liability).

(Added Pub. L. 98–369, div. A, title VII, § 714(g)(2), July 18, 1984, 98 Stat. 962; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Sections 6700 and 6701 of the Internal Revenue Code of 1986, referred to in text, are classified to sections 6700 and 6701, respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

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 this title.

EFFECTIVE DATE

Section 714(g)(4) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [enacting this section and amending section 7422 of Title 26, Internal Revenue Code] shall apply to any claim for refund or credit filed after the date of the enactment of this Act [July 18, 1984].''

[CHAPTER 93—REPEALED]

[§§ 1541 to 1546. Repealed. Pub. L. 97–164, title I, § 134, Apr. 2, 1982, 96 Stat. 41]

Section 1541, acts June 25, 1948, ch. 646, 62 Stat. 942; June 2, 1970, Pub. L. 91–271, title I, § 102, 84 Stat. 274; July 26, 1979, Pub. L. 96–39, title X, § 1001(b)(4)(A), 93 Stat. 305; Oct. 10, 1980, Pub. L. 96–417, title IV, § 401(a), title V, § 501(23), (24), 94 Stat. 1740, 1742, gave the Court of Customs and Patent Appeals exclusive jurisdiction of appeals from all final decisions of the Court of International Trade and from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions, and with discretion to entertain appeals from certain orders of the Court of International Trade. See section 1295(a)(5) of this title.

Section 1542, acts June 25, 1948, ch. 646, 62 Stat. 942; May 24, 1949, ch. 139, § 89(b), 63 Stat. 102, gave the Court of Customs and Patent Appeals jurisdiction of appeals from decisions of the Board of Appeals and the Board of Interference Examiners of the Patent Office as to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, with such appeal by an applicant to waive his right to proceed under section 63 of Title 35, and the Commissioner of Patents as to trademark applications and proceedings as provided in section 1071 of Title 15. See section 1295(a)(4) of this title.

Section 1543, acts June 25, 1948, ch. 646, 62 Stat. 943; Oct. 10, 1980, Pub. L. 96–417, title IV, § 401(b)(1), 94 Stat. 1740, gave the Court of Customs and Patent Appeals jurisdiction to review final determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade. See section 1295(a)(6) of this title.

Section 1544, added Pub. L. 89–651, § 8(c)(1), Oct. 14, 1966, 80 Stat. 901, gave the Court of Customs and Patent Appeals jurisdiction to review, by appeal on questions of law only, findings of the Secretary of Commerce under headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (relating to importation of instruments or apparatus). See section 1295(a)(7) of this title.

Section 1545, added Pub. L. 91–577, title III, § 143(a), Dec. 24, 1970, 84 Stat. 1558, gave the Court of Customs and Patent Appeals nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act, classified to section 2461 of Title 7, Agriculture. See section 1295(a)(8) of this title.

Section 1546, added Pub. L. 96–417, title IV, § 402(a), Oct. 10, 1980, 94 Stat. 1740, gave the Court of Customs and Patent Appeals all of the powers in law and in equity of, or conferred by statute upon, a court of appeals of the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 95—COURT OF INTERNATIONAL TRADE

Sec.
1581. Civil actions against the United States and agencies and officers thereof.
1582. Civil actions commenced by the United States.
1583. Counterclaims, cross-claims, and third-party actions.
1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.
1585. Powers in law and equity.

AMENDMENTS

1993—Pub. L. 103–182, title IV, § 414(a)(3), Dec. 8, 1993, 107 Stat. 2147, inserted ''the North American Free Trade Agreement or'' in item 1584.

1988—Pub. L. 100–449, title IV, § 402(d)(2), Sept. 28, 1988, 102 Stat. 1884, added item 1584.

1982—Pub. L. 97–164, title I, § 135, Apr. 2, 1982, 96 Stat. 41, struck out item 1584 ''Cure of defects''.

1980—Pub. L. 96–417, title II, § 201, Oct. 10, 1980, 94 Stat. 1728, substituted ''COURT OF INTERNATIONAL TRADE'' for ''CUSTOMS COURT'' in heading for chapter 95, ''Civil actions against the United States and agencies and officers thereof'' for ''Powers generally'' in item 1581, ''Civil actions commenced by the United States'' for ''Jurisdiction of the Customs Court'' in item 1582, and added items 1583 to 1585.

RULES OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

See Appendix to this title.

CROSS REFERENCES

Procedure in Court of International Trade, see section 2631 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1337 of this title.

§ 1581. Civil actions against the United States and agencies and officers thereof

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

(2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and

(3) any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act.

(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act;

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930; and

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

(Added Pub. L. 96–417, title II, § 201, Oct. 10, 1980, 94 Stat. 1728; amended Pub. L. 98–573, title II, § 212(b)(1), Oct. 30, 1984, 98 Stat. 2983; Pub. L. 99–514, title XVIII, § 1891(1), Oct. 22, 1986, 100 Stat. 2926; Pub. L. 100–449, title IV, § 402(a), Sept. 28, 1988, 102 Stat. 1883; Pub. L. 103–182, title IV, § 414(a)(1), title VI, § 684(a)(1), Dec. 8, 1993, 107 Stat. 2147, 2219.)

PRIOR HISTORY OF COURT

The United States Customs Court, the predecessor of the Court of International Trade, was omitted in the general revision of this chapter by Pub. L. 96–417.

The predecessor of the United States Customs Court was the Board of General Appraisers which was created by the Customs Administrative Act of June 10, 1890. The Board was under the administrative supervision of the Secretary of the Treasury.

From 1890 to 1926, the Board of General Appraisers had jurisdiction over all protests from decisions of the collectors of customs and appeals for reappraisement under sections 13 and 14 of the Customs Administrative Act of June 10, 1890, ch. 407, 26 Stat. 136.

The Customs Court was established by act May 28, 1926, ch. 411, §§ 1, 2, 44 Stat. 669, sections 405a and 405b of Title 19, Customs Duties, and said act transferred to it all the jurisdiction and powers of the former Board of General Appraisers. The Tariff Act of June 1930, ch. 497, title IV, § 518, 46 Stat. 737, section 1518 of Title 19, continued the Customs Court as constituted on June 17, 1930 with, however, several important changes.

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsecs. (c) and (i), is classified to section 1516a of Title 19.

The Trade Act of 1974, referred to in subsec. (d)(1) to (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) of Title 19. Sections 223, 251, and 271 of the Trade Act of 1974 are classified to sections 2273, 2341, and 2371, respectively, of Title 19. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (e), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1677f(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (g)(1), (2), is classified to section 1641 of Title 19.

Section 499(b) of the Tariff Act of 1930, referred to in subsec. (g)(3), is classified to section 1499(b) of Title 19.

Section 305 of the Tariff Act of 1930, referred to in subsec. (j), is classified to section 1305 of Title 19.

PRIOR PROVISIONS

A prior section 1581, act June 25, 1948, ch. 646, 62 Stat. 943, related to powers of the Customs Court generally, prior to the general revision of this chapter by Pub. L. 96–417. See section 1585 of this title.

AMENDMENTS

1993—Subsec. (g)(3). Pub. L. 103–182, § 684(a)(1), added par. (3).

Subsec. (i). Pub. L. 103–182, § 414(a)(1), inserted ''the North American Free Trade Agreement or'' before ''the United States-Canada Free-Trade Agreement'' in last sentence.

1988—Subsec. (i). Pub. L. 100–449 inserted at end ''This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.''

1986—Subsec. (g)(1). Pub. L. 99–514 substituted ''(3)'' for ''(3) or (c)''.

1984—Subsec. (g)(1). Pub. L. 98–573 amended par. (1) generally, substituting ''a customs broker's license under section 641(b)(2) or (3) or (c) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act'' for ''or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930''.

Subsec. (g)(2). Pub. L. 98–573 amended par. (2) generally, substituting ''any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930'' for ''any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 414(a)(1) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review, that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

EFFECTIVE DATE

Chapter effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

Subsecs. (d) and (g) to (i) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(A) of Pub. L. 96–417.

APPLICATION OF 1993 AMENDMENT

Section 684(b) of Pub. L. 103–182 provided that: ''For purposes of applying the amendments made by subsection (a) [amending this section and sections 2631, 2636, 2640, and 2642 of this title], any decision or order of the Customs Service denying, suspending, or revoking the accreditation of a private laboratory on or after the date of the enactment of this Act [Dec. 8, 1993] and before regulations to implement section 499(b) of the Tariff Act of 1930 [19 U.S.C. 1499(b)] are issued shall be treated as having been denied, suspended, or revoked under such section 499(b).''

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103–182, see section 3451 of Title 19, Customs Duties.

CROSS REFERENCES

Additional duties for failure to mark article or container of foreign origin, see section 1304 of Title 19, Customs Duties.

Appeals—

- By American manufacturers, producers, or wholesalers on value of classification, see section 1516 of Title 19.
- Decisions of Court of International Trade, see section 1295 of this title.
- Procedure on appeal, see section 2631 et seq. of this title.
- Protests from determination of appropriate customs officer under Anti-Dumping Law, see section 1516a of Title 19, Customs Duties.

Finality of decision of Court of International Trade, see section 2645 of this title.

Liability of consignee for additional or increased duties, see section 1485 of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2631, 2636, 2637, 2639, 2643 of this title; title 19 sections 1499, 1515.

§ 1582. Civil actions commenced by the United States

The Court of International Trade shall have exclusive jurisdiction of any civil action which

arises out of an import transaction and which is commenced by the United States—

(1) to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

(3) to recover customs duties.

(Added Pub. L. 96–417, title II, § 201, Oct. 10, 1980, 94 Stat. 1729; amended Pub. L. 98–573, title II, § 212(b)(2), Oct. 30, 1984, 98 Stat. 2983; Pub. L. 99–514, title XVIII, § 1891(2), Oct. 22, 1986, 100 Stat. 2926; Pub. L. 103–182, title VI, § 684(c), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

Sections 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), and 734(i)(2) of the Tariff Act of 1930, referred to in par. (1), are classified to sections 1592, 1593a, 1641(b)(6), 1641(d)(2)(A), 1671c(i)(2), and 1673c(i)(2), respectively, of Title 19, Customs Duties.

PRIOR PROVISIONS

A prior section 1582, acts June 25, 1948, ch. 646, 62 Stat. 943; June 2, 1970; Pub. L. 91–271, title I, § 110, 84 Stat. 278; July 26, 1979, Pub. L. 96–39, title X, § 1001(b)(4)(B), 93 Stat. 305, related to the jurisdiction of the Customs Court, prior to the general revision of this chapter by Pub. L. 96–417.

AMENDMENTS

1993—Par. (1). Pub. L. 103–182 inserted ''593A,'' after ''592,''.

1986—Par. (1). Pub. L. 99–514 substituted ''641(b)(6)'' for ''641(a)(1)(C)''.

1984—Par. (1). Pub. L. 98–573 inserted references to section 641(a)(1)(C) and 641(d)(2)(A) of the Tariff Act of 1930.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(A) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1352, 1355, 1356, 2639, 2640, 2643 of this title.

§ 1583. Counterclaims, cross-claims, and third-party actions

In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

(Added Pub. L. 96–417, title II, § 201, Oct. 10, 1980, 94 Stat. 1729.)

PRIOR PROVISIONS

A prior section 1583, act June 25, 1948, ch. 646, 62 Stat. 943, related to certain cases of exclusive jurisdiction of the Customs Court, prior to repeal by Pub. L. 91–271, title I, § 111, June 2, 1970, 84 Stat. 278.

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(A) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2643 of this title.

§ 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section 777(f) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.

(Added Pub. L. 100–449, title IV, § 402(d)(1), Sept. 28, 1988, 102 Stat. 1884; amended Pub. L. 103–182, title IV, § 414(a)(2), Dec. 8, 1993, 107 Stat. 2147.)

REFERENCES IN TEXT

Section 777(f) of the Tariff Act of 1930, referred to in text, is classified to section 1677f(f) of Title 19, Customs Duties.

PRIOR PROVISIONS

A prior section 1584, added Pub. L. 96–417, title II, § 201, Oct. 10, 1980, 94 Stat. 1729, provided that if a civil action within the exclusive jurisdiction of the Court of International Trade was commenced in a district court of the United States, the district court, in the interest of justice, was to transfer such civil action to the Court of International Trade, where such action would proceed as if it had been commenced in the Court of International Trade in the first instance, and that if a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Customs and Patent Appeals was commenced in the Court of International Trade, the Court of International Trade, in the interest of justice, would transfer such civil action to the appropriate district court or court of appeals or to the Court of Customs and Patent Appeals where such action was to proceed as if it had been commenced in such court in the first instance, prior to repeal by Pub. L. 97–164, title I, § 135, Apr. 2, 1982, 96 Stat. 41, effective Oct. 1, 1982.

AMENDMENTS

1993—Pub. L. 103–182 amended section catchline generally, inserting ''the North American Free Trade Agreement or'', and in text substituted ''section 777(f)'' for ''section 777(d)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

EFFECTIVE AND TERMINATION DATES

Section effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103–182, see section 3451 of Title 19, Customs Duties.

§ 1585. Powers in law and equity

The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.

(Added Pub. L. 96–417, title II, § 201, Oct. 10, 1980, 94 Stat. 1730.)

CROSS REFERENCES

Power of court to issue writs, see section 1651 of this title.

Protests from determinations of appropriate customs officer under Anti-Dumping Law, jurisdiction of Court of International Trade, see section 1516a of Title 19, Customs Duties.

Punishment for contempt, see section 401 of Title 18, Crimes and Criminal Procedure.

CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

Sec.
1602. Findings and declaration of purpose.
1603. Definitions.
1604. Immunity of a foreign state from jurisdiction.
1605. General exceptions to the jurisdictional immunity of a foreign state.
1606. Extent of liability.
1607. Counterclaims.
1608. Service; time to answer default.[1]
1609. Immunity from attachment and execution of property of a foreign state.
1610. Exceptions to the immunity from attachment or execution.
1611. Certain types of property immune from execution.

§ 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2892.)

EFFECTIVE DATE

Section 8 of Pub. L. 94–583 provided that: ''This Act [enacting this chapter and section 1330 of this title, amending sections 1332, 1391, and 1441 of this title, and enacting provisions set out as notes under this section and section 1 of this title] shall take effect ninety days after the date of its enactment [Oct. 21, 1976].''

SHORT TITLE

For short title of Pub. L. 94–583 as the ''Foreign Sovereign Immunities Act of 1976'', see section 1 of Pub. L. 94–583, set out as a Short Title of 1976 Amendments note under section 1 of this title.

SEPARABILITY

Section 7 of Pub. L. 94–583 provided that: ''If any provision of this Act [enacting this chapter and section 1330 of this title, amending sections 1332, 1391, and 1441 of this title, and enacting provisions set out as notes under this section and section 1 of this title] or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.''

§ 1603. Definitions

For purposes of this chapter—

(a) A ''foreign state'', except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An ''agency or instrumentality of a foreign state'' means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (d) of this title, nor created under the laws of any third country.

(c) The ''United States'' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A ''commercial activity'' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A ''commercial activity carried on in the United States by a foreign state'' means commercial activity carried on by such state and having substantial contact with the United States.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2892.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1332, 1391, 1441, 1610 of this title; title 12 section 635; title 15 section 15; title 22 sections 2295b, 6003, 6023.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the

[1] So in original. Does not conform to section catchline.

courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2892.)

REFERENCES IN TEXT

The time of enactment of this Act, referred to in text, probably means the time of enactment of Pub. L. 94–583, which was approved Oct. 21, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1605 of this title.

§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable; or

(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph—

(A) if the foreign state was not designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred, unless later so designated as a result of such act; and

(B) even if the foreign state is or was so designated, if—

(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

(ii) neither the claimant nor the victim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to con-

stitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in the Ship Mortgage Act, 1920 (46 U.S.C. 911 and following). Such action shall be brought, heard, and determined in accordance with the provisions of that Act and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

(e) For purposes of paragraph (7) of subsection (a)—

(1) the terms ''torture'' and ''extrajudicial killing'' have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

(2) the term ''hostage taking'' has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

(3) the term ''aircraft sabotage'' has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.

(g) LIMITATION ON DISCOVERY.—

(1) IN GENERAL.—(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for subsection (a)(7), the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.—(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.—The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(Added Pub. L. 94–583, §4(a), Oct. 21, 1976, 90 Stat. 2892; amended Pub. L. 100–640, §1, Nov. 9, 1988, 102 Stat. 3333; Pub. L. 100–669, §2, Nov. 16, 1988, 102 Stat. 3969; Pub. L. 101–650, title III, §325(b)(8), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 104–132, title II, §221(a), Apr. 24, 1996, 110 Stat. 1241; Pub. L. 105–11, Apr. 25, 1997, 111 Stat. 22.)

REFERENCES IN TEXT

Section 101(a)(22) of the Immigration and Nationality Act, referred to in subsec. (a)(7)(B)(ii), is classified to section 1101(a)(22) of Title 8, Aliens and Nationality.

The Ship Mortgage Act, 1920, referred to in subsec. (d), is section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, as amended, which was classified generally to chapter 25 (§ 911 et seq.) of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title I, § 106(b)(2), Nov. 23, 1988, 102 Stat. 4752, and reenacted by section 102(c) thereof as chapters 301 and 313 of Title 46, Shipping.

Section 3 of the Torture Victim Protection Act of 1991, referred to in subsec. (e)(1), is section 3 of Pub. L. 102–256, Mar. 12, 1992, 106 Stat. 73, which is set out in a note under section 1350 of this title.

Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, referred to in subsec. (g)(4), are set out in the Appendix to this title.

AMENDMENTS

1997—Subsec. (a)(7)(B)(ii). Pub. L. 105–11 substituted ''neither the claimant nor the victim was'' for ''the claimant or victim was not''.

1996—Subsec. (a)(7). Pub. L. 104–132, § 221(a)(1), added par. (7).

Subsecs. (e) to (g). Pub. L. 104–132, § 221(a)(2), added subsecs. (e) to (g).

1990—Subsec. (a)(6). Pub. L. 101–650 substituted ''state'' for ''State'' after ''foreign''.

1988—Subsec. (a)(6). Pub. L. 100–669 added par. (6).

Subsec. (b). Pub. L. 100–702, § 1(3), struck out at end ''Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.''

Subsec. (b)(1). Pub. L. 100–640, § 1(1), substituted ''and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved'' for ''but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit—unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice''.

Subsec. (b)(2). Pub. L. 100–640, § 1(2), substituted ''paragraph (1) of this subsection'' for ''subsection (b)(1) of this section''.

Subsecs. (c), (d). Pub. L. 100–702, § 1(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–11 provided that the amendment made by that Act was effective with respect to any cause of action arising before, on, or after Apr. 25, 1997.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 221(c) of title II of Pub. L. 104–132 provided that: ''The amendments made by this subtitle [subtitle B (§ 221) of title II of Pub. L. 104–132, amending this section and section 1610 of this title] shall apply to any cause of action arising before, on, or after the date of the enactment of this Act [Apr. 24, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 3 of Pub. L. 100–640 provided that: ''The amendments made by this Act [amending this section and section 1610 of this title] shall apply to actions commenced on or after the date of the enactment of this Act [Nov. 9, 1988].''

CIVIL LIABILITY FOR ACTS OF STATE SPONSORED TERRORISM

Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 589], Sept. 30, 1996, 110 Stat. 3009–121, 3009–172, provided that:

''(a) an [sic] official, employee, or agent of a foreign state designated as a state sponsor of terrorism designated [sic] under section 6(j) of the Export Administration Act of 1979 [50 App. U.S.C. 2405(j)] while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national's legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under section 1605(a)(7) of title 28, United States Code, for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

''(b) Provisions related to statute of limitations and limitations on discovery that would apply to an action brought under 28 U.S.C. 1605(f) and (g) shall also apply to actions brought under this section. No action shall be maintained under this action [sic] if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1391, 1604, 1606, 1607, 1610 of this title; title 15 section 15.

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1604 of this title.

§ 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1604, 1605, 1606 of this title.

§ 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a ''notice of suit'' shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1330, 1603, 1605, 1610 of this title; title 22 section 6082.

§ 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2895.)

REFERENCES IN TEXT

The time of enactment of this Act, referred to in text, probably means the time of enactment of Pub. L. 94–583, which was approved Oct. 21, 1976.

§ 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this

chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), (5), or (7), or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2896; amended Pub. L. 100–640, § 2, Nov. 9, 1988, 102 Stat. 3333; Pub. L. 100–669, § 3, Nov. 16, 1988, 102 Stat. 3969; Pub. L. 101–650, title III, § 325(b)(9), Dec. 1, 1990, 104 Stat. 5121; Pub. L. 104–132, title II, § 221(b), Apr. 24, 1996, 110 Stat. 1242.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsecs. (a) and (b), is 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as an Effective Date note under section 1602 of this title.

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–132, § 221(b)(1), added par. (7).

Subsec. (b)(2). Pub. L. 104–132, § 221(b)(2), substituted ''(5), or (7),'' for ''or (5),'' and ''involved in the act'' for ''used for the activity''.

1990—Subsecs. (a)(6), (e). Pub. L. 101–650 substituted ''state'' for ''State'' after ''foreign''.

1988—Subsec. (a)(6). Pub. L. 100–669 added par. (6).

Subsec. (e). Pub. L. 100–640 added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–132 applicable to any cause of action arising before, on, or after Apr. 24, 1996, see section 221(c) of Pub. L. 104–132, set out as a note under section 1605 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–640 applicable to actions commenced on or after Nov. 9, 1988, see section 3 of Pub. L. 100–640, set out as a note under section 1605 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1609, 1611 of this title.

§ 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those orga-

nizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(Added Pub. L. 94–583, § 4(a), Oct. 21, 1976, 90 Stat. 2897; amended Pub. L. 104–114, title III, § 302(e), Mar. 12, 1996, 110 Stat. 818.)

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (a), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, referred to in subsec. (c), is section 302 of Pub. L. 104–114, which amended this section and enacted section 6082 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–114 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–114 effective Aug. 1, 1996, or date determined pursuant to suspension authority of President under section 6085(b) or (c) of Title 22, Foreign Relations and Intercourse, see section 6085 of Title 22.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1609 of this title.

CHAPTER 99—GENERAL PROVISIONS

Sec.
1631. Transfer to cure want of jurisdiction.

§ 1631. Transfer to cure want of jurisdiction

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

(Added Pub. L. 97–164, title III, § 301(a), Apr. 2, 1982, 96 Stat. 55.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1292 of this title.

PART V—PROCEDURE

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CHAPTER 111—GENERAL PROVISIONS

Sec.
1651. Writs.
1652. State laws as rules of decision.
1653. Amendment of pleadings to show jurisdiction.
1654. Appearance personally or by counsel.
1655. Lien enforcement; absent defendants.
1656. Creation of new district or division or transfer of territory; lien enforcement.
1657. Priority of civil actions.
1658. Time limitations on the commencement of civil actions arising under Acts of Congress.
1659. Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission.

AMENDMENTS

1994—Pub. L. 103–465, title III, § 321(b)(1)(B), Dec. 8, 1994, 108 Stat. 4946, added item 1659.

1990—Pub. L. 101–650, title III, § 313(b), Dec. 1, 1990, 104 Stat. 5115, added item 1658.

1984—Pub. L. 98–620, title IV, § 401(b), Nov. 8, 1984, 98 Stat. 3357, added item 1657.

CROSS REFERENCES

Criminal procedure, see section 3001 et seq. of Title 18, Crimes and Criminal Procedure.

Removal of cases from State courts, procedure, see section 1446 of this title.

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs

necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 90, 63 Stat. 102.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 342, 376, 377 (Mar. 3, 1911, ch. 231, §§ 234, 261, 262, 36 Stat. 1156, 1162).

Section consolidates sections 342, 376, and 377 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Such section 342 provided:

''The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party.''

Such section 376 provided:

''Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States.''

Such section 377 provided:

''The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.''

The special provisions of section 342 of title 28, U.S.C., 1940 ed., with reference to writs of prohibition and mandamus, admiralty courts and other courts and officers of the United States were omitted as unnecessary in view of the revised section.

The revised section extends the power to issue writs in aid of jurisdiction, to all courts established by Act of Congress, thus making explicit the right to exercise powers implied from the creation of such courts.

The provisions of section 376 of title 28, U.S.C., 1940 ed., with respect to the powers of a justice or judge in issuing writs of ne exeat were changed and made the basis of subsection (b) of the revised section but the conditions and limitations on the writ of ne exeat were omitted as merely confirmatory of well-settled principles of law.

The provision in section 377 of title 28, U.S.C., 1940 ed., authorizing issuance of writs of scire facias, was omitted in view of rule 81(b) of the Federal Rules of Civil Procedure abolishing such writ. The revised section is expressive of the construction recently placed upon such section by the Supreme Court in *U.S. Alkali Export Assn. v. U.S.*, 65 S.Ct. 1120, 325 U.S. 196, 89 L.Ed. 1554, and *De Beers Consol. Mines v. U.S.*, 65 S.Ct. 1130, 325 U.S. 212, 89 L.Ed. 1566.

1949 ACT

This section corrects a grammatical error in subsection (a) of section 1651 of title 28, U.S.C.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, inserted ''and'' after ''jurisdictions''.

WRIT OF ERROR

Act Jan. 31, 1928, ch. 14, § 2, 45 Stat. 54, as amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, § 23, 62 Stat. 990, provided that: ''All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error.''

RULES OF THE SUPREME COURT

Procedure on petition for an extraordinary writ, see rule 20, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Remedies for seizure of person and property, including arrest, attachment, garnishment, replevin, and sequestration, see rule 64, Appendix to this title.

Writs of coram nobis, coram vobis, audita querela, bills of review, and bills in the nature of bills of review abolished, see rule 60.

Writs of mandamus and scire facias abolished in district courts, see rule 81.

CROSS REFERENCES

Mandamus; statutory provisions giving district courts jurisdiction to grant relief in the nature of writs of mandamus include—

Bridges over navigable waters, removal of, see sections 495 and 519 of Title 33, Navigation and Navigable Waters.

Federal Communications Act and orders of Commission, enforcement of, see sections 11, 401, and 406 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Federal Power Act, and orders thereunder, enforcement and prevention of violations, see sections 820 and 825m of Title 16, Conservation.

Federal Trade Commission Act, and orders thereunder, enforcement of, see section 49 of Title 15, Commerce and Trade.

Interstate Commerce Act, enforcement of, see section 11703 of Title 49, Transportation.

National Railroad Adjustment Board, enforcement of orders, see section 153 of Title 45, Railroads.

Securities and Public Utilities Holding Companies Acts and orders of Securities and Exchange Commission, enforcement of, see sections 77t, 78u, and 79r of Title 15, Commerce and Trade.

Stockyards Act, adopting by reference section 49 of Title 15, see section 222 of Title 7, Agriculture.

Tariff Act and orders of Tariff Commission, enforcement of, see section 1333 of Title 19, Customs Duties.

Puerto Rico, power of supreme and district courts to grant mandamus, see section 872 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1407, 3202 of this title.

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 725 (R.S. § 721).

''Civil actions'' was substituted for ''trials at common law'' to clarify the meaning of the Rules of Decision Act in the light of the Federal Rules of Civil Procedure. Such Act has been held to apply to suits in equity.

Changes were made in phraseology.

§ 1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 399 (Mar. 3, 1911, ch. 231, § 274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956).

Section was extended to permit amendment of all jurisdictional allegations instead of merely allegations of diversity of citizenship as provided by section 399 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Amended and supplemental pleadings, see rules 12 and 15, Appendix to this title.

§ 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 91, 63 Stat. 103.)

HISTORICAL REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 394 (Mar. 3, 1911, ch. 231, § 272, 36 Stat. 1164).

Words ''as, by the rules of the said courts respectively, are permitted to manage and conduct causes therein,'' after ''counsel,'' were omitted as surplusage. The revised section and section 2071 of this title effect no change in the procedure of the Tax Court before which certain accountants may be admitted as counsel for litigants under Rule 2 of the Tax Court.

Changes were made in phraseology.

1949 ACT

This section restores in section 1654 of title 28, U.S.C., language of the original law.

AMENDMENTS

1949—Act May 24, 1949, inserted ''as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein''.

§ 1655. Lien enforcement; absent defendants

In an action in a district court to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district, where any defendant cannot be served within the State, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a day certain.

Such order shall be served on the absent defendant personally if practicable, wherever found, and also upon the person or persons in possession or charge of such property, if any. Where personal service is not practicable, the order shall be published as the court may direct, not less than once a week for six consecutive weeks.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the State, but any adjudication shall, as regards the absent defendant without appearance. affect only the property which is the subject of the action. When a part of the property is within another district, but within the same state, such action may be brought in either district.

Any defendant not so personally notified may, at any time within one year after final judgment, enter his appearance, and thereupon the court shall set aside the judgment and permit such defendant to plead on payment of such costs as the court deems just.

(June 25, 1948, ch. 646, 62 Stat. 944.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 118 (Mar. 3, 1911, ch. 231, § 57, 36 Stat. 1102).

Word ''action'' was substituted for ''suit,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

In view of Rule 4(f) of the Federal Rules of Civil Procedure permitting service of process anywhere within the territorial limits of the States, the word ''State'' was substituted for ''district'' in the first and third paragraphs.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Process and relief from judgment or order, see rules 4 and 60, Appendix to this title.

§ 1656. Creation of new district or division or transfer of territory; lien enforcement

The creation of a new district or division or the transfer of any territory to another district or division shall not affect or divest any lien theretofore acquired in a district court upon property within such district, division or territory.

To enforce such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a certified copy of the record thereof, which, when filed in the proper court of the district or division in which such property is situated after such creation or transfer shall be evidence in all courts and places equally with the original thereof; and, thereafter like proceedings shall be had thereon, and with the same effect, as though the case or proceeding had been originally instituted in such court.

(June 25, 1948, ch. 646, 62 Stat. 944; Pub. L. 95–598, title II, § 242, Nov. 6, 1978, 92 Stat. 2671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 122 (Mar. 3, 1911, ch. 231, § 60, 36 Stat. 1103).

A provision as to creation of a new district or division or transfer of territory before March 3, 1911, was omitted as obsolete.

Words descriptive of the lien were omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1978—Pub. L. 95–598 directed the amendment of section by inserting ''or in a bankruptcy court'' after ''a district court'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 69 on this section, see note by Advisory Committee under rule 69, Appendix to this title.

§ 1657. Priority of civil actions

(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, ''good cause'' is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.

(Added Pub. L. 98–620, title IV, § 401(a), Nov. 8, 1984, 98 Stat. 3356.)

EFFECTIVE DATE

Section 403 of Pub. L. 98–620 provided that: ''The amendments made by this subtitle [subtitle A (§§ 401–403) of title IV of Pub. L. 98–620, enacting this section, amending sections 596, 636, 1364, 2284, and 2349 of this title, sections 437g, 437h, and 687 of Title 2, The Congress, section 552 of Title 5, Government Organization and Employees, sections 8, 136d, 136h, 136n, 136w, 194, 1366, 1600, and 1601 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, sections 18a, 21, 45, 57a–1, 78k–1, 687a, 687c, 719h, 1415, 2003, and 2622 of Title 15, Commerce and Trade, sections 1463a, 1910, 3117, and 3168 of Title 16, Conservation, sections 1964 and 1966 of Title 18, Crimes and Criminal Procedure, sections 346a and 348 of Title 21, Food and Drugs, section 618 of Title 22, Foreign Relations and Intercourse, section 640d–3 of Title 25, Indians, sections 3310, 6110, 6363, 7609, 9010, and 9011 of Title 26, Internal Revenue Code, sections 110, 160, 660, and 1303 of Title 29, Labor, section 816 of Title 30, Mineral Lands and Mining, section 2022 [now 4302] of Title 38, Veterans' Benefits, section 3628 of Title 39, Postal Service, sections 300j–9, 504, 6508, and 8514 of Title 42, The Public Health and Welfare, sections 1062, 1349, 1652, and 2011 of Title 43, Public Lands, sections 355, 745, 1018, and 1205 of Title 45, Railroads, section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 2305 of former Title 49, Transportation, section 792a of Title 50, War and National Defense, and sections 462 and 1984 of Title 50, Appendix, repealing sections 1296 and 2647 of this title, section 28 of Title 15, and section 3614 of Title 42, and amending provisions set out as a note under section 2304 of Title 10, Armed Forces] shall not apply to cases pending on the date of the enactment of this subtitle [Nov. 8, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1821.

§ 1658. Time limitations on the commencement of civil actions arising under Acts of Congress

Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

(Added Pub. L. 101–650, title III, § 313(a), Dec. 1, 1990, 104 Stat. 5114.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in text, is the date of enactment of Pub. L. 101–650, which was approved Dec. 1, 1990.

EFFECTIVE DATE

Section 313(c) of Pub. L. 101–650 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to causes of action accruing on or after the date of the enactment of this Act [Dec. 1, 1990].''

§ 1659. Stay of certain actions pending disposition of related proceedings before the United States International Trade Commission

(a) STAY.—In a civil action involving parties that are also parties to a proceeding before the United States International Trade Commission under section 337 of the Tariff Act of 1930, at the request of a party to the civil action that is also a respondent in the proceeding before the Commission, the district court shall stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission, but only if such request is made within—

(1) 30 days after the party is named as a respondent in the proceeding before the Commission, or

(2) 30 days after the district court action is filed,

whichever is later.

(b) USE OF COMMISSION RECORD.—Notwithstanding section 337(n)(1) of the Tariff Act of 1930, after dissolution of a stay under subsection (a), the record of the proceeding before the United States International Trade Commission shall be transmitted to the district court and shall be admissible in the civil action, subject to such protective order as the district court determines necessary, to the extent permitted under the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

(Added Pub. L. 103–465, title III, § 321(b)(1)(A), Dec. 8, 1994, 108 Stat. 4945.)

REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in text, is classified to section 1337 of Title 19, Customs Duties.

The Federal Rules of Evidence and the Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

EFFECTIVE DATE

Section applicable with respect to complaints filed under section 1337 of Title 19, Customs Duties, on or after the date on which the World Trade Organization Agreement enters into force with respect to the United States [Jan. 1, 1995], or in cases under section 1337 of Title 19 in which no complaint is filed, with respect to investigations initiated under such section on or after such date, see section 322 of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1337 of Title 19.

CHAPTER 113—PROCESS

Sec.
1691. Seal and teste of process.

Sec.
1692. Process and orders affecting property in different districts.
1693. Place of arrest in civil action.
1694. Patent infringement action.
1695. Stockholder's derivative action.
1696. Service in foreign and international litigation.

AMENDMENTS

1964—Pub. L. 88–619, § 4(b), Oct. 3, 1964, 78 Stat. 996, added item 1696.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see Rule 4, Appendix to this title.

§ 1691. Seal and teste of process

All writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 721 (R.S. § 911; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Provisions as to teste of process issuing from the district courts were omitted as superseded by Rule 4 (b) of the Federal Rules of Civil Procedure. Provision for teste of the Chief Justice of writs and process was omitted as unnecessary.

A provision requiring the United States to bear the expense of providing seals was omitted as unnecessary and obsolete.

Changes were made in phraseology.

IMMUNITY FROM SEIZURE UNDER JUDICIAL PROCESS OF CULTURAL OBJECTS IMPORTED FOR TEMPORARY EXHIBITION OR DISPLAY

Presidential determination of cultural significance of objects and exhibition or display thereof in the national interest, see section 2459 of Title 22, Foreign Relations and Intercourse.

FEDERAL RULES OF CIVIL PROCEDURE

Assistance, attachment, or sequestration, see rule 70, Appendix to this title.
Execution, see rule 69.
Form of summons, see rule 4.
Injunction, see rule 65.
Process, see rule 4.
Subpoenas, see rule 45.
Summons, see rule 4.
Writs of scire facias and mandamus abolished, see rule 81.

CROSS REFERENCES

Habeas corpus, see section 2241 of this title.
Power of courts to issue writs, see section 1651 of this title.
Power of Supreme Court to prescribe rules of procedure and evidence, see section 2072 of this title.
Writs venire facias abolished, see Historical and Revision Notes under section 1867 of this title.

§ 1692. Process and orders affecting property in different districts

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 117 (Mar. 3, 1911, ch. 231, § 56, 36 Stat. 1102).

Provisions of section 117 of title 28, U.S.C., 1940 ed., as to jurisdiction and control of a receiver of property in several districts are the basis of section 754 of this title.

For explanation of revision of section 117 of title 28, U.S.C., 1940 ed., and its extension to include property, not only in the same judicial circuit, but in any judicial circuit. (See reviser's note under section 754 of this title.)

Changes were made in phraseology.

CROSS REFERENCES

Receivers of property in different districts, see section 754 of this title.

§ 1693. Place of arrest in civil action

Except as otherwise provided by Act of Congress, no person shall be arrested in one district for trial in another in any civil action in a district court.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 112 (Mar. 3, 1911, ch. 231, § 51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, § 1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

Venue provisions of section 112 of title 28, U.S.C., 1940 ed., appear in sections 1391 and 1401 of this title. Other provisions are incorporated in section 1695 of this title.

The exception at the beginning of the section was substituted for "Except as provided in sections 113–117 of this title."

Changes were made in phraseology.

CROSS REFERENCES

Venue generally, see section 1391 of this title.
Waiver of venue, see section 1406 of this title.

§ 1694. Patent infringement action

In a patent infringement action commenced in a district where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant may be made upon his agent or agents conducting such business.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 109 (Mar. 3, 1911, ch. 231, § 48, 36 Stat. 1100).

Venue provisions of section 109 of title 28, U.S.C., 1940 ed., appear in section 1400 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Venue in patent infringement action, see section 1400 of this title.

§ 1695. Stockholder's derivative action

Process in a stockholder's action in behalf of his corporation may be served upon such corporation in any district where it is organized or licensed to do business or is doing business.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 112 (Mar. 3, 1911, ch. 231, § 51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, § 1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

The phrase "is organized or licensed to do business or is doing business" was substituted for the words "re-

sides or is found,'' as more specific and to conform to section 1391 of this title.

Venue provisions of section 112 of title 28, U.S.C., 1940 ed., appear in section 1391 and 1401 of this title. Other provisions are incorporated in section 1693 of this title.

Changes were made in phraseology.

CROSS REFERENCES

Venue in stockholder's derivative action, see section 1401 of this title.

§ 1696. Service in foreign and international litigation

(a) The district court of the district in which a person resides or is found may order service upon him of any document issued in connection with a proceeding in a foreign or international tribunal. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon application of any interested person and shall direct the manner of service. Service pursuant to this subsection does not, of itself, require the recognition or enforcement in the United States of a judgment, decree, or order rendered by a foreign or international tribunal.

(b) This section does not preclude service of such a document without an order of court.

(Added Pub. L. 88–619, § 4(a), Oct. 3, 1964, 78 Stat. 995.)

CHAPTER 115—EVIDENCE; DOCUMENTARY

Sec.
1731. Handwriting.
1732. Record made in regular course of business; photographic copies.
1733. Government records and papers; copies.
1734. Court record lost or destroyed generally.[1]
1735. Court record lost or destroyed where United States interested.
1736. Congressional Journals.
1737. Copy of officer's bond.
1738. State and Territorial statutes and judicial proceedings; full faith and credit.
1738A. Full faith and credit given to child custody determinations.
1738B. Full faith and credit for child support orders.
1738C. Certain acts, records, and proceedings and the effect thereof.
1739. State and Territorial nonjudicial records; full faith and credit.
1740. Copies of consular papers.
1741. Foreign official documents.
[1742. Repealed.]
1743. Demand on postmaster.
1744. Copies of patent office documents generally.[1]
1745. Copies of foreign patent documents.
1746. Unsworn declarations under penalty of perjury.

AMENDMENTS

1996—Pub. L. 104–199, § 2(b), Sept. 21, 1996, 110 Stat. 2419, added item 1738C.

1994—Pub. L. 103–383, § 3(b), Oct. 20, 1994, 108 Stat. 4066, added item 1738B.

1980—Pub. L. 96–611, § 8(b), Dec. 28, 1980, 94 Stat. 3571, added item 1738A.

1976—Pub. L. 94–550, § 1(b), Oct. 18, 1976, 90 Stat. 2534, added item 1746.

1964—Pub. L. 88–619, §§ 5(b), 6(b), 7(b), Oct. 3, 1964, 78 Stat. 996, substituted ''official documents'' for ''documents generally; copies'' in item 1741, inserted ''[Repealed]'' in item 1742, and substituted ''documents'' for ''specifications and drawings'' in item 1745.

1951—Act Aug. 28, 1951, ch. 351, § 2, 65 Stat. 206, inserted ''; photographic copies'' in item 1732.

1949—Act May 24, 1949, ch. 139, § 92(a), 63 Stat. 103, struck out item 1745 ''Printed copies of patent specifications and drawings'' and renumbered item 1746 as 1745.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases—
Proof of official record, see rule 44, Appendix to this title.
Subpoena for production of documentary evidence, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases—
Proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.
Subpoena for production of documentary evidence, see rule 17.

§ 1731. Handwriting

The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 638 (Feb. 26, 1913, ch. 79, 37 Stat. 683).

Words ''as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding'', were omitted as superfluous.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Evidence, civil actions, see rule 43, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal proceedings, see rule 26, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1732. Record made in regular course of business; photographic copies

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original. This subsection shall not be construed to exclude from evidence any docu-

[1] So in original. Does not conform to section catchline.

ment or copy thereof which is otherwise admissible under the rules of evidence.

(June 25, 1948, ch. 646, 62 Stat. 945; Aug. 28, 1951, ch. 351, §§1, 3, 65 Stat. 205, 206; Pub. L. 87–183, Aug. 30, 1961, 75 Stat. 413; Pub. L. 93–595, §2(b), Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §695 (June 20, 1936, ch. 640, §1, 49 Stat. 1561).

Changes in phraseology were made.

AMENDMENTS

1975—Pub. L. 93–595 struck out subsec. (a) which had made admissible as evidence writings or records made as a memorandum or record of any act, transaction, occurrence, or event if made in the regular course of business, and struck out designation ''(b)'' preceding remainder of section. See Federal Rules of Evidence set out in Appendix to this title.

1961—Subsec. (b). Pub. L. 87–183 struck out ''unless held in a custodial or fiduciary capacity or'' after ''may be destroyed in the regular course of business''.

1951—Act Aug. 29, 1951, §3, inserted reference to photographic copies in section catchline.

Subsecs. (a), (b). Act Aug. 28, 1951, §1, designated existing provisions as subsec. (a) and added subsec. (b).

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 695 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27 and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 5555.

§ 1733. Government records and papers; copies

(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

(c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.

(June 25, 1948, ch. 646, 62 Stat. 946; Pub. L. 93–595, §2(c), Jan. 2, 1975, 88 Stat. 1949.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§661–667, 671 (R.S. §§882–886, 889; July 31, 1894, ch. 174, §§17, 22, 28 Stat. 210; Mar. 2, 1895, ch. 177, §10, 28 Stat. 809; June 10, 1921, ch. 18, §§301, 302, 304, 310, 42 Stat. 23–25; May 10, 1934, ch. 277, §512, 48 Stat. 758; June 19, 1934, ch. 653, §6(a), 48 Stat. 1109).

The consolidation of sections 661–667 and 671 of title 28, U.S.C., 1940 ed., permitted omission of obsolete, unnecessary and repetitive provisions in such sections. For example, the provision in section 665 of title 28, U.S.C., 1940 ed., authorizing the court to require production of documents on a plea of non est factum, was omitted. Such plea is obsolete in Federal practice.

Numerous provisions with respect to authentication were omitted as covered by Rule 44 of the Federal Rules of Civil Procedure.

Likewise the provision that official seals shall be judicially noticed was omitted as unnecessary. Seals of Federal agencies are judicially noticed by States and Federal courts without statutory mandate. *Gardner v. Barney*, 1867, 6 Wall. 499, 73 U.S.C. 499, 18 L.Ed. 890, 31 C.J.S. 599 n. 27–30 and 23 C.J.S. 99 n. 41. The same principle unquestionably will apply to seals of Government corporations.

Words ''of any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly'', in section 661 of title 28, U.S.C., 1940 ed., were omitted as covered by ''or agency''. The revised section was broadened to apply to ''any department or agency''. (See reviser's note under section 1345 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to this title.

AMENDMENTS

1975—Subsec. (c). Pub. L. 93–595 added subsec. (c).

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Appendix to this title.

Subpoena for production of documentary evidence, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

Subpoena for production of documentary evidence, see rule 17.

CROSS REFERENCES

Authenticated and certified copy of Government record by Archivist admissible in evidence, see section 2116 of Title 44, Public Printing and Documents.

Authentication—

- Copies of documents, etc., in the office of the Commissioner of Indian Affairs is made by section 6 of Title 25, Indians.
- Original papers on file in the Bureau of Land Management are provided for by section 13 of Title 43, Public Lands.
- Records by Secretary of the Interior, see section 1460 of Title 43.
- Records of the Postal Service, see section 207 of Title 39, Postal Service.

Certified copies of schedules and tariffs of rates, etc., copies as evidence, see section 10303 of Title 49, Transportation.

Judicial notice of seals—

- Departments of Commerce and Labor, see sections 1501 of Title 15, Commerce and Trade, and 551 of Title 29, Labor.
- Department of Defense, see section 112 of Title 10, Armed Forces.
- Departments of the Army, Air Force, and Navy, see sections 3012, 5012, and 8012 of Title 10.

Provisions relating to the requisites of the certificates of national banks, and the acknowledgment and filing thereof, are made by sections 22 and 23 of Title 12, Banks and Banking.

Secretary of the Interior is authorized to furnish transcripts of records in district land offices for individuals, and such transcripts, when duly certified, are made admissible as evidence by section 83 of Title 43, Public Lands.

Verification of official documents by Secretary of Agriculture, see section 2203 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 704.

§ 1734. Court record lost or destroyed, generally

(a) A lost or destroyed record of any proceeding in any court of the United States may be

supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.

(b) Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record.

Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the district anywhere within the jurisdiction of the United States or in any foreign country.

Proof of service in a foreign country shall be certified by a minister or consul of the United States in such country, under his official seal.

If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an order reciting the substance and effect of the lost or destroyed record. Such order, subject to intervening rights of third persons, shall have the same effect as the original record.

(June 25, 1948, ch. 646, 62 Stat. 946.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§681, 682, 683, and 684 (R.S. §§899, 900, 901, 902; Jan. 31, 1879, ch. 39, §1, 20 Stat. 277).

Sections 681, 682, and 684 of title 28, U.S.C., 1940 ed., contained repetitious language which was eliminated by the consolidation.

Section 683 of title 28, U.S.C., 1940 ed., applied only to cases removed to the Supreme Court, and was revised so as to be applicable to cases transmitted to other courts not in existence in 1871 when the section was originally enacted.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 44 on former section 681 of this title, see note by Advisory Committee under rule 44, Appendix to this title.

Proof of official records, see rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1735. Court record lost or destroyed where United States interested

(a) When the record of any case or matter in any court of the United States to which the United States is a party, is lost or destroyed, a certified copy of any official paper of a United States attorney, United States marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States and relating to such case or matter, shall, on being filed in the court to which it relates, have the same effect as an original paper filed in such court. If the copy so filed discloses the date and amount of a judgment or decree and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such court.

(June 25, 1948, ch. 646, 62 Stat. 946.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§685, 686 (R.S. §§903, 904; Jan. 31, 1879, ch. 39, §§2, 3, 20 Stat. 277).

A provision of section 686 of title 28, U.S.C., 1940 ed., relating to allowances to clerks and United States attorneys for their services, and disbursements incidental to restoring lost records under such section was deleted as obsolete, in view of sections 508, 509, and 604 of this title, placing such officers on a salary basis and providing for their expenses.

Words ''And in all cases where any of the files, papers, or records of any court of the United States have been or shall be lost or destroyed, the files, records and papers which, pursuant to law, may have been or may be restored or supplied in place of such records, files, and papers, shall have the same force and effect, to all intents and purposes, as the originals thereof would have been entitled to,'' at the end of section 685 of title 28, U.S.C., 1940 ed., were omitted as fully covered by the remainder of this section and by section 1734 of this title.

Words ''or agency of the United States'' were substituted for ''of the Government'' so as to eliminate any possible ambiguity as to the scope of this section. See definitive section 451 of this title.

The phrase ''so far as the judges of such courts respectively shall deem it essential to the interests of the United States that such records and files be restored or supplied,'' was omitted as unnecessary.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 685 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1736. Congressional Journals

Extracts from the Journals of the Senate and the House of Representatives, and from the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or the Clerk of the House of Representatives shall be received in evidence with the same effect as the originals would have.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §676 (R.S. §895).

Changes in phraseology were made.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 676 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1737. Copy of officer's bond

Any person to whose custody the bond of any officer of the United States has been committed shall, on proper request and payment of the fee allowed by any Act of Congress, furnish certified copies thereof, which shall be prima facie evidence in any court of the execution, filing and contents of the bond.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 326, 499, 513, and 514 (R.S. §§ 783, 795; Feb. 22, 1875, ch. 95, § 3, 18 Stat. 333; Mar. 3, 1911, ch. 231, §§ 220, 291, 36 Stat. 1152, 1167).

Sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., were consolidated. They related to the bonds of particular officers, namely the Clerk of the Supreme Court, the United States marshals, and the clerks of the district courts. The revised section eliminates all inconsistent provisions of such sections.

The requirement that certified copies be furnished is new.

The other provisions of sections 326, 499, 513, and 514 of title 28, U.S.C., 1940 ed., are now incorporated in sections 544 and 952 of this title.

Changes were made in phraseology.

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 687 (R.S. § 905).

Words "Possession of the United States" were substituted for "of any country subject to the jurisdiction of the United States".

Words "or copies thereof" were added in three places. Copies have always been used to prove statutes and judicial proceedings under section 687 of title 28, U.S.C., 1940 ed. The added words will cover expressly such use.

Words "and its Territories and Possessions" were added in two places so as to make this section and section 1739 of this title uniform, the basic section of the latter having provided that nonjudicial records or books of any State, Territory, or "country subject to the jurisdiction of the United States" should be admitted in any court or office in any other State, Territory, or "such country."

Words "a judge of the court" were substituted for "the judge, chief justice or presiding magistrate" without change of substance.

At the beginning of the last paragraph, words "Such Acts" were substituted for "And the said". This follows the language of Article IV, section 1 of the Constitution.

For additional provisions as to authentication, see Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record, see rule 44, Appendix to this title.

Effect of rule 44 on former section 687 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Full faith and credit, see Const., art. 4, § 1.

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child; and

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of

the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

(Added Pub. L. 96–611, § 8(a), Dec. 28, 1980, 94 Stat. 3569.)

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 7 of Pub. L. 96–611 provided that:

''(a) The Congress finds that—

''(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

''(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

''(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

''(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

''(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

''(c) The general purposes of sections 6 to 10 of this Act [enacting this section and section 663 of Title 42, The Public Health and Welfare, amending sections 654 and 655 Title 42, and enacting provisions set out as notes under this section, sections 663 and 1305 of Title 42, and section 1073 of Title 18, Crimes and Criminal Procedure] are to—

''(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

''(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

''(3) facilitate the enforcement of custody and visitation decrees of sister States;

''(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

''(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

''(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.''

STATE COURT PROCEEDINGS FOR CUSTODY DETERMINATIONS; PRIORITY TREATMENT; FEES, COSTS, AND OTHER EXPENSES

Section 8(c) of Pub. L. 96–611 provided that: ''In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

''(1) afford priority to proceedings for custody determinations; and

''(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

''(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

''(B) the court determines it is appropriate.''

§ 1738B. Full faith and credit for child support orders

(a) GENERAL RULE.—The appropriate authorities of each State—

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) DEFINITIONS.—In this section:

''child'' means—

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

''child's State'' means the State in which a child resides.

''child's home State'' means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

''child support'' means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

''child support order''—

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes—

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

''contestant'' means—

(A) a person (including a parent) who—

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

''court'' means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

''modification'' means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) REQUIREMENTS OF CHILD SUPPORT ORDERS.—A child support order made by a court of a State is made consistently with this section if—

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) CONTINUING JURISDICTION.—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) AUTHORITY TO MODIFY ORDERS.—A court of a State may modify a child support order issued by a court of another State if—

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) RECOGNITION OF CHILD SUPPORT ORDERS.—If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home

State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) ENFORCEMENT OF MODIFIED ORDERS.—A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) CHOICE OF LAW.—

(1) IN GENERAL.—In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) LAW OF STATE OF ISSUANCE OF ORDER.—In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) PERIOD OF LIMITATION.—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) REGISTRATION FOR MODIFICATION.—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

(Added Pub. L. 103–383, § 3(a), Oct. 20, 1994, 108 Stat. 4064; amended Pub. L. 104–193, title III, § 322, Aug. 22, 1996, 110 Stat. 2221; Pub. L. 105–33, title V, § 5554, Aug. 5, 1997, 111 Stat. 636.)

AMENDMENTS

1997—Subsec. (f)(4). Pub. L. 105–33, § 5554(1), substituted ''a court having jurisdiction over the parties shall issue a child support order, which must be recognized.'' for ''a court may issue a child support order, which must be recognized.''

Subsec. (f)(5). Pub. L. 105–33, § 5554(2), inserted ''under subsection (d)'' after ''jurisdiction''.

1996—Subsec. (a)(2). Pub. L. 104–193, § 322(1), substituted ''subsections (e), (f), and (i)'' for ''subsection (e)''.

Subsec. (b). Pub. L. 104–193, § 322(2), inserted par. defining ''child's home State''.

Subsec. (c). Pub. L. 104–193, § 322(3), inserted ''by a court of a State'' before ''is made'' in introductory provisions.

Subsec. (c)(1). Pub. L. 104–193, § 322(4), inserted ''and subsections (e), (f), and (g)'' after ''located''.

Subsec. (d). Pub. L. 104–193, § 322(5), inserted ''individual'' before ''contestant'' and substituted ''subsections (e) and (f)'' for ''subsection (e)''.

Subsec. (e). Pub. L. 104–193, § 322(6), substituted ''modify a child support order issued'' for ''make a modification of a child support order with respect to a child that is made'' in introductory provisions.

Subsec. (e)(1). Pub. L. 104–193, § 322(7), inserted ''pursuant to subsection (i)'' after ''order''.

Subsec. (e)(2). Pub. L. 104–193, § 322(8), inserted ''individual'' before ''contestant'' in subpars. (A) and (B) and substituted ''with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume'' for ''to that court's making the modification and assuming'' in subpar. (B).

Subsec. (f). Pub. L. 104–193, § 322(10), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 104–193, § 322(11), substituted ''Modified'' for ''Prior'' in heading and ''subsections (e) and (f)'' for ''subsection (e)'' in text.

Pub. L. 104–193, § 322(9), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 104–193, § 322(12), inserted ''including the duration of current payments and other obligations of support'' before comma in par. (2) and ''arrears under'' after ''enforce'' in par. (3).

Pub. L. 104–193, § 322(9), redesignated subsec. (g) as (h).

Subsec. (i). Pub. L. 104–193, § 322(13), added subsec. (i).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 103–383 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

''(2) the laws by which the courts of different jurisdictions determine their authority to establish child support orders are not uniform;

''(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries—

''(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity;

''(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence;

''(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

''(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

''(E) lead to the excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law; and

''(4) among the results of the conditions described in this subsection are—

''(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

''(B) the deprivation of rights of liberty and property without due process of law;

''(C) burdens on commerce among the States; and

''(D) harm to the welfare of children and their parents and other custodians.

''(b) STATEMENT OF POLICY.—In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

''(c) PURPOSES.—The purposes of this Act [enacting this section and provisions set out as a note under section 1 of this title] are—

''(1) to facilitate the enforcement of child support orders among the States;

''(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

''(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.''

§ 1738C. Certain acts, records, and proceedings and the effect thereof

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

(Added Pub. L. 104–199, § 2(a), Sept. 21, 1996, 110 Stat. 2419.)

§ 1739. State and Territorial nonjudicial records; full faith and credit

All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records of books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 688 (R.S. § 906).

Words ''Possession of the United States'' were substituted for ''or any country subject to the jurisdiction of the United States.''

Words ''or copies thereof'' were added in two places. Copies have always been used to prove records and books under section 688 of title 28, U.S.C., 1940 ed., and the addition of these words clarifies the former implied meaning of such section.

In the first paragraph of the revised section words ''a judge of a court of record'' were substituted for words ''the presiding justice of the court'' and in the second paragraph ''judge'' was substituted for ''presiding justice'' for convenience and without change of substance.

Words ''and its Territories and Possessions'' were added after ''United States'', near the end of the section, in view of provisions of section 688 of title 28, U.S.C., 1940 ed., for the admission of records and books in any court or office in any other State, Territory, or ''in any such country.'' (Changed to ''Possession'' in this section.)

See also Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record, see rule 44, Appendix to this title.

Effect of rule 44 on former section 688 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1740. Copies of consular papers

Copies of all official documents and papers in the office of any consul or vice consul of the United States, and of all official entries in the books or records of any such office, authenticated by the consul or vice consul, shall be admissible equally with the originals.

(June 25, 1948, ch. 646, 62 Stat. 947.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 677 (R.S. § 896; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100).

Words ''authenticated by the consul or vice consul'' were substituted for ''certified under the hand and seal of such officer'', for clarity. Words ''in the courts of the United States'', were omitted after ''admissible''. Such papers should be so admitted in all courts consistently with sections 1738 and 1739 of this title.

See also Rule 44 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record see rule 44 Appendix to this title.

Effect of rule 44 on former section 677 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1741. Foreign official documents

An official record or document of a foreign country may be evidenced by a copy, summary,

or excerpt authenticated as provided in the Federal Rules of Civil Procedure.

(June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, § 92(b), 63 Stat. 103; Pub. L. 88–619, § 5(a), Oct. 3, 1964, 78 Stat. 996.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 695e (June 20, 1936, ch. 640, § 6, 49 Stat. 1563).

Words ''Nothing contained in this section shall be deemed to alter, amend, or repeal section 689 of this title,'' at the end of section 695e of title 28, U.S.C., 1940 ed., were omitted. Although significant in the original Act, such words are unnecessary in a revision wherein both sections in question, as revised, are enacted at the same time.

See also Rule 44 of the Federal Rules of Civil Procedure.

Section 695e–1 of title 28, U.S.C., 1940 ed., providing for certification of Vatican City Documents will be incorporated in title 22, U.S.C., Foreign Relations and Intercourse.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 1741 of title 28, U.S.C.

AMENDMENTS

1964—Pub. L. 88–619 substituted ''An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure'' for ''A copy of any foreign document of record or on file in a public office of a foreign country or political subdivision thereof, certified by the lawful custodian thereof, shall be admissible in evidence when authenticated by a certificate of a consular officer of the United States resident in such foreign country, under the seal of his office, that the copy has been certified by the lawful custodian'' in text, and ''official documents'' for ''documents, generally; copies'' in section catchline.

1949—Act May 24, 1949, corrected spelling of ''admissible''.

FEDERAL RULES OF CIVIL PROCEDURE

Authentication of copy of official record, see rule 44 Appendix to this title.

Effect of rule 44 on former section 695e of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, proof of official record, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 1204, 4222.

[§ 1742. Repealed. Pub. L. 88–619, § 6(a), Oct. 3, 1964, 78 Stat. 996]

Section, act June 25, 1948, ch. 646, 62 Stat. 948, related to authentication and certification of copies of documents relating to land titles, by persons having custody of such of any foreign government or its agents, certification by an American minister or consul that they be true copies of the originals, the recording of such copies in the office of the General Counsel for the Department of the Treasury, and to the evidentiary value of such copies.

§ 1743. Demand on postmaster

The certificate of the Postmaster General or the General Accounting Office of the mailing to a postmaster of a statement of his account and that payment of the balance stated has not been received shall be sufficient evidence of a demand notwithstanding any allowances or credits subsequently made. A copy of such statement shall be attached to the certificate.

(June 25, 1948, ch. 646, 62 Stat. 948.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 670 (R.S. § 890; June 10, 1921, ch. 18, § 301, 42 Stat. 23).

Provisions in section 670 of title 28, U.S.C., 1940 ed., that the statement should recite that a letter has been mailed to a described post office and sufficient time has elapsed for it to have reached its destination, was omitted as superfluous.

The last clause of section 670 of title 28, U.S.C., 1940 ed., was omitted as covered by the phrase ''notwithstanding any allowances or credits subsequently made'' in the revised section.

Changes were made in phraseology.

TRANSFER OF FUNCTIONS

The office of Postmaster General of the Post Office Department was abolished and all functions, powers, and duties of the Postmaster General were transferred to the United States Postal Service by Pub. L. 91–375, § 4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 670 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1744. Copies of Patent Office documents, generally

Copies of letters patent or of any records, books, papers, or drawings belonging to the Patent Office and relating to patents, authenticated under the seal of the Patent Office and certified by the Commissioner of Patents, or by another officer of the Patent Office authorized to do so by the Commissioner, shall be admissible in evidence with the same effect as the originals.

Any person making application and paying the required fee may obtain such certified copies.

(June 25, 1948, ch. 646, 62 Stat. 948; May 24, 1949, ch. 139, § 92(c), 63 Stat. 103.)

HISTORICAL AND REVISION NOTES

Based on section 127 of title 15, U.S.C., 1940 ed., Commerce and Trade, and title 28, U.S.C., 1940 ed., § 673 (R.S. § 892; Mar. 19, 1920, ch. 104, § 7, 41 Stat. 535; Mar. 4, 1925, ch. 535, § 2, 43 Stat. 1269).

For purposes of uniformity, words ''written or printed,'' at the beginning of the section, were omitted. Similar sections in this chapter do not contain such words.

Words ''or in his name attested by a chief of division duly designated by the commissioner,'' after ''Commissioner of Patents,'' were omitted as unnecessary.

Changes in phraseology were made.

AMENDMENTS

1949—Act May 24, 1949, substituted ''patents'' after ''relating to'' for ''registered trade-marks, labels, or prints'', and inserted ''or by another officer of the Pat-

ent Office authorized to do so by the Commissioner'' after ''Commissioner of Patents''.

CHANGE OF NAME

Patent Office and Commissioner of Patents redesignated Patent and Trademark Office and Commissioner of Patents and Trademarks, respectively, by section 3 of Pub. L. 93–596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

TRANSFER OF FUNCTIONS

Functions of all officers of Department of Commerce and all functions of all agencies and employees of Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. The Patent Office [now Patent and Trademark Office], referred to in this section, is an agency of the Department of Commerce, and the Commissioner of Patents [now Commissioner of Patents and Trademarks], referred to in this section, is an officer of that Department.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Appendix to this title.

Effect of rule 44 on former section 673 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 44, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1745 of this title.

§ 1745. Copies of foreign patent documents

Copies of the specifications and drawings of foreign letters patent, or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the United States Patent Office, certified in the manner provided by section 1744 of this title are prima facie evidence of their contents and of the dates indicated on their face.

(June 25, 1948, ch. 646, 62 Stat. 948, § 1746; renumbered § 1745, May 24, 1949, ch. 139, § 92(e), 63 Stat. 103; Pub. L. 88–619, § 7(a), Oct. 3, 1964, 78 Stat. 996.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 674 (R.S. § 893).

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 1745, act June 25, 1948, ch. 646, 62 Stat. 948, related to printed copies of patent specifications and drawings, prior to repeal by act May 24, 1949, ch. 139, § 92(d), 63 Stat. 103.

AMENDMENTS

1964—Pub. L. 88–619, among other changes, inserted ''or applications for foreign letters patent, and copies of excerpts of the official journals and other official publications of foreign patent offices belonging to the United States Patent Office'' in text, and substituted ''documents'' for ''specifications and drawings'' in section catchline.

1949—Act May 24, 1949, renumbered section 1746 of this title as this section.

CHANGE OF NAME

Patent Office redesignated Patent and Trademark Office, by section 3 of Pub. L. 93–596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Appendix to this title.

Effect of rule 44 on former section 675 of this title, see note by Advisory Committee under rule 44.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, and note of the Advisory Committee under rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)''.

(2) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)''.

(Added Pub. L. 94–550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)

PRIOR PROVISIONS

A prior section 1746 was renumbered section 1745 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 sections 1183a, 1225, 1357; title 10 section 931; title 18 sections 152, 1546, 1621, 1623; title 25 section 399.

CHAPTER 117—EVIDENCE; DEPOSITIONS

Sec.
1781. Transmittal of letter rogatory or request.
1782. Assistance to foreign and international tribunals and to litigants before such tribunals.
1783. Subpoena of person in foreign country.
1784. Contempt.
[1785. Repealed.]

AMENDMENTS

1964—Pub. L. 88–619, §§ 8(b), 9(b), 10(b), 12(b), Oct. 3, 1964, 78 Stat. 997, 998, substituted ''Transmittal of letter

rogatory or request'' for ''Foreign witnesses'' in item 1781, ''Assistance to foreign and international tribunals and to litigants before such tribunals'' for ''Testimony for use in foreign countries'' in item 1782, ''person'' for ''witness'' in item 1783, and struck out item 1785 ''Privilege against incrimination''.

DEPOSITIONS IN ADMIRALTY CASES

Prior to the general unification of civil and admiralty procedure and the recision of the Admiralty Rules on July 1, 1966, Revised Statutes §§863 to 865, as amended, which related to depositions de bene esse, when and how taken, notice, mode of taking, and transmission to court, provided as follows:

''SEC. 863. The testimony of any witness may be taken in any civil cause depending in a district court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

''SEC. 864. Every person deposing as provided in the preceding section [R.S. §863] shall be cautioned and sworn to testify the whole truth, and carefully examined.

''His testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. [As amended May 23, 1900, ch. 541, 31 Stat. 182.]

''SEC. 865. Every deposition taken under the two preceding sections [R.S. §§863, 864] shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause.''

R.S. §§863 to 865, as amended, quoted above, were applicable to admiralty proceedings only. Proceedings in bankruptcy and copyright are governed by rule 26 et seq. of Federal Rules of Civil Procedure. See also Rules of Bankruptcy Procedure set out in the Appendix to Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Depositions and discovery, see rules 26 to 37, Appendix to this title.

Persons before whom depositions may be taken in foreign countries, see rule 28.

Subpoena for taking depositions, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for taking depositions in criminal cases, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Subpoena to witness in foreign country, see rule 45, Appendix to this title.

§ 1781. Transmittal of letter rogatory or request

(a) The Department of State has power, directly, or through suitable channels—

(1) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution; and

(2) to receive a letter rogatory issued, or request made, by a tribunal in the United States, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude—

(1) the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

(June 25, 1948, ch. 646, 62 Stat. 948; Pub. L. 88–619, §8(a), Oct. 3, 1964, 78 Stat. 996.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §653 (R.S. §875; Feb. 27, 1877, ch. 69, §1, 19 Stat. 241; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167).

Word ''officer'' was substituted for ''commissioner'' to obviate uncertainty as to the person to whom the letters or commissioned may be issued.

The third sentence of section 653 of title 28, U.S.C., 1940 ed., providing for admission of testimony ''so taken and returned'' without objection as to the method of return, was omitted as unnecessary. Obviously, if the method designated by Congress is followed, it cannot be objected to.

The last sentence of section 653 of title 26, U.S.C., 1940 ed., relating to letters rogatory from courts of foreign countries, is incorporated in section 1782 of this title.

The revised section extends the provisions of section 653 of title 28, U.S.C., 1940 ed., which applied only to cases wherein the United States was a party or was interested, so as to insure a uniform method of taking foreign depositions in all cases.

Words ''courts of the United States'' were inserted to make certain that the section is addressed to the Federal rather than the State courts as obviously intended by Congress.

Changes were made in phraseology.

AMENDMENTS

1964—Pub. L. 88–619 substituted provisions authorizing the Department of State to transmit a letter rogatory or request by a foreign or international tribunal, or by a tribunal in the United States, to the tribunal, officer or agency in the United States or its foreign or international counterpart, to whom addressed, and to return it after execution, and providing that this section does not preclude direct transmission of letters rogatory or requests between interested tribunals, officers or agencies of foreign, international and of United States origin, for provisions authorizing United States ministers or consuls, whenever a United States court issues letters rogatory or a commission to take a deposition, to receive the executed letters or commissions from foreign courts or officers, endorse them with the place and date of receipt and any change in the deposition, and transmit it to the clerk of the issuing court in the same manner as his official dispatches, in text and ''Transmittal of letter rogatory or request'' for ''Foreign witnesses'' in section catchline.

FEDERAL RULES OF CIVIL PROCEDURE

Persons before whom depositions may be taken in foreign countries, see rule 28, Appendix to this title.

§ 1782. Assistance to foreign and international tribunals and to litigants before such tribunals

(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

(June 25, 1948, ch. 646, 62 Stat. 949; May 24, 1949, ch. 139, § 93, 63 Stat. 103; Pub. L. 88–619, § 9(a), Oct. 3, 1964, 78 Stat. 997; Pub. L. 104–106, div. A, title XIII, § 1342(b), Feb. 10, 1996, 110 Stat. 486.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 649–653, 701, 703, 704 (R.S. §§ 871–875, 4071, 4073, 4074; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921).

Sections 649–652 of title 28, U.S.C., 1940 ed., applied only to the District of Columbia and contained detailed provisions for issuing subpoenas, payment of witness fees and procedure for ordering and taking depositions. These matters are all covered by Federal Rules of Civil Procedure, Rules 26–32.

Provisions in sections 649–652 of title 28, U.S.C., 1940 ed., relating to the taking of testimony in the District of Columbia for use in State and Territorial courts were omitted as covered by section 14–204 of the District of Columbia Code, 1940 ed., and Rules 26 et seq., and 46 of the Federal Rules of Civil Procedure.

Only the last sentence of section 653 of title 28, U.S.C., 1940 ed., is included in this revised section. The remaining provisions relating to depositions of witnesses in foreign countries form the basis of section 1781 of this title.

Sections 701, 703, and 704 of title 28, U.S.C., 1940 ed., were limited to ''suits for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest.''

The revised section omits this limitation in view of the general application of the last sentence of section 653 of title 28, U.S.C., 1940 ed., consolidated herein. The improvement of communications and the expected growth of foreign commerce will inevitably increase litigation involving witnesses separated by wide distances.

Therefore the revised section is made simple and clear to provide a flexible procedure for the taking of depositions. The ample safeguards of the Federal Rules of Civil Procedure, Rules 26–32, will prevent misuse of this section.

The provisions of section 703 of title 28, U.S.C., 1940 ed., for punishment of disobedience to subpoena or refusal to answer is covered by Rule 37(b)(1) of Federal Rules or Civil Procedure.

The provisions of section 704 of title 28, U.S.C., 1940 ed., with respect to fees and mileage of witnesses are covered by Rule 45(c) of Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This amendment corrects restrictive language in section 1782 of title 28, U.S.C., in conformity with original law and permits depositions in any judicial proceeding without regard to whether the deponent is ''residing'' in the district or only sojourning there.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106 inserted '', including criminal investigations conducted before formal accusation'' after ''proceeding in a foreign or international tribunal'' in first sentence.

1964—Pub. L. 88–619 substituted provisions which empowered district courts to order residents to give testimony or to produce documents for use in a foreign or international tribunal, pursuant to a letter rogatory, or request, of a foreign or international tribunal or upon application of any interested person, and to direct that the evidence be presented before a person appointed by the court, provided that such person may administer oaths and take testimony, that the evidence be taken in accordance with the Federal Rules of Civil Procedure unless the order prescribes using the proce-

dure of the foreign or international tribunal, that a person may not be compelled to give legally privileged evidence, and that this chapter doesn't preclude a person from voluntarily giving evidence for use in a foreign or international tribunal, for provisions permitting depositions of witnesses within the United States for use in any court in a foreign country with which the United States was at peace to be taken before a person authorized to administer oaths designated by the district court of the district where the witness resides or is found, and directing that the procedure used be that generally used in courts of the United States, in text, and ''Assistance to foreign and international tribunals and to litigants before such tribunals'' for ''Testimony for use in foreign countries'' in section catchline.

1949—Act May 24, 1949, struck out ''residing'' after ''witness'', and substituted ''judicial proceeding'' for ''civil action'' after ''to be used in any''.

CROSS REFERENCES

Fees of witnesses in the United States courts, see section 1821 of this title.

Letters rogatory from United States courts, see section 1781 of this title.

§ 1783. Subpoena of person in foreign country

(a) A court of the United States may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a national or resident of the United States who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds, that particular testimony or the production of the document or other thing by him is necessary in the interest of justice, and, in other than a criminal action or proceeding, if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.

(b) The subpoena shall designate the time and place for the appearance or for the production of the document or other thing. Service of the subpoena and any order to show cause, rule, judgment, or decree authorized by this section or by section 1784 of this title shall be effected in accordance with the provisions of the Federal Rules of Civil Procedure relating to service of process on a person in a foreign country. The person serving the subpoena shall tender to the person to whom the subpoena is addressed his estimated necessary travel and attendance expenses, the amount of which shall be determined by the court and stated in the order directing the issuance of the subpoena.

(June 25, 1948, ch. 646, 62 Stat. 949; Pub. L. 88–619, § 10(a), Oct. 3, 1964, 78 Stat. 997.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 711, 712, and 713 (July 3, 1926, ch. 762, §§ 1–3, 44 Stat. 835).

Word ''resident'' was substituted for ''or domiciled therein.'' (See reviser's note under section 1391 of this title.)

Words ''or any assistant or district attorney acting under him,'' after ''Attorney General'' in section 712 of title 28, U.S.C., 1940 ed., were omitted, since, in any event, the approval of the Attorney General would be required. (See section 507 of this title.)

Changes were made in phraseology.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to this title.

AMENDMENTS

1964—Pub. L. 88–619 amended section generally, and among other changes, authorized a United States court to issue a subpoena to require the appearance of a witness before it or a person or body designated by it, and the production of documents or other tangible evidence, when necessary in the interest of justice, and in other than criminal actions or proceedings, if the court finds, in addition, that its not possible to obtain admissible evidence in any other manner, and provided that the procedure relating to the subpoena shall be in accordance with the Federal Rules of Civil Procedure, and struck out provisions which authorized the issuance of a subpoena when a personally notified individual failed to appear to testify pursuant to letter rogatory, or failed to answer any question he would have to answer in any examination before the court or if such person was beyond United States jurisdiction and the testimony was desired by the Attorney General in a criminal proceeding, provided that the subpoena issue to any United States consul, that the consul make personal service of the subpoena and of any order, rule, judgment or decree, that he make return of the subpoena and tender expenses to the witness, and substituted ''person'' for ''witness'' in section catchline.

FEDERAL RULES OF CIVIL PROCEDURE

Civil case, subpoena of witness in foreign country, see Rule 45, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal case, subpoena of witness in foreign country, see Rule 17 Title 18, Appendix, Crimes and Criminal Procedure.

RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS

Subpoena to witness in foreign country, see rule 45, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1784 of this title.

§ 1784. Contempt

(a) The court of the United States which has issued a subpoena served in a foreign country may order the person who has failed to appear or who has failed to produce a document or other thing as directed therein to show cause before it at a designated time why he should not be punished for contempt.

(b) The court, in the order to show cause, may direct that any of the person's property within the United States be levied upon or seized, in the manner provided by law or court rules governing levy or seizure under execution, and held to satisfy any judgment that may be rendered against him pursuant to subsection (d) of this section if adequate security, in such amount as the court may direct in the order, be given for any damage that he might suffer should he not be found in contempt. Security under this subsection may not be required of the United States.

(c) A copy of the order to show cause shall be served on the person in accordance with section 1783(b) of this title.

(d) On the return day of the order to show cause or any later day to which the hearing may be continued, proof shall be taken. If the person is found in contempt, the court, notwithstanding any limitation upon its power generally to punish for contempt, may fine him not more than $100,000 and direct that the fine and costs

of the proceedings be satisfied by a sale of the property levied upon or seized, conducted upon the notice required and in the manner provided for sales upon execution.

(June 25, 1948, ch. 646, 62 Stat. 949; Pub. L. 88–619, § 11, Oct. 3, 1964, 78 Stat. 998.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 714, 715, 716, 717, and 718 (July 3, 1926, ch. 762, §§ 4–8, 44 Stat. 836).

Sections 714–718 of title 28, U.S.C., 1940 ed., were consolidated, since all relate to contempt by a witness served personally in a foreign country.

The last sentence omits specific reference to section 118 of title 28, U.S.C., 1940 ed., now incorporated in section 1655 of this title, which provides for the method of opening judgments rendered on publication of process. (See also Rule 60(b) of the Federal Rules of Civil Procedure.)

Changes were made in phraseology.

AMENDMENTS

1964—Pub. L. 88–619 amended section generally, and among other changes, authorized the court to order a person to show cause for failing to produce a document or other thing in subsec. (a), provided that a copy of the order to show cause shall be served in accordance with section 1783(b) of this title, and struck out provisions requiring the marshal making levy or seizure to forward to any United States consul in the country where the witness may be, a copy of the order and a request for its personal service, and to cause publication of the order in the district where the issuing court sits, in subsec. (c), and struck out provisions in subsec. (d) permitting any judgment rendered upon service by publication only to be opened for answer within one year.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases, contempt for failure to obey subpoena, see Rule 45, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, contempt for failure to obey subpoena, see Rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1783 of this title.

[§ 1785. Repealed. Pub. L. 88–619, § 12(a), Oct. 3, 1964, 78 Stat. 998]

Section, act June 25, 1948, ch. 646, 62 Stat. 950, provided a privilege against self-incrimination on examination under letters rogatory. See section 1782(a) of this title.

CHAPTER 119—EVIDENCE; WITNESSES

Sec.
1821. Per diem and mileage generally; subsistence.
1822. Competency of interested persons; share of penalties payable.
[1823. Repealed.]
1824. Mileage fees under summons as both witness and juror.
1825. Payment of fees.
1826. Recalcitrant witnesses.
1827. Interpreters in courts of the United States.
1828. Special interpretation services.

AMENDMENTS

1978—Pub. L. 95–539, § 2(b), Oct. 28, 1978, 92 Stat. 2042, added items 1827 and 1828.

1970—Pub. L. 91–563, § 5(b), Dec. 19, 1970, 84 Stat. 1478, struck out item 1823 ''United States officers and employees''.

Pub. L. 91–452, title III, § 301(b), Oct. 15, 1970, 84 Stat. 932, added item 1826.

FEDERAL RULES OF CIVIL PROCEDURE

Civil cases—
Evidence, see Federal Rules of Evidence, Appendix to this title.
Subpoena for attendance of witnesses, see Rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for attendance of witnesses, see Rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

RULES OF EVIDENCE

Evidence, see Rule 26, Federal Rules of Criminal Procedure, Title 18, Appendix, Crimes and Criminal Procedure, and Federal Rules of Evidence, Appendix to this title.

Expert witnesses, see section 701 et seq., Federal Rules of Evidence.

CROSS REFERENCES

Criminal cases, witnesses and evidence, see sections 3481 et seq. of Title 18, Crimes and Criminal Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 503.

§ 1821. Per diem and mileage generally; subsistence

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term ''court of the United States'' includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

(b) A witness shall be paid an attendance fee of $40 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness's residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodg-

ing and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title.

(d)(1) A subsistence allowance shall be paid to a witness when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

(2) A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B)[1] of title 5, for official travel in such area by employees of the Federal Government.

(4) When a witness is detained pursuant to section 3144 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily attendance fee provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 240 of such Act (8 U.S.C. 1252(b))[1] to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

(f) Any witness who is incarcerated at the time that his or her testimony is given (except for a witness to whom the provisions of section 3144 of title 18 apply) may not receive fees or allowances under this section, regardless of whether such a witness is incarcerated at the time he or she makes a claim for fees or allowances under this section.

(June 25, 1948, ch. 646, 62 Stat. 950; May 10, 1949, ch. 96, 63 Stat. 65; May 24, 1949, ch. 139, § 94, 63 Stat. 103; Oct. 31, 1951, ch. 655, § 51(a), 65 Stat. 727; Sept. 3, 1954, ch. 1263, § 45, 68 Stat. 1242; Aug. 1, 1956, ch. 826, 70 Stat. 798; Pub. L. 90–274, § 102(b), Mar. 27, 1968, 82 Stat. 62; Pub. L. 95–535, § 1, Oct. 27, 1978, 92 Stat. 2033; Pub. L. 101–650, title III, § 314(a), Dec. 1, 1990, 104 Stat. 5115; Pub. L. 102–417, § 2(a)–(c), Oct. 14, 1992, 106 Stat. 2138; Pub. L. 104–208, div. C, title III, § 308(g)(5)(E), Sept. 30, 1996, 110 Stat. 3009–623.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 600c, section 1115(a) of title 26, U.S.C., 1940, Internal Revenue Code, and section 11–1514 of the D.C. Code, 1940 ed. (R.S. §§ 823, 848; Apr. 26, 1926, ch. 183, § 3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Feb. 10, 1939, ch. 2, § 1115(a), 53 Stat. 160; Dec. 24, 1942, ch. 825, § 1, 56 Stat. 1088.

Section consolidates part of section 600c of title 28, U.S.C., 1940 ed., with section 1115(a) of title 26, U.S.C., 1940 ed., and section 11–1514 of the D.C. Code, 1940 ed.

Words ''or person taking his deposition pursuant to any order of a court of the United States'' were added to cover that circumstance.

Reference in section 600c of title 28, U.S.C., 1940 ed., and section 11–1514 of the D.C. Code, 1940 ed., to the district courts of Hawaii, Puerto Rico and the District of Columbia, were omitted as covered by the words ''any court of the United States''.

Provision of section 600c of title 28, U.S.C., 1940 ed., for payment of witnesses is incorporated in section 1825 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendments, all provisions relating to the Tax Court were eliminated. Therefore, as finally enacted, section 1115(a) of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This section restores certain provisions of the original statute, R.S. § 848, which were inadvertently omitted from revised title 28, U.S.C., § 1821.

REFERENCES IN TEXT

Subsection (c) of section 5702 of title 5, referred to in subsec. (d)(3), which related to conditions under which an employee could be reimbursed for actual and necessary expenses of official travel when the maximum per diem allowance was less than these expenses, was repealed, and subsec. (e) of section 5702 of title 5, was redesignated as subsec. (c), by Pub. L. 99–234, title I, § 102, Jan. 2, 1986, 99 Stat. 1756.

Section 240 of the Immigration and Nationality Act, referred to in subsec. (e), is classified to section 1229a of Title 8, Aliens and Nationality.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–208 substituted ''section 240'' for ''section 242(b)''.

1992—Subsec. (d)(1). Pub. L. 102–417, § 2(b), struck out ''(other than a witness who is incarcerated)'' after ''paid to a witness''.

Subsec. (d)(4). Pub. L. 102–417, § 2(c), substituted ''3144'' for ''3149''.

Subsec. (f). Pub. L. 102–417, § 2(a), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–650 substituted ''$40'' for ''$30''.

1978—Pub. L. 95–535 increased the daily witness attendance fee from $20 to $30, substituted provisions relating to compensation for the actual expenses of travel based on the form of transportation used, to a travel allowance equal to the mileage allowance under section 5704 of Title 5 for a witness travelling by privately owned vehicle, and to tolls, taxi fares, and parking fees for provisions that a witness would receive 10 cents per mile and that mileage computation would be based on a uniform table of distances regardless of the mode of travel employed, provisions relating to a subsistence allowance in amounts not to exceed those which Government employees receive for official travel for provisions that such subsistence allowance would be $16 per day, provisions relating to a witness detained for want of security for his appearance being entitled to the daily attendance fee in addition to subsistence for provisions that such a witness would be entitled to $1 per day in addition to his subsistence, and inserted provisions defining ''court of the United States'' and relating to travel expenses being taxable as costs and to cer-

[1] See References in Text note below.

tain aliens being ineligible to receive fees and allowances.

1968—Pub. L. 90–274 increased the per diem allowance from $4 to $20, increased the mileage allowance from 8 cents per mile to 10 cents per mile, increased the daily subsistence allowance from $8 to $16, and directed that witnesses in the district courts for the districts of the Canal Zone, Guam, and the Virgin Islands receive the same fees and allowances provided in this section for witnesses in other district courts of the United States.

1956—Act Aug. 1, 1956, substituted ", or before any person authorized to take his deposition pursuant to any rule or order" for "or person taking his disposition pursuant to any order", increased the payments for mileage from 7 to 8 cents per mile and subsistence allowance from $5 to $8 per day, and authorized the computation of mileage on the basis of a uniform table of distances adopted by the Attorney General.

1954—Act Sept. 3, 1954, struck out language which had restricted section's applicability to those depositions taken pursuant to order of the court.

1951—Act Oct. 31, 1951, substituted "residences" for "residence" in that part of second sentence which precedes first proviso.

1949—Act May 24, 1949, inserted last par.

Act May 10, 1949, increased witnesses' fees from $2 to $4 per day, mileage allowance from 5 cents to 7 cents a mile, subsistence allowance from $3 to $5 per day, and inserted provisos.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 2(d) of Pub. L. 102–417 provided that: "The amendments made by this section [amending this section] shall be effective on and after the date of the enactment of this act [Oct. 14, 1992] and shall apply to any witness who testified before such date and has not received any fee or allowance under section 1821 of title 28, United States Code, relating to such testimony."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95–535 provided that: "The amendments made by this Act [amending this section] shall take effect on October 1, 1978, or on the date of enactment [Oct. 27, 1978], whichever occurs later."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

PAYMENT OF FACT WITNESS FEE TO INCARCERATED PERSON PROHIBITED

Pub. L. 102–395, title I, § 108, Oct. 6, 1992, 106 Stat. 1841, provided that: "Notwithstanding 28 U.S.C. 1821, no funds appropriated to the Department of Justice in fiscal year 1993 or any prior fiscal year, or any other funds available from the Treasury of the United States, shall be obligated or expended to pay a fact witness fee to a person who is incarcerated testifying as a fact witness in a court of the United States, as defined in 28 U.S.C. 1821(a)(2)."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–140, title I, § 110, Oct. 28, 1991, 105 Stat. 795.
Pub. L. 102–27, title II, § 102, Apr. 10, 1991, 105 Stat. 136.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 2503 of this title; title 12 section 3761; title 38 section 7253.

§ 1822. Competency of interested persons; share of penalties payable

Any person interested in a share of any fine, penalty or forfeiture incurred under any Act of Congress, may be examined as a witness in any proceeding for the recovery of such fine, penalty or forfeiture by any party thereto. Such examination shall not deprive the witness of his share.

(June 25, 1948, ch. 646, 62 Stat. 950.)

HISTORICAL AND REVISION NOTES

Based on section 644 of title 18, U.S.C., 1940 ed., Criminal Code and Criminal Procedure, R.S. § 5295.

Changes were made in phraseology.

[§ 1823. Repealed. Pub. L. 91–563, § 5(a), Dec. 19, 1970, 84 Stat. 1478]

Section, acts June 25, 1948, ch. 646, 62 Stat. 950; May 24, 1949, ch. 139, § 95, 63 Stat. 103; Oct. 5, 1949, ch. 601, 63 Stat. 704; July 7, 1952, ch. 581, 66 Stat. 439; July 28, 1955, ch. 424, § 3, 69 Stat. 394, related to payment of witnesses fees to officers and employees of the United States. See sections 5515, 5537, 5751, and 6322 of Title 5, Government Organization and Employees.

§ 1824. Mileage fees under summons as both witness and juror

No constructive or double mileage fees shall be allowed by reason of any person being summoned both as a witness and a juror.

(June 25, 1948, ch. 646, 62 Stat. 951.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 602 (May 27, 1908, ch. 200, § 1, 35 Stat. 377).

Words "or as a witness in two or more cases pending in the same court and triable at the same term thereof" were omitted as covered by section 1821 of this title.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Appendix to this title.

§ 1825. Payment of fees

(a) In any case in which the United States or an officer or agency of the United States is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States attorney or assistant United States attorney, and in the proceedings before a United States magistrate, on the certificate of such magistrate, except that any fees of defense witnesses, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

(1) on the certificate of a Federal public defender or assistant Federal public defender, in a criminal case in which the defendant is rep-

resented by such Federal public defender or assistant Federal public defender, and

(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in a criminal case in which a defendant is represented by such other counsel.

(b) In proceedings in forma pauperis for a writ of habeas corpus, and in proceedings in forma pauperis under section 2255 of this title, the United States marshal for the district shall pay, on the certificate of the district judge, all fees of witnesses for the party authorized to proceed in forma pauperis, except that any fees of witnesses for such party, other than experts, appearing pursuant to subpoenas issued upon approval of the court, shall be paid by the United States marshal for the district—

(1) on the certificate of a Federal public defender or assistant Federal public defender, in any such proceedings in which a party is represented by such Federal public defender or assistant Federal public defender, and

(2) on the certificate of the clerk of the court upon the affidavit of such witnesses' attendance given by other counsel appointed pursuant to section 3006A of title 18, in any such proceedings in which a party is represented by such other counsel.

(c) Fees and mileage need not be tendered to a witness upon service of a subpoena issued on behalf of the United States or an officer or agency of the United States, upon service of a subpoena issued on behalf of a defendant represented by a Federal public defender, assistant Federal public defender, or other attorney appointed pursuant to section 3006A of title 18, or upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis, if the payment of such fees and mileage is to be made by the United States marshal under this section.

(June 25, 1948, ch. 646, 62 Stat. 951; Pub. L. 89–162, Sept. 2, 1965, 79 Stat. 618; Pub. L. 99–651, title I, § 104, Nov. 14, 1986, 100 Stat. 3645.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 600c, 608 (R.S. §§ 236, 823, 848, 855; June 10, 1921, ch. 18, § 305, 42 Stat. 24; Apr. 26, 1926, ch. 183, § 3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Oct. 13, 1941, ch. 431, § 2, 55 Stat. 736; Dec. 24, 1942, ch. 825, § 1, 56 Stat. 1088).

Section consolidates parts of sections 600c and 608 of title 28, U.S.C., 1940 ed., relating to payment of witnesses. Other provisions of such sections are incorporated in sections 1821 and 1871 of this title.

Provisions in sections 600c and 608 of title 28, U.S.C., 1940 ed., for payment or certification on order of court were omitted as unnecessary and inappropriate on recommendation of the Judicial Conference Committee on Revision of the Judicial Code.

Words in section 608 of title 28, U.S.C., 1940 ed., "to which they appear to be entitled on the certificate of attendance" following the words "all fees" and the concluding phrase "which sum shall be allowed the marshal in the General Accounting Office in his accounts were omitted as unnecessary."

The second paragraph is new. It conforms to Rule 45(e) of the Federal Rules of Civil Procedure but is inconsistent with Rule 17(d) of the Federal Rules of Criminal Procedure and supersedes that rule as to Federal criminal cases. The Department of Justice suggests that Rule 17(d) is unworkable. To attempt compliance each deputy marshal serving process must carry, on the average, $500 in cash on trips to serve process.

The marshal must advance the money from his personal funds. The Comptroller General has not been able to set up any procedure to make it feasible to advance fees to Government witnesses.

If a witness is served but fails or refuses to appear, the marshal is out of pocket the money advanced and has no recourse. In the exceptional cases of real necessity, the marshal supplies transportation to an indigent witness under established regulations which protect the disbursement.

Changes were made in phraseology.

AMENDMENTS

1986—Pub. L. 99–651 amended section generally. Prior to amendment, section read as follows:

"In any case wherein the United States or an officer or agency thereof, is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner.

"In all proceedings, in forma pauperis, for a writ of habeas corpus or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, on the certificate of the district judge.

"Fees and mileage need not be tendered to the witness upon service of a subpena issued in behalf of the United States or an officer or agency thereof, or upon service of a subpena issued on behalf of a party, authorized to proceed in forma pauperis, where the payment thereof is to be made by the United States marshal as authorized in this section."

1965—Pub. L. 89–162 inserted provisions that, in all proceedings in forma pauperis, for a writ of habeas corpus, or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis on the certificate of the district judge and that fees and mileage need not be tendered to the witness upon service of a subpena issued on behalf of a party authorized to proceed in forma pauperis where the payment thereof is to be made by the United States marshal as authorized in this section.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–651 effective 120 days after Nov. 14, 1986, see section 105 of Pub. L. 99–651, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Accounts of marshal, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 567 of this title.

§ 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or

when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

(1) the court proceeding, or

(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both.

(Added Pub. L. 91–452, title III, § 301(a), Oct. 15, 1970, 84 Stat. 932; amended Pub. L. 98–473, title II, § 1013, Oct. 12, 1984, 98 Stat. 2142.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–473 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1657 of this title; title 18 section 3050.

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term ''presiding judicial officer'' as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term ''judicial proceedings instituted by the United States'' as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term ''United States district court'' as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this

section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer's motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(*l*) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer's own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

(Added Pub. L. 95–539, § 2(a), Oct. 28, 1978, 92 Stat. 2040; amended Pub. L. 100–702, title VII, §§ 702–710, Nov. 19, 1988, 102 Stat. 4654–4657; Pub. L. 104–317, title III, § 306, title IV, § 402(a), Oct. 19, 1996, 110 Stat. 3852, 3854.)

REFERENCES IN TEXT

The date of the enactment of the Judicial Improvements and Access to Justice Act, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 100–702, which was approved Nov. 19, 1988.

The Judicial Improvements and Access to Justice Act, referred to in subsec. (g)(1), is Pub. L. 100–702, Nov. 19, 1988, 102 Stat. 4642. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The effective date of this paragraph, referred to in subsec. (g)(5), is the effective date of Pub. L. 104–317, which was approved Oct. 19, 1996.

AMENDMENTS

1996—Subsec. (g)(5), (6). Pub. L. 104–317, § 402(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (*l*). Pub. L. 104–317, § 306, added subsec. (*l*).

1988—Subsec. (a). Pub. L. 100–702, § 702, amended subsec. (a) generally, substituting "certified and otherwise qualified interpreters in judicial proceedings instituted by the United States" for "interpreters in courts of the United States".

Subsec. (b). Pub. L. 100–702, § 703, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters."

Subsec. (c). Pub. L. 100–702, § 704, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section."

Subsec. (d). Pub. L. 100–702, §§ 705, 710(a), designated existing provisions as par. (1), in introductory provisions, substituted "qualified interpreter" for "competent interpreter", "judicial proceedings instituted by the United States" for "any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)", and "such judicial proceedings" for "such action", redesignated former pars. (1) and (2) as subpars. (A) and (B), and added par. (2).

Subsec. (e)(2). Pub. L. 100–702, § 710(b), substituted "judicial proceedings instituted by the United States" for "criminal or civil action in a United States district court".

Subsec. (g)(1) to (3). Pub. L. 100–702, § 706(a), amended pars. (1) to (3) generally. Prior to amendment, pars. (1) to (3) read as follows:

"(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

"(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

"(3) The presiding judicial officer may in such officer's discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action."

Subsec. (g)(4), (5). Pub. L. 100–702, § 706(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (h). Pub. L. 100–702, § 707, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section."

Subsec. (i). Pub. L. 100–702, § 708, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: "The term 'presiding judicial officer' as used in this section and section 1828 of this title includes a judge of a United States district court, a United States magistrate, and a referee in bankruptcy."

Subsec. (j). Pub. L. 100–702, § 708, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "The term 'United States district court' as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title."

Subsec. (k). Pub. L. 100–702, § 709, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: "The interpretation provided by certified interpreters pursuant to this section shall be in the consecu-

tive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.''

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 712 of title VII of Pub. L. 100–702 provided that: ''This title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall become effective upon the date of enactment [Nov. 19, 1988].''

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95–539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

SHORT TITLE

For short title of Pub. L. 95–539 as ''Court Interpreters Act'', see Short Title of 1978 Amendments note set out under section 1 of this title.

PAYMENT FOR CONTACTUAL SERVICES

Section 402(b) of Pub. L. 104–317 provided that: ''Notwithstanding sections 3302(b), 1341, and 1517 of title 31, United States Code, the Director of the Administrative Office of the United States Courts may include in any contract for the development or administration of examinations for interpreters (including such a contract entered into before the date of the enactment of this Act [Oct. 19, 1996]) a provision which permits the contractor to collect and retain fees in payment for contractual services in accordance with section 1827(g)(5) of title 28, United States Code.''

IMPACT ON EXISTING PROGRAMS

Section 711 of title VII of Pub. L. 100–702 provided that: ''Nothing in this title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall be construed to terminate or diminish existing programs for the certification of interpreters.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 604 of this title.

§ 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initiated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 9701 of title 31, but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

(Added Pub. L. 95–539, § 2(a), Oct. 28, 1978, 92 Stat. 2042; amended Pub. L. 97–258, § 3(g), Sept. 13, 1982, 96 Stat. 1065.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 9701 of title 31'' for ''section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a)''.

EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95–539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 1827, 1920 of this title.

CHAPTER 121—JURIES; TRIAL BY JURY

Sec.
1861. Declaration of policy.
1862. Discrimination prohibited.
1863. Plan for random jury selection.
1864. Drawing of names from the master jury wheel; completion of juror qualification form.
1865. Qualifications for jury service.
1866. Selection and summoning of jury panels.
1867. Challenging compliance with selection procedures.
1868. Maintenance and inspection of records.
1869. Definitions.
1870. Challenges.
1871. Fees.
1872. Issues of fact in Supreme Court.
1873. Admiralty and maritime cases.
1874. Actions on bonds and specialties.
1875. Protection of jurors' employment.
1876. Trial by jury in the Court of International Trade.
1877. Protection of jurors.
1878. Optional use of a one-step summoning and qualification procedure.

AMENDMENTS

1992—Pub. L. 102–572, title IV, § 403(b), Oct. 29, 1992, 106 Stat. 4512, substituted ''Optional'' for ''Experimental'' in item 1878.

1988—Pub. L. 100–702, title VIII, § 805(b), Nov. 19, 1988, 102 Stat. 4659, added item 1878.

1983—Pub. L. 97–463, § 3(2), Jan. 12, 1983, 96 Stat. 2532, added item 1877.

1980—Pub. L. 96–417, title III, § 302(b), Oct. 10, 1980, 94 Stat. 1739, added item 1876.

1978—Pub. L. 95–572, § 6(a)(2), Nov. 2, 1978, 92 Stat. 2456, added item 1875.

1968—Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 53, substituted ''Declaration of policy'' for ''Qualifications'' as item 1861, ''Discrimination prohibited'' for ''Exemptions'' as item 1862, ''Plan for random jury selection'' for ''Exclusion or excuse from service'' as item 1863, ''Drawing of names from the master jury wheel; completion of juror qualification form'' for ''Manner of drawing; jury commissioners and their compensation'' as item 1864, ''Qualifications for jury service'' for ''Apportionment within district; additional jury commissioners'' as item 1865, ''Selection and summoning of jury panels'' for ''Special petit juries; talesmen from bystanders'' as item 1866, ''Challenging compliance with selection procedures'' for ''Summoning jurors'' as item 1867, ''Maintenance and inspection of records'' for ''Disqualification of marshal or deputy'' as item 1868, ''Definitions'' for ''Frequency of service'' as item 1869, and reenacted items 1870–1874 without change.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8101.

§ 1861. Declaration of policy

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

(June 25, 1948, ch. 646, 62 Stat. 951; Pub. L. 85–315, part V, § 152, Sept. 9, 1957, 71 Stat. 638; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 54.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 411 and 415 (Mar. 3, 1911, ch. 231, §§ 275, 278, 38 Stat. 1164, 1165).

The revised section prescribes uniform standards of qualification for jurors in Federal Courts instead of making qualifications depend upon State laws. This is in accord with proposed legislation recommended by the Judicial Conference of the United States.

The last paragraph is added to exclude jurors incompetent to serve as jurors in State courts.

AMENDMENTS

1968—Pub. L. 90–274 substituted provisions declaring the policy of the United States with respect to trial by jury and the opportunity to serve on such juries for provisions setting out the required qualifications of Federal jurors, including age, citizenship, residence, freedom from conviction of certain crimes, ability to read, write, speak, and understand the English language, and capability of rendering efficient jury service.

1957—Pub. L. 85–315 substituted ''Qualifications of Federal jurors'' for ''Qualifications'' in section catchline.

Pub. L. 85–315 substituted ''and who has resided for a period of one year within the judicial district'' for ''and resides within the judicial district'', and struck out provisions which prohibited service as a grand or petit juror if a person was incompetent to serve as a grand or petit juror by the law of the State in which the district court is held.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 104 of Pub. L. 90–274 provided that: ''This Act [amending this section and sections 1821, 1862 to 1869, and 1871 of this title, repealing section 867 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under this section] shall become effective two hundred and seventy days after the date of enactment [Mar. 27, 1968]: *Provided*, That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–572, § 1, Nov. 2, 1978, 92 Stat. 2453, provided that: ''This Act [enacting sections 1363 and 1875 of this title, amending sections 1863, 1865, 1866, 1869, and 1871 of this title, renumbering section 1363 (relating to construction of references to laws of the United States or Acts of Congress) as section 1364 of this title, and enacting provisions set out as a note under section 1363 of this title] may be cited as the 'Jury System Improvements Act of 1978'.''

SHORT TITLE

Section 1 of Pub. L. 90–274 provided: ''That this Act [amending this section and sections 1821, 1862 to 1869, and 1871 of this title, repealing section 867 of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under this section] may be cited as the 'Jury Selection and Service Act of 1968'.''

FEDERAL RULES OF CIVIL PROCEDURE

Jurors and juries, see Rules 38, 39, and 48, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Jurors and juries, see Rules 23 and 24, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Constitutional provisions relating to trial by jury, see Const. Amends. 6 and 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1866, 1878 of this title.

§ 1862. Discrimination prohibited

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub. L. 96–417, title III, § 302(c), Oct. 10, 1980, 94 Stat. 1739.)

HISTORICAL AND REVISION NOTES

This section makes provision for specific exemption of classes of citizens usually excused from jury service in the interest of the public health, safety, or welfare. The inclusion in the jury list of persons so exempted usually serves only to waste the time of the court.

AMENDMENTS

1980—Pub. L. 96–417 prohibited discrimination against service as juror in the Court of International Trade.

1968—Pub. L. 90–274 substituted provisions prohibiting discrimination against citizens in their service as ju-

rors because of race, color, religion, sex, national origin, or economic status for provisions identifying three groups as exempt from jury service, including members of the armed forces on active duty, members of fire or police departments, and public officers actively engaged in the performance of official duties.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1866, 1878 of this title.

§ 1863. Plan for random jury selection

(a) Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title, and that shall otherwise comply with the provisions of this title. The plan shall be placed into operation after approval by a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district whose plan is being reviewed or such other active district judge of that district as the chief judge of the district may designate. The panel shall examine the plan to ascertain that it complies with the provisions of this title. If the reviewing panel finds that the plan does not comply, the panel shall state the particulars in which the plan fails to comply and direct the district court to present within a reasonable time an alternative plan remedying the defect or defects. Separate plans may be adopted for each division or combination of divisions within a judicial district. The district court may modify a plan at any time and it shall modify the plan when so directed by the reviewing panel. The district court shall promptly notify the panel, the Administrative Office of the United States Courts, and the Attorney General of the United States, of the initial adoption and future modifications of the plan by filing copies therewith. Modifications of the plan made at the instance of the district court shall become effective after approval by the panel. Each district court shall submit a report on the jury selection process within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, adopt rules and regulations governing the provisions and the operation of the plans formulated under this title.

(b) Among other things, such plan shall—

(1) either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process. If the plan establishes a jury commission, the district court shall appoint one citizen to serve with the clerk of the court as the jury commission: *Provided, however*, That the plan for the District of Columbia may establish a jury commission consisting of three citizens. The citizen jury commissioner shall not belong to the same political party as the clerk serving with him. The clerk or the jury commission, as the case may be, shall act under the supervision and control of the chief judge of the district court or such other judge of the district court as the plan may provide. Each jury commissioner shall, during his tenure in office, reside in the judicial district or division for which he is appointed. Each citizen jury commissioner shall receive compensation to be fixed by the district court plan at a rate not to exceed $50 per day for each day necessarily employed in the performance of his duties, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of such duties. The Judicial Conference of the United States may establish standards for allowance of travel, subsistence, and other necessary expenses incurred by jury commissioners.

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title. The plan for the District of Columbia may require the names of prospective jurors to be selected from the city directory rather than from voter lists. The plans for the districts of Puerto Rico and the Canal Zone may prescribe some other source or sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title. The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.

(3) specify detailed procedures to be followed by the jury commission or clerk in selecting names from the sources specified in paragraph (2) of this subsection. These procedures shall be designed to ensure the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes. They shall ensure that names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division are placed in a master jury wheel; and shall ensure that each county, parish, or similar political subdivision within the district or division is substantially proportionally represented in the master jury wheel for that judicial district, division, or combination of divisions. For the purposes of determining proportional representation in the master jury wheel, either the number of actual voters at the last general election in each county, par-

ish, or similar political subdivision, or the number of registered voters if registration of voters is uniformly required throughout the district or division, may be used.

(4) provide for a master jury wheel (or a device similar in purpose and function) into which the names of those randomly selected shall be placed. The plan shall fix a minimum number of names to be placed initially on the master jury wheel, which shall be at least one-half of 1 per centum of the total number of persons on the list used as a source of names for the district or division; but if this number of names is believed to be cumbersome and unnecessary, the plan may fix a smaller number of names to be placed in the master wheel, but in no event less than one thousand. The chief judge of the district court, or such other district court judge as the plan may provide, may order additional names to be placed in the master jury wheel from time to time as necessary. The plan shall provide for periodic emptying and refilling of the master jury wheel at specified times, the interval for which shall not exceed four years.

(5)(A) except as provided in subparagraph (B), specify those groups of persons or occupational classes whose members shall on individual request therefor, be excused from jury service. Such groups or classes shall be excused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and excuse of members thereof would not be inconsistent with sections 1861 and 1862 of this title.

(B) specify that volunteer safety personnel, upon individual request, shall be excused from jury service. For purposes of this subparagraph, the term ''volunteer safety personnel'' means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active service in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(7) fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(8) specify the procedures to be followed by the clerk or jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(c) The initial plan shall be devised by each district court and transmitted to the reviewing panel specified in subsection (a) of this section within one hundred and twenty days of the date of enactment of the Jury Selection and Service Act of 1968. The panel shall approve or direct the modification of each plan so submitted within sixty days thereafter. Each plan or modification made at the direction of the panel shall become effective after approval at such time thereafter as the panel directs, in no event to exceed ninety days from the date of approval. Modifications made at the instance of the district court under subsection (a) of this section shall be effective at such time thereafter as the panel directs, in no event to exceed ninety days from the date of modification.

(d) State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90–274, §101, Mar. 27, 1968, 82 Stat. 54; Pub. L. 92–269, §2, Apr. 6, 1972, 86 Stat. 117; Pub. L. 95–572, §2(a), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 100–702, title VIII, §802(b), (c), Nov. 19, 1988, 102 Stat. 4657, 4658; Pub. L. 102–572, title IV, §401, Oct. 29, 1992, 106 Stat. 4511.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940, ed., §415 (Mar. 3, 1911, ch. 231, §278, 36 Stat. 1165).

Subsections (a) and (b) are new and merely declaratory of existing practice.

The phrase ''or previous condition of servitude'' was omitted as obsolete.

Changes were made in phraseology.

REFERENCES IN TEXT

Section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b)(5)(B), is section 1203(6) of Pub. L. 90–351, which is classified to section 3796b(6) of Title 42, The Public Health and Welfare.

The date of enactment of the Jury Selection and Service Act of 1968, referred to in subsec. (c), is the date of enactment of Pub. L. 90–274, which was approved Mar. 27, 1968.

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–572 inserted at end ''The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.''

1988—Subsec. (b)(5). Pub. L. 100–702, §802(b), designated existing provisions as subpar. (A), inserted ''except as provided in subparagraph (B),'', and added subpar. (B).

Subsec. (b)(6). Pub. L. 100–702, § 802(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt. Such groups or classes shall be exempt only if the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title. The plan shall provide for exemption of the following persons: (i) members in active service in the Armed Forces of the United States; (ii) members of the fire or police departments of any State, district, territory, possession, or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.''

1978—Subsec. (b)(7) to (9). Pub. L. 95–572 struck out par. (7) relating to random jury selection plan provision for fixing the distance, in miles or in travel time, from each place of holding court beyond which prospective jurors residing should, on individual request, be excused from jury service on the ground of undue hardship in traveling to the place where court was held, now incorporated in definition of ''undue hardship or extreme inconvenience'' in section 1869(j) of this title, and redesignated pars. (8) and (9) as (7) and (8), respectively.

1972—Subsec. (b)(4). Pub. L. 92–269 inserted provisions requiring the master jury wheel to be emptied and refilled in not greater than four years intervals.

1968—Subsec. (a). Pub. L. 90–274 substituted provisions requiring a written plan covering the random selection of jurors by each United States District Court and the adoption, review, and modification of the plan for provisions authorizing district judges to exclude or excuse for good cause persons called as jurors.

Subsec. (b). Pub. L. 90–274 substituted provisions setting out the nine required features of a plan for random jury selection, including management by commission or clerk, selection from voter registration lists, detailed procedures for selecting names, a master jury wheel, excused or exempted groups, maximum distances of travel, disclosure of names, and procedures for assigning jurors drawn from the jury wheel to particular grand and petit jury panels, for provisions authorizing the district court to excuse, for the public interests, classes or groups upon a finding that such jury service would entail undue hardship, extreme inconvenience, or serious obstruction or delay in the fair and impartial administration of justice.

Subsec. (c). Pub. L. 90–274 substituted provisions covering the transmittal of the plan to a reviewing panel and the modification thereof for provisions prohibiting the exclusion of any citizen from juror service on account of race or color.

Subsec. (d). Pub. L. 90–274 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

REFILLING OF MASTER JURY WHEEL NOT LATER THAN SEPTEMBER 1, 1973; REFILLING OF QUALIFIED JURY WHEEL NOT LATER THAN OCTOBER 1, 1973; RETROACTIVE EFFECT

Sections 3 and 4 of Pub. L. 92–269 provided that:

''SEC. 3. (a) Each judicial district and each division or combination of divisions within a judicial district, for which a separate plan for random selection of jurors has been adopted pursuant to section 1863 of title 28, United States Code, other than the District of Columbia and the districts of Puerto Rico and the Canal Zone, shall not later than September 1, 1973, refill its master jury wheel with names obtained from the voter registration lists for, or the lists of actual voters in, the 1972 general election.

''(b) The District of Columbia and the judicial districts of Puerto Rico and the Canal Zone shall not later than September 1, 1973, refill their master jury wheels from sources which include the names of persons eighteen years of age or older.

''(c) The qualified jury wheel in each judicial district, and in each division or combination of divisions in a judicial district for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

''SEC. 4. (a) Nothing in this Act amending this section and section 1865 of this title shall affect the composition of any master jury wheel or qualified jury wheel prior to the date on which it is first refilled in compliance with the terms of section 3.

''(b) Nothing in this Act shall affect the composition or preclude the service of any jury empaneled on or before the date on which the qualified jury wheel from which the jurors' names were drawn is refilled in compliance with the provisions of section 3.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1866, 1867, 1868 of this title.

§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form

(a) From time to time as directed by the district court, the clerk or a district judge shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk or jury commission forthwith to ap-

pear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the district court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the jury commission or the clerk of the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as the plan may provide.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than $100 or imprisoned not more than three days, or both.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 57; Pub. L. 100–702, title VIII, § 803(a), Nov. 19, 1988, 102 Stat. 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 412, 412a (Mar. 3, 1911, ch. 231, § 276, 36 Stat. 1164; Feb. 3, 1917, ch. 27, 39 Stat. 873; May 21, 1945, ch. 129, title IV, 59 Stat. 198; July 5, 1946, ch. 541, title IV, 60 Stat. 478).

The words "The district court" were substituted for the phrase "the judge thereof, or by the judge senior in commission in districts having more than one judge" to conform to other sections authorizing appointment of court officers. See section 751 of this title relating to appointment of district court clerk.

The limitation in section 412a of title 28, U.S.C., 1940 ed., that jury commissioners shall serve no more than three days in any one term of court was omitted as unnecessary. This is a matter that may safely be left to the discretion of the court.

The last paragraph was added in conformity with section 11–1401 of the District of Columbia Code, 1940 ed., providing for three jury commissioners.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

As finally enacted, act July 9, 1947, ch. 211, title IV, 61 Stat. 304, which was classified to Title 28, U.S.C., 1946 ed., § 412a, was also a source of this section. Accordingly such act was included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–702 amended second sentence generally. Prior to amendment, second sentence read as follows: "The clerk or jury commission shall prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to the district court plan and to sections 1867 and 1868 of this title."

1968—Pub. L. 90–274 substituted provisions for the public drawing of names from the master jury wheel, the completion of the jury qualification form, and the penalties for failure to appear and for misrepresentation of material facts for provisions requiring the drawing of names from a jury box, the refilling of the box by the clerk and a jury commissioner, the requirements and compensation of the commissioner, and the alternate placement of names by the clerk and the commissioner.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Jurors and juries, see rules 38, 39, 46, 47, and 48, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Jurors and juries, see rules 6, 23, 24, and 51, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1869 of this title.

§ 1865. Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 58; Pub. L. 92–269, § 1, Apr. 6, 1972, 86 Stat. 117; Pub. L. 95–572, § 3(a),

Nov. 2, 1978, 92 Stat. 2453; Pub. L. 100–702, title VIII, § 803(b), Nov. 19, 1988, 102 Stat. 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 181, 413 (Mar. 3, 1911, ch. 231, §§ 100, 277, 36 Stat. 1121, 1164).

Section consolidates a part of section 181 with section 413 of title 28, U.S.C., 1940 ed. Other provisions of said section 181 are incorporated in section 115 of this title.

Word ''jurors'' was changed to ''grand and petit jurors'' upon authority of *Agnew v. United States*, 1897, 17 S.Ct. 235, 165 U.S. 36, 41 L.Ed. 624, construing such term to include both types of jurors.

The last sentence of subsection (a) was added to conform with existing practice in many districts. Subsection (b) extends to all districts a provision of section 181 of title 28, U.S.C., 1940 ed., which was designed for the convenience of the districts in Ohio and permitted jurors drawn for service at Cleveland, Toledo, and Columbus to serve at Youngstown, Lima, and Steubenville, respectively.

Changes were made in phraseology.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–702 substituted ''in any alphabetical'' for ''the alphabetical''.

1978—Subsec. (b)(5). Pub. L. 95–572 struck out ''by pardon or amnesty'' after ''civil rights have not been restored''.

1972—Subsec. (b)(1). Pub. L. 92–269 substituted ''eighteen years old'' for ''twenty-one years old''.

1968—Subsec. (a). Pub. L. 90–274 substituted provisions for the excusing of persons from jury service by the chief judge of the district court or by other district court judge for provisions requiring the selection of jurors so as to be most favorable to an impartial trial and so as to minimize the expense and burden of jury service.

Subsec. (b). Pub. L. 90–274 substituted provisions setting out the conditions of ineligibility for jury service for provisions authorizing the service of jurors in a place within the district other than the place for which the jurors were summoned.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1866, 1876 of this title.

§ 1866. Selection and summoning of jury panels

(a) The jury commission, or in the absence thereof the clerk, shall maintain a qualified jury wheel and shall place in such wheel names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to the district court plan. From time to time, the jury commission or the clerk shall publicly draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

(b) When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summonses for the required number of jurors.

Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address.

If such service is made personally, the summons shall be delivered by the clerk or the jury commission or their duly designated deputies to the marshal who shall make such service.

If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons.

(c) Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5) or (6) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court, or by the clerk under supervision of the court if the court's jury selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court's jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of this title. The number of persons excluded under clause (5) of this subsection shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection shall be eligible to sit on an-

other jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

(d) Whenever a person is disqualified, excused, exempt, or excluded from jury service, the jury commission or clerk shall note in the space provided on his juror qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefore.

(e) In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

(f) When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the voter registration lists, lists of actual voters, or other lists specified in the plan, in a manner ordered by the court consistent with sections 1861 and 1862 of this title.

(g) Any person summoned for jury service who fails to appear as directed shall be ordered by the district court to appear forthwith and show cause for his failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than $100 or imprisoned not more than three days, or both.

(June 25, 1948, ch. 646, 62 Stat. 952; May 24, 1949, ch. 179, § 96, 63 Stat. 103; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 58; Pub. L. 91–543, Dec. 11, 1970, 84 Stat. 1408; Pub. L. 95–572, § 2(b), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 97–463, § 2, Jan. 12, 1983, 96 Stat. 2531; Pub. L. 100–702, title VIII, § 801, Nov. 19, 1988, 102 Stat. 4657.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 417, 418 (Mar. 3, 1911, ch. 231, §§ 280, 281, 36 Stat. 1165).

Section consolidates parts of sections 417, 418 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

The requirement of section 418 of title 28, U.S.C., 1940 ed., for the summoning of a special jury in accordance with the law of the state was omitted as unnecessary and incongruous in view of other sections of this chapter making adequate provision for summoning jurors.

1949 ACT

This section amends section 1866 of title 28, U.S.C., by restoring provision of original law that special juries be impaneled in accordance with laws of the respective States.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–702 amended cl. (1) generally. Prior to amendment, cl. (1) read as follows: "excused by the court, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person shall be summoned again for jury service under subsections (b) and (c) of this section, or".

1983—Subsec. (b). Pub. L. 97–463, § 2, inserted provision in second par. authorizing service by first-class mail of persons drawn for jury service, substituted in fourth par. "If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons" for "If such service is made by registered or certified mail, the summons may be served by the clerk or jury commission or their duly designated deputies who shall make affidavit of service and shall file with such affidavit the addressee's receipt for the registered or certified summons" and struck out provision requiring the marshal, if service was made by the marshal, to attach to his return the addressee's receipt for the registered or certified mail.

1978—Subsec. (c). Pub. L. 95–572 struck out introductory text reference to par. (7) of section 1863(b) of this title.

1970—Subsec. (b). Pub. L. 91–543 inserted provisions authorizing duly designated deputies of the clerk or the jury commission to issue summonses, and deliver them to the marshal for service when personal service is to be made, and provisions authorizing, if service is made by registered or certified mail, the clerk or the jury commission or their duly designated deputies to make service of the summons.

1968—Subsec. (a). Pub. L. 90–274 substituted provisions authorizing the commission or clerk to maintain a jury wheel of qualified jurors and to draw particular panels therefrom for provisions authorizing the marshal to summon talesmen from the bystanders when there is an insufficient number of petit jurors.

Subsec. (b). Pub. L. 90–274 substituted provisions directing the clerk or jury commission to deliver summonses to the marshal for service when the court orders a grand or petit jury to be drawn and setting out the details of service for provisions requiring that, when a special jury was ordered by a district court, it had to be returned by the marshal in the same manner and form as was required in such case by the law of the State in which the district court sat.

Subsecs. (c) to (g). Pub. L. 90–274 added subsecs. (c) to (g).

1949—Act May 24, 1949, divided section into subsections and restored provisions that special juries be impaneled in accordance with State law.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1869 of this title.

§ 1867. Challenging compliance with selection procedures

(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(b) In criminal cases, before the voir dire examination begins, or within seven days after the Attorney General of the United States discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is

earlier, the Attorney General may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(c) In civil cases, before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, any party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury.

(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(e) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime, the Attorney General of the United States or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.

(f) The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section 1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 85–259, Sept. 2, 1957, 71 Stat. 583; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 59.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 416 (Mar. 3, 1911, ch. 231, § 279, 36 Stat. 1165; Jan. 31, 1929, ch. 126, 45 Stat. 1145).

Provisions for service by a disinterested person when marshal or his deputy is disqualified is incorporated in section 1868 of this title.

Provision for payment and reimbursement of postage and registry fee were omitted as covered by section 560 of this title.

Word ''summons'' was substituted for ''writ of venire facias'' in harmony with the Federal Rules of Civil Procedure which abolished unnecessary forms. See Rule 81(b) thereof, and Rule 12 of the Federal Rules of Criminal Procedure.

Provision of section 416 of title 28, U.S.C., 1940 ed., that the receipt of the person so addressed by registered mail should be regarded as personal service, was omitted. Such omission is consistent with Rule 5(b) of the Federal Rules of Civil Procedure providing that service by mail is complete upon mailing.

Provision for attachment to the return of the addressee's receipt for the summons, was inserted to cover its disposition.

Provision that no mileage shall be allowed for service by mail was omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1968—Pub. L. 90–274 substituted provisions by which a defendant may assert noncompliance with the selection procedures of the jury for provisions covering the issuance of summonses for jurors and service thereof upon jurors.

1957—Pub. L. 85–259 inserted ''or certified'' in second and third sentences.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1864, 1878 of this title.

§ 1868. Maintenance and inspection of records

After the master jury wheel is emptied and refilled pursuant to section 1863(b)(4) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury commission or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 60.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 416, 417 (Mar. 3, 1911, ch. 231, §§ 279, 280, 36 Stat. 1165, Jan. 31, 1929, ch. 126, 45 Stat. 1145).

Section consolidates parts of sections 416, 417 of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

The remaining portion of section 416 of title 28, U.S.C., 1940 ed., constitutes section 1867 of this title.

The remainder of section 417 of title 28, U.S.C., 1940 ed., is incorporated in section 1866 of this title.

Words, ''in the opinion of the court, disqualified'' were substituted for ''not an indifferent person, or is interested in the event of the cause''.

AMENDMENTS

1968—Pub. L. 90–274 substituted provisions for the maintenance and inspection of records in the hands of the commission or clerk before the master wheel was emptied for provisions covering the disqualification of the United States marshal or his deputy and the appointment of a disinterested person by the court.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1864 of this title.

§ 1869. Definitions

For purposes of this chapter—

(a) ''clerk'' and ''clerk of the court'' shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;

(b) ''chief judge'' shall mean the chief judge of any district court of the United States;

(c) ''voter registration lists'' shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent Federal general election, or, in the case of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiners pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the districts of Guam and the Virgin Islands, ''voter registration lists'' shall mean the official records maintained by territorial election officials of persons registered to vote in the most recent territorial general election;

(d) ''lists of actual voters'' shall mean the official lists of persons actually voting in either the most recent State or the most recent Federal general election;

(e) ''division'' shall mean: (1) one or more statutory divisions of a judicial district; or (2) in statutory divisions that contain more than one place of holding court, or in judicial districts where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the district court plan shall determine: *Provided*, That each county, parish, or similar political subdivision shall be included in some such division;

(f) ''district court of the United States'', ''district court'', and ''court'' shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;

(g) ''jury wheel'' shall include any device or system similar in purpose or function, such as a properly programed electronic data processing system or device;

(h) ''juror qualification form'' shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

(i) ''public officer'' shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;

(j) ''undue hardship or extreme inconvenience'', as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service;

(k) ''publicly draw'', as referred to in sections 1864 and 1866 of this chapter, shall mean

a drawing which is conducted within the district after reasonable public notice and which is open to the public at large under the supervision of the clerk or jury commission, except that when a drawing is made by means of electronic data processing, ''publicly draw'' shall mean a drawing which is conducted at a data processing center located in or out of the district, after reasonable public notice given in the district for which juror names are being drawn, and which is open to the public at large under such supervision of the clerk or jury commission as the Judicial Conference of the United States shall by regulation require; and

(*l*) ''jury summons'' shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, type, or facsimile manner on the summons or the envelopes transmitting the summons.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 88–139, § 2, Oct. 16, 1963, 77 Stat. 248; Pub. L. 90–274, § 101, Mar. 27, 1968, 82 Stat. 61; Pub. L. 91–358, title I, § 172(b), July 29, 1970, 84 Stat. 590; Pub. L. 92–437, § 1, Sept. 29, 1972, 86 Stat. 740; Pub. L. 95–572, §§ 3(b), 4, Nov. 2, 1978, 92 Stat. 2453; Pub. L. 95–598, title II, § 243, Nov. 6, 1978, 92 Stat. 2671; Pub. L. 99–650, § 3, Nov. 14, 1986, 100 Stat. 3641; Pub. L. 100–702, title VIII, §§ 802(a), 804, Nov. 19, 1988, 102 Stat. 4657, 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 423 (Mar. 3, 1911, ch. 231, § 286, 36 Stat. 1166). Changes were made in phraseology.

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (c), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1973 of Title 42 and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–702, § 802(a), amended subsec. (a) generally, substituting '', any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter'' for ''or any authorized deputy clerk''.

Subsec. (f). Pub. L. 100–702, § 804, amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: '''district court of the United States', 'district court', and 'court' shall mean courts constituted under chapter 5 of title 28, United States Code, section 22 of the Organic Act of Guam, as amended (64 Stat. 389; 48 U.S.C. 1424), section 21 of the Revised Organic Act of the Virgin Islands (68 Stat. 506; 48 U.S.C. 1611), and section 1 of title 3, Canal Zone Code;;''.

1986—Subsec. (f). Pub. L. 99–650 struck out ''except that for purposes of sections 1861, 1862, 1866(c), 1866(d), and 1867 of this chapter such terms shall include the Superior Court of the District of Columbia'' after ''Canal Zone Code;''.

1978—Subsec. (f). Pub. L. 95–598 directed the amendment of subsec. (f) by inserting ''chapter 6 of title 28, United States Code,'' after ''chapter 5 of title 28, United States Code,'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Subsec. (h). Pub. L. 95–572, § 3(b), struck out ''by pardon or amnesty'' after ''civil rights restored''.

Subsecs. (j) to (*l*). Pub. L. 95–572, § 4, added subsecs. (j) to (*l*).

1972—Subsec. (h). Pub. L. 92–437 added race and occupation to the particulars to be elicited on the juror qualification form, in provisions distinguishing between information to be requested and information to be required, struck out ''race and occupation of a potential juror'', and in information to be contained in the form, struck out ''race, color'' and ''occupation'' from the particulars, and required additional material to be contained in the form that information concerning race is required solely to enforce nondiscrimination in jury selection and that it has no bearing on an individual's qualification for jury service.

1970—Subsec. (f). Pub. L. 91–358 substituted reference to the Superior Court of the District of Columbia for references to the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia.

1968—Pub. L. 90–274 substituted provisions defining ''clerk'', ''clerk of the court'', ''chief judge'', ''voter registration lists'', ''list of actual voters'', ''division'', ''district court'', ''jury wheel'', ''juror qualification form'', and ''public officer'' for provisions allowing the challenge of a petit juror who had been summoned and attended court as a petit juror at any session held within one year prior to the challenge.

1963—Pub. L. 88–139 substituted ''session'' for ''term''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(a) of Pub. L. 99–650 provided in part that: ''The provisions of this Act [amending this section] shall take effect 180 days after the date of enactment of this Act [Nov. 14, 1986]''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92–437 provided that: ''This Act [amending this section] shall take effect on the sixtieth day after the date of its enactment [Sept. 29, 1972].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as a note under section 1257 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

§ 1870. Challenges

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants

or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

(June 25, 1948, ch. 646, 62 Stat. 953; Pub. L. 86–282, Sept. 16, 1959, 73 Stat. 565.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 424 (Mar. 3, 1911, ch. 231, § 287, 36 Stat. 1166).

Provisions of section 424 of title 28, U.S.C., 1940 ed., relating to the number of peremptory challenges in criminal cases were deleted as superseded by Rule 24 of the Federal Rules of Criminal Procedure.

The last sentence of the first paragraph was added to permit the same flexibility in the matter of challenges in civil cases as is permitted in criminal cases by said Rule 24.

Words ''without aid of triers'' at end of section 424 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

AMENDMENTS

1959—Pub. L. 86–282 substituted ''may'' for ''shall'' after ''several plaintiffs'', and '', or the court may allow'' for ''. If there is more than one defendant the court may allow the defendants''.

FEDERAL RULES OF CIVIL PROCEDURE

Alternate jurors, challenges, see rule 47, Appendix to this title.

Jurors and juries, see rules 38, 39, 47 and 48.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal cases, jury challenges, see rule 24, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Challenges in summary trials, see section 394 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1876 of this title.

§ 1871. Fees

(a) Grand and petit jurors in district courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a district judge.

(b)(1) A juror shall be paid an attendance fee of $40 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the beginning and end of such service or at any time during such service.

(2) A petit juror required to attend more than thirty days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding $10 more than the attendance fee, for each day in excess of thirty days on which he is required to hear such case.

(3) A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the district judge in charge of the particular grand jury, an additional fee, not exceeding $10 more than the attendance fee, for each day in excess of forty-five days of actual service.

(4) A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

(5) Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate is payable at the beginning and at the end of a juror's term of service.

(2) The Director shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

(3) Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon presentation of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

(4) Any juror who travels to district court pursuant to summons in an area outside of the contiguous forty-eight States of the United States shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the district judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Director of the Administrative Office of the United States Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in

the same geographical area. Claims for such allowance shall not require itemization.

(2) A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

(3) A subsistence allowance for jurors serving in district courts outside of the contiguous forty-eight States of the United States shall be allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Director of the Administrative Office of the United States Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

(e) During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order of the court in lieu of the subsistence allowances payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

(f) A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

(g) The Director of the Administrative Office of the United States Courts shall promulgate such regulations as may be necessary to carry out his authority under this section.

(June 25, 1948, ch. 646, 62 Stat. 953; May 24, 1949, ch. 139, § 97, 63 Stat. 103; July 14, 1949, ch. 333, 63 Stat. 411; Pub. L. 85–299, Sept. 7, 1957, 71 Stat. 618; Pub. L. 89–165, Sept. 2, 1965, 79 Stat. 645; Pub. L. 90–274, § 102(a), Mar. 27, 1968, 82 Stat. 62; Pub. L. 95–572, § 5, Nov. 2, 1978, 92 Stat. 2454; Pub. L. 101–650, title III, § 314(b), Dec. 1, 1990, 104 Stat. 5115; Pub. L. 102–572, title IV, § 402, Oct. 29, 1992, 106 Stat. 4511.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 600, 600a, 600b, 608, and sections 11–1512 and 11–1513 of the D.C. Code, 1940 ed., (R.S. §§ 236, 323; Apr. 26, 1926, ch. 183, §§ 1, 2, 44 Stat. 323; May 17, 1932, ch. 190, 47 Stat. 158; Oct. 13, 1941, ch. 431, § 2, 55 Stat. 736).

Section consolidates section 600 of title 28, U.S.C., 1940 ed., and sections 11–1512 and 11–1513 of the D.C. Code, 1940 ed., with part of section 608 of title 28, U.S.C., 1940 ed. The remainder of such section 608, relating to payment of witnesses' compensation, is the basis of section 1825 of this title.

Words ''place of service'' were substituted for references to attendance at court, in view of the earlier reference to service before commissioners.

The Advisory Committee to the House Committee on Revision of the Laws in revision of this title, recommends a careful study of the compensation of witnesses and jurors. Furthermore, provision should be made for the subsistence of jurors and witnesses serving at such distance from their homes as precludes daily travel to and from the court.

Changes were made in phraseology.

1949 ACT

This section incorporates in section 1871 of title 28, U.S.C., with changes in phraseology, the provisions of act of June 25, 1948 (ch. 652, 62 Stat. 1016), which became law subsequent to the enactment of the revision.

AMENDMENTS

1992—Subsec. (c)(5). Pub. L. 102–572 added par. (5).

1990—Subsec. (b). Pub. L. 101–650 substituted ''$40'' for ''$30'' in par. (1) and ''$10'' for ''$5'' in pars. (2) and (3).

1978—Subsecs. (a) to (g). Pub. L. 95–572, in revising text, substituted subsecs. (a) to (g) for prior five unnumbered paragraphs, and among other changes, deleted reference to fees for service before United States commissioners, now provided for in chapter 43 (section 631 et seq.) of this title relating to United States magistrates; increased to $30 from $20 allowance for actual attendance; continued the discretionary additional fee for extended service, increasing to forty-five from thirty days the basic service requirement; generalized travel allowance provisions in place of 10 cents per mile travel allowance from residence to place of service when commencing and terminating service and any necessary daily or interim travel, not to exceed a subsistence allowance of $16 per day; and deleted provision for same fees for service in districts courts for districts of Guam and Canal Zone as provided for services in other Federal district courts as covered in definition of ''district court of the United States'' in section 1869(f) of this title.

1968—Pub. L. 90–274 increased from $10 to $20 the per diem allowance for grand and petit jurors, increased from $14 to $25 the fee for extra days in cases requiring attendance in excess of 30 days, increased from $10 to $16 the daily subsistence rate when travel appears impracticable, increased from $10 to $20 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge, provided for the allowance of amounts expended for tolls, for toll roads, for toll tunnels, and for toll bridges, and directed that grand and petit jurors in the district courts for the districts of Guam and the Canal Zone receive the same fees and allowances provided for grand and petit jurors in other district courts of the United States.

1965—Pub. L. 89–165 increased from $7 to $10 the per diem allowance for grand and petit jurors, increased from $10 to $14 the fee for extra days in cases requiring attendance in excess of 30 days, prohibited payment for interim or daily travel at the 10-cent-per-mile rate in excess of the subsistence allowance which would have been paid if he had remained at the place of holding court overnight or during temporary recess, increased from $7 to $10 the daily subsistence rate when travel daily appears impracticable, and increased from $7 to $10 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge.

1957—Pub. L. 85–299 increased from 7 to 10 cents per mile and $5 to $7 per day the mileage and subsistence allowances of grand and petit jurors.

1949—Act July 14, 1949, increased the per diem fee paid jurors from $5 to $7, provided for per diem fee payments not to exceed $10 for each day in excess of thirty days, increased the mileage payment from 5 cents per mile to 7 cents, and provided for the certification of the judge in cases where the jury fee is in excess of $7 per diem.

Act May 24, 1949, increased jury fees and mileage and subsistence allowances.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–572 applicable with respect to any grand or petit juror serving on or after the sixtieth day following Nov. 2, 1978, see section 7(b) of Pub. L. 95–572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90–274, set out as a note under section 1861 of this title.

REFRESHMENT OF JURORS

Pub. L. 101–162, title IV, Nov. 21, 1989, 103 Stat. 1012, provided: ''That for fiscal year 1990 and hereafter, funds appropriated under this heading [COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES and FEES OF JURORS AND COMMISSIONERS] shall be available for refreshment of jurors.''

CROSS REFERENCES

Accounts of marshal, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 567, 1864, 1876 of this title.

§ 1872. Issues of fact in Supreme Court

In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 343 (Mar. 3, 1911, ch. 231, § 235, 36 Stat. 1156).

Changes were made in phraseology.

§ 1873. Admiralty and maritime cases

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.

(June 25, 1948, ch. 646, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 770 (R.S. §§ 566, 648; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Words ''and Territories'' following words ''in different States'' were omitted as obsolete. The act of February 26, 1845, ch. 20, 5 Stat. 726, from which this language was derived was intended primarily to cover the Great Lakes regions.

The first sentence of section 770 of title 28, U.S.C., 1940 ed., providing generally for the right of jury trials in district courts, was omitted as covered by Rule 38 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Jury trial of right, see rule 38, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Trial by jury, see rule 23, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1874. Actions on bonds and specialties

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 785 (R.S. § 961).

Word ''actions'' was substituted for ''all suits brought,'' in view of Rule 2 of the Federal Rules of Civil Procedure. For the same reason, words ''according to equity,'' after ''to recover so much as is due,'' were omitted.

Words ''or upon demurrer,'' after ''default or confession of the defendant,'' were omitted in view of Federal Rules of Civil Procedure, Rule 7(c), abolishing demurrers.

Changes were made in phraseology.

§ 1875. Protection of jurors' employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section—

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than $1,000 for each violation as to each employee.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d)(1) An individual claiming that his employer has violated the provisions of this section may make application to the district court for the district in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

(Added Pub. L. 95–572, § 6(a)(1), Nov. 2, 1978, 92 Stat. 2456; amended Pub. L. 97–463, § 1, Jan. 12, 1983, 96 Stat. 2531.)

AMENDMENTS

1983—Subsec. (d)(1). Pub. L. 97–463, § 1(1), substituted designation ''(d)(1)'' for ''(d)'' before ''An individual claiming''.

Subsec. (d)(2). Pub. L. 97–463, § 1(2), inserted provision empowering the court to tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to par. (1) of this subsection and, in existing provisions, substituted ''only if the court finds that the action is frivolous'' for ''if the court determines that the action is frivolous''.

EFFECTIVE DATE

Section applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95–572, set out as a note under section 1363 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1363 of this title.

§ 1876. Trial by jury in the Court of International Trade

(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

(b) Whenever the Court of International Trade conducts a jury trial—

(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

(4) jurors shall be compensated in accordance with section 1871 of this title.

(Added Pub. L. 96–417, title III, § 302(a), Oct. 10, 1980, 94 Stat. 1739.)

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(C) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 1877. Protection of jurors

(a) Subject to the provisions of this section and title 5 of the United States Code, subchapter 1 of chapter 81, title 5, United States Code, applies to a Federal grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

(b) In administering this section with respect to a juror covered by this section—

(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS–2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States Code, and

(2) performance of duty as a juror includes that time when a juror is (A) in attendance at court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view.

(Added Pub. L. 97–463, § 3(1), Jan. 12, 1983, 96 Stat. 2531.)

§ 1878. Optional use of a one-step summoning and qualification procedure

(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.

(Added Pub. L. 100–702, title VIII, § 805(a), Nov. 19, 1988, 102 Stat. 4658; amended Pub. L. 102–572, title IV, § 403(a), Oct. 29, 1992, 106 Stat. 4512.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''Optional'' for ''Experimental'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed ten. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted

pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists.

''(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

SAVINGS PROVISION

Section 403(c) of Pub. L. 102–572 provided that: ''For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section [Jan. 1, 1993]), the amendment made by subsection (a) of this section [amending this section] shall be effective on and after January 1, 1992.''

CHAPTER 123—FEES AND COSTS

Sec.
1911. Supreme Court.
1912. Damages and costs on affirmance.
1913. Courts of appeals.
1914. District court; filing and miscellaneous fees; rules of court.
1915. Proceedings in forma pauperis.
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1932.[1] Judicial Panel on Multidistrict Litigation.
1932.[1] Revocation of earned release credit.

AMENDMENTS

1996—Pub. L. 104–317, title IV, § 403(a)(2), Oct. 19, 1996, 110 Stat. 3854, added item 1932 ''Judicial Panel on Multidistrict Litigation''.

Pub. L. 104–134, title I, § 101[(a)] [title VIII, §§ 805(b), 809(b)], Apr. 26, 1996, 110 Stat. 1321, 1321–75, 1321–76; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, added item 1915A and item 1932 ''Revocation of earned release credit''.

1992—Pub. L. 102–572, title IX, §§ 902(b)(2), 908(b)(2), Oct. 29, 1992, 106 Stat. 4516, 4519, substituted ''Dismissal'' for ''District courts; dismissal'' in item 1919 and ''Court of Federal Claims'' for ''Claims Court'' as item 1926.

1988—Pub. L. 100–702, title X, § 1020(a)(8), Nov. 19, 1988, 102 Stat. 4672, substituted ''court'' for ''courts'' after ''District'' in item 1914.

1986—Pub. L. 99–500, § 101(b) [title IV, § 407(d)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–64, and Pub. L. 99–591, § 101(b) [title IV, § 407(d)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–64, added item 1931.

1984—Pub. L. 98–353, title I, § 111(c), July 10, 1984, 98 Stat. 343, substituted ''fees'' for ''courts'' in item 1930. Notwithstanding directory language that the amendment be made to the table of sections for chapter 125 of this title, the amendment was executed to the table of sections for chapter 123 of this title to reflect the probable intent of Congress.

1982—Pub. L. 97–164, title I, § 139(p)(2), Apr. 2, 1982, 96 Stat. 44, substituted ''Claims Court'' for ''Court of Customs and Patent Appeals'' in item 1926.

1978—Pub. L. 95–598, title II, § 246(b), Nov. 6, 1978, 92 Stat. 2672, added item 1930.

CROSS REFERENCES

Jury fees, see section 1871 of this title.

Witnesses, fees and subsistence, see section 1821 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 sections 507, 707, 1112, 1208, 1225, 1307, 1325; title 26 section 1398.

§ 1911. Supreme Court

The Supreme Court may fix the fees to be charged by its clerk.

The fees of the clerk, cost of serving process, and other necessary disbursements incidental to any case before the court, may be taxed against the litigants as the court directs.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 330 (Mar. 3, 1911, ch. 231, § 223, 36 Stat. 1153).

The second paragraph was inserted to give statutory sanction to existing practice.

Changes were made in phraseology.

RULES OF THE SUPREME COURT

Fees to be charged pursuant to this section, see rule 38, Appendix to this title.

CROSS REFERENCES

Payment by clerk into Treasury of all fees, costs, and emoluments, see section 671 of this title.

§ 1912. Damages and costs on affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 878, and section 1141(c)(4) of title 26 U.S.C., 1940 ed., Internal Revenue Code (R.S. § 1010; Mar. 3, 1911, ch. 231, §§ 117, 289, 36 Stat. 1131, 1167; Feb. 10, 1939, ch. 2, § 1141(c)(4), 53 Stat. 165).

Section consolidates section 878 of title 28 with section 1141(c)(4) of title 26, both U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation.

Words ''prevailing party'' were substituted for ''the respondents in error,'' contained in said section 878 of title 28, since writs of error have been abolished.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1141(c)(4)

[1] So in original. Two sections 1932 have been enacted.

of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

RULES OF THE SUPREME COURT

Interest and damages, see rule 42, Appendix to this title.

CROSS REFERENCES

Damages and costs in Courts of Appeals, see rules of the various Courts of Appeals.

§ 1913. Courts of appeals

The fees and costs to be charged and collected in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and uniform in all the circuits.

(June 25, 1948, ch. 646, 62 Stat. 954.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 543 (Mar. 3, 1891, ch. 517, § 2, 26 Stat. 826; Feb. 19, 1897, ch. 263, 29 Stat. 536; Sept. 27, 1944, ch. 413, 58 Stat. 743).

Words ''and in the United States Circuit Court of Appeals for the District of Columbia'' were omitted as covered by ''each court of appeals.''

Judicial Conference of Senior Circuit Judges was changed to Judicial Conference ''of the United States'' in conformity with section 331 of this title.

Changes were made in phraseology.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Pub. L. 102–140, title III, § 303, Oct. 28, 1991, 105 Stat. 810, as amended by Pub. L. 104–317, title IV, § 403(b), Oct. 19, 1996, 110 Stat. 3854, provided that:

''(a) The Judicial Conference shall hereafter prescribe reasonable fees, pursuant to sections 1913, 1914, 1926, 1930, and 1932 of title 28, United States Code, for collection by the courts under those sections for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. The Director of the Administrative Office of the United States Courts, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.

''(b) The Judicial Conference and the Director shall transmit each schedule of fees prescribed under paragraph (a) to the Congress at least 30 days before the schedule becomes effective. All fees hereafter collected by the Judiciary under paragraph (a) as a charge for services rendered shall be deposited as offsetting collections to the Judiciary Automation Fund pursuant to 28 U.S.C. 612(c)(1)(A) to reimburse expenses incurred in providing these services.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 101–515, title IV, § 404, Nov. 5, 1990, 104 Stat. 2132.

COURT OF APPEALS FEE SCHEDULE

(Effective April 1, 1996)

Following are fees to be charged for services to be performed by clerks of the courts of appeals. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4, and 13. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

(1) For docketing a case on appeal or review, or docketing any other proceeding, $100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(2) For every search of the records of the court and certifying the results thereof, $15.

(3) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, $5.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.

(5) For reproduction of the magnetic tape recordings, either cassette or reel-to-reel, $15 including the cost of materials.

(6) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), F.R.A.P., a flat fee of $25.

(7) For each microfiche or microfilm copy of any court record, where available, $3.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.

(9) For a check paid into the court which is returned for lack of funds, $25.

(10) Fees to be charged and collected for copies of opinions shall be fixed, from time to time, by each court, commensurate with the cost of printing.

(11) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(12) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(13) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

CROSS REFERENCES

Fees and costs, see rules of the various Courts of Appeals.

Power of Judicial Conference of the United States, see section 331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2077 of this title.

§ 1914. District court; filing and miscellaneous fees; rules of court

(a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $150, except that on application for a writ of habeas corpus the filing fee shall be $5.

(b) The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States.

(c) Each district court by rule or standing order may require advance payment of fees.

(June 25, 1948, ch. 646, 62 Stat. 954; Pub. L. 95–598, title II, §244, Nov. 6, 1978, 92 Stat. 2671; Pub. L. 99–336, §4(a), June 19, 1986, 100 Stat. 637; Pub. L. 99–500, §101(b) [title IV, §407(a)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–64, and Pub. L. 99–591, §101(b) [title IV, §407(a)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–64; Pub. L. 104–317, title IV, §401(a), Oct. 19, 1996, 110 Stat. 3853.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§549, 553 and 555 (R.S. §828; June 28, 1902, ch. 1301, §1, 32 Stat. 476; Feb. 11, 1925, ch. 204, §§2, 6, 8, 43 Stat. 857, 858; Jan. 22, 1927, ch. 50, §2, 44 Stat. 1023; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Mar. 3, 1942, ch. 124, §2, 56 Stat. 122; Sept. 27, 1944, ch. 414, §§1, 4, 5, 58 Stat. 743, 744).

Section consolidates sections 549, 553, and 555 of title 28, U.S.C., 1940 ed., as amended with necessary changes of phraseology.

The phrase ''filing fee'' was substituted for the inconsistent and misleading words of sections 549 and 553 of title 28, U.S.C., 1940 ed., ''as full payment for all services to be rendered by the clerk'' etc. thus removing the necessity for including exceptions and referring to other sections containing provisions for additional fees.

The provision in section 549 of title 28, U.S.C., 1940 ed., for payment of fees by the parties instituting criminal proceedings by indictment or information, was omitted. Such proceedings are instituted only by the United States from which costs cannot be exacted.

The provision in section 549 of title 28, U.S.C., 1940 ed., for taxation of fees as costs, was omitted as covered by section 1920 of this title.

Words ''or appeal from a deportation order of a United States Commissioner'' in section 553 of title 28, U.S.C., 1940 ed., were omitted as obsolete since repeal of the Chinese Exclusion Act by act Dec. 17, 1943, ch. 344, §1, 57 Stat. 600. Appeal was formerly conferred by section 282 of title 8, U.S.C., 1940 ed., Aliens and Nationality.

Subsection (d) excepting the District of Columbia, was added to preserve the existing schedule of fees prescribed by section 11–1509 of the District of Columbia Code, 1940 ed.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–317 substituted ''$150'' for ''$120''.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591 substituted ''$120'' for ''$60''.

Subsec. (d). Pub. L. 99–336 struck out subsec. (d) which provided that section was not applicable to District of Columbia.

1978—Subsec. (a). Pub. L. 95–598 substituted ''$60'' for ''$15''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 401(c) of Pub. L. 104–317 provided that: ''This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4(c) of Pub. L. 99–336 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act [June 19, 1986].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

DISTRICT COURT MISCELLANEOUS FEE SCHEDULE

(Effective January 1, 1998)

Following are fees to be charged for services to be performed by clerks of the district courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4, and 14. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. §3006A, and Bankruptcy Administrator programs.

(1) For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid, $20. This fee is applicable to the filing of a petition to perpetuate testimony, Rule 27(a), Federal Rules of Civil Procedure, the filing of papers by trustees under 28 U.S.C. §754, the filing of letters rogatory or letters of request, and registering of a judgment from another district pursuant to 28 U.S.C. §1963.

(2) For every search of the records of the district court conducted by the clerk of the district court or a deputy clerk, $15 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(3) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5. For exemplification of any document or paper, twice the amount of the fee for certification.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(5) For reproduction of magnetic tape recordings, either cassette or reel-to-reel, $15 including the cost of materials.

(6) Repealed.

(7) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, $3.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.

(9) For a check paid into the court which is returned for lack of funds, $25.

(10) For an appeal to a district judge from a judgment of conviction by a magistrate in a misdemeanor case, $25.

(11) For original admission of attorneys to practice, $50 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $15.

(12) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(13) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(14) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for

good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

(15) For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114, 110 Stat. 785 (1996), $4180. (This fee is in addition to the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.)

CROSS REFERENCES

Advance payment of fees, see local rules of the various district courts.

Appeal of certiorari, fee on filing notice of or petition, or upon receipt of order allowing, or notice of allowance of, see section 1917 of this title.

Exemption of United States from payment of fees, see section 2412 of this title.

Payment by clerk into Treasury of all fees, costs and other moneys collected, see section 751 of this title.

Power of Judicial Conference of the United States, see section 331 of this title.

Reporter's fee for copy of transcript, see section 753 of this title.

Taxation of costs, see section 1920 of this title.

In admiralty and maritime cases, see section 1925 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1930, 1931, 2412 of this title; title 11 section 330.

§ 1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this sub-

section, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term ''prisoner'' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, § 98, 63 Stat. 104; Oct. 31, 1951, ch. 655, § 51(b), (c), 65 Stat. 727; Pub. L. 86–320, Sept. 21, 1959, 73 Stat. 590; Pub. L. 96–82, § 6, Oct. 10, 1979, 93 Stat. 645; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 804(a), (c)–(e)], Apr. 26, 1996, 110 Stat. 1321, 1321–73 to 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, ch. 209, §§ 1–5, 27 Stat. 252; June 25, 1910, ch. 435, 36 Stat. 866; Mar. 3, 1911, ch. 231, § 5a, as added Jan. 20, 1944, ch. 3, § 1, 58 Stat. 5; June 27, 1922, ch. 246, 42 Stat. 666; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Section consolidates a part of section 9a(c)(e) with sections 832–836 of title 28, U.S.C., 1940 ed.

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see Distribution Table.

Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (a) and (b).

Words ''and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury as in other cases,'' in section 833 of title 28, U.S.C., 1940 ed., were omitted as covered by the general perjury statute, title 18, U.S.C., 1940 ed., § 231 (H.R. 1600, 80th Cong., sec. 1621).

A proviso in section 836 of title 28, U.S.C., 1940 ed., that the United States should not be liable for costs was deleted as covered by section 2412 of this title.

The provision in section 9a(e) of title 28, U.S.C., 1940 ed., respecting stenographic transcripts furnished on appeals in civil cases is extended by subsection (b) of the revised section to include criminal cases. Obviously it would be inconsistent to furnish the same to a poor person in a civil case involving money only and to deny it in a criminal proceeding where life and liberty are in jeopardy.

The provision of section 832 of title 28, U.S.C., 1940 ed., for payment when authorized by the Attorney General was revised to substitute the Director of the Administrative Office of the United States Courts who now disburses such items.

Changes in phraseology were made.

1949 ACT

This amendment clarifies the meaning of subsection (b) of section 1915 of title 28, U.S.C., and supplies, in subsection (e) of section 1915, an inadvertent omission to make possible the recovery of public funds expended in printing the record for persons successfully suing in forma pauperis.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(1)], designated first paragraph as par. (1), substituted ''Subject to subsection (b), any'' for ''Any'', struck out ''and costs'' after ''of fees'', substituted ''submits an affidavit that includes a statement of all assets such prisoner possesses'' for ''makes affidavit'', substituted ''such fees'' for ''such costs'', substituted ''the person'' for ''he'' in two places, added par. (2), and designated last paragraph as par. (3).

Subsec. (b). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(3)], added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(2), (4)], redesignated subsec. (b) as (c) and substituted ''subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)'' for ''subsection (a) of this section''. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(2)], redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(5)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.''

Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(2)], redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(a)(2), (c)], redesignated subsec. (e) as (f), designated existing provisions as par. (1) and substituted ''proceedings'' for ''cases'', and added par. (2).

Subsec. (g). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(d)], added subsec. (g).

Subsec. (h). Pub. L. 104–134, § 101[(a)] [title VIII, § 804(e)], added subsec. (h).

1979—Subsec. (b). Pub. L. 96–82 substituted ''Upon the filing of an affidavit in accordance with subsection (a) of this section, the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title'' and ''Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts'' for ''In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts''.

1959—Subsec. (a). Pub. L. 86–320 substituted ''person'' for ''citizen''.

1951—Subsec. (b). Act Oct. 31, 1951, struck out ''furnishing a stenographic transcript and'' after ''expense of''.

Subsec. (e). Act Oct. 31, 1951, inserted provision that the United States shall not be liable for any of the costs incurred.

1949—Subsec. (b). Act May 24, 1949, § 98(a), inserted ''such printing is'' between ''if'' and ''required''.

Subsec. (e). Act May 24, 1949, § 98(b), inserted ''or printed record'' after ''stenographic transcript''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Default judgment, see rule 55, Appendix to this title.

CROSS REFERENCES

Fair housing, enforcement by private persons in Federal or State courts without payment of fees, costs, or security, see section 3613 of Title 42, The Public Health and Welfare.

Reporters for United States District Court, see section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1930, 2503 of this title; title 10 section 867a; title 11 section 523; title 18 section 3006A.

§ 1915A. Screening

(a) SCREENING.—The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) GROUNDS FOR DISMISSAL.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

(c) DEFINITION.—As used in this section, the term ''prisoner'' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(Added Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 805(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–75; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

§ 1916. Seamen's suits

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 837 (June 12, 1917, ch. 27, § 1, 40 Stat. 157; July 1, 1918, ch. 113, § 1, 40 Stat. 683).

Changes in phraseology were made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1921 of this title.

§ 1917. District courts; fee on filing notice of or petition for appeal

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5 shall be paid to the clerk of the district court, by the appellant or petitioner.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 552 (Feb. 11, 1925, ch. 204, § 5, 43 Stat. 857; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Sept. 27, 1944, ch. 414, § 3, 58 Stat. 744).

Words ''to the clerk of the district court'' were added to clarify the intent of Congress, as shown by the title of the 1944 act containing this section, and by the text of such Act in its entirety.

Words ''as an additional fee in said suit or action, or proceeding in bankruptcy'' were omitted. The entire text of the basic 1944 act shows that Congress intended it to apply to all actions, suits and proceedings, including bankruptcy proceedings, and nowhere else in such act is any reference made to bankruptcy proceedings.

Changes were made in phraseology.

§ 1918. District courts; fines, forfeitures and criminal proceedings

(a) Costs shall be included in any judgment, order, or decree rendered against any person for the violation of an Act of Congress in which a civil fine or forfeiture of property is provided for.

(b) Whenever any conviction for any offense not capital is obtained in a district court, the court may order that the defendant pay the costs of prosecution.

(June 25, 1948, ch. 646, 62 Stat. 955.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 822 (R.S. § 974).

Changes were made in phraseology.

CROSS REFERENCES

Docket fees and costs of briefs, see notes under section 1923 of this title.

Particular items taxable as costs, see section 1920 of this title and notes thereto.

Witness fees, see notes under sections 1821 and 1825 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 844.

§ 1919. Dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any district court, the Court of International Trade, or the Court of Federal Claims for want of jurisdiction, such court may order the payment of just costs.

(June 25, 1948, ch. 646, 62 Stat. 955; Pub. L. 96–417, title V, § 510, Oct. 10, 1980, 94 Stat. 1743; Pub. L. 102–572, title IX, § 908(a), (b)(1), Oct. 29, 1992, 106 Stat. 4519.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 80 (Mar. 3, 1911, ch. 231, § 37, 36 Stat. 1098).

Words ''dismissed for want of jurisdiction'' were substituted for ''it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court''. The substituted language is sufficient. (See reviser's note under section 1359 of this title.) The provisions of section 80 of title 28, U.S.C., 1940 ed., re-

lating to dismissal for improper or collusive joinder in removal proceedings, are incorporated in section 1359 of this title. Other provisions of section 80 of title 28, U.S.C., 1940 ed., appear in section 1447 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''Dismissal'' for ''District courts; dismissal'' in section catchline and inserted reference to Court of Federal Claims in text.

1980—Pub. L. 96–417 included dismissals in Court of International Trade for want of jurisdiction.

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 this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(E) of Pub. L. 96–417, set out as a note under section 251 of this title.

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

(June 25, 1948, ch. 646, 62 Stat. 955; Pub. L. 95–539, § 7, Oct. 28, 1978, 92 Stat. 2044.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 9a(a) and 830 (R.S. § 983; Mar. 3, 1911, ch. 231, § 5a, as added Jan. 20, 1944, ch. 3, § 1, 58 Stat. 5).

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see table at end of reviser's notes.

Word ''may'' was substituted for ''shall'' before ''tax as costs,'' in view of Rule 54(d) of the Federal Rules of Civil Procedure, providing for allowance of costs to the prevailing party as of course ''unless the court otherwise directs''.

Changes were made in phraseology.

AMENDMENTS

1978—Par. (6). Pub. L. 95–539 added par. (6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–539 effective Oct. 28, 1978, see section 10(a) of Pub. L. 95–539, set out as a note under section 602 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs allowed to prevailing party, see rule 54, Appendix to this title.

Costs of previously dismissed action, see rule 41.

Motion for retaxation of costs by clerk in civil actions, see rule 54.

Offer of judgment affecting costs, see rule 68.

Taxation of costs in civil actions by clerk, see rule 54.

United States agencies, and officers, liability for fees and costs, see rule 54.

CROSS REFERENCES

Authority to administer oaths, see section 2903 of Title 5, Government Organization and Employees.

Costs, denial of to plaintiff where plaintiff recovers less than $10,000, see section 1332 of this title.

Definition of ''court of the United States,'' see section 451 of this title.

Exemption of United States for costs except where statute permits taxation, see section 2412 of this title.

Fees and costs in admiralty and maritime cases, see section 1925 of this title.

Marshal's fees, see section 1921 of this title.

Per diem, mileage and subsistence of witnesses, see notes under section 1821 of this title.

Reporter's transcript, fees for, see section 753 of this title.

Taxation of costs in fine, forfeiture and criminal proceedings, see section 1918 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 654, 655, 1821, 2412, 2503 of this title; title 21 section 844.

§ 1921. United States marshal's fees

(a)(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

(A) Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceeding.

(B) Serving a subpoena or summons for a witness or appraiser.

(C) Forwarding any writ, order, or process to another judicial district for service.

(D) The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

(E) The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

(F) Copies of writs or other papers furnished at the request of any party.

(G) Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

(H) Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title.

(3) For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor

and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

(c)(1) The United States Marshals Service shall collect a commission of 3 percent of the first $1,000 collected and 1½ percent on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General. if[1] the property is not disposed of by marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984 (98 Stat. 2040).

(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

(d) The United States marshals may require a deposit to cover the fees and expenses prescribed under this section.

(e) Notwithstanding section 3302 of title 31, the United States Marshals Service is authorized, to the extent provided in advance in appropriations Acts—

(1) to credit to such Service's appropriation all fees, commissions, and expenses collected by such Service for—

(A) the service of civil process, including complaints, summonses, subpoenas, and similar process; and

(B) seizures, levies, and sales associated with judicial orders of execution; and

(2) to use such credited amounts for the purpose of carrying out such activities.

(June 25, 1948, ch. 646, 62 Stat. 955; Sept. 9, 1950, ch. 937, 64 Stat. 824; Pub. L. 87–621, § 1, Aug. 31, 1962, 76 Stat. 417; Pub. L. 99–646, § 39(a), Nov. 10, 1986, 100 Stat. 3600; Pub. L. 100–690, title VII, § 7608(c), Nov. 18, 1988, 102 Stat. 4515; Pub. L. 101–647, title XII, § 1212, Nov. 29, 1990, 104 Stat. 4833.)

[1] So in original. Probably should be capitalized.

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 574 (R.S. §§ 823, 829; May 28, 1896, ch. 252, § 6, 29 Stat. 179; May 29, 1930, ch. 356, 46 Stat. 486; Aug. 3, 1935, ch. 431, § 2, 49 Stat. 513).

Provisions for serving venires and summoning grand and petit jurors were omitted as useless since marshal's fees are now covered into the Treasury and there is no basis for apportioning the cost of summoning jurors for a term of court and taxing the same to individual cases.

The marshal's fee "for holding a court of inquiry or other proceedings before a jury, including summoning a jury, $5" is omitted as obsolete in the Federal practice. See, Black's Law Dictionary "Court of Inquiry." See, also, Webster's International Dictionary.

A fee of 50 cents "for each bail bond" is omitted as covered by the general provision for taxation of marshal's fees in criminal cases.

The provisions for a fee of $5 for drawing and executing a deed and $1 for executing a deed prepared by a party or his attorney are omitted as unnecessary. It is the marshal's duty to execute conveyances of property which he sells on execution and his salary compensates him therefor. There is no occasion for him to draw such a deed and no beneficial purpose in taxing the parties a fee for his signature.

The 2 per centum fee for disbursing moneys is omitted as an unnecessary burden upon funds belonging to litigants.

The provision that a folio consists of "100 words or major fraction thereof" is inserted to conform with section 607 of title 28, U.S.C., 1940 ed., which is transferred to title 44, U.S.C., 1940 ed., Public Printing and Documents, along with section 606 of said title 28, to which said section 607 also relates.

The provision for a lump sum to be determined by the court and taxed in criminal cases was added. It fixes a maximum of $25 in misdemeanor cases and $100 in felony cases. It may be questioned whether costs as such should ever be taxed against the convicted defendant in a criminal case. The acquitted defendant is not permitted to tax costs against the United States. Indeed the allowance of costs in criminal cases is not a matter of right but rests completely within the discretion of the court. *Morris v. United States*, 1911, 185 Fed. 73, 107 C.C.A. 293.

In *Alberty v. U.S.*, C.C.A.9, 1937, 91 F.2d 461, the defendant was fined $100 on each of 11 accounts of an indictment under the 1906 Food and Drug Act (title 21, §§ 2, 10, U.S.C., 1934 ed., as amended). Costs of prosecution were taxed in the sum of $1,499.80. Yet the court in its discretion might have reached substantially the same result by imposing a fine of $200 on each count without any taxation of costs.

Changes were made in phraseology.

REFERENCES IN TEXT

The Comprehensive Forfeiture Act of 1984, referred to in subsec. (c)(1), is chapter III of title II of Pub. L. 98–473, Oct. 12, 1984, 98 Stat. 2040, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1961 of Title 18, Crimes and Criminal Procedure, and Tables.

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101–647 substituted "if the property is not disposed of by marshal's sale" for "If the property is to be disposed of by marshal's sale".

1988—Pub. L. 100–690 added subsecs. (a) to (d), struck out former subsecs. (a) and (b), and redesignated former subsec. (c) as (e).

1986—Pub. L. 99–646 designated existing provisions as subsec. (a) with pars. (1) to (9) and subsec. (b) with pars. (1) and (2), substituted a period for the semicolon at end of each par., and added subsec. (c).

1962—Pub. L. 87–621 increased fees for serving an attachment in rem, or libel in admiralty, warrant, attachment, summons, capias, or any other writ from $2 to $3, for serving a subpoena or summons for a witness or appraiser from 50 cents to $2, for preparation of a proclamation in admiralty from 30 cents to $3, and for copies of writs or other papers furnished at the request of any party from 10 to 30 cents per folio of 100 words or fraction thereof, and mileage for necessary travel from 10 cents a mile to 12 cents per mile, or fraction thereof, inserted provisions authorizing a fee of $1, in addition to the prescribed fee, for forwarding any writ, order, or process to another judicial district for service, and $3 for preparation of any notice of sale or other public notice or bill of sale, permitting payment of travel expenses where there is an endeavor to serve any process, writ, or order, prohibiting collection of mileage fees for services or endeavors to serve in the District of Columbia, and empowering marshals to require a deposit to cover all fees and expenses, and substituted provisions authorizing a fee of $3 for serving a writ of possession, partition, execution, order or process, and commissions of 3 per centum on the first $1,000 collected and 1½ per centum on amounts over $1,000 for seizing and levying on property (including seizures in admiralty), disposing of the same and receiving and paying over the money for provisions which permitted a marshal serving such a writ or process, and seizing and levying on property, advertising and disposing of the same and receiving and paying over the money, to receive the same fees and poundage as allowed for similar services to the sheriffs of the States in which the service is rendered, and 2½ per centum on any sum under $500, and 1½ per centum on amounts over $500 for sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and provisions permitting collection of actual expenses incurred, and $3 per hour for each deputy marshal required, for the keeping of property attached, and directing the marshal to collect, in advance, a deposit to cover initial expenses and periodically thereafter such amounts as necessary to pay expenses until litigation is concluded, for provisions which allowed only such compensation as the court, on petition, might allow.

1950—Act Sept. 9, 1950, increased mileage fees from 6 to 10 cents a mile.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 39(b) of Pub. L. 99–646 provided that: ''The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87–621 provided that: ''This Act [amending this section] shall become effective ninety days after enactment [Aug. 31, 1962].''

COLLECTION AND DISPOSITION OF FEES AND EXPENSES FOR SERVICES

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 997, provided in part: ''That notwithstanding the provisions of title 31 U.S.C. 3302, for fiscal year 1990 and hereafter the Director of the United States Marshals Service may collect fees and expenses for the services authorized by 28 U.S.C. 1921 as amended by Public Law 100–690, and credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services''.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Appendix to this title.

Proceeds of sales under admiralty process, see rule E.

CROSS REFERENCES

Collection of fees and accounting by marshal, see section 567 of this title.

Execution of all lawful writs and process, see section 566 of this title.

Power of State sheriff, see section 564 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 3711.

§ 1922. Witness fees before United States commissioners

The fees of more than four witnesses shall not be taxed against the United States, in the examination of any criminal case before a United States commissioner, unless their materiality and importance are first approved and certified to by the United States attorney for the district in which the examination is had.

(June 25, 1948, ch. 646, 62 Stat. 956.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 828 (R.S. § 981; May 28, 1896, ch. 252, § 19, 29 Stat. 184).

Last clause of section 828 of title 28, U.S.C., 1940 ed., providing ''and such taxation shall be subject to revision, as in other cases'' was omitted as unnecessary in view of the inherent power of the court to revise costs taxed.

Changes were made in phraseology.

CHANGE OF NAME

Reference to United States commissioners deemed to be reference to United States magistrates pursuant to Pub. L. 90–578, title IV, § 402, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of this title.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

CROSS REFERENCES

Compensation of United States magistrate judges, see section 634 of this title.

Liability of United States for costs, see section 2412 of this title.

§ 1923. Docket fees and costs of briefs

(a) Attorney's and proctor's docket fees in courts of the United States may be taxed as costs as follows:

$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers less than $50 the proctor's docket fee shall be $10;

$20 in admiralty appeals involving not over $1,000;

$50 in admiralty appeals involving not over $5,000;

$100 in admiralty appeals involving more than $5,000;

$5 on discontinuance of a civil action;

$5 on motion for judgment and other proceedings on recognizances;

$2.50 for each deposition admitted in evidence.

(b) The docket fees of United States attorneys and United States trustees shall be paid to the clerk of court and by him paid into the Treasury.

(c) In admiralty appeals the court may allow as costs for printing the briefs of the successful party not more than:

$25 where the amount involved is not over $1,000;

$50 where the amount involved is not over $5,000;

$75 where the amount involved is over $5,000.

(June 25, 1948, ch. 646, 62 Stat. 956; June 18, 1954, ch. 304, 68 Stat. 253; Pub. L. 95–598, title II, § 245, Nov. 6, 1978, 92 Stat. 2671.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 571, 572, and 578 (R.S. §§ 823, 824; May 28, 1896, ch. 252, §§ 6, 24, 29 Stat. 179, 186; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; July 19, 1919, ch. 24, § 1, 41 Stat. 209; Feb. 11, 1921, ch. 46, 41 Stat. 1099; June 6, 1930, ch. 409, 46 Stat. 522; Aug. 3, 1935, ch. 431, § 1, 49 Stat. 513).

Section consolidates sections 571, 572, and 578 of title 28, U.S.C., 1940 ed.

The phrase "$20 on trial or final hearing in civil, criminal, or admiralty cases" was substituted for the following provisions of section 572 of title 28, U.S.C., 1940 ed., "On trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of $20", and the limitation of $10 in "cases at law when judgment is rendered without a jury" was omitted. This simplified restatement provides for a single docket fee in each case which reaches final hearing or trial. Since the docket fee is arbitrary, any limitation or distinction between law cases tried with or without a jury is unrealistic.

Word "solicitor" was omitted as obsolete and inapplicable in civil, criminal, or admiralty practice.

Words "motion for judgment" were substituted for "scire facias" to conform to Rules 2 and 81 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

CODIFICATION

Section 408(c) of Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98–166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98–353, title III, § 323, July 10, 1984, 98 Stat. 358; Pub. L. 99–429, Sept. 30, 1986, 100 Stat. 985; Pub. L. 99–500, § 101(b) [title II, § 200], Oct. 18, 1986, 100 Stat. 1783–39, 1783–45, and Pub. L. 99–591, § 101(b) [title II, § 200], Oct. 30, 1986, 100 Stat. 3341–39, 3341–45; Pub. L. 99–554, title III, § 307(a), Oct. 27, 1986, 100 Stat. 3125, which provided for the deletion of any references to United States Trustees in this title at a prospective date, was repealed by Pub. L. 99–554, title III, § 307(b), Oct. 27, 1986, 100 Stat. 3125.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–598 inserted "and United States trustees" after "United States attorneys".

1954—Subsec. (a). Act June 18, 1954, inserted in first item "including a default judgment whether entered by the court or by the clerk" after "final hearing".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Appendix to this title.

Application of, see rule 81.

Depositions, see rules 26 to 32.

FEDERAL RULES OF CRIMINAL PROCEDURE

Depositions, see rule 15, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Taxation of costs—

Admiralty cases, see section 1925 of this title.

Criminal cases, see section 1918 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1920 of this title.

§ 1924. Verification of bill of costs

Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 831 (R.S. § 984; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Section as revised conforms to existing Federal Practice. See note to subdivision (d) of Rule 54 of the Federal Rules of Civil Procedure. For discussion as to verification of bill of costs under existing practice, see—8 Hughes, Federal Practice, Jurisdiction and Procedure—Civil and Criminal, § 6441.

Words "or allowed by the General Accounting Office" were omitted as unnecessary. That office will not allow items in a tax bill for costs against the United States unless such bill has been taxed by the court, and the court, under this section, cannot tax as costs items in an unverified bill.

Changes were made in phraseology.

§ 1925. Admiralty and maritime cases

Except as otherwise provided by Act of Congress, the allowance and taxation of costs in admiralty and maritime cases shall be prescribed by rules promulgated by the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

This section was drafted to make possible the promulgation of comprehensive and uniform rules governing costs in admiralty. Various enactments of Congress, all over 100 years old, relate to particular features of such matter, but do not set forth any comprehensive and uniform procedure. See, for example, sections 818, 826, and 827 of title 28, U.S.C., 1940 ed.

FEDERAL RULES OF CIVIL PROCEDURE

Fees and costs in admiralty proceedings, see Rules 41, 43, 54 and Rules C and E, Appendix to this title.

§ 1926. Court of Federal Claims

(a) The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected in the United States Court of Federal Claims.

(b) The court and its officers shall collect only such fees and costs as the Judicial Conference prescribes. The court may require advance payment of fees by rule.

(June 25, 1948, ch. 646, 62 Stat. 957; Pub. L. 97–164, title I, § 139(p)(1), Apr. 2, 1982, 96 Stat. 44; Pub. L. 102–572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 304 (Mar. 3, 1911, ch. 231, § 191, 36 Stat. 1144).

For distribution of other provisions of section 304 of title 28, U.S.C., 1940 ed., see Distribution Table.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''Court of Federal Claims'' for ''Claims Court'' as section catchline and ''United States Court of Federal Claims'' for ''United States Claims Court'' in subsec. (a).

1982—Pub. L. 97–164 substituted ''Claims Court'' for ''Court of Customs and Patent Appeals'' as section catchline and, in text substituted provisions directing the Judicial Conference of the United States to prescribe from time to time the fees and costs to be charged and collected in the United States Claims Court and directing the court and its officers to collect only such fees and costs as the Judicial Conference prescribes, with the court authorized to require advance payment of fees by rule for provisions which had directed that fees and costs in the Court of Customs and Patent Appeals be fixed by a table of fees adopted by such court and approved by the Supreme Court, that the fees and costs so fixed not exceed the fees and costs charged in the Supreme Court, and that the fees be accounted for and paid over to the Treasury.

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 this title.

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 this title.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

COURT OF FEDERAL CLAIMS FEE SCHEDULE

(Effective April 15, 1996)

Following are fees to be charged for services to be performed by the clerk of the United States Court of Federal Claims. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 8, and 9. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

(1) For filing a civil action or proceeding, $120.

(2) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (a) original documents; or (b) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(3) For certification or exemplification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5.

(4) For admission of attorneys to practice, $20 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $5.

(5) For receipt of a monthly listing of court orders and opinions, $10 per year.

(6) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(7) For a check paid into the court which is returned for lack of funds, $25.

(8) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

(9) For every search of the records of the Court of Federal Claims conducted by the clerk of the court or a deputy clerk, $15 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. (The Judicial Conference has adopted guidelines to assist courts in the application of this fee.)

§ 1927. Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

(June 25, 1948, ch. 646, 62 Stat. 957; Pub. L. 96–349, § 3, Sept. 12, 1980, 94 Stat. 1156.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 829 (R.S. § 982).

Word ''personally'' was inserted upon authority of *Motion Picture Patents Co. v. Steiner et al.*, 1912, 201 F. 63, 119 C.C.A. 401. Reference to ''proctor'' was omitted as covered by the revised section.

See definition of ''court of the United States'' in section 451 of this title.

Changes were made in phraseology.

AMENDMENTS

1980—Pub. L. 96–349 substituted judicial authorization to require attorneys to satisfy excess costs, expenses, and attorneys' fees reasonably incurred because of multiplication of proceedings for such prior authority to impose liability for increased costs based on multiplication of proceedings.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rules 11 and 54, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2503 of this title; title 19 section 1516a.

§ 1928. Patent infringement action; disclaimer not filed

Whenever a judgment is rendered for the plaintiff in any patent infringement action involving a part of a patent and it appears that the patentee, in his specifications, claimed to be, but was not, the original and first inventor or discoverer of any material or substantial part of the thing patented, no costs shall be included in such judgment, unless the proper disclaimer has been filed in the Patent Office prior to the commencement of the action.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 821 (R.S. § 973).

Word ''action'' was substituted for ''any suit at law or in equity'' to conform with Rule 2 of the Federal Rules of Civil Procedure.

Words ''or decree'' were omitted after ''judgment,'' because a judgment under Rule 54(a) of the Federal Rules of Civil Procedure by definition includes a decree.

Changes were made in phraseology.

CHANGE OF NAME

Patent Office redesignated Patent and Trademark Office, by section 3 of Pub. L. 93–596, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Appendix to this title.

CROSS REFERENCES

Costs where disclaimer not filed in patent infringement action, see section 288 of Title 35, Patents.

§ 1929. Extraordinary expenses not expressly authorized

Where the ministerial officers of the United States incur extraordinary expense in executing Acts of Congress, the payment of which is not specifically provided for, the Attorney General may allow the payment thereof.

(June 25, 1948, ch. 646, 62 Stat. 957.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 577 (R.S. § 846; Feb. 18, 1875, ch. 80, § 1, Stat. 318; May 28, 1896, ch. 252, § 13, 29 Stat. 183; May 27, 1908, ch. 200, § 1, 35 Stat. 375; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 26, 1919, ch. 49, § 7, 40 Stat. 1182; Oct. 13, 1941, ch. 431, § 1, 55 Stat. 736).

Provision for payment of expenses under section 577 of title 28, U.S.C., 1940 ed., from appropriations for expenses of the judiciary was omitted as unnecessary. Such expenses are carried in the Judiciary Appropriation Acts and will continue without this provision.

The first sentence of said section 577 is incorporated in section 551 of this title.

The qualifying phrase ''under the special taxation of the district court in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the Judiciary,'' was omitted, and the functions of allowing extraordinary expenses was vested in the Attorney General instead of the President. Neither the President nor the district judge should be burdened with such duty since the Attorney General only has the information upon which to act.

Changes were made in phraseology.

§ 1930. Bankruptcy fees

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under chapter 7 or 13 of title 11, $130.

(2) For a case commenced under chapter 9 of title 11, $300.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $800.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $1,000.

(5) For a case commenced under chapter 12 of title 11, $200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $250 for each quarter in which disbursements total less than $15,000; $500 for each quarter in which disbursements total $15,000 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,500 for each quarter in which disbursements total $225,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of $400.

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari $5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

(Added Pub. L. 95–598, title II, § 246(a), Nov. 6, 1978, 92 Stat. 2671; amended Pub. L. 98–353, title I, § 111(a), (b), July 10, 1984, 98 Stat. 342; Pub. L. 99–500, § 101(b) [title IV, § 407(b)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–64, and Pub. L. 99–591, § 101(b) [title IV, § 407(b)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–64; Pub. L. 99–554, title I, §§ 117, 144(f), Oct. 27, 1986, 100 Stat. 3095, 3097; Pub. L. 101–162, title IV, § 406(a), Nov. 21, 1989, 103 Stat. 1016; Pub. L. 102–140, title I, § 111(a), Oct. 28, 1991, 105 Stat. 795; Pub. L. 103–121, title I, § 111(a)(1), (b)(1), Oct. 27, 1993, 107 Stat. 1164; Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 109(a)], Sept. 30, 1996, 110 Stat. 3009, 3009–18.)

CODIFICATION

Amendment by Pub. L. 104–91 is based on section 111(a) of H.R. 2076, One Hundred Fourth Congress, as passed by House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–208 inserted a dollar sign before ''800''.

Subsec. (a)(6). Pub. L. 104–208 substituted ''$500 for each quarter in which disbursements total $15,000 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,500 for each quarter in which disbursements total $225,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.'' for ''$500 for each quarter in which disbursements total $15,000 or more but less than $150,000; $1,250 or each quarter in which disbursements total $150,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $3,000,000; $5,000 for each quarter in which disbursements total $3,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.''

Pub. L. 104–91, as amended by Pub. L. 104–99, struck out ''a plan is confirmed or'' before ''the case is converted''.

1993—Subsec. (a)(1). Pub. L. 103–121, § 111(a)(1), substituted ''$130'' for ''$120''.

Subsec. (a)(3). Pub. L. 103–81, § 111(b)(1), substituted ''800'' for ''$600''.

1991—Subsec. (a)(3). Pub. L. 102–140, § 111(a)(1), substituted ''$600'' for ''$500''.

Subsec. (a)(6). Pub. L. 102–140, § 111(a)(2), substituted ''$250'' for ''$150'', ''$500'' for ''$300'', ''$1,250'' for ''$750'', ''$3,750'' for ''$2,250'', and ''$5,000'' for ''$3,000''.

1989—Subsec. (a)(1). Pub. L. 101–162 substituted ''$120'' for ''$90''.

1986—Subsec. (a). Pub. L. 99–554, §§ 117(5), 144(f), in introductory and closing provisions, substituted ''of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title'' for ''of the court'', and in closing provisions, inserted provision that for conversion, on request of the debtor, of a case under chapter 7 or 13 of title 11, to a case under chapter 11 of title 11, the debtor pay to the clerk of the court a fee of $400.

Subsec. (a)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–554, § 117(1), amended par. (1) identically substituting ''$90'' for ''$60''.

Subsec. (a)(3). Pub. L. 99–554, § 117(2), substituted ''$500'' for ''$200''.

Subsec. (a)(4). Pub. L. 99–554, § 117(3), substituted ''$1,000'' for ''$500''.

Subsec. (a)(5), (6). Pub. L. 99–554, § 117(4), added pars. (5) and (6).

1984—Pub. L. 98–353, § 111(b), substituted ''fees'' for ''courts'' in section catchline.

Subsecs. (a), (c), (e). Pub. L. 98–353, § 111(a), substituted ''clerk of the court'' for ''clerk of the bankruptcy court''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 111(a) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

Section 111(b) of Pub. L. 103–121 provided in part that the amendment made by that section is effective 30 days after Oct. 27, 1993.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 111 of Pub. L. 102–140 provided that the amendment made by that section is effective 60 days after Oct. 28, 1991.

EFFECTIVE DATE OF 1989 AMENDMENT; MISCELLANEOUS FEES

Section 406(a) of Pub. L. 101–162 provided that: ''Section 1930(a)(1) of title 28, United States Code, is amended by striking out '$90' and inserting in lieu thereof '$120'. Pursuant to section 1930(b) of title 28, the Judicial Conference of the United States shall prescribe a fee of $60 on motions seeking relief from the automatic stay under 11 U.S.C. section 362(b) and motions to compel abandonment of property of the estate. The fees established pursuant to the preceding two sentences shall take effect 30 days after the enactment of this Act [Nov. 21, 1989].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, with effective date and applicability of enactment of subsec. (a)(6) of this section by section 117(4) of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(a), (d), (e) of Pub. L. 99–554, set out as a note under section 581 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

ACCRUAL AND PAYMENT OF QUARTERLY FEES IN CHAPTER 11 CASES AFTER JAN. 27, 1996; CONFIRMATION STATUS OF PLANS

Section 101(a) of Pub. L. 104–91, as amended by Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 109(d)], Sept. 30, 1996, 110 Stat. 3009, 3009–19, provided in part: ''That, notwithstanding any other provision of law, the fees under 28 U.S.C. 1930(a)(6) shall accrue and be payable from and after January 27, 1996, in all cases (including, without limitation, any cases pending as of that date), regardless of confirmation status of their plans''.

REPORT ON BANKRUPTCY FEES

Section 111(d) of Pub. L. 103–121 provided that:

''(1) REPORT REQUIRED.—Not later than March 31, 1998, the Judicial Conference of the United States shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, a report relating to the bankruptcy fee system and the impact of such system on various participants in bankruptcy cases.

''(2) CONTENTS OF REPORT.—Such report shall include—

''(A)(i) an estimate of the costs and benefits that would result from waiving bankruptcy fees payable by debtors who are individuals, and

''(ii) recommendations regarding various revenue sources to offset the net cost of waiving such fees; and

''(B)(i) an evaluation of the effects that would result in cases under chapters 11 and 13 of title 11, United States Code, from using a graduated bankruptcy fee system based on assets, liabilities, or both of the debtor, and

''(ii) recommendations regarding various methods to implement such a graduated bankruptcy fee system.

''(3) WAIVER OF FEES IN SELECTED DISTRICTS.—For purposes of carrying out paragraphs (1) and (2), the Judi-

cial Conference of the United States shall carry out in not more than six judicial districts, throughout the 3-year period beginning on October 1, 1994, a program under which fees payable under section 1930 of title 28, United States Code, may be waived in cases under chapter 7 of title 11, United States Code, for debtors who are individuals unable to pay such fees in installments.

''(4) STUDY OF GRADUATED FEE SYSTEM.—For purposes of carrying out paragraphs (1) and (2), the Judicial Conference of the United States shall carry out, in not fewer than six judicial districts, a study to estimate the results that would occur in cases under chapters 11 and 13 of title 11, United States Code, if filing fees payable under section 1930 of title 28, United States Code, were paid on a graduated scale based on assets, liabilities, or both of the debtor.''

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

ISSUANCE OF NOTICES TO CREDITORS AND OTHER INTERESTED PARTIES

Section 403 of Pub. L. 101–162 provided that: ''Notwithstanding any other provision of law, for fiscal year 1990 and hereafter, (a) The Administrative Office of the United States Courts, or any other agency or instrumentality of the United States, is prohibited from restricting solely to staff of the Clerks of the United States Bankruptcy Courts the issuance of notices to creditors and other interested parties. (b) The Administrative Office shall permit and encourage the preparation and mailing of such notices to be performed by or at the expense of the debtors, trustees or such other interested parties as the Court may direct and approve. (c) The Director of the Administrative Office of the United States Courts shall make appropriate provisions for the use of and accounting for any postage required pursuant to such directives.''

COLLECTION AND DISPOSITION OF FEES IN BANKRUPTCY CASES

Section 404(a) of Pub. L. 101–162 provided that: ''For fiscal year 1990 and hereafter, such fees as shall be collected for the preparation and mailing of notices in bankruptcy cases as prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. 1930(b) shall be deposited to the 'Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses' appropriation to be used for salaries and other expenses incurred in providing these services.''

BANKRUPTCY COURT MISCELLANEOUS FEE SCHEDULE

(Effective January 1, 1998)

Following are fees to be charged for services to be performed by clerks of the bankruptcy courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 1, 5, and 23, or to bankruptcy administrators appointed under Public Law No. 99–554, §302(d)(3)(I). No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. §3006A.

(1) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(2) For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5. For exemplification of any document or paper, twice the amount of the charge for certification.

(3) For reproduction of magnetic tape recordings, either cassette or reel-to-reel, $15 including the cost of materials.

(4) For amendments to a debtor's schedules of creditors or lists of creditors, $20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

(5) For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, $15 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(6) For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. §1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as a trustee in a case under title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized. If a child support creditor or its representative is the plaintiff, and if such plaintiff files the form required by §304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

(7) For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, including registering a judgment from another district, $20.

(8) In all cases filed under Title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of $30. This fee may be paid in installments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006.

(8.1) Upon the filing of a petition under chapter 7 of the Bankruptcy Code, the petitioner shall pay $15 to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. §330(b)(2). An application to pay the fee in installments may be filed in the manner set forth in Federal Rule of Bankruptcy Procedure 1006(b).

(8.2) Upon the filing of a motion to convert a case to chapter 7 of the Bankruptcy Code, the movant shall pay $15 to the clerk of [the] court for payment to trustees serving in cases as provided in 11 U.S.C. §330(b)(2). Upon the filing of a notice of conversion pursuant to section 1208(a) or section 1307(a) of the Code, $15 shall be paid to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. §330(b)(2). If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion.

(9) For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. §1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.

(10) Repealed.

(11) Repealed.

(12) For each microfiche sheet of film or microfilm jacket copy of any court record, where available, $3.

(13) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.

(14) For a check paid into the court which is returned for lack of funds, $25.

(15) Repealed.

(16) For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. §158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the

Courts of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

(17) For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, $500.

(18) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(19) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(20) When a joint case filed under § 302 of title 11 is divided into two separate cases at the request of the debtor(s), a fee shall be charged equal to one-half the current filing fee for the chapter under which the joint case was commenced.

(21) For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be collected in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

(22) For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule.

(23) For usage of electronic access to court data, 60 cents per minute of usage [provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information]. All such fees collected shall be deposited to the Judiciary Information Technology Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 589a of this title; title 11 sections 104, 1129.

§ 1931. Disposition of filing fees

(a) Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, $90 shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States.

(b) If the court authorizes a fee under section 1914(a) or an amount included in a judgment for costs under section 2412(a)(2) of this title of less than $150, the entire fee or amount, up to $90, shall be deposited into the special fund provided in this section.

(Added Pub. L. 99–500, § 101(b) [title IV, § 407(c)], Oct. 18, 1986, 100 Stat. 1783–39, 1783–64, and Pub. L. 99–591, § 101(b) [title IV, § 407(c)], Oct. 30, 1986, 100 Stat. 3341–39, 3341–64; amended Pub. L. 101–162, title IV, § 406(d), Nov. 21, 1989, 103 Stat. 1016; Pub. L. 102–572, title III, § 301(b), Oct. 29, 1992, 106 Stat. 4511; Pub. L. 104–317, title IV, § 401(b), Oct. 19, 1996, 110 Stat. 3853.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–317, § 401(b)(1), substituted "$90" for "$60".

Subsec. (b). Pub. L. 104–317, § 401(b)(2), substituted "$150" for "$120" and "$90" for "$60".

1992—Pub. L. 102–572 substituted present provisions for former provisions which read as follows:

"The following portion of moneys paid to the clerk of court as filing fees under this chapter shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States:

"Under section 1914(a), $60."

1989—Pub. L. 101–162, which directed that "as provided in annual appropriation acts" be struck out before colon, was executed by striking out "as provided in annual appropriation Acts" before colon as probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 60 days after Oct. 19, 1996, see section 401(c) of Pub. L. 104–317, set out as a note under section 1914 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

DISPOSITION OF FEES

Section 404 of Pub. L. 104–317 provided that:

"(a) DISPOSITION OF ATTORNEY ADMISSION FEES.—For each fee collected for admission of an attorney to practice, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, $30 of that portion of the fee exceeding $20 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code. Any portion exceeding $5 of the fee for a duplicate certificate of admission or certificate of good standing, as prescribed by the Judicial Conference of the United States pursuant to section 1914 of title 28, United States Code, shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

"(b) DISPOSITION OF BANKRUPTCY COMPLAINT FILING FEES.—For each fee collected for filing an adversary complaint in a bankruptcy proceeding, as established in Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule prescribed by the Judicial Conference of the United States pursuant to section 1930(b) of title 28, United States Code, the portion of the fee exceeding $120 shall be deposited into the special fund of the Treasury established under section 1931 of title 28, United States Code.

"(c) EFFECTIVE DATE.—This section shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996]."

COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES

Section 406(b) of Pub. L. 101–162, as amended by Pub. L. 103–121, title I, § 111(a)(3), (b)(4), Oct. 27, 1993, 107 Stat. 1164, provided that: "All fees as shall be hereafter collected for any service enumerated after item 18 of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. section 1930(b) and 30.76 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931 and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for

expenses of the Courts of Appeals, District Courts, and other Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis beginning on the first day of each fiscal year regarding the sums deposited in said fund.''

[Section 111(a), (b) of Pub. L. 103–121 provided in part that the amendments to section 406(b) of Pub. L. 101–162, set out above, are effective 30 days after Oct. 27, 1993.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 1827 of this title.

§ 1932.[1] Judicial Panel on Multidistrict Litigation

The Judicial Conference of the United States shall prescribe from time to time the fees and costs to be charged and collected by the Judicial Panel on Multidistrict Litigation.

(Added Pub. L. 104–317, title IV, § 403(a)(1), Oct. 19, 1996, 110 Stat. 3854.)

§ 1932.[1] Revocation of earned release credit

In any civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of such earned good time credit under section 3624(b) of title 18, United States Code, that has not yet vested, if, on its own motion or the motion of any party, the court finds that—

(1) the claim was filed for a malicious purpose;

(2) the claim was filed solely to harass the party against which it was filed; or

(3) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court.

(Added Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 809(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–76; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

Sec.
1961. Interest.
1962. Lien.
1963. Registration of judgments for enforcement in other districts.
[1963A. Repealed.]
1964. Constructive notice of pending actions.

AMENDMENTS

1996—Pub. L. 104–317, title II, § 203(b), Oct. 19, 1996, 110 Stat. 3850, substituted ''for enforcement in other districts'' for ''of the district courts and the Court of International Trade'' in item 1963.

1988—Pub. L. 100–702, title X, § 1002(b)(3), Nov. 19, 1988, 102 Stat. 4664, substituted ''Registration of judgments of the district courts and the Court of International Trade'' for ''Registration in other districts'' in item 1963 and repealed item 1963A ''Registration of judgments of the Court of International Trade''.

1980—Pub. L. 96–417, title V, § 511(b), Oct. 10, 1980, 94 Stat. 1743, added item 1963A.

1958—Pub. L. 85–689, § 1(b), (c), Aug. 20, 1958, 72 Stat. 683, substituted ''CHAPTER 125—PENDING ACTIONS AND JUDGMENTS'' for ''CHAPTER 125—JUDGMENTS'' in chapter heading and added item 1964.

[1] Another section 1932 is set out after this section.

[1] Another section 1932 is set out preceding this section.

FEDERAL RULES OF CIVIL PROCEDURE

Judgments, see rules 54 to 58, Appendix to this title.

CROSS REFERENCES

Declaratory judgments, see sections 2201 and 2202 of this title.

§ 1961. Interest

(a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

(b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually.

(c)(1) This section shall not apply in any judgment of any court with respect to any internal revenue tax case. Interest shall be allowed in such cases at the underpayment rate or overpayment rate (whichever is appropriate) established under section 6621 of the Internal Revenue Code of 1986.

(2) Except as otherwise provided in paragraph (1) of this subsection, interest shall be allowed on all final judgments against the United States in the United States Court of Appeals for the Federal circuit,[1] at the rate provided in subsection (a) and as provided in subsection (b).

(3) Interest shall be allowed, computed, and paid on judgments of the United States Court of Federal Claims only as provided in paragraph (1) of this subsection or in any other provision of law.

(4) This section shall not be construed to affect the interest on any judgment of any court not specified in this section.

(June 25, 1948, ch. 646, 62 Stat. 957; Pub. L. 97–164, title III, § 302(a), Apr. 2, 1982, 96 Stat. 55; Pub. L. 97–258, § 2(m)(1), Sept. 13, 1982, 96 Stat. 1062; Pub. L. 97–452, § 2(d)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 99–514, § 2, title XV, § 1511(c)(17), Oct. 22, 1986, 100 Stat. 2095, 2745; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 811 (R.S. § 966; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Changes were made in phraseology.

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (c)(1), is classified to section 6621 of Title 26, Internal Revenue Code.

[1] So in original. Probably should be capitalized.

AMENDMENTS

1992—Subsec. (c)(3). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1986—Subsec. (c)(1). Pub. L. 99–514, § 1511(c)(17), substituted ''the underpayment rate or overpayment rate (whichever is appropriate) established'' for ''a rate established''.

Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (b). Pub. L. 97–452 substituted ''section 1304(b) of title 31'' for ''section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a)''.

1982—Subsec. (a). Pub. L. 97–164, § 302(a)(1), (2), designated existing provisions as subsec. (a), substituted ''at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment'' for ''at the rate allowed by State law'', and inserted provision that the Director of the Administrative Office of the United States Courts distribute notice of the rate and any changes in it to all Federal judges.

Subsec. (b). Pub. L. 97–258 substituted ''this title and section 1304(b)(1) of title 31'' for ''title 28, United States Code, and section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a)''.

Subsecs. (b), (c). Pub. L. 97–164, § 302(a)(3), added subsecs. (b) and (c).

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 this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1511(c)(17) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 6621 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 2(m) of Pub. L. 97–258 provided that the amendment made by that section is effective Oct. 1, 1982.

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 this title.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

CROSS REFERENCES

Interest on—
Affirmed judgments of Court of Federal Claims, see section 2516 of this title.
Judgments against United States, see section 2411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 15 section 4303; title 21 section 844a; title 22 section 6082; title 26 section 6622.

§ 1962. Lien

Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State.

(June 25, 1948, ch. 646, 62 Stat. 958; Pub. L. 101–647, title XXXVI, § 3627, Nov. 29, 1990, 104 Stat. 4965.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 812 and 814 (R.S. § 967; Aug. 1, 1888, ch. 729, § 1, 25 Stat. 357; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 17, 1912, ch. 300, 37 Stat. 311).

Section consolidates sections 812 and 814 of title 28, U.S.C., 1940 ed., with changes in phraseology necessary to effect consolidation and to clarify the meaning of such sections.

Omitted words ''or decree'' after ''judgments'' as unnecessary inasmuch as Rule 54(a) of the Federal Rules of Civil Procedure by definition of judgment includes a decree.

Words ''in the State of Louisiana'' after ''or parish'' were omitted as unnecessary.

A reference to section 813 of title 28, U.S.C., 1940 ed., was omitted, since such section is omitted from this revision as covered by Rule 79(c) of the Federal Rules of Civil Procedure.

AMENDMENTS

1990—Pub. L. 101–647 inserted after first sentence ''This section does not apply to judgments entered in favor of the United States.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Judgments, see rules 54 to 58, Appendix to this title.

CROSS REFERENCES

Declaratory judgments, see sections 2201 and 2202 of this title.

§ 1963. Registration of judgments for enforcement in other districts

A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered

in like manner in any district in which the judgment is a lien.

The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

(June 25, 1948, ch. 646, 62 Stat. 958; Aug. 23, 1954, ch. 837, 68 Stat. 772; Pub. L. 85–508, § 12(*o*), July 7, 1958, 72 Stat. 349; Pub. L. 100–702, title X, § 1002(a), (b)(1), Nov. 19, 1988, 102 Stat. 4664; Pub. L. 101–647, title XXXVI, § 3628, Nov. 29, 1990, 104 Stat. 4965; Pub. L. 104–317, title II, § 203(a), Oct. 19, 1996, 110 Stat. 3849.)

HISTORICAL AND REVISION NOTES

This section follows the recommendation of the Supreme Court's Advisory Committee on Federal Rules of Civil Procedure (1937) which included the following rule:

''Rule 77. REGISTRATION OF JUDGMENTS IN OTHER DISTRICT COURTS. A judgment entered in any district court and which has become final through expiration of the time for appeal or by mandate on appeal may be registered in any other district court by filing therein an authenticated copy of the judgment. When so registered the judgment shall have the same effect and like proceedings for its enforcement may be taken thereon in the court in which it is registered as if the judgment had been originally entered by that court. If in the court in which the judgment was originally entered, the judgment has been satisfied in whole or in part or if an order has been made modifying or vacating it or affecting or suspending its operation, the party procuring the registration shall and any other party may file authenticated copies of the satisfaction or order with the court in which the judgment is registered. This rule shall not be construed to limit the effect of the Act of February 20, 1905, c. 592, § 20 (33 Stat. 729), as amended, U.S.C., title 15, § 100; or the Act of March 4, 1909, c. 320, §§ 36 and 37 (35 Stat. 1084), U.S.C., title 17, §§ 36 and 37; or § 56 of the Judicial Code, U.S.C., title 28, § 117; or to authorize the registration elsewhere of an order or a judgment rendered in a divorce action in the District of Columbia.''

Section 2508 of this title provides for the registration of judgments of the Court of Claims in favor of the United States in any district. See, also, section 2413 of this title.

The phrase ''for the recovery of money or property'' was not in the committee's draft of Rule 77 of Federal Rules of Civil Procedure but was inserted in the revised section to exclude judgments in divorce actions, and any other actions, the registration of which would serve no useful purpose.

AMENDMENTS

1996—Pub. L. 104–317 in section catchline substituted ''for enforcement in other districts'' for ''of the district courts and the Court of International Trade'', in first undesignated par. substituted ''court of appeals, district court, bankruptcy court,'' for ''district court'' and ''copy of the judgment'' for ''copy of such judgment'', and added undesignated par. at end.

1990—Pub. L. 101–647 inserted after first sentence ''Such a judgment entered in favor of the United States may be so registered any time after judgment is entered.''

1988—Pub. L. 100–702 substituted ''Registration of judgments of the district courts and the Court of International Trade'' for ''Registration in other districts'' in section catchline and amended first sentence generally. Prior to amendment, first sentence read as follows: ''A judgment in an action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment.''

1958—Pub. L. 85–508 struck out provisions which extended provisions of section to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954—Act Aug. 23, 1954, extended provisions of section to District Court for Territory of Alaska.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(c) of title X of Pub. L. 100–702 provided that: ''The amendments made by this section [amending this section and repealing section 1963A of this title] take effect 90 days after the date of enactment of this title [Nov. 19, 1988].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

[§ 1963A. Repealed. Pub. L. 100–702, title X, § 1002(b)(2), Nov. 19, 1988, 102 Stat. 4664]

Section, added Pub. L. 96–417, title V, § 511(a), Oct. 10, 1980, 94 Stat. 1743, provided for registration of judgments of the Court of International Trade. See section 1963 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 19, 1988, see section 1002(c) of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 1963 of this title.

§ 1964. Constructive notice of pending actions

Where the law of a State requires a notice of an action concerning real property pending in a court of the State to be registered, recorded, docketed, or indexed in a particular manner, or in a certain office or county or parish in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States district court to be registered, recorded, docketed, or indexed in the same manner, or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States district court as it relates to real property in such State.

(Added Pub. L. 85–689, § 1(a), Aug. 20, 1958, 72 Stat. 683.)

EFFECTIVE DATE

Section 2 of Pub. L. 85–689 provided that: ''The amendments made by this Act [enacting this section] shall only be effective with respect to actions commenced in United States district courts more than one hundred and eighty days after the date of enactment of this Act [Aug. 20, 1958].''

CHAPTER 127—EXECUTIONS AND JUDICIAL SALES

Sec.
2001. Sale of realty generally.
2002. Notice of sale of realty.
2003. Marshal's incapacity after levy on or sale of realty.

Sec.
2004. Sale of personalty generally.
2005. Appraisal of goods taken on execution.
2006. Execution against revenue officer.
2007. Imprisonment for debt.

§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 958; May 24, 1949, ch. 139, § 99, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 847 (Mar. 3, 1893, ch. 225, § 1, 27 Stat. 751; June 19, 1934, ch. 662, 48 Stat. 1119; Apr. 24, 1935, ch. 77, § 1, 49 Stat. 159; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

The term ''court of the United States'' is defined in section 451 of this title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in subsection (a) of section 2001 of title 28, U.S.C.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, corrected spelling of ''ancillary'' in second par.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

CROSS REFERENCES

Sale of property in bankruptcy proceedings, see section 363 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2004, 3201, 3202 of this title.

§ 2002. Notice of sale of realty

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, § 100, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 849 (Mar. 3, 1893, ch. 225, § 3, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 3, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Word ''under'' was substituted for ''ordered pursuant to section 847 of this title by'' after ''A public sale of realty or interest therein''.

Sections 847 and 848, of title 28, U.S.C., 1940 ed., now sections 2001 and 2004 of this title, relate only to sales under orders or decrees, without any reference to sales under judgments. In 1921 the Supreme Court held, in *Yazoo & M. V. R. Co. v. City of Clarksdale*, 1921, 42 S.Ct. 27, 257 U.S. 10, 66 L.Ed. 104, that such section 847 did not apply to sales under common law executions. At that time such section 849 of title 28, U.S.C., 1940 ed., read as it has been revised above, without any reference to such section 847. However, in 1935, such sections 847, 848 and 849 were amended by one act, ch. 77, 49 Stat. 159, and, in such section 849, the words ''pursuant to the provisions of this Act'' were inserted, but the word ''judgment,'' though retained in such section 849, was not inserted in such sections 847 and 848. It is probable that Congress did not intend, in 1935 to make such sections 847 and 848 applicable to sales under judgments in law actions. Hence, to make all three sections consistent, the above-mentioned substitution was made.

Reference to circuit was deleted from first and second paragraphs as unnecessary and inappropriate. Publication in a newspaper in a large circuit remote from the county in which the realty is situate, might be wholly insufficient to give notice to interested parties.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2002 of title 28, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, substituted ''11'' for ''II'' after ''Title'' in third par.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3201, 3202 of this title.

§ 2003. Marshal's incapacity after levy on or sale of realty

Whenever a United States marshal dies, is removed from office, or the term of his commission expires, after levying on realty or any interest therein under a writ of execution issued by a court of the United States, and before sale or other final disposition thereof, like process shall issue to the succeeding marshal and the same proceedings shall be had as if such contingency had not occurred.

Whenever any such contingency arises after a marshal has sold any realty or interest therein and before a deed is executed, the court may, on application by the purchaser, or the plaintiff in whose action the sale was made, setting forth the facts of the case and the reason why the title was not perfected by such marshal, order the succeeding marshal to perfect the title and execute a deed to the purchaser, upon payment of the purchase money and unpaid costs.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, § 101, 63 Stat. 104.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 850 (R.S. § 994).

Word ''realty'' was substituted for ''lands, tenements, or hereditaments'' in two places, the two terms being synonymous. (See Black's Law Dictionary, 3d Ed., p. 1969.)

Word ''action'' was substituted for ''suit'', in view of Rule 2 of the Federal Rules of Civil Procedure, prescribing but one form of action.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2003 of title 28, U.S.C.

AMENDMENTS

1949—Act May 24, 1949, corrected spelling of ''realty'' in first par.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

§ 2004. Sale of personalty generally

Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 848 (Mar. 3, 1893, ch. 225, § 2, 27 Stat. 751; Apr. 24, 1935, ch. 77, § 2, 49 Stat. 160; June 19, 1935, ch. 276, 49 Stat. 390).

A provision making the section applicable to pending proceedings was deleted as obsolete.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3202 of this title.

§ 2005. Appraisal of goods taken on execution

Whenever State law requires that goods taken on execution be appraised before sale, goods taken under execution issued from a court of the United States shall be appraised in like manner.

The United States marshal shall summon the appraisers in the same manner as the sheriff is required to summon appraisers under State law.

If the appraisers fail to attend and perform their required duties, the marshal may sell the goods without an appraisal. Appraisers attending and performing their duties, shall receive the fees allowed for appraisals under State law.

(June 25, 1948, ch. 646, 62 Stat. 959.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 846 (R.S. § 993).

Words ''shall be appraised in like manner'' were substituted for ''the appraisers appointed under the authority of the State may appraise goods taken in execution on a fieri facias issued out of any court of the United States''. The change precludes construction that the State appraisers only are available to appraise such goods in civil actions in the federal courts.

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, see rule 69, Appendix to this title.

§ 2006. Execution against revenue officer

Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

(1) probable cause existed; or

(2) the officer acted under the directions of the Secretary of the Treasury or other proper Government officer.

When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

(June 25, 1948, ch. 646, 62 Stat. 960.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 842 (R.S. § 989).

Changes were made in phraseology.

FEDERAL RULES OF CIVIL PROCEDURE

Execution, against certain public officers, see rule 69, Appendix to this title.

Judgment, see rule 54.

CROSS REFERENCES

Executions in favor of United States, see section 2413 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7422.

§ 2007. Imprisonment for debt

(a) A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States in accordance with the procedure applicable in such State.

(b) Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States in a civil action shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for discharge shall be conducted before a United States commissioner for the judicial district wherein the defendant is held.

(June 25, 1948, ch. 646, 62 Stat. 960.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 843, 844, and 845 (R.S. §§ 990, 991, 992; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 2, 1901, ch. 814, 31 Stat. 956; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Changes were made in phraseology.

CHANGE OF NAME

Reference to United States commissioner deemed to be reference to United States magistrate, pursuant to Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of this title.

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Execution and seizure of person or property, see rules 64 and 69, Appendix to this title.

CHAPTER 129—MONEYS PAID INTO COURT

Sec.
2041. Deposit of moneys in pending or adjudicated cases.
2042. Withdrawal.
2043. Deposit of other moneys.
2044. Payment of fine with bond money.

AMENDMENTS

1990—Pub. L. 101–647, title XXXVI, § 3629(b), Nov. 29, 1990, 104 Stat. 4966, which directed the amendment of the table of sections for chapter 29 by adding item 2044, was executed by adding item 2044 to the table of sections for chapter 129 to reflect the probable intent of Congress.

1982—Pub. L. 97–258, § 2(g)(4)(A), (B), Sept. 13, 1982, 96 Stat. 1060, substituted ''Deposit of moneys in pending or adjudicated cases'' for ''Deposit'' in item 2041 and added item 2043.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 347.

§ 2041. Deposit of moneys in pending or adjudicated cases

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

(June 25, 1948, ch. 646, 62 Stat. 960; Pub. L. 97–258, § 2(g)(4)(C), Sept. 13, 1982, 96 Stat. 1061.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 851 (R.S. § 995; May 29, 1920, ch. 214, § 1, 41 Stat. 654).

Changes were made in phraseology.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''Deposit of moneys in pending or adjudicated cases'' for ''Deposit'' in section catchline.

REGISTRY ADMINISTRATION ACCOUNT

Pub. L. 100–459, title IV, § 400, Oct. 1, 1988, 102 Stat. 2211, provided: ''That any funds hereafter collected by the Judiciary as a charge for services rendered in administering accounts kept in a court's registry shall be deposited into a separate account entitled 'Registry Administration Account' in the Treasury of the United States. Such funds shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts and Other Judicial Services and the Administrative Office of the United States Courts''.

FEDERAL RULES OF CIVIL PROCEDURE

Bringing funds into court, see rule C, Appendix to this title.

Claims against proceeds in registry, see rule E.

Deposit in court, see rule 67.

Funds in court registry, see rule E.

CROSS REFERENCES

Condemnation proceedings, deposit in registry of court, see section 258a of Title 40, Public Buildings, Property, and Works.

Court officers depositing registry moneys, see section 646 of Title 18, Crimes and Criminal Procedure.

Depositaries of public moneys and financial agents of Government, see section 90 of Title 12, Banks and Banking.

Limitation of liability, deposit of value of interest in court, see section 185 of Title 46, Appendix, Shipping.

Powers upon designation and assignment, exception as to permanent designation of depository of funds, see section 296 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 566, 2042, 2043 of this title.

§ 2042. Withdrawal

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to

the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

(June 25, 1948, ch. 646, 62 Stat. 960; Pub. L. 97–258, § 2(g)(4)(D), Sept. 13, 1982, 96 Stat. 1061.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 852 (R.S. § 996; Feb. 19, 1897, ch. 265, § 3, 29 Stat. 578; Mar. 3, 1911, ch. 224, 36 Stat. 1083).

Words ''and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders'' were omitted, in view of section 725p(b)(14), of title 31, U.S.C., 1940 ed., which repealed permanent appropriations of unclaimed money accounts and substituted authorization for annual appropriations effective July 1, 1935.

Changes were made in phraseology.

In U. S. Law Week, Nov. 7, 1939, Rep. Walter Chandler (Author of Chandler Act, Bankruptcy) observed as to the Judicial Code:

''Among the major subjects needing study and revision are—Numerous procedural changes which have been brought about through adoption of the Federal Rules of Civil Procedure should be codified.'' * * *

AMENDMENTS

1982—Pub. L. 97–258 inserted references to section 2041 in two places.

FEDERAL RULES OF CIVIL PROCEDURE

Deposit in court, see rule 67, Appendix to this title.

CROSS REFERENCES

Unclaimed moneys, see section 347 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3666.

§ 2043. Deposit of other moneys

Except for public moneys deposited under section 2041 of this title, each clerk of the United States courts shall deposit public moneys that the clerk collects into a checking account in the Treasury, subject to disbursement by the clerk. At the end of each accounting period, the earned part of public moneys accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

(Added Pub. L. 97–258, § 2(g)(4)(E), Sept. 13, 1982, 96 Stat. 1061.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
28:2043	31:725v(b)(related to clerks).	June 26, 1934, ch. 756, § 23(b)(related to clerks), 48 Stat. 1236; restated Dec. 21, 1944, ch. 631, § 1, 58 Stat. 845.

The words ''Except for public moneys deposited under section 2041 of this title . . . public moneys'' are substituted for ''All fees and other collections other than moneys referred to in subsection (a) of this section'' for consistency and because 31:725v(a) is superseded by 28:2041 and is not part of the revised title contained in section 1 of the bill. The word ''Treasury'' is substituted for ''Treasurer of the United States'' because of section 1 of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 31:725v(b)(last sentence) is omitted as obsolete.

§ 2044. Payment of fine with bond money

On motion of the United States attorney, the court shall order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This section shall not apply to any third party surety.

(Added Pub. L. 101–647, title XXXVI, § 3629(a), Nov. 29, 1990, 104 Stat. 4966.)

EFFECTIVE DATE

Section effective 180 days after Nov. 29, 1990, and applicable with respect to certain actions for debts owed the United States pending in court on that effective date, see section 3631 of Pub. L. 101–647, set out as a note under section 3001 of this title.

CHAPTER 131—RULES OF COURTS

Sec.
2071. Rule-making power generally.
2072. Rules of procedure and evidence; power to prescribe.
2073. Rules of procedure and evidence; method of prescribing.
2074. Rules of procedure and evidence; submission to Congress; effective date.
2075. Bankruptcy rules.
[2076. Repealed.]
2077. Publication of rules; advisory committees.

AMENDMENTS

1988—Pub. L. 100–702, title IV, § 401(d), Nov. 19, 1988, 102 Stat. 4650, added items 2072 to 2075 and struck out former items 2072 ''Rules of civil procedure'', 2075 ''Bankruptcy rules'', and 2076 ''Rules of evidence''.

1982—Pub. L. 97–164, title II, § 208(b), Apr. 2, 1982, 96 Stat. 55, added item 2077.

1975—Pub. L. 93–595, § 2(a)(2), Jan. 2, 1975, 88 Stat. 1949, added item 2076.

1966—Pub. L. 89–773, § 3, Nov. 6, 1966, 80 Stat. 1323, struck out ''for district courts'' in item 2072 and struck out items 2073 and 2074.

1964—Pub. L. 88–623, § 2, Oct. 3, 1964, 78 Stat. 1001, added item 2075.

1954—Act July 27, 1954, ch. 583, § 2, 68 Stat. 567, added item 2074.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal procedure rules are set out in Title 18, Appendix, Crimes and Criminal Procedure.

§ 2071. Rule-making power generally

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

(f) No rule may be prescribed by a district court other than under this section.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 102, 63 Stat. 104; Pub. L. 100–702, title IV, § 403(a)(1), Nov. 19, 1988, 102 Stat. 4650.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 219, 263, 296, 307, 723, 731, and 761, and section 1111 of title 26, U.S.C., 1940 ed., Internal Revenue Code (R.S. §§ 913, 918; Mar. 3, 1887, ch. 359, § 4, 24 Stat. 506; Mar. 3, 1911, ch. 231, §§ 122, 157, 194, 291, 297, 36 Stat. 1132, 1139, 1145, 1167, 1168; Mar. 3, 1911, ch. 231, § 187(a), as added Oct. 10, 1940, ch. 843, § 1, 54 Stat. 1101; Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941; Mar. 2, 1929, ch. 488, § 1, 45 Stat. 1475; Feb. 10, 1939, ch. 2, § 1111, 53 Stat. 160; Oct. 21, 1942, ch. 619, title V, § 504(a), (c), 56 Stat. 957).

Sections 219, 263, 296, 307, 723, and 731 of title 28, U.S.C., 1940 ed., gave specified courts, other than the Supreme Court, power to make rules. Section 761 of such title related to rules established in the district courts and Court of Claims. Section 1111 of title 26, U.S.C., 1940 ed., related to Tax Court. This section consolidates all such provisions. For other provisions of such sections, see Distribution Table.

Recognition by Congress of the broad rule-making power of the courts will make it possible for the courts to prescribe complete and uniform modes of procedure, and alleviate, at least in part, the necessity of searching in two places, namely in the Acts of Congress and in the rules of the courts, for procedural requisites.

Former Attorney General Cummings recently said: ''Legislative bodies have neither the time to inquire objectively into the details of judicial procedure nor the opportunity to determine the necessity for amendment or change. Frequently such legislation has been enacted for the purpose of meeting particular problems or supposed difficulties, but the results have usually been confusing or otherwise unsatisfactory. Comprehensive action has been lacking for the obvious reason that the professional nature of the task would leave the legislature little time for matters of substance and statesmanship. It often happened that an admitted need for change, even in limited areas, could not be secured.''—The New Criminal Rules—Another Triumph of the Democratic Process. American Bar Association Journal, May 1945.

Provisions of sections 263 and 296 of title 28, U.S.C., 1940 ed., authorizing the Court of Claims and Customs Court to punish for contempt, were omitted as covered by H. R. 1600, § 401, 80th Congress, for revision of the Criminal Code.

Provisions of section 1111 of title 26, U.S.C., 1940 ed., making applicable to Tax Court Proceedings ''the rules of evidence applicable in the courts of the District of Columbia in the type of proceeding which, prior to Sept. 16, 1938, were within the jurisdiction of the courts of equity of said District,'' were omitted as unnecessary and inconsistent with other provisions of law relating to the Federal courts. The rules of evidence in Tax Court proceedings are the same as those which apply to civil procedure in other courts. See *Dempster Mill. Mfg. Co. v. Burnet*, 1931, 46 F.2d 604, 60 App.D.C. 23.

For rule-making power of the Supreme Court in copyright infringement actions, see section 25(e) of title 17, U.S.C., 1940 ed., Copyrights. See, also, section 205(a) of title 11, U.S.C., 1940 ed., Bankruptcy, authorizing the Supreme Court to promulgate rules relating to service of process in railroad reorganization proceedings.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1111 of Title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment clarifies section 2071 of title 28, U.S.C., by giving express recognition to the power of the Supreme Court to prescribe its own rules and by giving a better description of its procedural rules.

AMENDMENTS

1988—Pub. L. 100–702 designated existing provisions as subsec. (a), substituted ''under section 2072 of this title'' for ''by the Supreme Court'', and added subsecs. (b) to (f).

1949—Act May 24, 1949, expressed recognition to the Supreme Court's power to prescribe its own rules and give a better description of its procedural rules.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 407 of title IV of Pub. L. 100–702 provided that: ''This title [enacting sections 2072 to 2074 of this title, amending this section, sections 331, 332, 372, 604, 636, and 2077 of this title, section 460n–8 of Title 16, Conservation, and section 3402 of Title 18, Crimes and Criminal Procedure, repealing former section 2072 and section 2076 of this title and sections 3771 and 3772 of Title 18, and enacting provisions set out as notes under this section] shall take effect on December 1, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–462, § 4, Jan. 12, 1983, 96 Stat. 2530, provided that: ''The amendments made by this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] shall take effect 45 days after the enactment of this Act [Jan. 12, 1983].''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97–462, § 1, Jan. 12, 1983, 96 Stat. 2527, provided: ''That this Act [enacting provisions set out as notes below, amending Rule 4 of the Federal Rules of Civil Procedure, set out in the Appendix to this title, adding Form 18–A in the Appendix of Forms, and amending section 951 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Federal Rules of Civil Procedure Amendments Act of 1982'.''

SAVINGS PROVISION

Section 406 of title IV of Pub. L. 100–702 provided that: ''The rules prescribed in accordance with law before the effective date of this title [Dec. 1, 1988] and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title [see Effective Date of 1988 Amendment note above].''

TAX COURT RULEMAKING NOT AFFECTED

Section 405 of title IV of Pub. L. 100–702 provided that: ''The amendments made by this title [see Effective Date of 1988 Amendment note above] shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986 [26 U.S.C. 7453].''

ADMIRALTY RULES

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however in the Supplemental Rules for Certain Admiralty and Maritime Claims, rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Rules by district courts, authority to make, see rule 83, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Court of Appeals, rules, see rule 57, Title 18, Appendix, Crimes and Criminal Procedure.
District court rules, see rule 57.

CROSS REFERENCES

Court of Appeals—
Designation and assignment of District Court judge to sit on, see section 292 of this title.
Designation of places for terms or sessions of, see section 48 of this title.
Participation by members of bar at judicial conference of circuit, see section 333 of this title.
Court of International Trade—
Assignment or reassignment of cases, see section 253 of this title.
Notice of time and place of hearing before judge or division, see section 2632 of this title.
District Court—
Advance payment of fees, see section 1914 of this title.
Division of business, see section 137 of this title.
Exercise of judicial powers, see section 132 of this title.
Regular terms, see section 138 of this title.
Special terms, see section 141 of this title.
Tax Court rules, see section 7453 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 331, 332, 604, 2077 of this title; title 42 section 300aa–12.

§ 2072. Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4648; amended Pub. L. 101–650, title III, § 315, Dec. 1, 1990, 104 Stat. 5115.)

PRIOR PROVISIONS

A prior section 2072, acts June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 103, 63 Stat. 104; July 18, 1949, ch. 343, § 2, 63 Stat. 446; May 10, 1950, ch. 174, § 2, 64 Stat. 158; July 7, 1958, Pub. L. 85–508, § 12(m), 72 Stat. 348; Nov. 6, 1966, Pub. L. 89–773, § 1, 80 Stat. 1323, authorized the Supreme Court to prescribe rules of civil procedure, prior to repeal by Pub. L. 100–702, §§ 401(a), 407, effective Dec. 1, 1988.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–650 added subsec. (c).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

APPLICABILITY TO VIRGIN ISLANDS

Rules of civil procedure promulgated under this section as applicable to the District Court of the Virgin Islands, see section 1615 of Title 48, Territories and Insular Possessions.

ADMIRALTY RULES

The Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on Dec. 20, 1920, effective Mar. 7, 1921, as revised, amended, and supplemented, were rescinded, effective July 1, 1966, in accordance with the general unification of civil and admiralty procedure which became effective July 1, 1966. Provision for certain distinctly maritime remedies were preserved however, in the Supplemental Rules for Certain Admiralty and Maritime Claims, Rules A to F, Federal Rules of Civil Procedure, Appendix to this title.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules of procedure, see rules 1, 2, 35, 38, 81, Appendix to this title.
Evidence, see rule 43.
One form of action, see rules 1 and 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 332, 636, 1292, 2071, 2073, 2074, 2112 of this title; title 26 section 7482; title 29 section 160; title 38 section 7292.

§ 2073. Rules of procedure and evidence; method of prescribing

(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under sections 2072 and 2075 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under sub-

section (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

(d) In making a recommendation under this section or under section 2072 or 2075, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 or 2075 of this title.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649; amended Pub. L. 103–394, title I, § 104(e), Oct. 22, 1994, 108 Stat. 4110.)

PRIOR PROVISIONS

A prior section 2073, acts June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 104, 63 Stat. 104; May 10, 1950, ch. 174, § 3, 64 Stat. 158, empowered the Supreme Court to prescribe, by general rules, the practice and procedure in admiralty and maritime cases in the district courts, prior to repeal by Pub. L. 89–773, § 2, Nov. 6, 1966, 80 Stat. 1323.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–394, § 104(e)(1), substituted "sections 2072 and 2075" for "section 2072".

Subsecs. (d), (e). Pub. L. 103–394, § 104(e)(2), inserted "or 2075" after "2072".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

§ 2074. Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

(Added Pub. L. 100–702, title IV, § 401(a), Nov. 19, 1988, 102 Stat. 4649.)

PRIOR PROVISIONS

A prior section 2074, act July 27, 1954, ch. 583, § 1, 68 Stat. 567, empowered the Supreme Court to prescribe rules for review of decisions of the Tax Court of the United States, prior to repeal by Pub. L. 89–773, § 2, Nov. 6, 1966, 80 Stat. 1323.

EFFECTIVE DATE

Section effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF EVIDENCE PROPOSED APRIL 29, 1994; EFFECTIVE DATE

Pub. L. 103–322, title IV, § 40141, Sept. 13, 1994, 108 Stat. 1918, provided that:

"(a) MODIFICATION OF PROPOSED AMENDMENT.—The proposed amendments to the Federal Rules of Evidence that are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the amendment made by subsection (b).

"(b) RULE.—[Amended Rule 412 of the Federal Rules of Evidence.]

"(c) TECHNICAL AMENDMENT.—[Amended table of contents for the Federal Rules of Evidence.]"

MODIFICATION OF AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE PROPOSED APRIL 29, 1994; EFFECTIVE DATE

Pub. L. 103–322, title XXIII, § 230101, Sept. 13, 1994, 108 Stat. 2077, provided that:

"(a) MODIFICATION OF PROPOSED AMENDMENTS.—The proposed amendments to the Federal Rules of Criminal Procedure which are embraced by an order entered by the Supreme Court of the United States on April 29, 1994, shall take effect on December 1, 1994, as otherwise provided by law, but with the following amendments:

"(b) IN GENERAL.—[Amended Rule 32 of the Federal Rules of Criminal Procedure.]

"(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall become effective on December 1, 1994."

AMENDMENTS TO CIVIL RULES PROPOSED APRIL 30, 1991

Pub. L. 102–198, § 11, Dec. 9, 1991, 105 Stat. 1626, provided that:

"(a) TECHNICAL AMENDMENT.—Rule 15(c)(3) of the Federal Rules of Civil Procedure for the United States Courts, as transmitted to the Congress by the Supreme Court pursuant to section 2074 of title 28, United States Code, to become effective on December 1, 1991, is amended by striking 'Rule 4(m)' and inserting 'Rule 4(j)'.

"(b) AMENDMENT TO FORMS.—Form 1–A, Notice of Lawsuit and Request for Waiver of Service of Summons, and Form 1–B, Waiver of Service of Summons, included in the transmittal by the Supreme Court de-

scribed in subsection (a), shall not be effective and Form 18–A, Notice and Acknowledgment for Service by Mail, abrogated by the Supreme Court in such transmittal, effective December 1, 1991, shall continue in effect on or after that date.''

AMENDMENTS TO CIVIL RULES PROPOSED APRIL 28, 1982

Pub. L. 97–462, § 5, Jan. 12, 1983, 96 Stat. 2530, provided that: ''The amendments to the Federal Rules of Civil Procedure [Rule 4], the effective date of which was delayed by the Act entitled 'An Act to delay the effective date of proposed amendments to rule 4 of the Federal Rules of Civil Procedure', approved August 2, 1982 (96 Stat. 246) [Pub. L. 97–227, see below], shall not take effect.''

Pub. L. 97–227, Aug. 2, 1982, 96 Stat. 246, provided: ''That notwithstanding the provisions of section 2072 of title 28, United States Code, the amendments to rule 4 of the Federal Rules of Civil Procedure as proposed by the Supreme Court of the United States and transmitted to the Congress by the Chief Justice on April 28, 1982, shall take effect on October 1, 1983, unless previously approved, disapproved, or modified by Act of Congress.

''SEC. 2. This Act shall be effective as of August 1, 1982, but shall not apply to the service of process that takes place between August 1, 1982, and the date of enactment of this Act [Aug. 2, 1982].''

AMENDMENTS TO CRIMINAL RULES AND RULES OF EVIDENCE PROPOSED APRIL 30, 1979; POSTPONEMENT OF EFFECTIVE DATE

Pub. L. 96–42, July 31, 1979, 93 Stat. 326, provided: ''That notwithstanding any provision of section 3771 or 3772 of title 18 of the United States Code or of section 2072, 2075, or 2076 of title 28 of the United States Code to the contrary—

''(1) the amendments proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, to the Federal Rules of Criminal Procedure affecting rules 11(e)(6), 17(h), 32(f), and 44(c), and adding new rules 26.2 and 32.1, and the amendment so proposed and transmitted to the Federal Rules of Evidence affecting rule 410, shall not take effect until December 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier; and

''(2) the amendment proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, affecting rule 40 of the Federal Rules of Criminal Procedure shall take effect on August 1, 1979, with the following amendments:

''(A) In the matter designated as paragraph (1) of subdivision (d), strike out 'in accordance with Rule 32.1(a)'.

''(B) In the matter designated as paragraph (2) of subdivision (d), strike out 'in accordance with Rule 32.1(a)(1)'.''

APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

Pub. L. 94–426, § 1, Sept. 28, 1976, 90 Stat. 1334, provided: ''That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94–349), are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.''

POSTPONEMENT OF EFFECTIVE DATE OF PROPOSED RULES AND FORMS GOVERNING PROCEEDINGS UNDER SECTIONS 2254 AND 2255 OF THIS TITLE

Pub. L. 94–349, § 2, July 8, 1976, 90 Stat. 822, provided: ''That, notwithstanding the provisions of section 2072 of title 28 of the United States Code, the rules and forms governing section 2254 [section 2254 of this title] cases in the United States district courts and the rules and forms governing section 2255 [section 2255 of this title] proceedings in the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, and which were transmitted to the Congress on or about April 26, 1976, shall not take effect until thirty days after the adjournment sine die of the 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier.''

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED NOVEMBER 20, 1972 AND DECEMBER 18, 1972

Pub. L. 93–595, § 3, Jan. 2, 1975, 88 Stat. 1949, provided that: ''The Congress expressly approves the amendments to the Federal Rules of Civil Procedure [Rules 30(c), 32(c), 43, and 44.1] and the amendments to the Federal Rules of Criminal Procedure [Rules 26, 26.1, and 28], which are embraced by the orders entered by the Supreme Court of the United States on November 20, 1972, and December 18, 1972, and such amendments shall take effect on the one hundred and eightieth day beginning after the date of the enactment of this Act [Jan. 2, 1975].''

CONGRESSIONAL APPROVAL REQUIREMENT FOR PROPOSED RULES OF EVIDENCE FOR UNITED STATES COURTS AND AMENDMENTS TO FEDERAL RULES OF CIVIC PROCEDURE AND CRIMINAL PROCEDURE; SUSPENSION OF EFFECTIVENESS OF SUCH RULES

Pub. L. 93–12, Mar. 30, 1973, 87 Stat. 9, provided: ''That notwithstanding any other provisions of law, the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure, which are embraced by the orders entered by the Supreme Court of the United States on Monday, November 20, 1972, and Monday, December 18, 1972, shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by the Act of Congress.''

§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law.

(Added Pub. L. 88–623, § 1, Oct. 3, 1964, 78 Stat. 1001; amended Pub. L. 95–598, title II, § 247, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 103–394, title I, § 104(f), Oct. 22, 1994, 108 Stat. 4110.)

AMENDMENTS

1994—Pub. L. 103–394 amended third par. generally. Prior to amendment, third par. read as follows: ''Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the

beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.''

1978—Pub. L. 95–598 substituted ''in cases under title 11'' for ''under the Bankruptcy Act'' and struck out provisions directing that all laws in conflict with bankruptcy rules be of no further force or effect after such rules have taken effect.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

RULES PROMULGATED BY SUPREME COURT

Pub. L. 98–353, title III, § 320, July 10, 1984, 98 Stat. 357, provided that: ''The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code. Section 2075 of title 28, United States Code, shall apply with respect to the general rules prescribed under this section.''

APPLICABILITY OF RULES TO CASES UNDER TITLE 11

Pub. L. 95–598, title IV, § 405(d), Nov. 6, 1978, 92 Stat. 2685, provided that: ''The rules prescribed under section 2075 of title 28 of the United States Code and in effect on September 30, 1979, shall apply to cases under title 11, to the extent not inconsistent with the amendments made by this Act, or with this Act [see Tables for complete classification of Pub. L. 95–598], until such rules are repealed or superseded by rules prescribed and effective under such section, as amended by section 248 of this Act.''

ADDITIONAL RULEMAKING POWER

Pub. L. 95–598, title IV, § 410, Nov. 6, 1978, 92 Stat. 2687, provided that: ''The Supreme Court may issue such additional rules of procedure, consistent with Acts of Congress, as may be necessary for the orderly transfer of functions and records and the orderly transition to the new bankruptcy court system created by this Act [see Tables for complete classification of Pub. L. 95–598].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2073 of this title.

[§ 2076. Repealed. Pub. L. 100–702, title IV, § 401(c), Nov. 19, 1988, 102 Stat. 4650]

Section, added Pub. L. 93–595, § 2(a)(1), Jan. 2, 1975, 88 Stat. 1948; amended Pub. L. 94–149, § 2, Dec. 12, 1975, 89 Stat. 806, authorized the Supreme Court to prescribe amendments to Federal Rules of Evidence. See sections 2072 to 2074 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as an Effective Date of 1988 Amendment note under section 2071 of this title.

§ 2077. Publication of rules; advisory committees

(a) The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published. Each court of appeals shall print or cause to be printed necessary copies of the rules. The Judicial Conference shall prescribe the fees for sales of copies under section 1913 of this title, but the Judicial Conference may provide for free distribution of copies to members of the bar of each court and to other interested persons.

(b) Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall appoint an advisory committee for the study of the rules of practice and internal operating procedures of such court and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit. The advisory committee shall make recommendations to the court concerning such rules and procedures. Members of the committee shall serve without compensation, but the Director may pay travel and transportation expenses in accordance with section 5703 of title 5.

(Added Pub. L. 97–164, title II, § 208(a), Apr. 2, 1982, 96 Stat. 54; amended Pub. L. 100–702, title IV, § 401(b), Nov. 19, 1988, 102 Stat. 4650; Pub. L. 101–650, title IV, § 406, Dec. 1, 1990, 104 Stat. 5124.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–650 inserted before period at end of first sentence ''and, in the case of an advisory committee appointed by a court of appeals, of the rules of the judicial council of the circuit''.

1988—Subsec. (b). Pub. L. 100–702 substituted ''Each court, except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title shall appoint'' for ''Each court of appeals shall appoint'' and ''such court'' for ''the court of appeals''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101–650, set out as a note under section 332 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–702 effective Dec. 1, 1988, see section 407 of Pub. L. 100–702, set out as a note under section 2071 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

Sec.
2101. Supreme Court; time for appeal or certiorari; docketing; stay.
2102. Priority of criminal case on appeal from State court.
[2103. Repealed.]
2104. Reviews of State court decisions.
2105. Scope of review; abatement.
2106. Determination.
2107. Time for appeal to court of appeals.
2108. Proof of amount in controversy.
2109. Quorum of Supreme Court justices absent.
[2110. Repealed.]
2111. Harmless error.
2112. Record on review and enforcement of agency orders.
2113. Definition.

HISTORICAL AND REVISION NOTES

1949 ACT

This section inserts in the chapter analysis of chapter 133 of title 28, U.S.C., a new item ''2111,'' in view of

the insertion in such title, by another section of this bill, of a new section 2111.

AMENDMENTS

1988—Pub. L. 100–352, § 5(c), (d)(2), June 27, 1988, 102 Stat. 663, struck out item 2103 ''Appeal from State court or from a United States court of appeals improvidently taken regarded as petition for writ of certiorari'' and substituted ''Reviews of State court decisions'' for ''Appeals from State courts'' in item 2104.

1982—Pub. L. 97–164, title I, § 136, Apr. 2, 1982, 96 Stat. 41, struck out item 2110 ''Time for appeal to Court of Claims in tort claims cases''.

1970—Pub. L. 91–358, title I, § 172(a)(2)(B), July 29, 1970, 84 Stat. 590, added item 2113.

1962—Pub. L. 87–669, § 2, Sept. 19, 1962, 76 Stat. 556, substituted ''or from a United States court of appeals improvidently taken regarded as petition for'' for ''improvidently taken regarded as'' in item 2103.

1958—Pub. L. 85–791, § 1, Aug. 28, 1958, 72 Stat. 941, added item 2112.

1949—Act May 24, 1949, ch. 139, § 105, 63 Stat. 104, added item 2111.

FEDERAL RULES OF APPELLATE PROCEDURE

See Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Stay of execution and relief pending review, see rule 38, Title 18, Appendix, Crimes and Criminal Procedure.

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by rules of the Supreme Court.

(June 25, 1948, ch. 646, 62 Stat. 961; May 24, 1949, ch. 139, § 106, 63 Stat. 104; Pub. L. 98–209, § 10(b), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 100–352, § 5(b), June 27, 1988, 102 Stat. 663; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(C), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 47, 47a, 349a, 350, 380, 380a, section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 1167; Mar. 3, 1911, ch. 231, §§ 210, 266, 291, 36 Stat. 1150, 1162, 1167; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38 Stat. 220; Sept. 6, 1916, ch. 448, § 6, 39 Stat. 727; Feb. 13, 1925, ch. 229, §§ 1, 8 (a, b, d), 43 Stat. 938, 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 936; Aug. 24, 1937, ch. 754, §§ 2, 3, 50 Stat. 752; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates section 350 of title 28, U.S.C., 1940 ed., with those portions of sections 47, 47a, 349a, 380, and 380a, of said title 28, section 29, of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., respective time for taking direct appeal. (For disposition of other provisions of said sections, see Distribution Table.)

Subsection (a) of the revised section is derived from sections 349a and 380a of title 28, U.S.C., 1940 ed. The phrase ''under rules prescribed by the Supreme Court'' was substituted for the phrase ''under such rules as may be prescribed by the proper courts'' which appeared in both such sections. The Supreme Court by its revised rules 10–13 has made adequate provision for filing record and docketing case. (See Revised Rules of the Supreme Court following section 354 of title 28, U.S.C., 1940 ed.)

Subsection (b) is in accord with sections 47 and 47a of title 28, U.S.C., 1940 ed., and section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation.

Subsection (c), with respect to the time for taking other appeals or petitioning for a writ of certiorari, substitutes, as more specific, the words ''ninety days'' for the words ''three months'' contained in section 350 of title 28, U.S.C., 1940 ed. The provision in said section 350 for allowance of additional time was retained, notwithstanding the language of the Supreme Court in *Comm'r v. Bedford's Estate*, 1945, 65 S.Ct. 1157, 1159, 325 U.S. 283, 89 L.Ed. 1611, to the effect that the 3 months' period is ''more than ample * * * to determine whether to seek further review''.

In subsection (c), words ''in a civil action, suit, or proceeding'' were added because section 350 of title 28, U.S.C., 1940 ed., was superseded as to criminal cases by Federal Rules of Criminal Procedure, Rule 39(a)(2), (b)(2).

Words ''or the United States Court of Appeals for the District of Columbia'' in section 350 of title 28, U.S.C., 1940 ed., were omitted as covered by ''court of appeals'' in subsection (d) of this revised section.

Words in section 350 of title 28, U.S.C., 1940 ed., ''excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months'', were omitted as obsolete, in view of the independence of the Philippines recognized by section 1240 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions.

Subsection (e) relates only to supersedeas or stay of execution of judgments sought to be reviewed in the Supreme Court on writ of certiorari. Supersedeas or stay of proceedings taken to the Supreme Court by appeal from courts of appeals, or direct appeals from a district court or three-judge courts, is governed by Rule 62 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This section clarifies the meaning of subsection (c) of section 2101 of title 28, U.S.C. At present, such subsection, after the words, ''ninety days after entry of such judgment or decree'', reads, ''unless, upon application for writ of certiorari, for good cause, the Supreme Court or a justice thereof allows an additional time not exceeding sixty days.''

The new subsection (d) of section 2101 supplies an omission in revised title 28, U.S.C., and confirms the authority of the Supreme Court to regulate the time for seeking review of State criminal cases.

The other amendment merely renumbers subsections (d) and (e) of such section 2101 as subsections (e) and (f), respectively.

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1988—Subsec. (a). Pub. L. 100–352 substituted ''section 1253'' for ''sections 1252, 1253, and 2282''.

1983—Subsec. (g). Pub. L. 98–209 added subsec. (g).

1949—Subsec. (c). Act May 24, 1949, § 106(a), clarified the allowance of an additional 60 days in which to apply for a writ of certiorari.

Subsecs. (d) to (f). Act May 24, 1949, § 106(b), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of Title 10, Armed Forces.

FEDERAL RULES OF APPELLATE PROCEDURE

Criminal cases, time for appeal, see rule 4, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2350 of this title.

§ 2102. Priority of criminal case on appeal from State court

Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States is a party and such other cases as the court may decide to be of public importance.

(June 25, 1948, ch. 646, 62 Stat. 962.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 351 (Mar. 3, 1911, ch. 231, § 253, 36 Stat. 1160; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54).

Changes were made in phraseology.

[§ 2103. Repealed. Pub. L. 100–352, § 5(c), June 27, 1988, 102 Stat. 663]

Section, acts June 25, 1948, ch. 646, 62 Stat. 962; Sept. 19, 1962, Pub. L. 87–669, § 1, 76 Stat. 556, provided that appeal from State court or from a United States court of appeals improvidently taken be regarded as petition for writ of certiorari.

EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 2104. Reviews of State court decisions

A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 962; Pub. L. 100–352, § 5(d)(1), June 27, 1988, 102 Stat. 663.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 871 (R.S., § 1003).

Words ''An appeal to'' were substituted for ''writs of error from'', in view of the abolition of the writ of error.

Changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100–352 substituted ''Reviews of State court decisions'' for ''Appeals from State courts'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

§ 2105. Scope of review; abatement

There shall be no reversal in the Supreme Court or a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 879 (R.S. § 1011; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318).

The revised language is substituted for the provisions of section 879 of title 28, U.S.C., 1940 ed., to avoid any construction that matters of fact are not reviewable in

nonjury cases. Such section 879 related to review upon a writ of error which applied only to actions at law. (See Rule 52(a) of the Federal Rules of Civil Procedure limiting the review of questions of fact which renders unnecessary any statutory limitation.)

Rule 7(c) of the Federal Rules of Civil Procedure abolished all pleas, and the rules adopted the motion as a substitute therefor.

Words ''matters in abatement'' were, therefore, substituted for the abolished ''plea in abatement'' and ''plea to the jurisdiction.''

Changes were made in phraseology.

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§344, 876, 877 (R.S. §701; Mar. 3, 1891, ch. 517, §§10, 11, 26 Stat. 829; Mar. 3, 1911, ch. 231, §§231, 236, 237, 291, 36 Stat. 1156, 1167; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 16, 1916, ch. 448, §2, 39 Stat. 726; Feb. 17, 1922, ch. 54, 42 Stat. 366; Feb. 13, 1925, ch. 229, §1, 43 Stat. 937; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates part of section 344 of title 28, U.S.C., 1940 ed., with sections 876 and 877 of said title. Other provisions of said section 344 are incorporated in sections 1257 and 2103 of this title.

Words ''or a court of appeals'' were inserted after ''Supreme Court'' upon authority of *United States v. Illinois Surety Co.*, C.C.A. 1915, 226 F. 653, affirmed 37 S.Ct. 614, 244 U.S. 376, 61 L.Ed. 1206, wherein it was held that this section also applied to the courts of appeals in view of section 11 of the Circuit Court of Appeals Act of Mar. 3, 1891, ch. 517, 28 Stat. 829.

The revised section will cover instances where the Supreme Court remands a case to the highest court of a State and to the United States Tax Court. It will also cover a remand of a case to the Court of Claims or the Court of Customs and Patent Appeals. For authority to remand a case to The Tax Court, see *Equitable Life Assurance Society of U.S. v. Commissioner of Internal Revenue*, 1944, 64 S.Ct. 722, 321 U.S. 560, 88 L.Ed. 927.

Revised section will also permit a remand by the Supreme Court to a court of appeals inasmuch as such latter court then would be a lower court. The revised section is in conformity with numerous holdings of the Supreme Court to the effect that such a remand may be made. See especially, *Maryland Casualty Co. v. United States*, 1929, 49 S.Ct. 484, 279 U.S. 792, 73 L.Ed. 960; *Krauss Bros. Co. v. Mellon*, 1928, 48 S.Ct. 358, 276 U.S. 386, 72 L.Ed. 620 and *Buzyuski v. Luckenbach S. S. Co.*, 1928, 48 S.Ct. 440, 277 U.S. 226, 72 L.Ed. 860.

The last sentence of section 876 of title 28, U.S.C., 1940 ed., providing that the Supreme Court should not issue execution but should send a special mandate to the inferior court to award execution, was omitted. See rule 34 of the revised rules of the Supreme Court relating to Mandates, and section 1651 of this title authorizing the Supreme Court to issue all writs necessary in aid of its jurisdiction.

Changes were made in phraseology.

§ 2107. Time for appeal to court of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 7 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

(June 25, 1948, ch. 646, 62 Stat. 963; May 24, 1949, ch. 139, §§107, 108, 63 Stat. 104; Pub. L. 95–598, title II, §248, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 102–198, §12, Dec. 9, 1991, 105 Stat. 1627.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§227a, 230, and section 1142 of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1891, ch. 517, §11, 26 Stat. 829; Mar. 3, 1911, ch. 231, §129, 36 Stat. 1134; Feb. 13, 1925, ch. 229, §8(c), 43 Stat. 940; Feb. 28, 1927, ch. 228, 44 Stat. 1261; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Feb. 10, 1939, ch. 2, §1142, 53 Stat. 165; Oct. 21, 1942, ch. 619, title V, §504(a), (c), 56 Stat. 957).

Section consolidates sections 227a and 230 of title 28, U.S.C., 1940 ed., with section 1142 of title 26, U.S.C., 1940 ed., Internal Revenue Code. Other provisions of such section 227a are incorporated in section 1292 of this title.

Section 227a of title 28, U.S.C., 1940 ed., provided a time limit of 30 days for appeals from patent-infringement decisions, and section 230 of title 28, U.S.C., 1940 ed., permitted 3 months for appeals generally. The revised section adopts the 30-day limit in conformity with recommendations of members of the Judicial Conference of the United States and proposed amendment to Rule 73 of the Federal Rules of Civil Procedure.

Section 1142 of title 26, U.S.C., 1940 ed., provided for 3 months within which to petition for appeal from a decision of The Tax Court. The second paragraph of the revised section reduces this to 60 days for reasons explained above. Other provisions of said section 1142 making a distinction between decisions before and after June 6, 1932, were omitted as executed.

Words ''in an action, suit, or proceeding of a civil nature'' were added in view of Rule 37 of the Federal Rules of Criminal Procedure prescribing a different limitation for criminal appeals.

Words ''notice of appeal is filed'' were substituted for provisions of sections 230 of title 28, U.S.C., 1940 ed., and 1142 of title 26, U.S.C., 1940 ed., for petition and allowance of appeal in order to eliminate the useless paper work involved in a pro forma application for appeal and perfunctory allowance of the same. The effect of the section is to require appeals to the courts of appeals in all cases to be taken by filing notice of appeal. See Rule 73(b) of Federal Rules of Civil Procedure.

The case of *Mosier v. Federal Reserve Bank of New York*, C.C.A. 1942, 132 F.2d 710, holds that the Federal Rules of Civil Procedure changing the method of ''taking'' an appeal, do not affect the time limitation prescribed by section 230 of title 28, U.S.C., 1940 ed.

Word ''order'' was added, in two places, after ''judgment'' so as to make the section cover all appeals of which the courts of appeals have jurisdiction, as set forth in section 1291 et seq. of this title.

The last paragraph was added in conformity with section 48 of title 11, U.S.C., 1940 ed., Bankruptcy, and other sections of that title regulating appellate procedure in bankruptcy matters.

The third paragraph was inserted to conform to the existing practice in Admiralty upon the recommendation of the Committee on the Federal Courts of the New York County Lawyers Association.

The time for appeal to the Court of Customs and Patent Appeals in patent and trade-mark cases is governed by section 89 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 60 of title 35, U.S.C., 1940 ed., Patents, and Rule 25 of the Rules of such court, and, in customs cases, by section 2601 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1142 of title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment to section 2107 of title 28, U.S.C., restores the former 15-day limitation of time within which to appeal from an interlocutory order in admiralty.

This amendment eliminates as surplusage the words ''in any such action, suit or proceeding,'' from the fourth paragraph of section 2107 of title 28, U.S.C., and corrects a typographical error in the same paragraph.

AMENDMENTS

1991—Pub. L. 102–198 designated first and second pars. as subsecs. (a) and (b), respectively, added subsec. (c), designated fifth par. as subsec. (d), and struck out third and fourth pars. which read as follows:

''In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

''The district court may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree.''

1978—Pub. L. 95–598 directed the amendment of section by inserting ''or the bankruptcy court'' after ''district court'' and by striking out the final paragraph, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1949—Act May 24, 1949, restored, in third par., the 15-day limitation of time within which to appeal from an interlocutory order in admiralty, and in fourth par., substituted ''The district court may'' for ''The district court, in any such action, suit, or proceeding, may'' and corrected spelling of ''excusable''.

FEDERAL RULES OF APPELLATE PROCEDURE

Criminal cases, time for appeal, see rule 4, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 29; title 21 section 848.

§ 2108. Proof of amount in controversy

Where the power of any court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 231 (Feb. 13, 1925, ch. 229, § 9, 43 Stat. 941).

Words ''or in the Supreme Court'' were omitted. Section 7 of the 1925 act containing such words related to review by the Supreme Court of the United States of decisions of the Supreme Court of the Philippine Islands and designated a certain jurisdictional amount. Such section 7 has now become obsolete, in view of the recognition of the independence of the Philippines, title 48 U.S.C., 1940 ed., § 1240, Territories and Insular Possessions, and there is no other case wherein the power of the Supreme Court to review depends on the amount or value in controversy.

§ 2109. Quorum of Supreme Court justices absent

If a case brought to the Supreme Court by direct appeal from a district court cannot be heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. The decision of such court shall be final and conclusive. In the event of the disqualification or disability of one or more of such circuit judges, such court shall be filled as provided in chapter 15 of this title.

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on portions of section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates portions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., with changes of substance and phraseology.

The revised section includes the principal provisions of sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, in case of the absence of a quorum of qualified Justices of the Supreme Court.

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, were identical and were applicable only to decisions of three-judge courts in antitrust cases under section 107 of said title 15 and Interstate Commerce cases under sections 1, 8, and 12 of said title 49, ''or any other acts having a like purpose that may hereinafter

be enacted.'' The revised section broadens and extends the application of such provisions to include ''any case involving a direct appeal to the Supreme Court from the decision of a district court or a district court of three judges which cannot be heard and determined because of the absence of a quorum of qualified justices.'' It includes direct appeals in criminal cases under section 3731 of title 18 (H.R. 1600, 80th Cong.).

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively provided that the Supreme Court certify the case to the Circuit Court of Appeals and that the Senior Circuit Judge, qualified to participate should designate himself and two other circuit judges next in order of seniority. Other provisions were made for designation of circuit judges from other circuits in case of insufficient circuit judges being available in the circuit.

The revised section permits the Chief Justice of the United States to designate the ''court of appeals'' to hear the case in banc or by means of a specially constituted court of appeals composed of the three circuit judges senior in commission who are able to sit. In case of disqualification or disability, the court shall be filled by designation and assignment as provided in chapter 15 of this title.

The provisions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., relating to time for appeal are incorporated in section 2101 of this title. The provisions of said sections for direct appeal to the Supreme Court are retained in said titles 15 and 49.

The second paragraph of the revised section is new. It recognizes the necessity of final disposition of litigation in which appellate review has been had and further review by the Supreme Court is impossible for lack of a quorum of qualified justices.

[§ 2110. Repealed. Pub. L. 97–164, title I, § 136, Apr. 2, 1982, 96 Stat. 41]

Section, acts June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 109, 63 Stat. 105, provided that appeals to the Court of Claims in tort claims cases, as provided in section 1504 of this title, be taken within 90 days after the entry of the final judgment of the district court.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§ 2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(Added May 24, 1949, ch. 139, § 110, 63 Stat. 105.)

HISTORICAL AND REVISION NOTES

1949 ACT

Incorporates in title 28, U.S.C., as section 2111 thereof, the harmless error provisions of section 269 of the Judicial Code (now repealed), which applied to all courts of the United States and to all cases therein and therefore was superseded only in part by the Federal Procedural Rules, which apply only to the United States district courts.

FEDERAL RULES OF CIVIL PROCEDURE

Harmless error, see rule 61, Appendix to this title.

§ 2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accordance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals of proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

(2) For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

(3) If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by

means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of proceedings under this paragraph. The agency, board, commission, or officer concerned shall file the record in the court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

(Added Pub. L. 85–791, § 2, Aug. 28, 1958, 72 Stat. 941; amended Pub. L. 89–773, § 5(a), (b), Nov. 6, 1966, 80 Stat. 1323; Pub. L. 100–236, § 1, Jan. 8, 1988, 101 Stat. 1731.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–236 substituted ''If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:'' and pars. (1) to (5) for ''If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.''

1966—Subsec. (a). Pub. L. 89–773, § 5(a), substituted ''The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing'' for ''The several courts of appeal shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing.'' See section 2072 of this title.

Subsec. (b). Pub. L. 89–773, § 5(b), substituted ''the rules prescribed under the authority of section 2072 of this title'' for ''the said rules of the court of appeals'' and for ''the rules of such court''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 3 of Pub. L. 100–236 provided that: ''The amendments made by this Act [amending this section and section 1369 of Title 33, Navigation and Navigable Waters] take effect 180 days after the date of the enactment of this Act [Jan 8, 1988], except that the judicial panel on multidistrict litigation may issue rules pursuant to subsection (a)(3) of section 2112 of title 28, United States Code (as added by section 1), on or after such date of enactment.''

SAVINGS PROVISION

Section 5(c) of Pub. L. 89–773 provided that: ''The amendments of section 2112 of title 28 of the United States Code made by this Act shall not operate to invalidate or repeal rules adopted under the authority of that section prior to the enactment of this Act [Nov. 6, 1966], which rules shall remain in effect until superseded by rules prescribed under the authority of section 2072 of title 28 of the United States Code as amended by this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2346 of this title; title 5 section 7123; title 7 sections 8, 9, 136n, 194, 228b–3, 1115, 1600, 1601; title 12 sections 1467a, 1786, 1818, 1848, 2266, 2268, 4583, 4634; title 15 sections 21, 45, 57a, 78y, 79x, 80a–42, 80b–13, 687e, 717r, 1193, 1262, 1474, 1710, 1825, 2060, 2618, 3416; title 16 sections 773f, 825*l*, 1536, 1858, 2437, 3142, 3373, 5010, 5507; title 19 sections 81r, 1677f; title 20 sections 1234g, 1412, 1416, 7372, 7711, 8896; title 21 sections 346a, 348, 355, 360g, 360kk, 371; title 22 section 1631f; title 25 section 4161; title 26 section 3310; title 27 section 204; title 29 sections 160, 210, 660, 667, 727, 1578; title 30 sections 816, 1462; title 31 section 1263; title 33 section 921; title 39 section 3628; title 40 section 333; title 42 sections 263a, 263b, 291h, 504, 1316, 1320a–7a, 1320a–8, 2022, 3027, 3785, 5311, 5405, 6029, 6306, 6869, 7525, 8412, 9152; title 43 sections 355, 1349; title 46 App. section 1181; title 47 section 402; title 49 section 46110.

§ 2113. Definition

For purposes of this chapter, the terms ''State court'', ''State courts'', and ''highest court of a State'' include the District of Columbia Court of Appeals.

(Added Pub. L. 91–358, title I, § 172(a)(2)(A), July 29, 1970, 84 Stat. 590.)

EFFECTIVE DATE

Section effective the first day of the seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as an Effective Date of 1970 Amendment note under section 1257 of this title.

PART VI—PARTICULAR PROCEEDINGS

Chap.		Sec.
151.	**Declaratory Judgments**	**2201**
153.	**Habeas Corpus**	**2241**
154.	**Special habeas corpus procedures in capital cases**	**2261.**[1]
155.	**Injunctions; Three-Judge Courts**	**2281**
157.	**Surface Transportation Board Orders; Enforcement and Review**	**2321**
158.	**Orders of Federal Agencies; Review**	**2341**
159.	**Interpleader**	**2361**
161.	**United States as Party Generally**	**2401**
163.	**Fines, Penalties and Forfeitures**	**2461**
165.	**United States Court of Federal Claims Procedure**	**2501**
[167.	**Repealed.]**	
169.	**Court of International Trade Procedure**	**2631**
171.	**Tort Claims Procedure**	**2671**
173.	**Attachment in Postal Suits**	**2710**
175.	**Civil Commitment and Rehabilitation of Narcotic Addicts**	**2901**
176.	**Federal Debt Collection Procedure**	**3001**
178.	**Professional and Amateur Sports Protection**	**3701**
179.	**Judicial Review of Certain Actions by Presidential Offices**	**3901**

[1] So in original.

SENATE REVISION AMENDMENT

Chapters 169, 171 and 173 were renumbered ''167'', ''169'' and ''171'', respectively, without change in their section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1996—Pub. L. 104–331, § 3(e), Oct. 26, 1996, 110 Stat. 4071, added item for chapter 179.

Pub. L. 104–132, title I, § 107(b), Apr. 24, 1996, 110 Stat. 1226, as amended Pub. L. 104–294, title VI, § 605(k), Oct. 11, 1996, 110 Stat. 3510, added item for chapter 154.

1995—Pub. L. 104–88, title III, § 305(c)(2), Dec. 29, 1995, 109 Stat. 945, which directed amendment of the item for chapter 157 in the table of chapters of this title by substituting ''Surface Transportation Board'' for ''Interstate Commerce Commission'', was executed by making the substitution in the table of chapters for this part to reflect the probable intent of Congress.

1992—Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in item for chapter 165.

Pub. L. 102–559, § 2(b), Oct. 28, 1992, 106 Stat. 4228, substituted ''Procedure'' for ''Procedures'' in item for chapter 176 and added item for chapter 178.

1990—Pub. L. 101–647, title XXXVI, § 3302 [3612], Nov. 29, 1990, 104 Stat. 4964, added item for chapter 176.

1982—Pub. L. 97–164, title I, §§ 139(*o*)(1), 140, Apr. 2, 1982, 96 Stat. 44, substituted ''United States Claims Court Procedure'' for ''Court of Claims Procedure'' in item for chapter 165 and struck out item for chapter 167 ''Court of Customs and Patent Appeals Procedure''.

1980—Pub. L. 96–417, title V, § 501(25), Oct. 10, 1980, 94 Stat. 1742, substituted ''Court of International Trade Procedure'' for ''Customs Court Procedure'' in item for chapter 169.

1966—Pub. L. 89–793, title VI, § 603, Nov. 8, 1966, 80 Stat. 1450, added item for chapter 175.

Pub. L. 89–554, § 4(d), Sept. 6, 1966, 80 Stat. 621, added item for chapter 158.

1960—Pub. L. 86–682, § 10, Sept. 2, 1960, 74 Stat. 708, added item for chapter 173.

CROSS REFERENCES

Arbitration proceedings, see section 3 et seq. of Title 9, Arbitration.

Bankruptcy proceedings, see Bankruptcy Rules and Official Bankruptcy Forms, Appendix to Title 11, Bankruptcy.

Labor disputes, procedure, see sections 159 and 160 of Title 29, Labor.

Railway labor disputes, court procedure after arbitration, see section 159 of Title 45, Railroads.

See, also, rule 81 of the Federal Rules of Civil Procedure, Appendix to this title.

CHAPTER 151—DECLARATORY JUDGMENTS

Sec.
2201. Creation of remedy.
2202. Further relief.

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 111, 63 Stat. 105; Aug. 28, 1954, ch. 1033, 68 Stat. 890; Pub. L. 85–508, § 12(p), July 7, 1958, 72 Stat. 349; Pub. L. 94–455, title XIII, § 1306(b)(8), Oct. 4, 1976, 90 Stat. 1719; Pub. L. 95–598, title II, § 249, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 98–417, title I, § 106, Sept. 24, 1984, 98 Stat. 1597; Pub. L. 100–449, title IV, § 402(c), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 100–670, title I, § 107(b), Nov. 16, 1988, 102 Stat. 3984; Pub. L. 103–182, title IV, § 414(b), Dec. 8, 1993, 107 Stat. 2147.)

Historical and Revision Notes

1948 Act

Based on title 28, U.S.C., 1940 ed., § 400 (Mar. 3, 1911, ch. 231, § 274d, as added June 14, 1934, ch. 512, 48 Stat. 955; Aug. 30, 1935, ch. 829, § 405, 49 Stat. 1027).

This section is based on the first paragraph of section 400 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in section 2202 of this title.

While this section does not exclude declaratory judgments with respect to State taxes, such suits will not ordinarily be entertained in the courts of the United States where State law makes provision for payment under protest and recovery back or otherwise affords adequate remedy in the State courts. See *Great Lakes Dredge & Dock Co. v. Huffman*, La. 1943, 63 S.Ct. 1070, 319 U.S. 293, 87 L.Ed. 1407. See also *Spector Motor Service v. McLaughlin*, Conn. 1944, 65 S.Ct. 152, 323 U.S. 101, 89 L.Ed. 101. See also section 1341 of this title forbidding district courts to restrain enforcements of State taxes where State courts afford plain, speedy, and efficient remedy.

Changes were made in phraseology.

1949 Act

Section corrects a typographical error in section 2201 of title 28, U.S.C.

References in Text

Section 7428 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 7428 of Title 26, Internal Revenue Code.

Section 516A(f)(10) of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1516a(f)(10) of Title 19, Customs Duties.

Sections 505 and 512 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b), are classified to sections 355 and 360b, respectively, of Title 21, Food and Drugs.

Amendments

1993—Subsec. (a). Pub. L. 103–182 substituted ''merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930),'' for ''Canadian merchandise,''.

1988—Subsec. (a). Pub. L. 100–449 substituted ''1986,'' for ''1954 or'' and inserted ''or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority,'' after ''title 11,''.

Subsec. (b). Pub. L. 100–670 inserted ''or 512'' after ''505''.

1984—Pub. L. 98–417 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–598 inserted reference to proceedings under section 505 or 1146 of title 11.

1976—Pub. L. 94–455 substituted ''taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954'' for ''taxes''.

1958—Pub. L. 85–508 struck out provisions which related to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954—Act Aug. 28, 1954, extended provisions to Alaska.

1949—Act May 24, 1949, corrected spelling of ''or'' in second sentence.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

Effective and Termination Dates of 1988 Amendment

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date of 1976 Amendment

Amendment by Pub. L. 94–455 applicable with respect to pleadings filed with the United States Tax Court, the District Court of the United States for the District of Columbia, or the United States Court of Claims more than 6 months after Oct. 4, 1976, but only with respect to determinations (or requests for determinations) made after Jan. 1, 1976, see section 1306(c) of Pub. L. 94–455, set out as an Effective Date note under section 7428 of Title 26, Internal Revenue Code.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

Effect of Termination of NAFTA Country Status

For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103–182, see section 3451 of Title 19, Customs Duties.

AMOUNT IN CONTROVERSY

Jurisdictional amount in diversity of citizenship cases, see section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 623; title 8 sections 1252, 1503; title 21 sections 355, 360b.

§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

(June 25, 1948, ch. 646, 62 Stat. 964.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 400 (Mar. 3, 1911, ch. 231, § 274d, as added June 14, 1934, ch. 512, 48 Stat. 955; Aug. 30, 1935, ch. 829, § 405, 49 Stat. 1027).

This section is based on the second paragraph of section 400 of title 28, U.S.C., 1940 ed. Other provisions of such section are incorporated in section 2201 of this title.

Provision in said section 400 that the court shall require adverse parties whose rights are adjudicated to show cause why further relief should not be granted forthwith, were omitted as unnecessary and covered by the revised section.

Provisions relating to submission of interrogatories to a jury were omitted as covered by rule 49 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 623.

CHAPTER 153—HABEAS CORPUS

Sec.
2241. Power to grant writ.
2242. Application.
2243. Issuance of writ; return; hearing; decision.
2244. Finality of determination.
2245. Certificate of trial judge admissible in evidence.
2246. Evidence; depositions; affidavits.
2247. Documentary evidence.
2248. Return or answer; conclusiveness.
2249. Certified copies of indictment, plea and judgment; duty of respondent.
2250. Indigent petitioner entitled to documents without cost.
2251. Stay of State court proceedings.
2252. Notice.
2253. Appeal.
2254. State custody; remedies in Federal courts.
2255. Federal custody; remedies on motion attacking sentence.
[2256. Omitted.]

SENATE REVISION AMENDMENT

Chapter catchline was changed by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1978—Pub. L. 95–598, title II, § 250(b), Nov. 6, 1978, 92 Stat. 2672, directed the addition of item 2256 ''Habeas corpus from bankruptcy courts'', which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1966—Pub. L. 89–711, § 3, Nov. 2, 1966, 80 Stat. 1106, substituted ''Federal courts'' for ''State Courts'' in item 2254.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1657 of this title.

§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 112, 63 Stat. 105; Pub. L. 89–590, Sept. 19, 1966, 80 Stat. 811.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 451, 452, 453 (R.S. §§ 751, 752, 753; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 13, 1925, ch. 229, § 6, 43 Stat. 940).

Section consolidates sections 451, 452 and 453 of title 28, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Words ''for the purpose of an inquiry into the cause of restraint of liberty'' in section 452 of title 28, U.S.C., 1940 ed., were omitted as merely descriptive of the writ.

Subsection (b) was added to give statutory sanction to orderly and appropriate procedure. A circuit judge who unnecessarily entertains applications which should be addressed to the district court, thereby disqualifies

himself to hear such matters on appeal and to that extent limits his usefulness as a judge of the court of appeals. The Supreme Court and Supreme Court Justices should not be burdened with applications for writs cognizable in the district courts.

1949 ACT

This section inserts commas in certain parts of the text of subsection (b) of section 2241 of title 28, U.S.C., for the purpose of proper punctuation.

AMENDMENTS

1966—Subsec. (d). Pub. L. 89–590 added subsec. (d).
1949—Subsec. (b). Act May 24, 1949, inserted commas after ''Supreme Court'' and ''any justice thereof''.

RULES OF THE SUPREME COURT

Procedure on petitions for writ, see rule 20, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3006A.

§ 2242. Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

(June 25, 1948, ch. 646, 62 Stat. 965.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 454 (R.S. § 754).

Words ''or by someone acting in his behalf'' were added. This follows the actual practice of the courts, as set forth in *United States ex rel. Funaro v. Watchorn*, C.C. 1908, 164 F. 152; *Collins v. Traeger*, C.C.A. 1928, 27 F.2d 842, and cases cited.

The third paragraph is new. It was added to conform to existing practice as approved by judicial decisions. See *Dorsey v. Gill* (App.D.C.) 148 F.2d 857, 865, 866. See also *Holiday v. Johnston*, 61 S.Ct. 1015, 313 U.S. 342, 85 L.Ed. 1392.

Changes were made in phraseology.

§ 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

(June 25, 1948, ch. 646, 62 Stat. 965.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 455, 456, 457, 458, 459, 460, and 461 (R.S. §§ 755–761).

Section consolidates sections 455–461 of title 28, U.S.C., 1940 ed.

The requirement for return within 3 days ''unless for good cause additional time, not exceeding 20 days is allowed'' in the second paragraph, was substituted for the provision of such section 455 which allowed 3 days for return if within 20 miles, 10 days if more than 20 but not more than 100 miles, and 20 days if more than 100 miles distant.

Words ''unless for good cause additional time is allowed'' in the fourth paragraph, were substituted for words ''unless the party petitioning requests a longer time'' in section 459 of title 28, U.S.C., 1940 ed.

The fifth paragraph providing for production of the body of the detained person at the hearing is in conformity with *Walker v. Johnston*, 1941, 61 S.Ct. 574, 312 U.S. 275, 85 L.Ed. 830.

Changes were made in phraseology.

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

(June 25, 1948, ch. 646, 62 Stat. 965; Pub. L. 89–711, § 1, Nov. 2, 1966, 80 Stat. 1104; Pub. L. 104–132, title I, §§ 101, 106, Apr. 24, 1996, 110 Stat. 1217, 1220.)

HISTORICAL AND REVISION NOTES

This section makes no material change in existing practice. Notwithstanding the opportunity open to litigants to abuse the writ, the courts have consistently refused to entertain successive ''nuisance'' applications for habeas corpus. It is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Hatton Sumners of the Committee on the Judiciary and referred to that Committee.

The practice of suing out successive, repetitious, and unfounded writs of habeas corpus imposes an unnecessary burden on the courts. See *Dorsey v. Gill*, 1945, 148 F.2d 857, 862, in which Miller, J., notes that ''petitions for the writ are used not only as they should be to protect unfortunate persons against miscarriages of justice, but also as a device for harassing court, custodial, and enforcement officers with a multiplicity of repetitious, meritless requests for relief. The most extreme example is that of a person who, between July 1, 1939, and April 1944 presented in the District Court 50 petitions for writs of habeas corpus; another person has presented 27 petitions; a third, 24; a fourth, 22; a fifth, 20. One hundred nineteen persons have presented 597 petitions—an average of 5.''

SENATE REVISION AMENDMENTS

Section amended to modify original language which denied Federal judges power to entertain application for writ where legality of detention had been determined on prior application and later application presented no new grounds, and to omit reference to rehearing in section catch line and original provision authorizing hearing judge to grant rehearing. 80th Congress, Senate Report No. 1559, Amendment No. 45.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, § 106(a), substituted '', except as provided in section 2255.'' for ''and the petition presents no new ground not heretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry.''

Subsec. (b). Pub. L. 104–132, § 106(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''When after an evidentiary hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law, a person in custody pursuant to the judgment of a State court has been denied by a court of the United States or a justice or judge of the United States release from custody or other remedy on an application for a writ of habeas corpus, a subsequent application for a writ of habeas corpus in behalf of such person need not be entertained by a court of the United States or a justice or judge of the United States unless the application alleges and is predicated on a factual or other ground not adjudicated on the hearing of the earlier application for the writ, and unless the court, justice, or judge is satisfied that the applicant has not on the earlier application deliberately withheld the newly asserted ground or otherwise abused the writ.''

Subsec. (d). Pub. L. 104–132, § 101, added subsec. (d).

1966—Pub. L. 89–711 designated existing provisions as subsec. (a), struck out provision making the subsection's terms applicable to applications seeking in-

quiry into detention of persons detained pursuant to judgments of State courts, and added subsecs. (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2255, 2262, 2266 of this title.

§ 2245. Certificate of trial judge admissible in evidence

On the hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgment the certificate of the judge who presided at the trial resulting in the judgment, setting forth the facts occurring at the trial, shall be admissible in evidence. Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

This section makes no substantive change in existing law. It is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Sumners of the House Committee on the Judiciary. It clarifies existing law and promotes uniform procedure.

§ 2246. Evidence; depositions; affidavits

On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

This section is derived from H.R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Sumners of the House Committee on the Judiciary. It clarifies existing practice without substantial change.

§ 2247. Documentary evidence

On application for a writ of habeas corpus documentary evidence, transcripts of proceedings upon arraignment, plea and sentence and a transcript of the oral testimony introduced on any previous similar application by or in behalf of the same petitioner, shall be admissible in evidence.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. It is declaratory of existing law and practice.

§ 2248. Return or answer; conclusiveness

The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. At common law the return was conclusive and could not be controverted but it is now almost universally held that the return is not conclusive of the facts alleged therein. 39 C.J.S. pp. 664–666, §§ 98, 99.

§ 2249. Certified copies of indictment, plea and judgment; duty of respondent

On application for a writ of habeas corpus to inquire into the detention of any person pursuant to a judgment of a court of the United States, the respondent shall promptly file with the court certified copies of the indictment, plea of petitioner and the judgment, or such of them as may be material to the questions raised, if the petitioner fails to attach them to his petition, and same shall be attached to the return to the writ, or to the answer to the order to show cause.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. It conforms to the prevailing practice in habeas corpus proceedings.

§ 2250. Indigent petitioner entitled to documents without cost

If on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application in forma pauperis, the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Derived from H.R. 4232, Seventy-ninth Congress, first session. It conforms to the prevailing practice.

§ 2251. Stay of State court proceedings

A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment of discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void. If no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

(June 25, 1948, ch. 646, 62 Stat. 966.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 465 (R.S. § 766; Mar. 3, 1893, ch. 226, 27 Stat. 751; Feb. 13, 1925, ch. 229, § 8(c), 43 Stat. 940; June 19, 1934, ch. 673, 48 Stat. 1177).

Provisions relating to proceedings pending in 1934 were deleted as obsolete.

A provision requiring an appeal to be taken within 3 months was omitted as covered by sections 2101 and 2107 of this title.

Changes were made in phraseology.

§ 2252. Notice

Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of State

officers or by virtue of State laws notice shall be served on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct.

(June 25, 1948, ch. 646, 62 Stat. 967.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 462 (R.S. § 762).

Section 462 of title 28, U.S.C., 1940 ed., was limited to alien prisoners described in section 453 of title 28, U.S.C., 1940 ed. The revised section extends to all cases of all prisoners under State custody or authority, leaving it to the justice or judge to prescribe the notice to State officers, to specify the officer served, and to satisfy himself that such notice has been given.

Provision for making due proof of such service was omitted as unnecessary. The sheriff's or marshal's return is sufficient.

Changes were made in phraseology.

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

(June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, § 113, 63 Stat. 105; Oct. 31, 1951, ch. 655, § 52, 65 Stat. 727; Pub. L. 104–132, title I, § 102, Apr. 24, 1996, 110 Stat. 1217.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 463(a) and 466 (Mar. 10, 1908, ch. 76, 36 Stat. 40; Feb. 13, 1925, ch. 229, §§ 6, 13, 43 Stat. 940, 942; June 29, 1938, ch. 806, 52 Stat. 1232).

This section consolidates paragraph (a) of section 463, and section 466 of title 28, U.S.C., 1940 ed.

The last two sentences of section 463(a) of title 28, U.S.C., 1940 ed., were omitted. They were repeated in section 452 of title 28, U.S.C., 1940 ed. (See reviser's note under section 2241 of this title.)

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in the second paragraph of section 2253 of title 28.

AMENDMENTS

1996—Pub. L. 104–132 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

''In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

''There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

''An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.''

1951—Act Oct. 31, 1951, substituted ''to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his'' for ''of removal issued pursuant to section 3042 of Title 18 or the'' in second par.

1949—Act May 24, 1949, substituted ''3042'' for ''3041'' in second par.

FEDERAL RULES OF CRIMINAL PROCEDURE

Commitment to another district; removal, see Rule 40, Title 18, Appendix, Crimes and Criminal Procedure.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

(June 25, 1948, ch. 646, 62 Stat. 967; Pub. L. 89–711, § 2, Nov. 2, 1966, 80 Stat. 1105; Pub. L. 104–132, title I, § 104, Apr. 24, 1996, 110 Stat. 1218.)

HISTORICAL AND REVISION NOTES

This new section is declaratory of existing law as affirmed by the Supreme Court. (See Ex parte Hawk, 1944, 64 S. Ct. 448, 321, U.S. 114, 88L. Ed. 572.)

SENATE REVISION AMENDMENTS

Senate amendment to this section, Senate Report No. 1559, amendment No. 47, has three declared purposes, set forth as follows:

"The first is to eliminate from the prohibition of the section applications in behalf of prisoners in custody under authority of a State officer but whose custody has not been directed by the judgment of a State court. If the section were applied to applications by persons detained solely under authority of a State officer it would unduly hamper Federal courts in the protection of Federal officers prosecuted for acts committed in the course of official duty.

"The second purpose is to eliminate, as a ground of Federal jurisdiction to review by habeas corpus judgments of State courts, the proposition that the State court has denied a prisoner a 'fair adjudication of the legality of his detention under the Constitution and laws of the United States.' The Judicial Conference believes that this would be an undesirable ground for Federal jurisdiction in addition to exhaustion of State remedies or lack of adequate remedy in the State courts because it would permit proceedings in the Federal court on this ground before the petitioner had exhausted his State remedies. This ground would, of course, always be open to a petitioner to assert in the Federal court after he had exhausted his State remedies or if he had no adequate State remedy.

"The third purpose is to substitute detailed and specific language for the phrase 'no adequate remedy available.' That phrase is not sufficiently specific and precise, and its meaning should, therefore, be spelled out in more detail in the section as is done by the amendment."

REFERENCES IN TEXT

Section 408 of the Controlled Substances Act, referred to in subsec. (h), is classified to section 848 of Title 21, Food and Drugs.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–132, § 104(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner."

Subsec. (d). Pub. L. 104–132, § 104(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–132, § 104(4), amended subsec. (e) generally, substituting present provisions for provisions which stated that presumption of correctness existed unless applicant were to establish or it otherwise appeared or respondent were to admit that any of several enumerated factors applied to invalidate State determination or else that factual determination by State court was clearly erroneous.

Pub. L. 104–132, § 104(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 104–132, § 104(2), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

Subsecs. (h), (i). Pub. L. 104–132, § 104(5), added subsecs. (h) and (i).

1966—Pub. L. 89–711 substituted ''Federal courts'' for ''State Courts'' in section catchline, added subsec. (a), designated existing paragraphs as subsecs. (b) and (c), and added subsecs. (d) to (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2244, 2261, 2262, 2263, 2264, 2266 of this title; title 18 section 3006A; title 21 section 848.

APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

Pub. L. 94–426, § 1, Sept. 28, 1976, 90 Stat. 1334, provided: ''That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94–349), are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.''

POSTPONEMENT OF EFFECTIVE DATE OF PROPOSED RULES GOVERNING PROCEEDINGS UNDER SECTIONS 2254 AND 2255 OF THIS TITLE

Rules and forms governing proceedings under sections 2254 and 2255 of this title proposed by Supreme Court order of Apr. 26, 1976, effective 30 days after adjournment sine die of 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier, see section 2 of Pub. L. 94–349, set out as a note under section 2074 of this title.

RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS

(Effective February 1, 1977, as amended to January 26, 1998)

Rule
1. Scope of rules.
2. Petition.
3. Filing petition.
4. Preliminary consideration by judge.
5. Answer; contents.
6. Discovery.
7. Expansion of record.
8. Evidentiary hearing.
9. Delayed or successive petitions.
10. Powers of magistrates.
11. Federal Rules of Civil Procedure; extent of applicability.

APPENDIX OF FORMS

Model form for use in applications for habeas corpus under 28 U.S.C. § 2254.

Model form for use in 28 U.S.C. § 2254 cases involving a Rule 9 issue.

EFFECTIVE DATE OF RULES; EFFECTIVE DATE OF 1975 AMENDMENT

Rules governing Section 2254 cases, and the amendments thereto by Pub. L. 94–426, Sept. 28, 1976, 90 Stat. 1334, effective with respect to petitions under section 2254 of this title and motions under section 2255 of this title filed on or after Feb. 1, 1977, see section 1 of Pub. L. 94–426, set out as a note above.

Rule 1. Scope of Rules

(a) APPLICABLE TO CASES INVOLVING CUSTODY PURSUANT TO A JUDGMENT OF A STATE COURT. These rules govern the procedure in the United States district courts on applications under 28 U.S.C. § 2254:

(1) by a person in custody pursuant to a judgment of a state court, for a determination that such custody is in violation of the Constitution, laws, or treaties of the United States; and

(2) by a person in custody pursuant to a judgment of either a state or a federal court, who makes application for a determination that custody to which he may be subject in the future under a judgment of a state court will be in violation of the Constitution, laws, or treaties of the United States.

(b) OTHER SITUATIONS. In applications for habeas corpus in cases not covered by subdivision (a), these rules may be applied at the discretion of the United States district court.

ADVISORY COMMITTEE NOTE

Rule 1 provides that the habeas corpus rules are applicable to petitions by persons in custody pursuant to a judgment of a state court. See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Whether the rules ought to apply to other situations (*e.g.*, person in active military service, *Glazier v. Hackel*, 440 F.2d 592 (9th Cir. 1971); or a reservist called to active duty but not reported, *Hammond v. Lenfest*, 398 F.2d 705 (2d Cir. 1968)) is left to the discretion of the court.

The basic scope of habeas corpus is prescribed by statute. 28 U.S.C. § 2241(c) provides that the ''writ of habeas corpus shall not extend to a prisoner unless * * * (h)e is *in custody* in violation of the Constitution.'' 28 U.S.C. § 2254 deals specifically with state custody, providing that habeas corpus shall apply only ''in behalf of a person in custody pursuant to a judgment of a state court * * *.''

In *Preiser v. Rodriguez, supra*, the court said: ''It is clear . . . that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.'' 411 U.S. at 484.

Initially the Supreme Court held that habeas corpus was appropriate only in those situations in which petitioner's claim would, if upheld, result in an immediate release from a present custody. *McNally v. Hill*, 293 U.S. 131 (1934). This was changed in *Peyton v. Rowe*, 391 U.S. 54 (1968), in which the court held that habeas corpus was a proper way to attack a consecutive sentence to be served in the future, expressing the view that consecutive sentences resulted in present custody under both judgments, not merely the one imposing the first sentence. This view was expanded in *Carafas v. LaVallee*, 391 U.S. 234 (1968), to recognize the propriety of habeas corpus in a case in which petitioner was in custody when the petition had been originally filed but had since been unconditionally released from custody.

See also *Preiser v. Rodriguez*, 411 U.S. at 486 et seq.

Since *Carafas*, custody has been construed more liberally by the courts so as to make a § 2255 motion or habeas corpus petition proper in more situations. ''In custody'' now includes a person who is: on parole, *Jones v. Cunningham*, 371 U.S. 236 (1963); at large on his own recognizance but subject to several conditions pending execution of his sentence, *Hensley v. Municipal Court*, 411 U.S. 345 (1973); or released on bail after conviction pending final disposition of his case, *Lefkowitz v. Newsome*, 95 S.Ct. 886 (1975). See also *United States v. Re*, 372 F.2d 641 (2d Cir.), cert. denied, 388 U.S. 912 (1967) (on probation); *Walker v. North Carolina*, 262 F.Supp. 102 (W.D.N.C. 1966), aff'd per curiam, 372 F.2d 129 (4th Cir.), cert. denied, 388 U.S. 917 (1967) (recipient of a conditionally suspended sentence); *Burris v. Ryan*, 397 F.2d 553 (7th Cir. 1968); *Marden v. Purdy*, 409 F.2d 784 (5th Cir. 1969) (free on bail); *United States ex rel. Smith v. Dibella*, 314 F.Supp. 446 (D.Conn. 1970) (release on own recognizance); *Choung v. California*, 320 F.Supp. 625 (E.D.Cal.

1970) (federal stay of state court sentence); *United States ex rel. Meadows v. New York*, 426 F.2d 1176 (2d Cir. 1970), cert. denied, 401 U.S. 941 (1971) (subject to parole detainer warrant); *Capler v. City of Greenville*, 422 F.2d 299 (5th Cir. 1970) (released on appeal bond); *Glover v. North Carolina*, 301 F.Supp. 364 (E.D.N.C. 1969) (sentence served, but as convicted felon disqualified from engaging in several activities).

The courts are not unanimous in dealing with the above situations, and the boundaries of custody remain somewhat unclear. In *Morgan v. Thomas*, 321 F.Supp. 565 (S.D.Miss. 1970), the court noted:

> It is axiomatic that actual physical custody or restraint is not required to confer habeas jurisdiction. Rather, the term is synonymous with restraint of liberty. The real question is how much restraint of one's liberty is necessary before the right to apply for the writ comes into play. * * *
>
> It is clear however, that something more than moral restraint is necessary to make a case for habeas corpus.

321 F.Supp. at 573

Hammond v. Lenfest, 398 F.2d 705 (2d Cir. 1968), reviewed prior ''custody'' doctrine and reaffirmed a generalized flexible approach to the issue. In speaking about 28 U.S.C. § 2241, the first section in the habeas corpus statutes, the court said:

> While the language of the Act indicates that a writ of habeas corpus is appropriate only when a petitioner is ''in custody,'' * * * the Act ''does not attempt to mark the boundaries of 'custody' nor in any way other than by use of that word attempt to limit the situations in which the writ can be used.'' * * * And, recent Supreme Court decisions have made clear that ''[i]t [habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.'' * * * ''[B]esides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.''

398 F.2d at 710–711

There is, as of now, no final list of the situations which are appropriate for habeas corpus relief. It is not the intent of these rules or notes to define or limit ''custody.''

It is, however, the view of the Advisory Committee that claims of improper conditions of custody or confinement (not related to the propriety of the custody itself), can better be handled by other means such as 42 U.S.C. § 1983 and other related statutes. In *Wilwording v. Swanson*, 404 U.S. 249 (1971), the court treated a habeas corpus petition by a state prisoner challenging the conditions of confinement as a claim for relief under 42 U.S.C. § 1983, the Civil Rights Act. Compare *Johnson v. Avery*, 393 U.S. 483 (1969).

The distinction between duration of confinement and conditions of confinement may be difficult to draw. Compare *Preiser v. Rodriguez*, 411 U.S. 475 (1973), with *Clutchette v. Procunier*, 497 F.2d 809 (9th Cir. 1974), modified, 510 F.2d 613 (1975).

Rule 2. Petition

(a) APPLICANTS IN PRESENT CUSTODY. If the applicant is presently in custody pursuant to the state judgment in question, the application shall be in the form of a petition for a writ of habeas corpus in which the state officer having custody of the applicant shall be named as respondent.

(b) APPLICANTS SUBJECT TO FUTURE CUSTODY. If the applicant is not presently in custody pursuant to the state judgment against which he seeks relief but may be subject to such custody in the future, the application shall be in the form of a petition for a writ of habeas corpus with an added prayer for appropriate relief against the judgment which he seeks to attack. In such a case the officer having present custody of the applicant and the attorney general of the state in which the judgment which he seeks to attack was entered shall each be named as respondents.

(c) FORM OF PETITION. The petition shall be in substantially the form annexed to these rules, except that any district court may by local rule require that petitions filed with it shall be in a form prescribed by the local rule. Blank petitions in the prescribed form shall be made available without charge by the clerk of the district court to applicants upon their request. It shall specify all the grounds for relief which are available to the petitioner and of which he has or by the exercise of reasonable diligence should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The petition shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the petitioner.

(d) PETITION TO BE DIRECTED TO JUDGMENTS OF ONE COURT ONLY. A petition shall be limited to the assertion of a claim for relief against the judgment or judgments of a single state court (sitting in a county or other appropriate political subdivision). If a petitioner desires to attack the validity of the judgments of two or more state courts under which he is in custody or may be subject to future custody, as the case may be, he shall do so by separate petitions.

(e) RETURN OF INSUFFICIENT PETITION. If a petition received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the petitioner, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the petition.

(As amended Pub. L. 94–426, § 2(1), (2), Sept. 28, 1976, 90 Stat. 1334; Apr. 28, 1982, eff. Aug. 1, 1982.)

ADVISORY COMMITTEE NOTE

Rule 2 describes the requirements of the actual petition, including matters relating to its form, contents, scope, and sufficiency. The rule provides more specific guidance for a petitioner and the court than 28 U.S.C. § 2242, after which it is patterned.

Subdivision (a) provides that an applicant challenging a state judgment, pursuant to which he is presently in custody, must make his application in the form of a petition for a writ of habeas corpus. It also requires that the state officer having custody of the applicant be named as respondent. This is consistent with 28 U.S.C. § 2242, which says in part, ''[Application for a writ of habeas corpus] shall allege * * * the name of the person who has custody over [the applicant] * * *.'' The proper person to be served in the usual case is either the warden of the institution in which the petitioner is incarcerated (*Sanders v. Bennett*, 148 F.2d 19 (D.C.Cir. 1945)) or the chief officer in charge of state penal institutions.

Subdivision (b) prescribes the procedure to be used for a petition challenging a judgment under which the petitioner will be subject to custody in the future. In this event the relief sought will usually not be released from present custody, but rather for a declaration that

the judgment being attacked is invalid. Subdivision (b) thus provides for a prayer for ''appropriate relief.'' It is also provided that the attorney general of the state of the judgment as well as the state officer having actual custody of the petitioner shall be named as respondents. This is appropriate because no one will have custody of the petitioner in the state of the judgment being attacked, and the habeas corpus action will usually be defended by the attorney general. The attorney general is in the best position to inform the court as to who the proper party respondent is. If it is not the attorney general, he can move for a substitution of party.

Since the concept of ''custody'' requisite to the consideration of a petition for habeas corpus has been enlarged significantly in recent years, it may be worthwhile to spell out the various situations which might arise and who should be named as respondent(s) for each situation.

(1) The applicant is in jail, prison, or other actual physical restraint due to the state action he is attacking. The named respondent shall be the state officer who has official custody of the petitioner (for example, the warden of the prison).

(2) The applicant is on probation or parole due to the state judgment he is attacking. The named respondents shall be the particular probation or parole officer responsible for supervising the applicant, and the official in charge of the parole or probation agency, or the state correctional agency, as appropriate.

(3) The applicant is in custody in any other manner differing from (1) and (2) above due to the effects of the state action he seeks relief from. The named respondent should be the attorney general of the state wherein such action was taken.

(4) The applicant is in jail, prison, or other actual physical restraint but is attacking a state action which will cause him to be kept in custody in the future rather than the government action under which he is presently confined. The named respondents shall be the state or federal officer who has official custody of him at the time the petition is filed and the attorney general of the state whose action subjects the petitioner to future custody.

(5) The applicant is in custody, although not physically restrained, and is attacking a state action which will result in his future custody rather than the government action out of which his present custody arises. The named respondent(s) shall be the attorney general of the state whose action subjects the petitioner to future custody, as well as the government officer who has present official custody of the petitioner if there is such an officer and his identity is ascertainable.

In any of the above situations the judge may require or allow the petitioner to join an additional or different party as a respondent if to do so would serve the ends of justice.

As seen in rule 1 and paragraphs (4) and (5) above, these rules contemplate that a petitioner currently in federal custody will be permitted to apply for habeas relief from a state restraint which is to go into effect in the future. There has been disagreement in the courts as to whether they have jurisdiction of the habeas application under these circumstances (compare *Piper v. United States*, 306 F.Supp. 1259 (D.Conn. 1969), with *United States ex rel. Meadows v. New York*, 426 F.2d 1176 (2d Cir. 1970), cert. denied, 401 U.S. 941 (1971)). This rule seeks to make clear that they do have such jurisdiction.

Subdivision (c) provides that unless a district court requires otherwise by local rule, the petition must be in the form annexed to these rules. Having a standard prescribed form has several advantages. In the past, petitions have frequently contained mere conclusions of law, unsupported by any facts. Since it is the relationship of the facts to the claim asserted that is important, these petitions were obviously deficient. In addition, lengthy and often illegible petitions, arranged in no logical order, were submitted to judges who have had to spend hours deciphering them. For example, in *Passic v. Michigan*, 98 F.Supp. 1015, 1016 (E.D.Mich. 1951), the court dismissed a petition for habeas corpus, describing it as ''two thousand pages of irrational, prolix and redundant pleadings * * *.''

Administrative convenience, of benefit to both the court and the petitioner, results from the use of a prescribed form. Judge Hubert L. Will briefly described the experience with the use of a standard form in the Northern District of Illinois:

> Our own experience, though somewhat limited, has been quite satisfactory. * * *
>
> In addition, [petitions] almost always contain the necessary basic information * * *. Very rarely do we get the kind of hybrid federal-state habeas corpus petition with civil rights allegations thrown in which were not uncommon in the past. * * * [W]hen a real constitutional issue is raised it is quickly apparent * * *.
>
> 33 F.R.D. 363, 384

Approximately 65 to 70% of all districts have adopted forms or local rules which require answers to essentially the same questions as contained in the standard form annexed to these rules. All courts using forms have indicated the petitions are time-saving and more legible. The form is particularly helpful in getting information about whether there has been an exhaustion of state remedies or, at least, where that information can be obtained.

The requirement of a standard form benefits the petitioner as well. His assertions are more readily apparent, and a meritorious claim is more likely to be properly raised and supported. The inclusion in the form of the ten most frequently raised grounds in habeas corpus petitions is intended to encourage the applicant to raise all his asserted grounds in one petition. It may better enable him to recognize if an issue he seeks to raise is cognizable under habeas corpus and hopefully inform him of those issues as to which he must first exhaust his state remedies.

Some commentators have suggested that the use of forms is of little help because the questions usually are too general, amounting to little more than a restatement of the statute. They contend the blanks permit a prisoner to fill in the same ambiguous answers he would have offered without the aid of a form. See Comment, Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1177–1178 (1970). Certainly, as long as the statute requires factual pleading, the adequacy of a petition will continue to be affected largely by the petitioner's intelligence and the legal advice available to him. On balance, however, the use of forms has contributed enough to warrant mandating their use.

Giving the petitioner a list of often-raised grounds may, it is said, encourage perjury. See Comment, Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1178 (1970). Most inmates are aware of, or have access to, some common constitutional grounds for relief. Thus, the risk of perjury is not likely to be substantially increased and the benefit of the list for some inmates seems sufficient to outweigh any slight risk that perjury will increase. There is a penalty for perjury, and this would seem the most appropriate way to try to discourage it.

Legal assistance is increasingly available to inmates either through paraprofessional programs involving law students or special programs staffed by members of the bar. See Jacob and Sharma, Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process, 18 Kan.L.Rev. 493 (1970). In these situations, the prescribed form can be filled out more competently, and it does serve to ensure a degree of uniformity in the manner in which habeas corpus claims are presented.

Subdivision (c) directs the clerk of the district court to make available to applicants upon request, without charge, blank petitions in the prescribed form.

Subdivision (c) also requires that all available grounds for relief be presented in the petition, including those grounds of which, by the exercise of reason-

able diligence, the petitioner should be aware. This is reinforced by rule 9(b), which allows dismissal of a second petition which fails to allege new grounds or, if new grounds are alleged, the judge finds an inexcusable failure to assert the ground in the prior petition.

Both subdivision (c) and the annexed form require a legibly handwritten or typewritten petition. As required by 28 U.S.C. § 2242, the petition must be signed and sworn to by the petitioner (or someone acting in his behalf).

Subdivision (d) provides that a single petition may assert a claim only against the judgment or judgments of a single state court (*i.e.*, a court of the same county or judicial district or circuit). This permits, but does not require, an attack in a single petition on judgments based upon separate indictments or on separate counts even though sentences were imposed on separate days by the same court. A claim against a judgment of a court of a different political subdivision must be raised by means of a separate petition.

Subdivision (e) allows the clerk to return an insufficient petition to the petitioner, and it must be returned if the clerk is so directed by a judge of the court. Any failure to comply with the requirements of rule 2 or 3 is grounds for insufficiency. In situations where there may be arguable noncompliance with another rule, such as rule 9, the judge, not the clerk, must make the decision. If the petition is returned it must be accompanied by a statement of the reason for its return. No petitioner should be left to speculate as to why or in what manner his petition failed to conform to these rules.

Subdivision (e) also provides that the clerk shall retain one copy of the insufficient petition. If the prisoner files another petition, the clerk will be in a better position to determine the sufficiency of the new petition. If the new petition is insufficient, comparison with the prior petition may indicate whether the prisoner has failed to understand the clerk's prior explanation for its insufficiency, so that the clerk can make another, hopefully successful, attempt at transmitting this information to the petitioner. If the petitioner insists that the original petition was in compliance with the rules, a copy of the original petition is available for the consideration of the judge. It is probably better practice to make a photocopy of a petition which can be corrected by the petitioner, thus saving the petitioner the task of completing an additional copy.

1982 AMENDMENT

Subdivision (c). The amendment takes into account 28 U.S.C. § 1746, enacted after adoption of the § 2254 rules. Section 1746 provides that in lieu of an affidavit an unsworn statement may be given under penalty of perjury in substantially the following form if executed within the United States, its territories, possessions or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'' The statute is ''intended to encompass prisoner litigation,'' and the statutory alternative is especially appropriate in such cases because a notary might not be readily available. *Carter v. Clark*, 616 F.2d 228 (5th Cir. 1980). The § 2254 forms have been revised accordingly.

AMENDMENTS

1976—Subd. (c). Pub. L. 94–426, § 2(1), inserted ''substantially'' after ''The petition shall be in'', and struck out requirement that the petition follow the prescribed form.

Subd. (e). Pub. L. 94–426, § 2(2), inserted ''substantially'' after ''district court does not'', and struck out provision which permitted the clerk to return a petition for noncompliance without a judge so directing.

Rule 3. Filing Petition

(a) PLACE OF FILING; COPIES; FILING FEE. A petition shall be filed in the office of the clerk of the district court. It shall be accompanied by two conformed copies thereof. It shall also be accompanied by the filing fee prescribed by law unless the petitioner applies for and is given leave to prosecute the petition in forma pauperis. If the petitioner desires to prosecute the petition in forma pauperis, he shall file the affidavit required by 28 U.S.C. § 1915. In all such cases the petition shall also be accompanied by a certificate of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution, which certificate may be considered by the court in acting upon his application for leave to proceed in forma pauperis.

(b) FILING AND SERVICE. Upon receipt of the petition and the filing fee, or an order granting leave to the petitioner to proceed in forma pauperis, and having ascertained that the petition appears on its face to comply with rules 2 and 3, the clerk of the district court shall file the petition and enter it on the docket in his office. The filing of the petition shall not require the respondent to answer the petition or otherwise move with respect to it unless so ordered by the court.

ADVISORY COMMITTEE NOTE

Rule 3 sets out the procedures to be followed by the petitioner and the court in filing the petition. Some of its provisions are currently dealt with by local rule or practice, while others are innovations. Subdivision (a) specifies the petitioner's responsibilities. It requires that the petition, which must be accompanied by two conformed copies thereof, be filed in the office of the clerk of the district court. The petition must be accompanied by the filing fee prescribed by law (presently $5; see 28 U.S.C. § 1914(a)), unless leave to prosecute the petition in forma pauperis is applied for and granted. In the event the petitioner desires to prosecute the petition in forma pauperis, he must file the affidavit required by 28 U.S.C. § 1915, together with a certificate showing the amount of funds in his institutional account.

Requiring that the petition be filed in the office of the clerk of the district court provides an efficient and uniform system of filing habeas corpus petitions.

Subdivision (b) requires the clerk to file the petition. If the filing fee accompanies the petition, it may be filed immediately, and, if not, it is contemplated that prompt attention will be given to the request to proceed in forma pauperis. The court may delegate the issuance of the order to the clerk in those cases in which it is clear from the petition that there is full compliance with the requirements to proceed in forma pauperis.

Requiring the copies of the petition to be filed with the clerk will have an impact not only upon administrative matters, but upon more basic problems as well. In districts with more than one judge, a petitioner under present circumstances may send a petition to more than one judge. If no central filing system exists for each district, two judges may independently take different action on the same petition. Even if the action taken is consistent, there may be needless duplication of effort.

The requirement of an additional two copies of the form of the petition is a current practice in many courts. An efficient filing system requires one copy for use by the court (central file), one for the respondent (under 3(b), the respondent receives a copy of the petition whether an answer is required or not), and one for petitioner's counsel, if appointed. Since rule 2 provides that blank copies of the petition in the prescribed form are to be furnished to the applicant free of charge,

there should be no undue burden created by this requirement.

Attached to copies of the petition supplied in accordance with rule 2 is an affidavit form for the use of petitioners desiring to proceed in forma pauperis. The form requires information concerning the petitioner's financial resources.

In forma pauperis cases, the petition must also be accompanied by a certificate indicating the amount of funds in the petitioner's institution account. Usually the certificate will be from the warden. If the petitioner is on probation or parole, the court might want to require a certificate from the supervising officer. Petitions by persons on probation or parole are not numerous enough, however, to justify making special provision for this situation in the text of the rule.

The certificate will verify the amount of funds credited to the petitioner in an institution account. The district court may by local rule require that any amount credited to the petitioner, in excess of a stated maximum, must be used for the payment of the filing fee. Since prosecuting an action in forma pauperis is a privilege (see *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965)), it is not to be granted when the petitioner has sufficient resources.

Subdivision (b) details the clerk's duties with regard to filing the petition. If the petition does not appear on its face to comply with the requirements of rules 2 and 3, it may be returned in accordance with rule 2(e). If it appears to comply, it must be filed and entered on the docket in the clerk's office. However, under this subdivision the respondent is not required to answer or otherwise move with respect to the petition unless so ordered by the court.

Rule 4. Preliminary Consideration by Judge

The original petition shall be presented promptly to a judge of the district court in accordance with the procedure of the court for the assignment of its business. The petition shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified. Otherwise the judge shall order the respondent to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate. In every case a copy of the petition and any order shall be served by certified mail on the respondent and the attorney general of the state involved.

Advisory Committee Note

Rule 4 outlines the options available to the court after the petition is properly filed. The petition must be promptly presented to and examined by the judge to whom it is assigned. If it plainly appears from the face of the petition and any exhibits attached thereto that the petitioner is not entitled to relief in the district court, the judge must enter an order summarily dismissing the petition and cause the petitioner to be notified. If summary dismissal is not ordered, the judge must order the respondent to file an answer or to otherwise plead to the petition within a time period to be fixed in the order.

28 U.S.C. § 2243 requires that the writ shall be awarded, or an order to show cause issued, ''unless it appears from the application that the applicant or person detained is not entitled thereto.'' Such consideration may properly encompass any exhibits attached to the petition, including, but not limited to, transcripts, sentencing records, and copies of state court opinions. The judge may order any of these items for his consideration if they are not yet included with the petition. See 28 U.S.C. § 753(f) which authorizes payment for transcripts in habeas corpus cases.

It has been suggested that an answer should be required in every habeas proceeding, taking into account the usual petitioner's lack of legal expertise and the important functions served by the return. See Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1178 (1970). However, under § 2243 it is the duty of the court to screen out frivolous applications and eliminate the burden that would be placed on the respondent by ordering an unnecessary answer. *Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970). In addition, ''notice'' pleading is not sufficient, for the petition is expected to state facts that point to a ''real possibility of constitutional error.'' See *Aubut v. State of Maine*, 431 F.2d 688, 689 (1st Cir. 1970).

In the event an answer is ordered under rule 4, the court is accorded greater flexibility than under § 2243 in determining within what time period an answer must be made. Under § 2243, the respondent must make a return within three days after being so ordered, with additional time of up to forty days allowed under the Federal Rules of Civil Procedure, Rule 81(a)(2), for good cause. In view of the widespread state of work overload in prosecutors' offices (see, *e.g.*, *Allen*, 424 F.2d at 141), additional time is granted in some jurisdictions as a matter of course. Rule 4, which contains no fixed time requirement, gives the court the discretion to take into account various factors such as the respondent's workload and the availability of transcripts before determining a time within which an answer must be made.

Rule 4 authorizes the judge to ''take such other action as the judge deems appropriate.'' This is designed to afford the judge flexibility in a case where either dismissal or an order to answer may be inappropriate. For example, the judge may want to authorize the respondent to make a motion to dismiss based upon information furnished by respondent, which may show that petitioner's claims have already been decided on the merits in a federal court; that petitioner has failed to exhaust state remedies; that the petitioner is not in custody within the meaning of 28 U.S.C. § 2254; or that a decision in the matter is pending in state court. In these situations, a dismissal may be called for on procedural grounds, which may avoid burdening the respondent with the necessity of filing an answer on the substantive merits of the petition. In other situations, the judge may want to consider a motion from respondent to make the petition more certain. Or the judge may want to dismiss some allegations in the petition, requiring the respondent to answer only those claims which appear to have some arguable merit.

Rule 4 requires that a copy of the petition and any order be served by certified mail on the respondent and the attorney general of the state involved. See 28 U.S.C. § 2252. Presently, the respondent often does not receive a copy of the petition unless the court directs an answer under 28 U.S.C. § 2243. Although the attorney general is served, he is not required to answer if it is more appropriate for some other agency to do so. Although the rule does not specifically so provide, it is assumed that copies of the court orders to respondent will be mailed to petitioner by the court.

Rule 5. Answer; Contents

The answer shall respond to the allegations of the petition. In addition it shall state whether the petitioner has exhausted his state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the state and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceeding. The answer shall indicate what transcripts (of pretrial, trial, sentencing, and post-conviction proceedings) are available, when they can be furnished, and also what proceedings have been recorded and not

transcribed. There shall be attached to the answer such portions of the transcripts as the answering party deems relevant. The court on its own motion or upon request of the petitioner may order that further portions of the existing transcripts be furnished or that certain portions of the non-transcribed proceedings be transcribed and furnished. If a transcript is neither available nor procurable, a narrative summary of the evidence may be submitted. If the petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, a copy of the petitioner's brief on appeal and of the opinion of the appellate court, if any, shall also be filed by the respondent with the answer.

ADVISORY COMMITTEE NOTE

Rule 5 details the contents of the ''answer''. (This is a change in terminology from ''return,'' which is still used below when referring to prior practice.) The answer plays an obviously important rule in a habeas proceeding:

> The return serves several important functions: it permits the court and the parties to uncover quickly the disputed issues; it may reveal to the petitioner's attorney grounds for release that the petitioner did not know; and it may demonstrate that the petitioner's claim is wholly without merit.
>
> Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1083, 1178 (1970).

The answer must respond to the allegations of the petition. While some districts require this by local rule (see, *e.g.*, E.D.N.C.R. 17(B)), under 28 U.S.C. § 2243 little specificity is demanded. As a result, courts occasionally receive answers which contain only a statement certifying the true cause of detention, or a series of delaying motions such as motions to dismiss. The requirement of the proposed rule that the ''answer shall respond to the allegations of the petition'' is intended to ensure that a responsive pleading will be filed and thus the functions of the answer fully served.

The answer must also state whether the petitioner has exhausted his state remedies. This is a prerequisite to eligibility for the writ under 28 U.S.C. § 2254(b) and applies to every ground the petitioner raises. Most form petitions now in use contain questions requiring information relevant to whether the petitioner has exhausted his remedies. However, the exhaustion requirement is often not understood by the unrepresented petitioner. The attorney general has both the legal expertise and access to the record and thus is in a much better position to inform the court on the matter of exhaustion of state remedies. An alleged failure to exhaust state remedies as to any ground in the petition may be raised by a motion by the attorney general, thus avoiding the necessity of a formal answer as to that ground.

The rule requires the answer to indicate what transcripts are available, when they can be furnished, and also what proceedings have been recorded and not transcribed. This will serve to inform the court and petitioner as to what factual allegations can be checked against the actual transcripts. The transcripts include pretrial transcripts relating, for example, to pretrial motions to suppress; transcripts of the trial or guilty plea proceeding; and transcripts of any post-conviction proceedings which may have taken place. The respondent is required to furnish those portions of the transcripts which he believes relevant. The court may order the furnishing of additional portions of the transcripts upon the request of petitioner or upon the court's own motion.

Where transcripts are unavailable, the rule provides that a narrative summary of the evidence may be submitted.

Rule 5 (and the general procedure set up by this entire set of rules) does not contemplate a traverse to the answer, except under special circumstances. See advisory committee note to rule 9. Therefore, the old common law assumption of verity of the allegations of a return until impeached, as codified in 28 U.S.C. § 2248, is no longer applicable. The meaning of the section, with its exception to the assumption ''to the extent that the judge finds from the evidence that they (the allegations) are not true,'' has given attorneys and courts a great deal of difficulty. It seems that when the petition and return pose an issue of fact, no traverse is required; *Stewart v. Overholser*, 186 F.2d 339 (D.C. Cir. 1950).

> We read § 2248 of the Judicial Code as not requiring a traverse when a factual issue has been clearly framed by the petition and the return or answer. This section provides that the allegations of a return or answer to an order to show cause shall be accepted as true if not traversed, except to the extent the judge finds from the evidence that they are not true. This contemplates that where the petition and return or answer do present an issue of fact material to the legality of detention, evidence is required to resolve that issue despite the absence of a traverse. This reference to evidence assumes a hearing on issues raised by the allegations of the petition and the return or answer to the order to show cause.
>
> 186 F.2d at 342, n. 5

In actual practice, the traverse tends to be a mere pro forma refutation of the return, serving little if any expository function. In the interests of a more streamlined and manageable habeas corpus procedure, it is not required except in those instances where it will serve a truly useful purpose. Also, under rule 11 the court is given the discretion to incorporate Federal Rules of Civil Procedure when appropriate, so civil rule 15(a) may be used to allow the petitioner to amend his petition when the court feels this is called for by the contents of the answer.

Rule 5 does not indicate who the answer is to be served upon, but it necessarily implies that it will be mailed to the petitioner (or to his attorney if he has one). The number of copies of the answer required is left to the court's discretion. Although the rule requires only a copy of petitioner's brief on appeal, respondent is free also to file a copy of respondent's brief. In practice, courts have found it helpful to have a copy of respondent's brief.

Rule 6. Discovery

(a) LEAVE OF COURT REQUIRED. A party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g).

(b) REQUESTS FOR DISCOVERY. Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.

(c) EXPENSES. If the respondent is granted leave to take the deposition of the petitioner or any other person the judge may as a condition of taking it direct that the respondent pay the expenses of travel and subsistence and fees of counsel for the petitioner to attend the taking of the deposition.

ADVISORY COMMITTEE NOTE

This rule prescribes the procedures governing discovery in habeas corpus cases. Subdivision (a) provides that any party may utilize the processes of discovery

available under the Federal Rules of Civil Procedure (rules 26–37) if, and to the extent that, the judge allows. It also provides for the appointment of counsel for a petitioner who qualifies for this when counsel is necessary for effective utilization of discovery procedures permitted by the judge.

Subdivision (a) is consistent with *Harris v. Nelson*, 394 U.S. 286 (1969). In that case the court noted,

> [I]t is clear that there was no intention to extend to habeas corpus, as a matter of right, the broad discovery provisions * * * of the new [Federal Rules of Civil Procedure].

394 U.S. at 295

However, citing the lack of methods for securing information in habeas proceedings, the court pointed to an alternative.

> Clearly, in these circumstances * * * the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage. * * * Their authority is expressly confirmed in the All Writs Act, 28 U.S.C. § 1651.

394 U.S. at 299

The court concluded that the issue of discovery in habeas corpus cases could best be dealt with as part of an effort to provide general rules of practice for habeas corpus cases:

> In fact, it is our view that the rulemaking machinery should be invoked to formulate rules of practice with respect to federal habeas corpus and § 2255 proceedings, on a comprehensive basis and not merely one confined to discovery. The problems presented by these proceedings are materially different from those dealt with in the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, and reliance upon usage and the opaque language of Civil Rule 81(a)(2) is transparently inadequate. In our view the results of a meticulous formulation and adoption of special rules for federal habeas corpus and § 2255 proceedings would promise much benefit.

394 U.S. at 301 n. 7

Discovery may, in appropriate cases, aid in developing facts necessary to decide whether to order an evidentiary hearing or to grant the writ following an evidentiary hearing:

> We are aware that confinement sometimes induces fantasy which has its basis in the paranoia of prison rather than in fact. But where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry. Obviously, in exercising this power, the court may utilize familiar procedures, as appropriate, whether these are found in the civil or criminal rules or elsewhere in the ''usages and principles.''

Granting discovery is left to the discretion of the court, discretion to be exercised where there is a showing of good cause why discovery should be allowed. Several commentators have suggested that at least some discovery should be permitted without leave of court. It is argued that the courts will be burdened with weighing the propriety of requests to which the discovered party has no objection. Additionally, the availability of protective orders under Fed.R.Civ.R., Rules 30(b) and 31(d) will provide the necessary safeguards. See Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1186–87 (1970); Civil Discovery in Habeas Corpus, 67 Colum.L.Rev. 1296, 1310 (1967).

Nonetheless, it is felt the requirement of prior court approval of all discovery is necessary to prevent abuse, so this requirement is specifically mandated in the rule.

While requests for discovery in habeas proceedings normally follow the granting of an evidentiary hearing, there may be instances in which discovery would be appropriate beforehand. Such an approach was advocated in *Wagner v. United States*, 418 F.2d 618, 621 (9th Cir. 1969), where the opinion stated the trial court could permit interrogatories, provide for deposing witnesses, ''and take such other prehearing steps as may be appropriate.'' While this was an action under § 2255, the reasoning would apply equally well to petitions by state prisoners. Such pre-hearing discovery may show an evidentiary hearing to be unnecessary, as when there are ''no disputed issues of law or fact.'' 83 Harv. L.Rev. 1038, 1181 (1970). The court in Harris alluded to such a possibility when it said ''the court may * * * authorize such proceedings with respect to development, *before or in conjunction with the hearing* of the facts * * *.'' [emphasis added] 394 U.S. at 300. Such pre-hearing discovery, like all discovery under rule 6, requires leave of court. In addition, the provisions in rule 7 for the use of an expanded record may eliminate much of the need for this type of discovery. While probably not as frequently sought or granted as discovery in conjunction with a hearing, it may nonetheless serve a valuable function.

In order to make pre-hearing discovery meaningful, subdivision (a) provides that the judge should appoint counsel for a petitioner who is without counsel and qualifies for appointment when this is necessary for the proper utilization of discovery procedures. Rule 8 provides for the appointment of counsel at the evidentiary hearing stage (see rule 8(b) and advisory committee note), but this would not assist the petitioner who seeks to utilize discovery to stave off dismissal of his petition (see rule 9 and advisory committee note) or to demonstrate that an evidentiary hearing is necessary. Thus, if the judge grants a petitioner's request for discovery prior to making a decision as to the necessity for an evidentiary hearing, he should determine whether counsel is necessary for the effective utilization of such discovery and, if so, appoint counsel for the petitioner if the petitioner qualifies for such appointment.

This rule contains very little specificity as to what types and methods of discovery should be made available to the parties in a habeas proceeding, or how, once made available, these discovery procedures should be administered. The purpose of this rule is to get some experience in how discovery would work in actual practice by letting district court judges fashion their own rules in the context of individual cases. When the results of such experience are available it would be desirable to consider whether further, more specific codification should take place.

Subdivision (b) provides for judicial consideration of all matters subject to discovery. A statement of the interrogatories, or requests for admission sought to be answered, and a list of any documents sought to be produced, must accompany a request for discovery. This is to advise the judge of the necessity for discovery and enable him to make certain that the inquiry is relevant and appropriately narrow.

Subdivision (c) refers to the situation where the respondent is granted leave to take the deposition of the petitioner or any other person. In such a case the judge may direct the respondent to pay the expenses and fees of counsel for the petitioner to attend the taking of the deposition, as a condition granting the respondent such leave. While the judge is not required to impose this condition subdivision (c) will give the court the means to do so. Such a provision affords some protection to the indigent petitioner who may be prejudiced by his inability to have counsel, often court-appointed, present at the taking of a deposition. It is recognized that under 18 U.S.C. § 3006A(g), court-appointed counsel in a § 2254 proceeding is entitled to receive up to $250 and reimbursement for expenses reasonably incurred. (Compare Fed.R. Crim.P. 15(c).) Typically, however, this does not adequately reimburse counsel if he must attend the taking of depositions or be involved in other pre-hearing proceedings. Subdivision (c) is intended to provide additional funds, if necessary, to be paid by the state government (respondent) to petitioner's counsel.

Although the rule does not specifically so provide, it is assumed that a petitioner who qualifies for the ap-

pointment of counsel under 18 U.S.C. § 3006A(g) and is granted leave to take a deposition will be allowed witness costs. This will include recording and transcription of the witness's statement. Such costs are payable pursuant to 28 U.S.C. § 1825. See Opinion of Comptroller General, February 28, 1974.

Subdivision (c) specifically recognizes the right of the respondent to take the deposition of the petitioner. Although the petitioner could not be called to testify against his will in a criminal trial, it is felt the nature of the habeas proceeding, along with the safeguards accorded by the Fifth Amendment and the presence of counsel, justify this provision. See 83 Harv.L.Rev. 1038, 1183–84 (1970).

Rule 7. Expansion of Record

(a) DIRECTION FOR EXPANSION. If the petition is not dismissed summarily the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the petition.

(b) MATERIALS TO BE ADDED. The expanded record may include, without limitation, letters predating the filing of the petition in the district court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.

(c) SUBMISSION TO OPPOSING PARTY. In any case in which an expanded record is directed, copies of the letters, documents, exhibits, and affidavits proposed to be included shall be submitted to the party against whom they are to be offered, and he shall be afforded an opportunity to admit or deny their correctness.

(d) AUTHENTICATION. The court may require the authentication of any material under subdivision (b) or (c).

ADVISORY COMMITTEE NOTE

This rule provides that the judge may direct that the record be expanded. The purpose is to enable the judge to dispose of some habeas petitions not dismissed on the pleadings, without the time and expense required for an evidentiary hearing. An expanded record may also be helpful when an evidentiary hearing is ordered.

The record may be expanded to include additional material relevant to the merits of the petition. While most petitions are dismissed either summarily or after a response has been made, of those that remain, by far the majority require an evidentiary hearing. In the fiscal year ending June 30, 1970, for example, of 8,423 § 2254 cases terminated, 8,231 required court action. Of these, 7,812 were dismissed before a prehearing conference and 469 merited further court action (*e.g.*, expansion of the record, prehearing conference, or an evidentiary hearing). Of the remaining 469 cases, 403 required an evidentiary hearing, often time-consuming, costly, and, at least occasionally, unnecessary. See Director of the Administrative Office of the United States Courts, Annual Report, 245a–245c (table C4) (1970). In some instances these hearings were necessitated by slight omissions in the state record which might have been cured by the use of an expanded record.

Authorizing expansion of the record will, hopefully, eliminate some unnecessary hearings. The value of this approach was articulated in *Raines v. United States*, 423 F.2d 526, 529–530 (4th Cir. 1970):

> Unless it is clear from the pleadings and the files and records that the prisoner is entitled to no relief, the statute makes a hearing mandatory. We think there is a permissible intermediate step that may avoid the necessity for an expensive and time consuming evidentiary hearing in every Section 2255 case. It may instead be perfectly appropriate, depending upon the nature of the allegations, for the district court to proceed by requiring that the record be expanded to include letters, documentary evidence, and, in an appropriate case, even affidavits. *United States v. Carlino*, 400 F.2d 56 (2nd Cir. 1968); *Mirra v. United States*, 379 F.2d 782 (2nd Cir. 1967); *Accardi v. United States*, 379 F.2d 312 (2nd Cir. 1967). When the issue is one of credibility, resolution on the basis of affidavits can rarely be conclusive, but that is not to say they may not be helpful.

In *Harris v. Nelson*, 394 U.S. 286, 300 (1969), the court said:

> At any time in the proceedings * * * *either on [the court's] own motion* or upon cause shown by the petitioner, it may issue such writs and take or authorize such proceedings * * * *before* or in conjunction with the hearing of the facts * * * [emphasis added]

Subdivision (b) specifies the materials which may be added to the record. These include, without limitation, letters predating the filing of the petition in the district court, documents, exhibits, and answers under oath directed to written interrogatories propounded by the judge. Under this subdivision affidavits may be submitted and considered part of the record. Subdivision (b) is consistent with 28 U.S.C. §§ 2246 and 2247 and the decision in *Raines* with regard to types of material that may be considered upon application for a writ of habeas corpus. See *United States v. Carlino*, 400 F.2d 56, 58 (2d Cir. 1968), and *Machibroda v. United States*, 368 U.S. 487 (1962).

Under subdivision (c) all materials proposed to be included in the record must be submitted to the party against whom they are to be offered.

Under subdivision (d) the judge can require authentication if he believes it desirable to do so.

Rule 8. Evidentiary Hearing

(a) DETERMINATION BY COURT. If the petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the petition as justice shall require.

(b) FUNCTION OF THE MAGISTRATE.

(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the petition, and submit to a judge of the court proposed findings of fact and recommendations for disposition.

(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.

(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.

(c) APPOINTMENT OF COUNSEL; TIME FOR HEARING. If an evidentiary hearing is required the judge shall appoint counsel for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g) and the hearing shall be conducted as promptly as practicable, having re-

gard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the case if the interest of justice so requires.

(As amended Pub. L. 94–426, § 2(5), Sept. 28, 1976, 90 Stat. 1334; Pub. L. 94–577, § 2(a)(1), (b)(1), Oct. 21, 1976, 90 Stat. 2730, 2731.)

ADVISORY COMMITTEE NOTE

This rule outlines the procedure to be followed by the court immediately prior to and after the determination of whether to hold an evidentiary hearing.

The provisions are applicable if the petition has not been dismissed at a previous stage in the proceeding [including a summary dismissal under rule 4; a dismissal pursuant to a motion by the respondent; a dismissal after the answer and petition are considered; or a dismissal after consideration of the pleadings and an expanded record].

If dismissal has not been ordered, the court must determine whether an evidentiary hearing is required. This determination is to be made upon a review of the answer, the transcript and record of state court proceedings, and if there is one, the expanded record. As the United States Supreme Court noted in *Townsend v. Sam*, 372 U.S. 293, 319 (1963):

> Ordinarily [the complete state-court] record—including the transcript of testimony (or if unavailable some adequate substitute, such as a narrative record), the pleadings, court opinions, and other pertinent documents—is indispensable to determining whether the habeas applicant received a full and fair state-court evidentiary hearing resulting in reliable findings.

Subdivision (a) contemplates that all of these materials, if available, will be taken into account. This is especially important in view of the standard set down in *Townsend* for determining *when* a hearing in the federal habeas proceeding is mandatory.

> The appropriate standard * * * is this: Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in a collateral proceeding.

372 U.S. at 312

The circumstances under which a federal hearing is mandatory are now specified in 28 U.S.C. § 2254(d). The 1966 amendment clearly places the burden on the petitioner, when there has already been a state hearing, to show that it was not a fair or adequate hearing for one or more of the specifically enumerated reasons, in order to force a federal evidentiary hearing. Since the function of an evidentiary hearing is to try issues of fact (372 U.S. at 309), such a hearing is unnecessary when only issues of law are raised. See, *e.g.*, *Yeaman v. United States*, 326 F.2d 293 (9th Cir. 1963).

In situations in which an evidentiary hearing is not mandatory, the judge may nonetheless decide that an evidentiary hearing is desirable:

> The purpose of the test is to indicate the situations in which the holding of an evidentiary hearing is mandatory. In all other cases where the material facts are in dispute, the holding of such a hearing is in the discretion of the district judge.

372 U.S. at 318

If the judge decides that an evidentiary hearing is neither required nor desirable, he shall make such a disposition of the petition "as justice shall require." Most habeas petitions are dismissed before the prehearing conference stage (see Director of the Administrative Office of the United States Courts, Annual Report 245a–245c (table C4) (1970)) and of those not dismissed, the majority raise factual issues that necessitate an evidentiary hearing. If no hearing is required, most petitions are dismissed, but in unusual cases the court may grant the relief sought without a hearing. This includes immediate release from custody or nullification of a judgment under which the sentence is to be served in the future.

Subdivision (b) provides that a magistrate, when so empowered by rule of the district court, may recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed, provided he gives the district judge a sufficiently detailed description of the facts so that the judge may decide whether or not to hold an evidentiary hearing. This provision is not inconsistent with the holding in *Wingo v. Wedding*, 418 U.S. 461 (1974), that the Federal Magistrates Act did not change the requirement of the habeas corpus statute that federal judges personally conduct habeas evidentiary hearings, and that consequently a local district court rule was invalid insofar as it authorized a magistrate to hold such hearings. 28 U.S.C. § 636(b) provides that a district court may by rule authorize any magistrate to perform certain additional duties, including preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing.

As noted in *Wingo*, review "by Magistrates of applications for post-trial relief is thus limited to review for the purpose of proposing, not holding, evidentiary hearings."

Utilization of the magistrate as specified in subdivision (b) will aid in the expeditious and fair handling of habeas petitions.

> A qualified, experienced magistrate will, it is hoped, acquire an expertise in examining these [post-conviction review] applications and summarizing their important contents for the district judge, thereby facilitating his decisions. Law clerks are presently charged with this responsibility by many judges, but judges have noted that the normal 1-year clerkship does not afford law clerks the time or experience necessary to attain real efficiency in handling such applications.

S. Rep. No. 371, 90th Cong., 1st Sess., 26 (1967)

Under subdivision (c) there are two provisions that differ from the procedure set forth in 28 U.S.C. § 2243. These are the appointment of counsel and standard for determining how soon the hearing will be held.

If an evidentiary hearing is required the judge must appoint counsel for a petitioner who qualified for appointment under the Criminal Justice Act. Currently, the appointment of counsel is not recognized as a right at any stage of a habeas proceeding. See, *e.g.*, *United States ex rel. Marshall v. Wilkins*, 338 F.2d 404 (2d Cir. 1964). Some district courts have, however, by local rule, required that counsel must be provided for indigent petitioners in cases requiring a hearing. See, *e.g.*, D.N.M.R. 21(f), E.D. N.Y.R. 26(d). Appointment of counsel at this stage is mandatory under subdivision (c). This requirement will not limit the authority of the court to provide counsel at an earlier stage if it is thought desirable to do so as is done in some courts under current practice. At the evidentiary hearing stage, however, an indigent petitioner's access to counsel should not depend on local practice and, for this reason, the furnishing of counsel is made mandatory.

Counsel can perform a valuable function benefiting both the court and the petitioner. The issues raised can be more clearly identified if both sides have the benefit of trained legal personnel. The presence of counsel at the prehearing conference may help to expedite the evidentiary hearing or make it unnecessary, and counsel will be able to make better use of available prehearing discovery procedures. Compare ABA Project on Standards for Criminal Justice, Standards Relating to Post-Conviction Remedies § 4.4, p. 66 (Approved Draft 1968). At a hearing, the petitioner's claims are more likely to be effectively and properly presented by counsel.

Under 18 U.S.C. § 3006A(g), payment is allowed counsel up to $250, plus reimbursement for expenses reasonably incurred. The standards of indigency under this section are less strict than those regarding eligibility to prosecute a petition in forma pauperis, and thus many who cannot qualify to proceed under 28 U.S.C. § 1915 will be entitled to the benefits of counsel under 18 U.S.C. § 3006A(g). Under rule 6(c), the court may order the respondent to reimburse counsel from state funds for fees and expenses incurred as the result of the utilization of discovery procedures by the respondent.

Subdivision (c) provides that the hearing shall be conducted as promptly as possible, taking into account "the need of counsel for both parties for adequate time for investigation and preparation." This differs from the language of 28 U.S.C. § 2243, which requires that the day for the hearing be set "not more than five days after the return unless for good cause additional time is allowed." This time limit fails to take into account the function that may be served by a prehearing conference and the time required to prepare adequately for an evidentiary hearing. Although "additional time" is often allowed under § 2243, subdivision (c) provides more flexibility to take account of the complexity of the case, the availability of important materials, the workload of the attorney general, and the time required by appointed counsel to prepare.

While the rule does not make specific provision for a prehearing conference, the omission is not intended to cast doubt upon the value of such a conference:

> The conference may limit the questions to be resolved, identify areas of agreement and dispute, and explore evidentiary problems that may be expected to arise. * * * [S]uch conferences may also disclose that a hearing is unnecessary * * *.
>
> ABA Project on Standards for Criminal Justice, Standards Relating to Post-Conviction Remedies § 4.6, commentary pp. 74–75. (Approved Draft, 1968.)

See also Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1188 (1970).

The rule does not contain a specific provision on the subpoenaing of witnesses. It is left to local practice to determine the method for doing this. The implementation of 28 U.S.C. § 1825 on the payment of witness fees is dealt with in an opinion of the Comptroller General, February 28, 1974.

AMENDMENTS

1976—Subd. (b). Pub. L. 94–577, § 2(a)(1), substituted provisions which authorized magistrates, when designated to do so in accordance with section 636(b) of this title, to conduct hearings, including evidentiary hearings, on the petition and to submit to a judge of the court proposed findings of fact and recommendations for disposition, which directed the magistrate to file proposed findings and recommendations with the court with copies furnished to all parties, which allowed parties thus served 10 days to file written objections thereto, and which directed a judge of the court to make de novo determinations of the objected-to portions and to accept, reject, or modify the findings or recommendations for provisions under which the magistrate had been empowered only to recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed.

Subd. (c). Pub. L. 94–577, § 2(b)(1), substituted "and the hearing shall be conducted" for "and shall conduct the hearing".

Pub. L. 94–426 provided that these rules not limit the appointment of counsel under section 3006A of title 18, if the interest of justice so require.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(c) of Pub. L. 94–577 provided that: "The amendments made by this section [amending subdivs. (b) and (c) of this rule and Rule 8(b), (c) of the Rules Governing Proceedings Under Section 2255 of this title] shall take effect with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977."

Rule 9. Delayed or Successive Petitions

(a) DELAYED PETITIONS. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

(b) SUCCESSIVE PETITIONS. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

(As amended Pub. L. 94–426, § 2(7), (8), Sept. 28, 1976, 90 Stat. 1335.)

ADVISORY COMMITTEE NOTE

This rule is intended to minimize abuse of the writ of habeas corpus by limiting the right to assert stale claims and to file multiple petitions. Subdivision (a) deals with the delayed petition. Subdivision (b) deals with the second or successive petition.

Subdivision (a) provides that a petition attacking the judgment of a state court may be dismissed on the grounds of delay if the petitioner knew or should have known of the existence of the grounds he is presently asserting in the petition and the delay has resulted in the state being prejudiced in its ability to respond to the petition. If the delay is more than five years after the judgment of conviction, prejudice is presumed, although this presumption is rebuttable by the petitioner. Otherwise, the state has the burden of showing such prejudice.

The assertion of stale claims is a problem which is not likely to decrease in frequency. Following the decisions in *Jones v. Cunningham*, 371 U.S. 236 (1963), and *Benson v. California*, 328 F.2d 159 (9th Cir. 1964), the concept of custody expanded greatly, lengthening the time period during which a habeas corpus petition may be filed. The petitioner who is not unconditionally discharged may be on parole or probation for many years. He may at some date, perhaps ten or fifteen years after conviction, decide to challenge the state court judgment. The grounds most often troublesome to the courts are ineffective counsel, denial of right of appeal, plea of guilty unlawfully induced, use of a coerced confession, and illegally constituted jury. The latter four grounds are often interlocked with the allegation of ineffective counsel. When they are asserted after the passage of many years, both the attorney for the defendant and the state have difficulty in ascertaining what the facts are. It often develops that the defense attorney has little or no recollection as to what took place and that many of the participants in the trial are dead or their whereabouts unknown. The court reporter's notes may have been lost or destroyed, thus eliminating any exact record of what transpired. If the case was decided on a guilty plea, even if the record is intact, it may not satisfactorily reveal the extent of the defense attorney's efforts in behalf of the petitioner. As a consequence, there is obvious difficulty in investigating petitioner's allegations.

The interest of both the petitioner and the government can best be served if claims are raised while the evidence is still fresh. The American Bar Association has recognized the interest of the state in protecting itself against stale claims by limiting the right to raise such claims after completion of service of a sentence imposed pursuant to a challenged judgment. See ABA Standards Relating to Post-Conviction Remedies § 2.4 (c), p. 45 (Approved Draft, 1968). Subdivision (a) is not

limited to those who have completed their sentence. Its reach is broader, extending to all instances where delay by the petitioner has prejudiced the state, subject to the qualifications and conditions contained in the subdivision.

In *McMann v. Richardson*, 397 U.S. 759 (1970), the court made reference to the issue of the stale claim:

> What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, *but whether, years later*, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof. [Emphasis added.]

397 U.S. at 773

The court refused to allow this, intimating its dislike of collateral attacks on sentences long since imposed which disrupt the state's interest in finality of convictions which were constitutionally valid when obtained.

Subdivision (a) is not a statute of limitations. Rather, the limitation is based on the equitable doctrine of laches. ''Laches is such delay in enforcing one's rights as works disadvantage to another.'' 30A C.J.S. Equity § 112, p. 19. Also, the language of the subdivision, ''a petition *may* be dismissed'' [emphasis added], is permissive rather than mandatory. This clearly allows the court which is considering the petition to use discretion in assessing the equities of the particular situation.

The use of a flexible rule analogous to laches to bar the assertion of stale claims is suggested in ABA Standards Relating to Post-Conviction Remedies § 2.4, commentary at 48 (Approved Draft, 1968). Additionally, in *Fay v. Noia*, 372 U.S. 391 (1963), the Supreme Court noted:

> Furthermore, habeas corpus has traditionally been regarded as governed by equitable principles. *United States ex rel. Smith v. Baldi*, 344 U.S. 561, 573 (dissenting opinion). Among them is the principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks.

372 U.S. at 438

Finally, the doctrine of laches has been applied with reference to another postconviction remedy, the writ of coram nobis. See 24 C.J.S. Criminal Law § 1606(25), p. 779.

The standard used for determining if the petitioner shall be barred from asserting his claim is consistent with that used in laches provisions generally. The petitioner is held to a standard of reasonable diligence. Any inference or presumption arising by reason of the failure to attack collaterally a conviction may be disregarded where (1) there has been a change of law or fact (new evidence) or (2) where the court, in the interest of justice, feels that the collateral attack should be entertained and the prisoner makes a proper showing as to why he has not asserted a particular ground for relief.

Subdivision (a) establishes the presumption that the passage of more than five years from the time of the judgment of conviction to the time of filing a habeas petition is prejudicial to the state. ''Presumption'' has the meaning given it by Fed.R.Evid. 301. The prisoner has ''the burden of going forward with evidence to rebut or meet the presumption'' that the state has not been prejudiced by the passage of a substantial period of time. This does not impose too heavy a burden on the petitioner. He usually knows what persons are important to the issue of whether the state has been prejudiced. Rule 6 can be used by the court to allow petitioner liberal discovery to learn whether witnesses have died or whether other circumstances prejudicial to the state have occurred. Even if the petitioner should fail to overcome the presumption of prejudice to the state, he is not automatically barred from asserting his claim. As discussed previously, he may proceed if he neither knew nor, by the exercise of reasonable diligence, could have known of the grounds for relief.

The presumption of prejudice does not come into play if the time lag is not more than five years.

The time limitation should have a positive effect in encouraging petitioners who have knowledge of it to assert all their claims as soon after conviction as possible. The implementation of this rule can be substantially furthered by the development of greater legal resources for prisoners. See ABA Standards Relating to Post-Conviction Remedies § 3.1, pp. 49–50 (Approved Draft, 1968).

Subdivision (a) does not constitute an abridgement or modification of a substantive right under 28 U.S.C. § 2072. There are safeguards for the hardship case. The rule provides a flexible standard for determining when a petition will be barred.

Subdivision (b) deals with the problem of successive habeas petitions. It provides that the judge may dismiss a second or successive petition (1) if it fails to allege new or different grounds for relief or (2) if new or different grounds for relief are alleged and the judge finds the failure of the petitioner to assert those grounds in a prior petition is inexcusable.

In *Sanders v. United States*, 373 U.S. 1 (1963), the court, in dealing with the problem of successive applications, stated:

> Controlling weight *may* be given to denial of a prior application for federal habeas corpus or § 2255 relief only if (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application. [Emphasis added.]

373 U.S. at 15

The requirement is that the prior determination of the same ground has been on the merits. This requirement is in 28 U.S.C. § 2244(b) and has been reiterated in many cases since *Sanders*. See *Gains v. Allgood*, 391 F.2d 692 (5th Cir. 1968); *Hutchinson v. Craven*, 415 F.2d 278 (9th Cir. 1969); *Brown v. Peyton*, 435 F.2d 1352 (4th Cir. 1970).

With reference to a successive application asserting a new ground or one not previously decided on the merits, the court in *Sanders* noted:

> In either case, full consideration of the merits of the new application can be avoided only if there has been an abuse of the writ * * * and this the Government has the burden of pleading. * * *
>
> Thus, for example, if a prisoner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first application, * * * he may be deemed to have waived his right to a hearing on a second application presenting the withheld ground.

373 U.S. at 17–18

Subdivision (b) has incorporated this principle and requires that the judge find petitioner's failure to have asserted the new grounds in the prior petition to be inexcusable.

Sanders, 18 U.S.C. § 2244, and subdivision (b) make it clear that the court has discretion to entertain a successive application.

The burden is on the government to plead abuse of the writ. See *Sanders v. United States*, 373 U.S. 1, 10 (1963); *Dixon v. Jacobs*, 427 F.2d 589, 596 (D.C.Cir. 1970); cf. *Johnson v. Copinger*, 420 F.2d 395 (4th Cir. 1969). Once the government has done this, the petitioner has the burden of proving that he has not abused the writ. In *Price v. Johnston*, 334 U.S. 266, 292 (1948), the court said:

> [I]f the Government chooses * * * to claim that the prisoner has abused the writ of *habeas corpus*, it rests with the Government to make that claim with clarity and particularity in its return to the order to show cause. That is not an intolerable burden. The Government is usually well acquainted with the facts that are necessary to make such a claim. Once a particular abuse has been alleged, the prisoner has the burden of answering that allegation and of proving that he has not abused the writ.

Subdivision (b) is consistent with the important and well established purpose of habeas corpus. It does not eliminate a remedy to which the petitioner is rightfully entitled. However, in *Sanders*, the court pointed out:

> Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose only purpose is to vex, harass, or delay.

373 U.S. at 18

There are instances in which petitioner's failure to assert a ground in a prior petition is excusable. A retroactive change in the law and newly discovered evidence are examples. In rare instances, the court may feel a need to entertain a petition alleging grounds that have already been decided on the merits. *Sanders*, 373 U.S. at 1, 16. However, abusive use of the writ should be discouraged, and instances of abuse are frequent enough to require a means of dealing with them. For example, a successive application, already decided on the merits, may be submitted in the hope of getting before a different judge in multijudge courts. A known ground may be deliberately withheld in the hope of getting two or more hearings or in the hope that delay will result in witnesses and records being lost. There are instances in which a petitioner will have three or four petitions pending at the same time in the same court. There are many hundreds of cases where the application is at least the second one by the petitioner. This subdivision is aimed at screening out the abusive petitions from this large volume, so that the more meritorious petitions can get quicker and fuller consideration.

The form petition, supplied in accordance with rule 2(c), encourages the petitioner to raise all of his available grounds in one petition. It sets out the most common grounds asserted so that these may be brought to his attention.

Some commentators contend that the problem of abuse of the writ of habeas corpus is greatly overstated:

> Most prisoners, of course, are interested in being released as soon as possible; only rarely will one inexcusably neglect to raise all available issues in his first federal application. The purpose of the ''abuse'' bar is apparently to deter repetitious applications from those few bored or vindictive prisoners * * *.

83 Harv.L.Rev. at 1153–1154

See also ABA Standards Relating to Post-Conviction Remedies § 6.2, commentary at 92 (Approved Draft, 1968), which states: ''The occasional, highly litigious prisoner stands out as the rarest exception.'' While no recent systematic study of repetitious applications exists, there is no reason to believe that the problem has decreased in significance in relation to the total number of § 2254 petitions filed. That number has increased from 584 in 1949 to 12,088 in 1971. See Director of the Administrative Office of the United States Courts, Annual Report, table 16 (1971). It is appropriate that action be taken by rule to allow the courts to deal with this problem, whatever its specific magnitude. The bar set up by subdivision (b) is not one of rigid application, but rather is within the discretion of the courts on a case-by-case basis.

If it appears to the court after examining the petition and answer (where appropriate) that there is a high probability that the petition will be barred under either subdivision of rule 9, the court ought to afford petitioner an opportunity to explain his apparent abuse. One way of doing this is by the use of the form annexed hereto. The use of a form will ensure a full airing of the issue so that the court is in a better position to decide whether the petition should be barred. This conforms with *Johnson v. Copinger*, 420 F.2d 395 (4th Cir. 1969), where the court stated:

> [T]he petitioner is obligated to present facts demonstrating that his earlier failure to raise his claims is excusable and does not amount to an abuse of the writ. However, it is inherent in this obligation placed upon the petitioner that he must be given an opportunity to make his explanation, if he has one. If he is not afforded such an opportunity, the requirement that he satisfy the court that he has not abused the writ is meaningless. Nor do we think that a procedure which allows the imposition of a forfeiture for abuse of the writ, without allowing the petitioner an opportunity to be heard on the issue, comports with the minimum requirements of fairness.

420 F.2d at 399

Use of the recommended form will contribute to an orderly handling of habeas petitions and will contribute to the ability of the court to distinguish the excusable from the inexcusable delay or failure to assert a ground for relief in a prior petition.

AMENDMENTS

1976—Subd. (a). Pub. L. 94–426, § 2(7), struck out provision which established a rebuttable presumption of prejudice to the state if the petition was filed more than five years after conviction and started the running of the five year period, where a petition challenged the validity of an action after conviction, from the time of the order of such action.

Subd. (b). Pub. L. 94–426, § 2(8), substituted ''constituted an abuse of the writ'' for ''is not excusable''.

Rule 10. Powers of Magistrates

The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.

(As amended Pub. L. 94–426, § 2(11), Sept. 28, 1976, 90 Stat. 1335; Apr. 30, 1979, eff. Aug. 1, 1979.)

ADVISORY COMMITTEE NOTE

Under this rule the duties imposed upon the judge of the district court by rules 2, 3, 4, 6, and 7 may be performed by a magistrate if and to the extent he is empowered to do so by a rule of the district court. However, when such duties involve the making of an order under rule 4 disposing of the petition, that order must be made by the court. The magistrate in such instances must submit to the court his report as to the facts and his recommendation with respect to the order.

The Federal Magistrates Act allows magistrates, when empowered by local rule, to perform certain functions in proceedings for post-trial relief. See 28 U.S.C. § 636(b)(3). The performance of such functions, when authorized, is intended to ''afford some degree of relief to district judges and their law clerks, who are presently burdened with burgeoning numbers of habeas corpus petitions and applications under 28 U.S.C. § 2255.'' Committee on the Judiciary, The Federal Magistrates Act, S.Rep. No. 371, 90th Cong., 1st sess., 26 (1967).

Under 28 U.S.C. § 636(b), any district court,

> by the concurrence of a majority of all the judges of such district court, may establish rules pursuant to which any full-time United States magistrate * * * may be assigned within the territorial jurisdiction of such court such additional duties as are not inconsistent with the Constitution and laws of the United States.

The proposed rule recognizes the limitations imposed by 28 U.S.C. § 636(b) upon the powers of magistrates to act in federal postconviction proceedings. These limitations are: (1) that the magistrate may act only pursuant to a rule passed by the majority of the judges in the district court in which the magistrate serves, and (2) that the duties performed by the magistrate pursuant to such rule be consistent with the Constitution and laws of the United States.

It has been suggested that magistrates be empowered by law to hold hearings and make final decisions in habeas proceedings. See Proposed Reformation of Federal

Habeas Corpus Procedure: Use of Federal Magistrates, 54 Iowa L.Rev. 1147, 1158 (1969). However, the Federal Magistrates Act does not authorize such use of magistrates. *Wingo v. Wedding*, 418 U.S. 461 (1974). See advisory committee note to rule 8. While the use of magistrates can help alleviate the strain imposed on the district courts by the large number of unmeritorious habeas petitions, neither 28 U.S.C. § 636(b) nor this rule contemplate the abdication by the court of its decision-making responsibility. See also Developments in the Law—Federal Habeas Corpus, 83 Harv. L.Rev. 1038, 1188 (1970)

Where a full-time magistrate is not available, the duties contemplated by this rule may be assigned to a part-time magistrate.

1979 AMENDMENT

This amendment conforms the rule to subsequently enacted legislation clarifying and further defining the duties which may be assigned to a magistrate, 18 U.S.C. § 636, as amended in 1976 by Pub. L. 94–577. To the extent that rule 10 is more restrictive than § 636, the limitations are of no effect, for the statute expressly governs ''[n]otwithstanding any provision of law to the contrary.''

The reference to particular rules is stricken, as under § 636(b)(1)(A) a judge may designate a magistrate to perform duties under other rules as well (e.g., order that further transcripts be furnished under rule 5; appoint counsel under rule 8). The reference to ''established standards and criteria'' is stricken, as § 636(4) requires each district court to ''establish rules pursuant to which the magistrates shall discharge their duties.'' The exception with respect to a rule 4 order dismissing a petition is stricken, as that limitation appears in § 636(b)(1)(B) and is thereby applicable to certain other actions under these rules as well (e.g., determination of a need for an evidentiary hearing under rule 8; dismissal of a delayed or successive petition under rule 9).

AMENDMENTS

1976—Pub. L. 94–426 inserted '', and to the extent the district court has established standards and criteria for the performance of such duties'' after ''rule of the district court''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

Rule 11. Federal Rules of Civil Procedure; Extent of Applicability

The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules.

ADVISORY COMMITTEE NOTE

Habeas corpus proceedings are characterized as civil in nature. See *e.g.*, *Fisher v. Baker*, 203 U.S. 174, 181 (1906). However, under Fed.R.Civ.P. 81(a)(2), the applicability of the civil rules to habeas corpus actions has been limited, although the various courts which have considered this problem have had difficulty in setting out the boundaries of this limitation. See *Harris v. Nelson*, 394 U.S. 286 (1969) at 289, footnote 1. Rule 11 is intended to conform with the Supreme Court's approach in the *Harris* case. There the court was dealing with the petitioner's contention that Civil Rule 33 granting the right to discovery via written interrogatories is wholly applicable to habeas corpus proceedings. The court held:

> We agree with the Ninth Circuit that Rule 33 of the Federal Rules of Civil Procedure is not applicable to habeas corpus proceedings and that 28 U.S.C. § 2246 does not authorize interrogatories except in limited circumstances not applicable to this case; but we conclude that, in appropriate circumstances, a district court, confronted by a petition for habeas corpus which establishes a prima facie case for relief, may use or authorize the use of suitable discovery procedures, including interrogatories, reasonably fashioned to elicit facts necessary to help the court to ''dispose of the matter as law and justice require'' 28 U.S.C. § 2243.

394 U.S. at 290

The court then went on to consider the contention that the ''conformity'' provision of Rule 81(a)(2) should be rigidly applied so that the civil rules would be applicable only to the extent that habeas corpus practice had conformed to the practice in civil actions at the time of the adoption of the Federal Rules of Civil Procedure on September 16, 1938. The court said:

> Although there is little direct evidence, relevant to the present problem, of the purpose of the ''conformity'' provision of Rule 81(a)(2), the concern of the draftsmen, as a general matter, seems to have been to provide for the continuing applicability of the ''civil'' rules in their new form to those areas of practice in habeas corpus and other enumerated proceedings in which the ''specified'' proceedings had theretofore utilized the modes of civil practice. Otherwise, those proceedings were to be considered outside of the scope of the rules without prejudice, of course, to the use of particular rules by analogy or otherwise, where appropriate.

394 U.S. at 294

The court then reiterated its commitment to judicial discretion in formulating rules and procedures for habeas corpus proceedings by stating:

> [T]he habeas corpus jurisdiction and the duty to exercise it being present, the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage.

Where their duties require it, this is the inescapable obligation of the courts. Their authority is expressly confirmed in the All Writs Act, 28 U.S.C. § 1651.

394 U.S. at 299

Rule 6 of these proposed rules deals specifically with the issue of discovery in habeas actions in a manner consistent with *Harris*. Rule 11 extends this approach to allow the court considering the petition to use any of the rules of civil procedure (unless inconsistent with these rules of habeas corpus) when in its discretion the court decides they are appropriate under the circumstances of the particular case. The court does not have to rigidly apply rules which would be inconsistent or inequitable in the overall framework of habeas corpus. Rule 11 merely recognizes and affirms their discretionary power to use their judgment in promoting the ends of justice.

Rule 11 permits application of the civil rules only when it would be appropriate to do so. Illustrative of an inappropriate application is that rejected by the Supreme Court in *Pitchess v. Davis*, 95 S.Ct. 1748 (1975), holding that Fed.R.Civ.P. 60(b) should not be applied in a habeas case when it would have the effect of altering the statutory exhaustion requirement of 28 U.S.C. § 2254.

APPENDIX OF FORMS

MODEL FORM FOR USE IN APPLICATIONS FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

Name _____

Prison number _____

_____

Place of confinement _____

United States District Court _____ District of _____

Case No. _____

(To be supplied by Clerk of U.S. District Court)

_____, PETITIONER
(Full name)

v.

_____, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person having custody of petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF _____, ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions—Read Carefully

(1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
(2) Additional pages are not permitted except with respect to the *facts* which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
(3) Upon receipt of a fee of $5 your petition will be filed if it is in proper order.
(4) If you do not have the necessary filing fee, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $_____, you must pay the filing fee as required by the rule of the district court.
(5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
(7) When the petition is fully completed, *the original and two copies* must be mailed to the Clerk of the United States District Court whose address is ____
_____
(8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack_____
_____
2. Date of judgment of conviction _____
3. Length of sentence _____
4. Nature of offense involved (all counts) _____
_____
_____
_____
5. What was your plea? (Check one)
(a) Not guilty ☐
(b) Guilty ☐
(c) Nolo contendere ☐
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
_____
_____
_____
6. Kind of trial: (Check one)
(a) Jury ☐
(b) Judge only ☐
7. Did you testify at the trial?
Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?
Yes ☐ No ☐
9. If you did appeal, answer the following:
(a) Name of court _____
(b) Result _____
(c) Date of result _____
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☐ No ☐
11. If your answer to 10 was ''yes,'' give the following information:
(a) (1) Name of court _____
(2) Nature of proceeding _____
_____
(3) Grounds raised _____
_____
_____
_____
_____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
(5) Result_____
(6) Date of result_____
(b) As to any second petition, application or motion give the same information:
(1) Name of court _____
(2) Nature of proceeding _____
_____
(3) Grounds raised _____
_____
_____
_____
_____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
(5) Result_____
(6) Date of result_____
(c) As to any third petition, application or motion, give the same information:
(1) Name of court _____
(2) Nature of proceeding _____
_____
(3) Grounds raised _____
_____
_____
_____
_____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐
(5) Result_____
(6) Date of result_____
(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes ☐ No ☐
(2) Second petition, etc. Yes ☐ No ☐
(3) Third petition, etc. Yes ☐ No ☐
(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
_____
_____

_____

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: _____

_____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

B. Ground two: _____

_____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

C. Ground three: _____

_____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

D. Ground four: _____

_____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

_____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes □ No □

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes □ No □

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes □ No □

(a) If so, give name and location of court which imposed sentence to be served in the future:

_____

(b) And give date and length of sentence to be served in the future:

_____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes □ No □

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.

(date)

_____
Signature of Petitioner

IN FORMA PAUPERIS DECLARATION

_____
[Insert appropriate court]

_____ (Petitioner)	DECLARATION IN SUPPORT OF REQUEST TO PROCEED *IN FORMA PAUPERIS*
v.	
_____ (Respondent(s))	

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes □ No □
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.
   _____
   _____
   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.
   _____
   _____
2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes □ No □
   b. Rent payments, interest or dividends? Yes □ No □
   c. Pensions, annuities or life insurance payments? Yes □ No □
   d. Gifts or inheritances? Yes □ No □
   e. Any other sources? Yes □ No □
   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.
   _____
   _____
   _____
   _____
3. Do you own cash, or do you have money in a checking or savings account?
   Yes □ No □ (Include any funds in prison accounts.)
   If the answer is "yes," state the total value of the items owned.
   _____
   _____
   _____
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes □ No □
   If the answer is "yes," describe the property and state its approximate value.
   _____
   _____
   _____
5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.
   _____
   _____
   _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

_____
Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of $_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution:

_____
_____
_____
_____

_____
Authorized Officer of Institution

(As amended Apr. 28, 1982, eff. Aug. 1, 1982.)

MODEL FORM FOR USE IN 28 U.S.C. § 2254 CASES INVOLVING A RULE 9 ISSUE

Form No. 9

United States District Court,

_____ District of _____

Case No. ———

_____, PETITIONER

v.

_____, RESPONDENT

and

_____, ADDITIONAL RESPONDENT

Petitioner's Response as to Why His Petition Should Not Be Barred Under Rule 9

Explanation and Instructions—Read Carefully

(I) Rule 9. Delayed or successive petitions.

(a) Delayed petitions. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

(b) Successive petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

(II) Your petition for habeas corpus has been found to be subject to dismissal under rule 9( ) for the following reason(s):
_____
_____
_____
_____

(III) This form has been sent so that you may explain why your petition contains the defect(s) noted in (II) above. It is required that you fill out this form and send it back to the court within _____ days. Failure to do so will result in the automatic dismissal of your petition.

(IV) When you have fully completed this form, the original and two copies must be mailed to the Clerk of the United States District Court whose address is _____
_____

(V) This response must be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(VI) Additional pages are not permitted except with respect to the *facts* which you rely upon in item 4 or 5 in the response. Any citation of authorities should be kept to an absolute minimum and is only appropriate if there has been a change in the law since the judgment you are attacking was rendered.

(VII) Respond to 4 *or* 5 below, not to both, unless (II) above indicates that you must answer both sections.

RESPONSE

1. Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your petition is attacking was entered? Yes ☐ No ☐
2. If you checked "yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present.

   _____

   _____
3. Describe the nature of the assistance, including the names of those who rendered it to you.

   _____

   _____

   _____

   _____
4. If your petition is in jeopardy because of delay prejudicial to the state under rule 9(a), explain why you feel the delay has not been prejudicial and/or why the delay is excusable under the terms of 9(a). This should be done by relying upon FACTS, not your opinions or conclusions.

   _____

   _____

   _____

   _____

   _____
5. If your petition is in jeopardy under rule 9(b) because it asserts the same grounds as a previous petition, explain why you feel it deserves a reconsideration. If its fault under rule 9(b) is that it asserts new grounds which should have been included in a prior petition, explain why you are raising these grounds now rather than previously. Your explanation should rely on FACTS, not your opinions or conclusions.

   _____

   _____

   _____

   _____

   _____

   _____

   _____

   _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

_____
Signature of Petitioner

(As amended Apr. 28, 1982, eff. Aug. 1, 1982.)

§ 2255. Federal custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-

finder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

(June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, § 114, 63 Stat. 105; Pub. L. 104–132, title I, § 105, Apr. 24, 1996, 110 Stat. 1220.)

HISTORICAL AND REVISION NOTES

1948 ACT

This section restates, clarifies and simplifies the procedure in the nature of the ancient writ of error coram nobis. It provides an expeditious remedy for correcting erroneous sentences without resort to habeas corpus. It has the approval of the Judicial Conference of the United States. Its principal provisions are incorporated in H.R. 4233, Seventy-ninth Congress.

1949 ACT

This amendment conforms language of section 2255 of title 28, U.S.C., with that of section 1651 of such title and makes it clear that the section is applicable in the district courts in the Territories and possessions.

REFERENCES IN TEXT

Section 408 of the Controlled Substances Act, referred to in text, is classified to section 848 of Title 21, Food and Drugs.

AMENDMENTS

1996—Pub. L. 104–132 inserted at end three new undesignated paragraphs beginning ''A 1-year period of limitation'', ''Except as provided in section 408 of the Controlled Substances Act'', and ''A second or successive motion must be certified'' and struck out second and fifth undesignated pars. providing, respectively, that ''A motion for such relief may be made at any time.'' and ''The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.''

1949—Act May 24, 1949, substituted ''court established by Act of Congress'' for ''court of the United States'' in first par.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 753, 1825, 2244, 2253, 2266 of this title; title 18 section 3006A; title 21 section 848.

APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

Pub. L. 94–426, § 1, Sept. 28, 1976, 90 Stat. 1334, provided: ''That the rules governing section 2254 cases in the United States district courts and the rules governing section 2255 proceedings for the United States district courts, as proposed by the United States Supreme Court, which were delayed by the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94–349), are approved with the amendments set forth in section 2 of this Act and shall take effect as so amended, with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.''

POSTPONEMENT OF EFFECTIVE DATE OF PROPOSED RULES AND FORMS GOVERNING PROCEEDINGS UNDER SECTIONS 2254 AND 2255 OF THIS TITLE

Rules and forms governing proceedings under sections 2254 and 2255 of this title proposed by Supreme Court order of Apr. 26, 1976, effective 30 days after adjournment sine die of 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier, see section 2 of Pub. L. 94–349, set out as a note under section 2074 of this title.

RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS

(*Effective February 1, 1977, as amended to January 26, 1998*)

Rule
1. Scope of rules.
2. Motion.
3. Filing motion.
4. Preliminary consideration by judge.
5. Answers; contents.
6. Discovery.
7. Expansion of record.
8. Evidentiary hearing.
9. Delayed or successive motions.
10. Powers of magistrates.
11. Time for appeal.
12. Federal Rules of Criminal and Civil Procedure; extent of applicability.

APPENDIX OF FORMS

Model form for motions under 28 U.S.C. § 2255.
Model form for use in 28 U.S.C. § 2255 cases involving a Rule 9 issue.

EFFECTIVE DATE OF RULES; EFFECTIVE DATE OF 1975 AMENDMENT

Rules, and the amendments thereto by Pub. L. 94–426, Sept. 28, 1976, 90 Stat. 1334, effective with respect to petitions under section 2254 of this title and motions under section 2255 of this title filed on or after Feb. 1, 1977, see section 1 of Pub. L. 94–426, set out as a note above.

Rule 1. Scope of Rules

These rules govern the procedure in the district court on a motion under 28 U.S.C. § 2255:

(1) by a person in custody pursuant to a judgment of that court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack; and

(2) by a person in custody pursuant to a judgment of a state or other federal court and subject to future custody under a judgment of the district court for a determination that such future custody will be in violation of the Constitution or laws of the United States, or that the district court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.

ADVISORY COMMITTEE NOTE

The basic scope of this postconviction remedy is prescribed by 28 U.S.C. § 2255. Under these rules the person seeking relief from federal custody files a motion to vacate, set aside, or correct sentence, rather than a petition for habeas corpus. This is consistent with the terminology used in section 2255 and indicates the difference between this remedy and federal habeas for a state prisoner. Also, habeas corpus is available to the person in federal custody if his ''remedy by motion is inadequate or ineffective to test the legality of his detention.''

Whereas sections 2241–2254 (dealing with federal habeas corpus for those in state custody) speak of the district court judge ''issuing the writ'' as the operative remedy, section 2255 provides that, if the judge finds the movant's assertions to be meritorious, he ''shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.'' This is possible because a motion under § 2255 is a further step in the movant's criminal case and not a separate civil action, as appears from the legislative history of section 2 of S. 20, 80th Congress, the provisions of which were incorporated by the same Congress in title 28 U.S.C. as § 2255. In reporting S. 20 favorably the Senate Judiciary Committee said (Sen. Rep. 1526, 80th Cong. 2d Sess., p. 2):

The two main advantages of such motion remedy over the present habeas corpus are as follows:

First, habeas corpus is a separate civil action and not a further step in the criminal case in which petitioner is sentenced (*Ex parte Tom Tong*, 108 U.S. 556, 559 (1883)). It is not a determination of guilt or innocence of the charge upon which petitioner was sentenced. Where a prisoner sustains his right to discharge in habeas corpus, it is usually because some right—such as lack of counsel—has been denied which reflects no determination of his guilt or innocence but affects solely the fairness of his earlier criminal trial. Even under the broad power in the statute ''to dispose of the party as law and justice require'' (28 U.S.C.A., sec. 461), the court or judge is by no means in the same advantageous position in habeas corpus to do justice as would be so if the matter were determined in the criminal proceeding (see *Medley*, petitioner, 134 U.S. 160, 174 (1890)). For instance, the judge (by habeas corpus) cannot grant a new trial in the criminal case. Since the motion remedy is in the criminal proceeding, this section 2 affords the opportunity and expressly gives the broad powers to set aside the judgment and to ''discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.''

The fact that a motion under § 2255 is a further step in the movant's criminal case rather than a separate civil action has significance at several points in these rules. See, *e.g.*, advisory committee note to rule 3 (re no filing fee), advisory committee note to rule 4 (re availability of files, etc., relating to the judgment), advisory committee note to rule 6 (re availability of discovery under criminal procedure rules), advisory committee note to rule 11 (re no extension of time for appeal), and advisory committee not to rule 12 (re applicability of federal criminal rules). However, the fact that Congress has characterized the motion as a further step in the criminal proceedings does *not* mean that proceedings upon such a motion are of necessity governed by the legal principles which are applicable at a criminal trial regarding such matters as counsel, presence, confrontation, self-incrimination, and burden of proof.

The challenge of decisions such as the revocation of probation or parole are not appropriately dealt with under 28 U.S.C. § 2255, which is a continuation of the original criminal action. Other remedies, such as habeas corpus, are available in such situations.

Although rule 1 indicates that these rules apply to a motion for a determination that the judgment was imposed ''in violation of the . . . laws of the United States,'' the language of 28 U.S.C. § 2255, it is not the intent of these rules to define or limit what is encompassed within that phrase. See *Davis v. United States*, 417 U.S. 333 (1974), holding that it is not true ''that every asserted error of law can be raised on a § 2255 motion,'' and that the appropriate inquiry is ''whether the claimed error of law was a fundamental defect which inherently results in a complete miscarriage of justice,' and whether [i]t . . . present[s] exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent.' ''

For a discussion of the ''custody'' requirement and the intended limited scope of this remedy, see advisory committee note to § 2254 rule 1.

Rule 2. Motion

(a) NATURE OF APPLICATION FOR RELIEF. If the person is presently in custody pursuant to the federal judgment in question, or if not presently in custody may be subject to such custody in the future pursuant to such judgment, the application for relief shall be in the form of a motion to vacate, set aside, or correct the sentence.

(b) FORM OF MOTION. The motion shall be in substantially the form annexed to these rules, except that any district court may by local rule require that motions filed with it shall be in a form prescribed by the local rule. Blank motions in the prescribed form shall be made available without charge by the clerk of the district court to applicants upon their request. It shall specify all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The motion shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the petitioner.

(c) MOTION TO BE DIRECTED TO ONE JUDGMENT ONLY. A motion shall be limited to the assertion of a claim for relief against one judgment only of the district court. If a movant desires to attack the validity of other judgments of that or any other district court under which he is in custody or may be subject to future custody, as the case may be, he shall do so by separate motions.

(d) RETURN OF INSUFFICIENT MOTION. If a motion received by the clerk of a district court does not substantially comply with the requirements of rule 2 or rule 3, it may be returned to the movant, if a judge of the court so directs, together with a statement of the reason for its return. The clerk shall retain a copy of the motion.

(As amended Pub. L. 94–426, § 2(3), (4), Sept. 28, 1976, 90 Stat. 1334; Apr. 28, 1982, eff. Aug. 1, 1982.)

ADVISORY COMMITTEE NOTE

Under these rules the application for relief is in the form of a motion rather than a petition (see rule 1 and advisory committee note). Therefore, there is no requirement that the movant name a respondent. This is consistent with 28 U.S.C. § 2255. The United States Attorney for the district in which the judgment under attack was entered is the proper party to oppose the motion since the federal government is the movant's adversary of record.

If the movant is attacking a federal judgment which will subject him to future custody, he must be in present custody (see rule 1 and advisory committee note) as the result of a state or federal governmental action. He need not alter the nature of the motion by trying to include the government officer who presently has official custody of him as a psuedo-respondent, or third-party plaintiff, or other fabrication. The court hearing his motion attacking the future custody can exercise jurisdiction over those having him in present custody without the use of artificial pleading devices.

There is presently a split among the courts as to whether a person currently in state custody may use a § 2255 motion to obtain relief from a federal judgment under which he will be subjected to custody in the future. Negative, see *Newton v. United States*, 329 F.Supp. 90 (S.D. Texas 1971); affirmative, see *Desmond v. The United States Board of Parole*, 397 F.2d 386 (1st Cir. 1968),

cert. denied, 393 U.S. 919 (1968); and *Paalino v. United States*, 314 F.Supp. 875 (C.D.Cal. 1970). It is intended that these rules settle the matter in favor of the prisoner's being able to file a § 2255 motion for relief under those circumstances. The proper district in which to file such a motion is the one in which is situated the court which rendered the sentence under attack.

Under rule 35, Federal Rules of Criminal Procedure, the court may correct an illegal sentence or a sentence imposed in an illegal manner, or may reduce the sentence. This remedy should be used, rather than a motion under these § 2255 rules, whenever applicable, but there is some overlap between the two proceedings which has caused the courts difficulty.

The movant should not be barred from an appropriate remedy because he has misstyled his motion. See *United States v. Morgan*, 346 U.S. 502, 505 (1954). The court should construe it as whichever one is proper under the circumstances and decide it on its merits. For a § 2255 motion construed as a rule 35 motion, see *Heflin v. United States*, 358 U.S. 415 (1959); and *United States v. Coke*, 404 F.2d 836 (2d Cir. 1968). For writ of error coram nobis treated as a rule 35 motion, see *Hawkins v. United States*, 324 F.Supp. 223 (E.D.Texas, Tyler Division 1971). For a rule 35 motion treated as a § 2255 motion, see *Moss v. United States*, 263 F.2d 615 (5th Cir. 1959); *Jones v. United States*, 400 F.2d 892 (8th Cir. 1968), cert. denied 394 U.S. 991 (1969); and *United States v. Brown*, 413 F.2d 878 (9th Cir. 1969), cert. denied, 397 U.S. 947 (1970).

One area of difference between § 2255 and rule 35 motions is that for the latter there is no requirement that the movant be "in custody." *Heflin v. United States*, 358 U.S. 415, 418, 422 (1959); *Duggins v. United States*, 240 F.2d 479, 483 (6th Cir. 1957). Compare with rule 1 and advisory committee note for § 2255 motions. The importance of this distinction has decreased since *Peyton v. Rowe*, 391 U.S. 54 (1968), but it might still make a difference in particular situations.

A rule 35 motion is used to attack the sentence imposed, not the basis for the sentence. The court in *Gilinsky v. United States*, 335 F.2d 914, 916 (9th Cir. 1964), stated, "a Rule 35 motion presupposes a valid conviction. * * * [C]ollateral attack on errors allegedly committed at trial is not permissible under Rule 35." By illustration the court noted at page 917: "a Rule 35 proceeding contemplates the correction of a sentence of a court having jurisdiction. * * * [J]urisdictional defects * * * involve a collateral attack, they must ordinarily be presented under 28 U.S.C. § 2255." In *United States v. Semet*, 295 F.Supp. 1084 (E.D. Okla. 1968), the prisoner moved under rule 35 and § 2255 to invalidate the sentence he was serving on the grounds of his failure to understand the charge to which he pleaded guilty. The court said:

> As regards Defendant's Motion under Rule 35, said Motion must be denied as its presupposes a valid conviction of the offense with which he was charged and may be used only to attack the sentence. It may not be used to examine errors occurring prior to the imposition of sentence.

295 F.Supp. at 1085

See also: *Moss v. United States*, 263 F.2d at 616; *Duggins v. United States*, 240 F. 2d at 484; *Migdal v. United States*, 298 F.2d 513, 514 (9th Cir. 1961); *Jones v. United States*, 400 F.2d at 894; *United States v. Coke*, 404 F.2d at 847; and *United States v. Brown*, 413 F.2d at 879.

A major difficulty in deciding whether rule 35 or § 2255 is the proper remedy is the uncertainty as to what is meant by an "illegal sentence." The Supreme Court dealt with this issue in *Hill v. United States*, 368 U.S. 424 (1962). The prisoner brought a § 2255 motion to vacate sentence on the ground that he had not been given a Fed.R.Crim. P. 32(a) opportunity to make a statement in his own behalf at the time of sentencing. The majority held this was not an error subject to collateral attack under § 2255. The five-member majority considered the motion as one brought pursuant to rule 35, but denied relief, stating:

> [T]he narrow function of Rule 35 is to permit correction at any time of an illegal *sentence*, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence. The sentence in this case was not illegal. The punishment meted out was not in excess of that prescribed by the relevant statutes, multiple terms were not imposed for the same offense, nor were the terms of the sentence itself legally or constitutionally invalid in any other respect.

368 U.S. at 430

The four dissenters felt the majority definition of "illegal" was too narrow.

> [Rule 35] provides for the correction of an "illegal sentence" without regard to the reasons why that sentence is illegal and contains not a single word to support the Court's conclusion that only a sentence illegal by reason of the punishment it imposes is "illegal" within the meaning of the Rule. I would have thought that a sentence imposed in an illegal manner—whether the amount or form of the punishment meted out constitutes an additional violation of law or not—would be recognized as an "illegal sentence" under any normal reading of the English language.

368 U.S. at 431–432

The 1966 amendment of rule 35 added language permitting correction of a sentence imposed in an "illegal manner." However, there is a 120-day time limit on a motion to do this, and the added language does not clarify the intent of the rule or its relation to § 2255.

The courts have been flexible in considering motions under circumstances in which relief might appear to be precluded by *Hill v. United States*. In *Peterson v. United States*, 432 F.2d 545 (8th Cir. 1970), the court was confronted with a motion for reduction of sentence by a prisoner claiming to have received a harsher sentence than his codefendants because he stood trial rather than plead guilty. He alleged that this violated his constitutional right to a jury trial. The court ruled that, even though it was past the 120-day time period for a motion to reduce sentence, the claim was still cognizable under rule 35 as a motion to correct an illegal sentence.

The courts have made even greater use of § 2255 in these types of situations. In *United States v. Lewis*, 392 F.2d 440 (4th Cir. 1968), the prisoner moved under § 2255 and rule 35 for relief from a sentence he claimed was the result of the judge's misunderstanding of the relevant sentencing law. The court held that he could not get relief under rule 35 because it was past the 120 days for correction of a sentence imposed in an illegal manner and under *Hill v. United States* it was not an illegal sentence. However, § 2255 was applicable because of its "otherwise subject to collateral attack" language. The flaw was not a mere trial error relating to the finding of guilt, but a rare and unusual error which amounted to "exceptional circumstances" embraced in § 2255's words "collateral attack." See 368 U.S. at 444 for discussion of other cases allowing use of § 2255 to attack the sentence itself in similar circumstances, especially where the judge has sentenced out of a misapprehension of the law.

In *United States v. McCarthy*, 433 F.2d 591, 592 (1st Cir. 1970), the court allowed a prisoner who was past the time limit for a proper rule 35 motion to use § 2255 to attack the sentence which he received upon a plea of guilty on the ground that it was induced by an unfulfilled promise of the prosecutor to recommend leniency. The court specifically noted that under § 2255 this was a proper collateral attack on the sentence and there was no need to attack the conviction as well.

The court in *United States v. Malcolm*, 432 F.2d 809, 814, 818 (2d Cir. 1970), allowed a prisoner to challenge his sentence under § 2255 without attacking the conviction. It held rule 35 inapplicable because the sentence was not illegal on its face, but the manner in which the sentence was imposed raised a question of the denial of due

process in the sentencing itself which was cognizable under § 2255.

The flexible approach taken by the courts in the above cases seems to be the reasonable way to handle these situations in which rule 35 and § 2255 appear to overlap. For a further discussion of this problem, see C. Wright, Federal Practice and Procedure; Criminal §§ 581–587 (1969, Supp. 1975).

See the advisory committee note to rule 2 of the § 2254 rules for further discussion of the purposes and intent of rule 2 of these § 2255 rules.

1982 AMENDMENT

Subdivision (b). The amendment takes into account 28 U.S.C. § 1746, enacted after adoption of the § 2255 rules. Section 1746 provides that in lieu of an affidavit an unsworn statement may be given under penalty of perjury in substantially the following form if executed within the United States, its territories, possessions or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'' The statute is ''intended to encompass prisoner litigation,'' and the statutory alternative is especially appropriate in such cases because a notary might not be readily available. *Carter v. Clark*, 616 F.2d 228 (5th Cir. 1980). The § 2255 forms have been revised accordingly.

AMENDMENTS

1976—Subd. (b). Pub. L. 94–426, § 2(3), inserted ''substantially'' after ''The motion shall be in'', and struck out requirement that the motion follow the prescribed form.

Subd. (d). Pub. L. 94–426, § 2(4), inserted ''substantially'' after ''district court does not'', and struck out provision which permitted the clerk to return a motion for noncompliance without a judge so directing.

Rule 3. Filing Motion

(a) PLACE OF FILING; COPIES. A motion under these rules shall be filed in the office of the clerk of the district court. It shall be accompanied by two conformed copies thereof.

(b) FILING AND SERVICE. Upon receipt of the motion and having ascertained that it appears on its face to comply with rules 2 and 3, the clerk of the district court shall file the motion and enter it on the docket in his office in the criminal action in which was entered the judgment to which it is directed. He shall thereupon deliver or serve a copy of the motion together with a notice of its filing on the United States Attorney of the district in which the judgment under attack was entered. The filing of the motion shall not require said United States Attorney to answer the motion or otherwise move with respect to it unless so ordered by the court.

ADVISORY COMMITTEE NOTE

There is no filing fee required of a movant under these rules. This is a change from the practice of charging $15 and is done to recognize specifically the nature of a § 2255 motion as being a continuation of the criminal case whose judgment is under attack.

The long-standing practice of requiring a $15 filing fee has followed from 28 U.S.C. § 1914(a) whereby ''parties instituting any civil action * * * pay a filing fee of $15, except that on an application for a writ of habeas corpus the filing fee shall be $5.'' This has been held to apply to a proceeding under § 2255 despite the rationale that such a proceeding is a motion and thus a continuation of the criminal action. (See note to rule 1.)

> A motion under Section 2255 is a civil action and the clerk has no choice but to charge a $15.00 filing fee unless by leave of court it is filed in forma pauperis.

McCune v. *United States*, 406 F.2d 417, 419 (6th Cir. 1969).

Although the motion has been considered to be a new civil action in the nature of habeas corpus for filing purposes, the reduced fee for habeas has been held not applicable. The Tenth Circuit considered the specific issue in *Martin* v. *United States*, 273 F.2d 775 (10th Cir. 1960), cert. denied, 365 U.S. 853 (1961), holding that the reduced fee was exclusive to habeas petitions.

> Counsel for Martin insists that, if a docket fee must be paid, the amount is $5 rather than $15 and bases his contention on the exception contained in 28 U.S.C. § 1914 that in habeas corpus the fee is $5. This reads into § 1914 language which is not there. While an application under § 2255 may afford the same relief as that previously obtainable by habeas corpus, it is not a petition for a writ of habeas corpus. A change in § 1914 must come from Congress.

273 F.2d at 778

Although for most situations § 2255 is intended to provide to the federal prisoner a remedy equivalent to habeas corpus as used by state prisoners, there is a major distinction between the two. Calling a § 2255 request for relief a motion rather than a petition militates toward charging no new filing fee, not an increased one. In the absence of convincing evidence to the contrary, there is no reason to suppose that Congress did not mean what it said in making a § 2255 action a motion. Therefore, as in other motions filed in a criminal action, there is no requirement of a filing fee. It is appropriate that the present situation of docketing a § 2255 motion as a new action and charging a $15 filing fee be remedied by the rule when the whole question of § 2255 motions is thoroughly thought through and organized.

Even though there is no need to have a forma pauperis affidavit to proceed with the action since there is no requirement of a fee for filing the motion the affidavit remains attached to the form to be supplied potential movants. Most such movants are indigent, and this is a convenient way of getting this into the official record so that the judge may appoint counsel, order the government to pay witness fees, allow docketing of an appeal, and grant any other rights to which an indigent is entitled in the course of a § 2255 motion, when appropriate to the particular situation, without the need for an indigency petition and adjudication at such later point in the proceeding. This should result in a streamlining of the process to allow quicker disposition of these motions.

For further discussion of this rule, see the advisory committee note to rule 3 of the § 2254 rules.

Rule 4. Preliminary Consideration by Judge

(a) REFERENCE TO JUDGE; DISMISSAL OR ORDER TO ANSWER. The original motion shall be presented promptly to the judge of the district court who presided at the movant's trial and sentenced him, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of that part of the proceedings being attacked by the movant. If the appropriate judge is unavailable to consider the motion, it shall be presented to another judge of the district in accordance with the procedure of the court for the assignment of its business.

(b) INITIAL CONSIDERATION BY JUDGE. The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order

for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

ADVISORY COMMITTEE NOTE

Rule 4 outlines the procedure for assigning the motion to a specific judge of the district court and the options available to the judge and the government after the motion is properly filed.

The long-standing majority practice in assigning motions made pursuant to § 2255 has been for the trial judge to determine the merits of the motion. In cases where the § 2255 motion is directed against the sentence, the merits have traditionally been decided by the judge who imposed sentence. The reasoning for this was first noted in *Currell v. United States*, 173 F.2d 348, 348–349 (4th Cir. 1949):

> Complaint is made that the judge who tried the case passed upon the motion. Not only was there no impropriety in this, but it is highly desirable in such cases that the motions be passed on by the judge who is familiar with the facts and circumstances surrounding the trial, and is consequently not likely to be misled by false allegations as to what occurred.

This case, and its reasoning, has been almost unanimously endorsed by other courts dealing with the issue.

Commentators have been critical of having the motion decided by the trial judge. See Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1206–1208 (1970).

> [T]he trial judge may have become so involved with the decision that it will be difficult for him to review it objectively. Nothing in the legislative history suggests that ''court'' refers to a specific judge, and the procedural advantages of section 2255 are available whether or not the trial judge presides at the hearing.
>
> The theory that Congress intended the trial judge to preside at a section 2255 hearing apparently originated in *Carvell v. United States*, 173 F.2d 348 (4th Cir. 1949) (per curiam), where the panel of judges included Chief Judge Parker of the Fourth Circuit, chairman of the Judicial Conference committee which drafted section 2255. But the legislative history does not indicate that Congress wanted the trial judge to preside. Indeed the advantages of section 2255 can all be achieved if the case is heard in the sentencing district, regardless of which judge hears it. According to the Senate committee report the purpose of the bill was to make the proceeding a part of the criminal action so the court could resentence the applicant, or grant him a new trial. (A judge presiding over a habeas corpus action does not have these powers.) In addition, Congress did not want the cases heard in the district of confinement because that tended to concentrate the burden on a few districts, and made it difficult for witnesses and records to be produced.

83 Harv.L.Rev. at 1207–1208

The Court of Appeals for the First Circuit has held that a judge other than the trial judge should rule on the 2255 motion. See *Halliday v. United States*, 380 F.2d 270 (1st Cir. 1967).

There is a procedure by which the movant can have a judge other than the trial judge decide his motion in courts adhering to the majority rule. He can file an affidavit alleging bias in order to disqualify the trial judge. And there are circumstances in which the trial judge will, on his own, disqualify himself. See, *e.g.*, *Webster v. United States*, 330 F.Supp. 1080 (1972). However, there has been some questioning of the effectiveness of this procedure. See Developments in the Law—Federal Habeas Corpus, 83 Harv.L.Rev. 1038, 1200–1207 (1970).

Subdivision (a) adopts the majority rule and provides that the trial judge, or sentencing judge if different and appropriate for the particular motion, will decide the motion made pursuant to these rules, recognizing that, under some circumstances, he may want to disqualify himself. A movant is not without remedy if he feels this is unfair to him. He can file an affidavit of bias. And there is the right to appellate review if the trial judge refuses to grant his motion. Because the trial judge is thoroughly familiar with the case, there is obvious administrative advantage in giving him the first opportunity to decide whether there are grounds for granting the motion.

Since the motion is part of the criminal action in which was entered the judgment to which it is directed, the files, records, transcripts, and correspondence relating to that judgment are automatically available to the judge in his consideration of the motion. He no longer need order them incorporated for that purpose.

Rule 4 has its basis in § 2255 (rather than 28 U.S.C. § 2243 in the corresponding habeas corpus rule) which does not have a specific time limitation as to when the answer must be made. Also, under § 2255, the United States Attorney for the district is the party served with the notice and a copy of the motion and required to answer (when appropriate). Subdivision (b) continues this practice since there is no respondent involved in the motion (unlike habeas) and the United States Attorney, as prosecutor in the case in question, is the most appropriate one to defend the judgment and oppose the motion.

The judge has discretion to require an answer or other appropriate response from the United States Attorney. See advisory committee note to rule 4 of the § 2254 rules.

Rule 5. Answer; Contents

(a) CONTENTS OF ANSWER. The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available federal remedies including any prior post-conviction motions under these rules or those existing previous to the adoption of the present rules. The answer shall also state whether an evidentiary hearing was accorded the movant in a federal court.

(b) SUPPLEMENTING THE ANSWER. The court shall examine its files and records to determine whether it has available copies of transcripts and briefs whose existence the answer has indicated. If any of these items should be absent, the government shall be ordered to supplement its answer by filing the needed records. The court shall allow the government an appropriate period of time in which to do so, without unduly delaying the consideration of the motion.

ADVISORY COMMITTEE NOTE

Unlike the habeas corpus statutes (see 28 U.S.C. §§ 2243, 2248) § 2255 does not specifically call for a return or answer by the United States Attorney or set any time limits as to when one must be submitted. The general practice, however, if the motion is not summarily dismissed, is for the government to file an answer to the motion as well as counter-affidavits, when appropriate. Rule 4 provides for an answer to the motion by the United States Attorney, and rule 5 indicates what its contents should be.

There is no requirement that the movant exhaust his remedies prior to seeking relief under § 2255. However, the courts have held that such a motion is inappropriate if the movant is simultaneously appealing the decision.

> We are of the view that there is no jurisdictional bar to the District Court's entertaining a Section 2255 motion during the pendency of a direct appeal but that the orderly administration of criminal law precludes considering such a motion absent extraordinary circumstances.

Womack v. United States, 395 F.2d 630, 631 (D.C.Cir. 1968)

Also see *Masters v. Eide*, 353 F.2d 517 (8th Cir. 1965). The answer may thus cut short consideration of the motion if it discloses the taking of an appeal which was omitted from the form motion filed by the movant.

There is nothing in § 2255 which corresponds to the § 2248 requirement of a traverse to the answer. Numerous cases have held that the government's answer and affidavits are not conclusive against the movant, and if they raise disputed issues of fact a hearing must be held. *Machibroda v. United States*, 368 U.S. 487, 494, 495 (1962); *United States v. Salerno*, 290 F.2d 105, 106 (2d Cir. 1961); *Romero v. United States*, 327 F.2d 711, 712 (5th Cir. 1964); *Scott v. United States*, 349 F.2d 641, 642, 643 (6th Cir. 1965); *Schiebelhut v. United States*, 357 F.2d 743, 745 (6th Cir. 1966); and *Del Piano v. United States*, 362 F.2d 931, 932, 933 (3d Cir. 1966). None of these cases make any mention of a traverse by the movant to the government's answer. As under rule 5 of the § 2254 rules, there is no intention here that such a traverse be required, except under special circumstances. See advisory committee note to rule 9.

Subdivision (b) provides for the government to supplement its answers with appropriate copies of transcripts or briefs if for some reason the judge does not already have them under his control. This is because the government will in all probability have easier access to such papers than the movant, and it will conserve the court's time to have the government produce them rather than the movant, who would in most instances have to apply in forma pauperis for the government to supply them for him anyway.

For further discussion, see the advisory committee note to rule 5 of the § 2254 rules.

Rule 6. Discovery

(a) LEAVE OF COURT REQUIRED. A party may invoke the processes of discovery available under the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure or elsewhere in the usages and principles of law if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a movant who qualifies for appointment of counsel under 18 U.S.C. § 3006A(g).

(b) REQUESTS FOR DISCOVERY. Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.

(c) EXPENSES. If the government is granted leave to take the deposition of the movant or any other person, the judge may as a condition of taking it direct that the government pay the expenses of travel and subsistence and fees of counsel for the movant to attend the taking of the deposition.

ADVISORY COMMITTEE NOTE

This rule differs from the corresponding discovery rule under the § 2254 rules in that it includes the processes of discovery available under the Federal Rules of Criminal Procedure as well as the civil. This is because of the nature of a § 2255 motion as a continuing part of the criminal proceeding (see advisory committee note to rule 1) as well as a remedy analogous to habeas corpus by state prisoners.

See the advisory committee note to rule 6 of the § 2254 rules. The discussion there is fully applicable to discovery under these rules for § 2255 motions.

Rule 7. Expansion of Record

(a) DIRECTION FOR EXPANSION. If the motion is not dismissed summarily, the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion.

(b) MATERIALS TO BE ADDED. The expanded record may include, without limitation, letters predating the filing of the motion in the district court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as a part of the record.

(c) SUBMISSION TO OPPOSING PARTY. In any case in which an expanded record is directed, copies of the letters, documents, exhibits, and affidavits proposed to be included shall be submitted to the party against whom they are to be offered, and he shall be afforded an opportunity to admit or deny their correctness.

(d) AUTHENTICATION. The court may require the authentication of any material under subdivision (b) or (c).

ADVISORY COMMITTEE NOTE

It is less likely that the court will feel the need to expand the record in a § 2255 proceeding than in a habeas corpus proceeding, because the trial (or sentencing) judge is the one hearing the motion (see rule 4) and should already have a complete file on the case in his possession. However, rule 7 provides a convenient method for supplementing his file if the case warrants it.

See the advisory committee note to rule 7 of the § 2254 rules for a full discussion of reasons and procedures for expanding the record.

Rule 8. Evidentiary Hearing

(a) DETERMINATION BY COURT. If the motion has not been dismissed at a previous stage in the proceeding, the judge, after the answer is filed and any transcripts or records of prior court actions in the matter are in his possession, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice dictates.

(b) FUNCTION OF THE MAGISTRATE.

(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the motion, and submit to a judge of the court proposed findings and recommendations for disposition.

(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.

(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.

(c) APPOINTMENT OF COUNSEL; TIME FOR HEARING. If an evidentiary hearing is required, the

judge shall appoint counsel for a movant who qualifies for the appointment of counsel under 18 U.S.C. § 3006A(g) and the hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment of counsel under 18 U.S.C. § 3006A at any stage of the proceeding if the interest of justice so requires.

(d) PRODUCTION OF STATEMENTS AT EVIDENTIARY HEARING.

(1) IN GENERAL. Federal Rule of Criminal Procedure 26.2(a)–(d), and (f) applies at an evidentiary hearing under these rules.

(2) SANCTIONS FOR FAILURE TO PRODUCE STATEMENT. If a party elects not to comply with an order under Federal Rule of Criminal Procedure 26.2(a) to deliver a statement to the moving party, at the evidentiary hearing the court may not consider the testimony of the witness whose statement is withheld.

(As amended Pub. L. 94–426, § 2(6), Sept. 28, 1976, 90 Stat. 1335; Pub. L. 94–577, § 2(a)(2), (b)(2), Oct. 21, 1976, 90 Stat. 2730, 2731; Apr. 22, 1993, eff. Dec. 1, 1993.)

ADVISORY COMMITTEE NOTE

The standards for § 2255 hearings are essentially the same as for evidentiary hearings under a habeas petition, except that the previous federal fact-finding proceeding is in issue rather than the state's. Also § 2255 does not set specific time limits for holding the hearing, as does § 2243 for a habeas action. With these minor differences in mind, see the advisory committee note to rule 8 of § 2254 rules, which is applicable to rule 8 of these § 2255 rules.

1993 AMENDMENT

The amendment to Rule 8 is one of a series of parallel amendments to Federal Rules of Criminal Procedure 32, 32.1, and 46 which extend the scope of Rule 26.2 (Production of Witness Statements) to proceedings other than the trial itself. The amendments are grounded on the compelling need for accurate and credible information in making decisions concerning the defendant's liberty. *See* the Advisory Committee Note to Rule 26.2(g). A few courts have recognized the authority of a judicial officer to order production of prior statements by a witness at a Section 2255 hearing, *see, e.g.*, *United States v. White*, 342 F.2d 379, 382, n.4 (4th Cir. 1959). The amendment to Rule 8 grants explicit authority to do so. The amendment is not intended to require production of a witness's statement before the witness actually presents oral testimony.

AMENDMENTS

1976—Subd. (b). Pub. L. 94–577, § 2(a)(2), substituted provisions which authorized magistrates, when designated to do so in accordance with section 636(b) of this title, to conduct hearings, including evidentiary hearings, on the petition and to submit to a judge of the court proposed findings of fact and recommendations for disposition, which directed the magistrate to file proposed findings and recommendations with the court with copies furnished to all parties, which allowed parties thus served 10 days to file written objections thereto, and which directed a judge of the court to make de novo determinations of the objected-to portions and to accept, reject, or modify the findings or recommendations for provisions under which the magistrate had been empowered only to recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed.

Subd. (c). Pub. L. 94–577, § 2(b)(2), substituted "and the hearing shall be conducted" for "and shall conduct the hearing."

Pub. L. 94–426 provided that these rules not limit the appointment of counsel under section 3006A of title 18, if the interest of justice so require.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendments made by Pub. L. 94–577 effective with respect to motions under section 2255 of this title filed on or after Feb. 1, 1977, see section 2(c) of Pub. L. 94–577, set out as a note under Rule 8 of the Rules Governing Cases Under Section 2254 of this title.

Rule 9. Delayed or Successive Motions

(a) DELAYED MOTIONS. A motion for relief made pursuant to these rules may be dismissed if it appears that the government has been prejudiced in its ability to respond to the motion by delay in its filing unless the movant shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(b) SUCCESSIVE MOTIONS. A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

(As amended Pub. L. 94–426, § 2(9), (10), Sept. 28, 1976, 90 Stat. 1335.)

ADVISORY COMMITTEE NOTE

Unlike the statutory provisions on habeas corpus (28 U.S.C. §§ 2241–2254), § 2255 specifically provides that "a motion for such relief may be made *at any time*." [Emphasis added.] Subdivision (a) provides that delayed motions may be barred from consideration if the government has been prejudiced in its ability to respond to the motion by the delay and the movant's failure to seek relief earlier is not excusable within the terms of the rule. Case law, dealing with this issue, is in conflict.

Some courts have held that the literal language of § 2255 precludes any possible time bar to a motion brought under it. In *Heflin v. United States*, 358 U.S. 415 (1959), the concurring opinion noted:

> The statute [28 U.S.C. § 2255] further provides; "A motion * * * may be made at any time." This * * * simply means that, as in habeas corpus, there is no statute of limitations, no *res judicata*, and that the doctrine of laches is inapplicable.

358 U.S. at 420

McKinney v. United States, 208 F.2d 844 (D.C.Cir. 1953) reversed the district court's dismissal of a § 2255 motion for being too late, the court stating:

> McKinney's present application for relief comes late in the day: he has served some fifteen years in prison. But tardiness is irrelevant where a constitutional issue is raised and where the prisoner is still confined.

208 F.2d at 846, 847

In accord, see: *Juelich v. United States*, 300 F.2d 381, 383 (5th Cir. 1962); *Conners v. United States*, 431 F.2d 1207, 1208 (9th Cir. 1970); *Sturrup v. United States*, 218 F.Supp. 279, 281 (E.D.N.Car. 1963); and *Banks v. United States*, 319 F.Supp. 649, 652 (S.D.N.Y. 1970).

It has also been held that delay in filing a § 2255 motion does not bar the movant because of lack of reasonable diligence in pressing the claim.

> The statute [28 U.S.C. § 2255], when it states that the motion may be made at any time, excludes the addi-

tion of a showing of diligence in delayed filings. A number of courts have considered contentions similar to those made here and have concluded that there are no time limitations. This result excludes the requirement of diligence which is in reality a time limitation.

Haier v. United States, 334 F.2d 441, 442 (10th Cir. 1964)

Other courts have recognized that delay may have a negative effect on the movant. In *Raines v. United States*, 423 F.2d 526 (4th Cir. 1970), the court stated:

[B]oth petitioners' silence for extended periods, one for 28 months and the other for nine years, serves to render their allegations less believable. ''Although a delay in filing a section 2255 motion is not a controlling element * * * it may merit some consideration * * *.''

423 F.2d at 531

In *Aiken v. United States*, 191 F.Supp. 43, 50 (M.D.N.Car. 1961), aff'd 296 F.2d 604 (4th Cir. 1961), the court said: ''While motions under 28 U.S.C. § 2255 may be made at any time, the lapse of time affects the good faith and credibility of the moving party.'' For similar conclusions, see: *Parker v. United States*, 358 F.2d 50, 54 n. 4 (7th Cir. 1965), cert. denied, 386 U.S. 916 (1967); *Le Clair v. United States*, 241 F.Supp. 819, 824 (N.D. Ind. 1965); *Malone v. United States*, 299 F.2d 254, 256 (6th Cir. 1962), cert. denied, 371 U.S. 863 (1962); *Howell v. United States*, 442 F.2d 265, 274 (7th Cir. 1971); and *United States v. Wiggins*, 184 F. Supp. 673, 676 (D.C.Cir. 1960).

There have been holdings by some courts that a delay in filing a § 2255 motion operates to increase the burden of proof which the movant must meet to obtain relief. The reasons for this, as expressed in *United States v. Bostic*, 206 F.Supp. 855 (D.C.Cir. 1962), are equitable in nature.

Obviously, the burden of proof on a motion to vacate a sentence under 28 U.S.C. § 2255 is on the moving party. . . . The burden is particularly heavy if the issue is one of fact and a long time has elapsed since the trial of the case. While neither the statute of limitations nor laches can bar the assertion of a constitutional right, nevertheless, the passage of time may make it impracticable to retry a case if the motion is granted and a new trial is ordered. No doubt, at times such a motion is a product of an afterthought. Long delay may raise a question of good faith.

206 F.Supp. at 856–857

See also *United States v. Wiggins*, 184 F.Supp. at 676.

A requirement that the movant display reasonable diligence in filing a § 2255 motion has been adopted by some courts dealing with delayed motions. The court in *United States v. Moore*, 166 F.2d 102 (7th Cir. 1948), cert. denied, 334 U.S. 849 (1948), did this, again for equitable reasons.

[W]e agree with the District Court that the petitioner has too long slept upon his rights. * * * [A]pparently there is no limitation of time within which * * * a motion to vacate may be filed, except that an applicant must show reasonable diligence in presenting his claim. * * *

The reasons which support the rule requiring diligence seem obvious. * * * Law enforcement officials change, witnesses die, memories grow dim. The prosecuting tribunal is put to a disadvantage if an unexpected retrial should be necessary after long passage of time.

166 F.2d at 105

In accord see *Desmond v. United States*, 333 F.2d 378, 381 (1st Cir. 1964), on remand, 345 F.2d 225 (1st Cir. 1965).

One of the major arguments advanced by the courts which would penalize a movant who waits an unduly long time before filing a § 2255 motion is that such delay is highly prejudicial to the prosecution. In *Desmond v. United States*, writing of a § 2255 motion alleging denial of effective appeal because of deception by movant's own counsel, the court said:

[A]pplications for relief such as this must be made promptly. It will not do for a prisoner to wait until government witnesses have become unavailable as by death, serious illness or absence from the country, or until the memory of available government witnesses has faded. It will not even do for a prisoner to wait any longer than is reasonably necessary to prepare appropriate moving papers, however inartistic, after discovery of the deception practiced upon him by his attorney.

333 F.2d at 381

In a similar vein are *United States v. Moore* and *United States v. Bostic*, supra, and *United States v. Wiggins*, 184 F. Supp. at 676.

Subdivision (a) provides a flexible, equitable time limitation based on laches to prevent movants from withholding their claims so as to prejudice the government both in meeting the allegations of the motion and in any possible retrial. It includes a reasonable diligence requirement for ascertaining possible grounds for relief. If the delay is found to be excusable, or nonprejudicial to the government, the time bar is inoperative.

Subdivision (b) is consistent with the language of § 2255 and relevant case law.

The annexed form is intended to serve the same purpose as the comparable one included in the § 2254 rules.

For further discussion applicable to this rule, see the advisory committee note to rule 9 of the § 2254 rules.

AMENDMENTS

1976—Subd. (a). Pub. L. 94–426, § 2(9), struck out provision which established a rebuttable presumption of prejudice to government if the petition was filed more than five years after conviction.

Subd. (b). Pub. L. 94–426, § 2(10), substituted ''constituted an abuse of the procedure governed by these rules'' for ''is not excusable''.

Rule 10. Powers of Magistrates

The duties imposed upon the judge of the district court by these rules may be performed by a United States magistrate pursuant to 28 U.S.C. § 636.

(As amended Pub. L. 94–426, § 2(12), Sept. 28, 1976, 90 Stat. 1335; Apr. 30, 1979, eff. Aug. 1, 1979.)

ADVISORY COMMITTEE NOTE

See the advisory committee note to rule 10 of the § 2254 rules for a discussion fully applicable here as well.

1979 AMENDMENT

This amendment conforms the rule to 18 U.S.C. § 636. See Advisory Committee Note to rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts.

AMENDMENTS

1976—Pub. L. 94–426 inserted '', and to the extent the district court has established standards and criteria for the performance of such duties,'' after ''rule of the district court''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

Rule 11. Time for Appeal

The time for appeal from an order entered on a motion for relief made pursuant to these rules is as provided in Rule 4(a) of the Federal Rules

of Appellate Procedure. Nothing in these rules shall be construed as extending the time to appeal from the original judgment of conviction in the district court.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

ADVISORY COMMITTEE NOTE

Rule 11 is intended to make clear that, although a § 2255 action is a continuation of the criminal case, the bringing of a § 2255 action does not extend the time.

1979 AMENDMENT

Prior to the promulgation of the Rules Governing Section 2255 Proceedings, the courts consistently held that the time for appeal in a section 2255 case is as provided in Fed.R.App.P. 4(a), that is, 60 days when the government is a party, rather than as provided in appellate rule 4(b), which says that the time is 10 days in criminal cases. This result has often been explained on the ground that rule 4(a) has to do with civil cases and that ''proceedings under section 2255 are civil in nature.'' E.g., *Rothman v. United States*, 508 F.2d 648 (3d Cir. 1975). Because the new section 2255 rules are based upon the premise ''that a motion under § 2255 is a further step in the movant's criminal case rather than a separate civil action,'' see Advisory Committee Note to rule 1, the question has arisen whether the new rules have the effect of shortening the time for appeal to that provided in appellate rule 4(b). A sentence has been added to rule 11 in order to make it clear that this is not the case.

Even though section 2255 proceedings are a further step in the criminal case, the added sentence correctly states current law. In *United States v. Hayman*, 342 U.S. 205 (1952), the Supreme Court noted that such appeals ''are governed by the civil rules applicable to appeals from final judgments in habeas corpus actions.'' In support, the Court cited *Mercado v. United States*, 183 F.2d 486 (1st Cir. 1950), a case rejecting the argument that because § 2255 proceedings are criminal in nature the time for appeal is only 10 days. The *Mercado* court concluded that the situation was governed by that part of 28 U.S.C. § 2255 which reads: ''An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.'' Thus, because appellate rule 4(a) is applicable in habeas cases, it likewise governs in § 2255 cases even though they are criminal in nature.

Rule 12. Federal Rules of Criminal and Civil Procedure; Extent of Applicability

If no procedure is specifically prescribed by these rules, the district court may proceed in any lawful manner not inconsistent with these rules, or any applicable statute, and may apply the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure, whichever it deems most appropriate, to motions filed under these rules.

ADVISORY COMMITTEE NOTE

This rule differs from rule 11 of the § 2254 rules in that it includes the Federal Rules of Criminal Procedure as well as the civil. This is because of the nature of a § 2255 motion as a continuing part of the criminal proceeding (see advisory committee note to rule 1) as well as a remedy analogous to habeas corpus by state prisoners.

Since § 2255 has been considered analogous to habeas as respects the restrictions in Fed.R.Civ.P. 81(a)(2) (see *Sullivan v. United States*, 198 F.Supp. 624 (S.D.N.Y. 1961)), rule 12 is needed. For discussion, see the advisory committee note to rule 11 of the § 2254 rules.

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are classified generally to the Appendix to Title 18, Crimes and Criminal Procedure.

The Federal Rules of Civil Procedure, referred to in text, are classified generally to the Appendix to this title.

APPENDIX OF FORMS

MODEL FORM FOR MOTIONS UNDER 28 U.S.C. § 2255

Name _____
Prison Number _____
Place of Confinement _____
United States District Court _____ District of _____
Case No. _____ (to be supplied by Clerk of U.S. District Court)

United States,

v.

_____

(full name of movant)

(If movant has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

(1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the *facts* which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.

(4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

(7) When the motion is fully completed, the *original and two copies* must be mailed to the Clerk of the United States District Court whose address is_____

_____

(8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court which entered the judgment of conviction under attack _____
2. Date of judgment of conviction _____
3. Length of sentence _____
4. Nature of offense involved (all counts) _____

_____
_____
_____

5. What was your plea? (Check one)
   (a) Not guilty ☐
   (b) Guilty ☐
   (c) Nolo contendere ☐

   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

   _____
   _____
   _____

6. Kind of trial: (Check one)
   (a) Jury ☐
   (b) Judge only ☐
7. Did you testify at the trial?
   Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?
   Yes ☐ No ☐
9. If you did appeal, answer the following:
   (a) Name of court _____
   (b) Result _____
   (c) Date of result _____
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
    Yes ☐ No ☐
11. If your answer to 10 was ''yes,'' give the following information:
    (a) (1) Name of court _____
    (2) Nature of proceeding _____
    _____
    (3) Grounds raised _____
    _____
    _____
    _____
    _____
    (4) Did you receive an evidentiary hearing on your petition, application or motion?
    Yes ☐ No ☐
    (5) Result _____
    (6) Date of result _____
    (b) As to any second petition, application or motion give the same information:
    (1) Name of court _____
    (2) Nature of proceeding _____
    _____
    (3) Grounds raised _____
    _____
    _____
    _____
    _____
    (4) Did you receive an evidentiary hearing on your petition, application or motion?
    Yes ☐ No ☐
    (5) Result _____
    (6) Date of result _____
    (c) As to any third petition, application or motion, give the same information:
    (1) Name of court _____
    (2) Nature of proceeding _____
    (3) Grounds raised _____
    _____
    _____
    _____
    _____
    (4) Did you receive an evidentiary hearing on your petition, application or motion?
    Yes ☐ No ☐
    (d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
    (1) First petition, etc. Yes ☐ No ☐
    (2) Second petition, etc. Yes ☐ No ☐
    (3) Third petition, etc. Yes ☐ No ☐
    (e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
    _____
    _____
    _____
12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

    CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

    For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, *you should raise in this motion all available grounds* (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: _____
_____
Supporting FACTS (tell your story *briefly* without citing cases or law): _____
_____
_____
_____
_____
_____
_____

B. Ground two: _____
_____
Supporting FACTS (tell your story *briefly* without citing cases or law): _____
_____
_____
_____
_____
_____
_____

C. Ground three: _____
_____
Supporting FACTS (tell your story *briefly* without citing cases or law): _____
_____
_____
_____
_____
_____
_____

D. Ground four: _____
_____
Supporting FACTS (tell your story *briefly* without citing cases or law): _____
_____
_____

_____
_____
_____
_____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

_____
_____
_____
_____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☐
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing _____
_____
(b) At arraignment and plea _____
_____
(c) At trial _____
_____
(d) At sentencing _____
_____
(e) On appeal _____
_____
(f) In any post-conviction proceeding _____
_____
(g) On appeal from any adverse ruling in a post-conviction proceeding _____
_____
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☐ No ☐
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☐
(a) If so, give name and location of court which imposed sentence to be served in the future:
_____
_____
(b) And give date and length of sentence to be served in the future:
_____
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

_____
Signature of Movant

IN FORMA PAUPERIS DECLARATION

_____

[Insert appropriate court]

United States v. _____ (Movant)	DECLARATION IN SUPPORT OF REQUEST TO PROCEED *IN FORMA PAUPERIS*

I, _____, declare that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes ☐ No ☐
a. If the answer is ''yes,'' state the amount of your salary or wages per month, and give the name and address of your employer.
_____
_____
b. If the answer is ''no,'' state the date of last employment and the amount of the salary and wages per month which you received.
_____
_____
2. Have you received within the past twelve months any money from any of the following sources?
a. Business, profession or form of self-employment?
Yes ☐ No ☐
b. Rent payments, interest or dividends?
Yes ☐ No ☐
c. Pensions, annuities or life insurance payments?
Yes ☐ No ☐
d. Gifts or inheritances? Yes ☐ No ☐
e. Any other sources? Yes ☐ No ☐
If the answer to any of the above is ''yes,'' describe each source of money and state the amount received from each during the past twelve months.
_____
_____
_____
3. Do you own any cash, or do you have money in a checking or savings account?
Yes ☐ No ☐ (Include any funds in prison accounts)
If the answer is ''yes,'' state the total value of the items owned.
_____
_____
_____
4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
Yes ☐ No ☐
If the answer is ''yes,'' describe the property and state its approximate value.
_____
_____
5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.
_____
_____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

_____
Signature of Movant

CERTIFICATE

I hereby certify that the movant herein has the sum of $_____ on account to his credit at the _____ institution where he is confined.

I further certify that movant likewise has the following securities to his credit according to the records of said _____ institution:

_____
_____
_____
_____

_____
Authorized Officer of Institution

(As amended Apr. 28, 1982, eff. Aug. 1, 1982.)

MODEL FORM FOR USE IN 28 U.S.C. § 2255 CASES INVOLVING A RULE 9 ISSUE

Form No. 9

United States District Court

_____ District of _____

Case No. _____

United States

v.

_____

(Name of Movant)

Movant's Response as to Why His Motion Should Not be Barred Under Rule 9

Explanation and Instructions—Read Carefully

(I) Rule 9. Delayed or Successive Motions.

(a) Delayed motions. A motion for relief made pursuant to these rules may be dismissed if it appears that the government has been prejudiced in its ability to respond to the motion by delay in its filing unless the movant shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(b) Successive motions. A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

(II) Your motion to vacate, set aside, or correct sentence has been found to be subject to dismissal under rule 9( ) for the following reason(s):

_____
_____
_____
_____

(III) This form has been sent so that you may explain why your motion contains the defect(s) noted in (II) above. It is required that you fill out this form and send it back to the court within _____ days. Failure to do so will result in the automatic dismissal of your motion.

(IV) When you have fully completed this form, the original and two copies must be mailed to the Clerk of the United States District Court whose address is _____

_____

(V) This response must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(VI) Additional pages are not permitted except with respect to the *facts* which you rely upon in item 4 or 5 in the response. Any citation of authorities should be kept to an absolute minimum and is only appropriate if there has been a change in the law since the judgment you are attacking was rendered.

(VII) Respond to 4 *or* 5, not to both, unless (II) above indicates that you must answer both sections.

RESPONSE

1. Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your motion is attacking was entered?
   Yes ☐ No ☐
2. If you checked "Yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present.
   _____
3. Describe the nature of the assistance, including the names of those who rendered it to you.
   _____
   _____
   _____
4. If your motion is in jeopardy because of delay prejudicial to the government under rule 9(a), explain why you feel the delay has not been prejudicial and/or why the delay is excusable under the terms of 9(a). This should be done by relying upon FACTS, not your opinions or conclusions.
   _____
   _____
   _____
   _____
5. If your motion is in jeopardy under rule 9(b) because it asserts the same grounds as a previous motion, explain why you feel it deserves a reconsideration. If its fault under rule 9(b) is that it asserts new grounds which should have been included in a prior motion, explain why you are raising these grounds now rather than previously. Your explanation should rely on FACTS, not your opinions or conclusions.
   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

_____
Signature of Movant

(As amended Apr. 28, 1982, eff. Aug. 1, 1982.)

[§ 2256. Omitted]

CODIFICATION

Section, added Pub. L. 95–598, title II, § 250(a), Nov. 6, 1978, 92 Stat. 2672, did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. Section read as follows:

§ 2256. Habeas corpus from bankruptcy courts

A bankruptcy court may issue a writ of habeas corpus—

(1) when appropriate to bring a person before the court—

(A) for examination;

(B) to testify; or

(C) to perform a duty imposed on such person under this title; or

(2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—

(A) such debtor was arrested or imprisoned on process in any civil action;

(B) such process was issued for the collection of a debt—

(i) dischargeable under title 11; or

(ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and

(C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ.

PRIOR PROVISIONS

A prior section 2256, added Pub. L. 95–144, § 3, Oct. 28, 1977, 91 Stat. 1220, related to jurisdiction of proceedings relating to transferred offenders, prior to transfer to section 3244 of Title 18, Crimes and Criminal Procedure, by Pub. L. 95–598, title III, § 314(j), Nov. 6, 1978, 92 Stat. 2677.

CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

Sec.
2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
2263. Filing of habeas corpus application; time requirements; tolling rules.
2264. Scope of Federal review; district court adjudications.
2265. Application to State unitary review procedure.
2266. Limitation periods for determining applications and motions.

§ 2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

(b) This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

(1) appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

(Added Pub. L. 104–132, title I, § 107(a), Apr. 24, 1996, 110 Stat. 1221.)

EFFECTIVE DATE

Section 107(c) of Pub. L. 104–132 provided that: ''Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act [Apr. 24, 1996].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2262, 2265 of this title.

§ 2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

(b) A stay of execution granted pursuant to subsection (a) shall expire if—

(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

(Added Pub. L. 104–132, title I, § 107(a), Apr. 24, 1996, 110 Stat. 1222.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2265 of this title.

§ 2263. Filing of habeas corpus application; time requirements; tolling rules

(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

(b) The time requirements established by subsection (a) shall be tolled—

(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

(3) during an additional period not to exceed 30 days, if—

(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

(Added Pub. L. 104–132, title I, § 107(a), Apr. 24, 1996, 110 Stat. 1223.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2262, 2265 of this title.

§ 2264. Scope of Federal review; district court adjudications

(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

(1) the result of State action in violation of the Constitution or laws of the United States;

(2) the result of the Supreme Court's recognition of a new Federal right that is made retroactively applicable; or

(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

(Added Pub. L. 104–132, title I, § 107(a), Apr. 24, 1996, 110 Stat. 1223.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2265 of this title.

§ 2265. Application to State unitary review procedure

(a) For purposes of this section, a ''unitary review'' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

(b) To qualify under this section, a unitary review procedure must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2261(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

(c) Sections 2262, 2263, 2264, and 2266 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State ''post-conviction review'' and ''direct review'' in such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to ''an order under section 2261(c)'' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

(Added Pub. L. 104–132, title I, § 107(a), Apr. 24, 1996, 110 Stat. 1223.)

§ 2266. Limitation periods for determining applications and motions

(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

(III) Whether the failure to allow a delay in a case that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

(2) The time limitations under paragraph (1) shall apply to—

(A) an initial application for a writ of habeas corpus;

(B) any second or successive application for a writ of habeas corpus; and

(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ of mandamus not later than 30 days after the filing of the petition.

(5)(A) The Administrative Office of the United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

(2) The time limitations under paragraph (1) shall apply to—

(A) an initial application for a writ of habeas corpus;

(B) any second or successive application for a writ of habeas corpus; and

(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

(5) The Administrative Office of the United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.

(Added Pub. L. 104–132, title I, § 107(a), Apr. 24, 1996, 110 Stat. 1224.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2265 of this title.

CHAPTER 155—INJUNCTIONS; THREE-JUDGE COURTS

Sec.
[2281. Repealed.]
[2282. Repealed.]
2283. Stay of State court proceedings.
2284. Three-judge district court; when required; composition; procedure.[1]

AMENDMENTS

1976—Pub. L. 94–381, § 4, Aug. 12, 1976, 90 Stat. 1119, struck out item 2281 ''Injunction against enforcement of State statute; three-judge court required'', item 2282 ''Injunction against enforcement of Federal statute; three-judge court required'', and inserted ''when required'' after ''district court'' in item 2284.

[§§ 2281, 2282. Repealed. Pub. L. 94–381, §§ 1, 2, Aug. 12, 1976, 90 Stat. 1119]

Section 2281, act June 25, 1948, ch. 646, 62 Stat. 968, provided that an interlocutory or permanent injunction restraining the enforcement, operation or execution of a State statute on grounds of unconstitutionality should not be granted unless the application has been heard and determined by a three-judge district court.

Section 2282, act June 25, 1948, ch. 646, 62 Stat. 968, provided that an interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress on grounds of unconstitutionality should not be granted unless the application therefor has been heard and determined by a three-judge district court.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94–381 set out as an Effective Date of 1976 Amendment note under section 2284 of this title.

§ 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

(June 25, 1948, ch. 646, 62 Stat. 968.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 379 (Mar. 3, 1911, ch. 231, § 265, 36 Stat. 1162).

An exception as to acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.

The phrase ''in aid of its jurisdiction'' was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

The exceptions specifically include the words ''to protect or ''effectuate its judgments,'' for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey v. New York Life Insurance Co.*, 62 S.Ct. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts, of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change).

Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision.

Changes were made in phraseology.

§ 2284. Three-judge court; when required; composition; procedure

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

(June 25, 1948, ch. 646, 62 Stat. 968; Pub. L. 86–507, § 1(19), June 11, 1960, 74 Stat. 201; Pub. L. 94–381, § 3, Aug. 12, 1976, 90 Stat. 1119; Pub. L. 98–620, title IV, § 402(29)(E), Nov. 8, 1984, 98 Stat. 3359.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 47, 47a, 380, 380a, and 792 (Mar. 3, 1911, ch. 231, §§ 210, 266, 36 Stat. 1150, 1162; Mar. 4, 1943, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38 Stat. 220; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938; Aug. 24, 1937, ch. 754, § 3, 50 Stat. 752; Apr. 6, 1942, ch. 210, § 3, 56 Stat. 199).

Provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., relating to the Supreme Court's jurisdiction of direct appeals appear in section 1253 of this title.

Provisions of sections 47, 380, and 380a of title 28, U.S.C., 1940 ed., requiring applications for injunctions restraining the enforcement, operation or execution of Federal or State statutes or orders of the Interstate Commerce Commission to be heard and determined by three-judge district courts appear in sections 2281, 2282, and 2325 of this title.

[1] So in original. Does not conform to section catchline.

The provision for notice to the United States attorney for the district where the action is pending was added because of the necessity of the United States attorney's preparation for hearing as soon as possible, to expedite such a case.

Provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., respecting time for direct appeal appear in section 2101 of this title.

This revised section represents an effort to provide a uniform method of convoking three-judge district courts, and for procedure therein. It follows recommendations of a committee appointed by the Judicial Conference of the United States, composed of Circuit Judges Evan A. Evans, Kimbrough Stone, Orie L. Phillips, and Albert B. Maris.

The committee pointed out that section 380a of title 28, U.S.C., 1940 ed., is the latest and ''most carefully drawn expression by Congress on the subject.'' Consequently, this section follows closely such section 380a and eliminates the discrepancies between sections 47, 47a, 380, and 380a of such title.

This section governs only the composition and procedure of three-judge district courts. The requirement that applications for injunctions be heard and determined by such courts will appear in other sections of this and other titles of the United States Code as Congress may enact from time to time. For example, see sections 2281, 2282, and 2325 of this title, sections 1213, 1215, 1255 of title 11, U.S.C., 1940 ed., Bankruptcy, section 28 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 44 of title 49, U.S.C., 1940 ed., Transportation.

United States District Judge W. Calvin Chestnut, has referred to the provisions relating to enforcement or setting aside or orders of the Interstate Commerce Commission as unfortunately lengthy and prolix. He has urged revision to insure uniform procedure in the several classes of so-called three-judge cases.

The provision that such notice shall be given by the clerk by registered mail, and shall be complete on the mailing thereof follows, substantially, rules 4(d)(4) and 5(b) of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

REFERENCES IN TEXT

The rules of civil procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98–620 struck out provision that the hearing had to be given precedence and held at the earliest practicable day.

1976—Pub. L. 94–381 substituted ''Three-judge court; when required'' for ''Three-judge district court'' in section catchline, and generally revised section to alter the method by which three-judge courts are composed, the procedure used by such courts, and to conform its requirements to the repeal of sections 2281 and 2282 of this title.

1960—Pub. L. 86–507 substituted ''by registered mail or by certified mail by the clerk and'' for ''by registered mail by the clerk, and''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 7 of Pub. L. 94–381 provided that: ''This Act [amending this section and section 2403 of this title and repealing sections 2281 and 2282 of this title] shall not apply to any action commenced on or before the date of enactment [Aug. 12, 1976].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 922; title 18 section 3626; title 26 sections 9010, 9011; title 42 sections 1973b, 1973c, 1973h, 1973aa–2, 1973bb; title 47 section 555.

CHAPTER 157—SURFACE TRANSPORTATION BOARD ORDERS; ENFORCEMENT AND REVIEW

Sec.
2321. Judicial review of Board's orders and decisions; procedure generally; process.
2322. United States as party
2323. Duties of Attorney General; intervenors.
[2324, 2325. Repealed.]

AMENDMENTS

1995—Pub. L. 104–88, title III, § 305(c)(1)(A), (E), Dec. 29, 1995, 109 Stat. 944, 945, substituted ''SURFACE TRANSPORTATION BOARD'' for ''INTERSTATE COMMERCE COMMISSION'' in chapter heading and ''Board's'' for ''Commission's'' in item 2321.

1975—Pub. L. 93–584, § 8, Jan. 2, 1975, 88 Stat. 1918, substituted ''Judicial Review of Commission's orders and decisions; procedure generally; process'' for ''Procedure generally; process'' in item 2321 and struck out item 2324 ''Stay of Commission's order'' and item 2325 ''Injunction; three-judge court required''.

CROSS REFERENCES

Review of orders of Federal agencies, see section 701 et seq. of Title 5, Government Organization and Employees.

§ 2321. Judicial review of Board's orders and decisions; procedure generally; process

(a) Except as otherwise provided by an Act of Congress, a proceeding to enjoin or suspend, in whole or in part, a rule, regulation, or order of the Surface Transportation Board shall be brought in the court of appeals as provided by and in the manner prescribed in chapter 158 of this title.

(b) The procedure in the district courts in actions to enforce, in whole or in part, any order of the Surface Transportation Board other than for payment of money or the collection of fines, penalties, and forfeitures, shall be as provided in this chapter.

(c) The orders, writs, and process of the district courts may, in the cases specified in subsection (b) and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49, run, be served and be returnable anywhere in the United States.

(June 25, 1948, ch. 646, 62 Stat. 969; May 24, 1949, ch. 139, § 115, 63 Stat. 105; Pub. L. 93–584, § 5, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95–473, § 2(a)(3)(B), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 104–88, title III, § 305(c)(1)(B), (C), Dec. 29, 1995, 109 Stat. 945.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 44 (Oct. 22, 1913, ch. 32, 38 Stat. 220.)

Word ''actions'' was substituted for ''cases,'' in view of rule 2 of the Federal Rules of Civil Procedure.

The exception as to procedure in the infliction of criminal punishment was omitted as unnecessary, as Title 18, U.S.C., Crimes and Criminal Procedure, and the Federal Rules of Criminal Procedure govern procedure in criminal matters.

Changes were made in phraseology.

1949 ACT

This section corrects, in section 2321 of title 28, U.S.C., the reference to certain sections in title 49,

U.S.C. The provisions which were formerly set out as section 49 of such title 49, are now set out as section 23 of such title.

AMENDMENTS

1995—Pub. L. 104–88 substituted ''Board's'' for ''Commission's'' in section catchline and ''Surface Transportation Board'' for ''Interstate Commerce Commission'' in subsecs. (a) and (b).

1978—Subsec. (c). Pub. L. 95–473 substituted ''enforcement actions and actions to collect civil penalties under subtitle IV of title 49'' for ''actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)''.

1975—Subsec. (a). Pub. L. 93–584 designated existing provisions as subsecs. (b) and (c) and added subsec. (a).

Subsec. (b). Pub. L. 93–584 designated existing first par. as subsec. (b) and substituted ''in whole or in part, any order of the Interstate Commerce Commission other than for'', for ''suspend, enjoin, annual or set aside in whole or in part any order of the Interstate Commerce Commission other than for the''.

Subsec. (c). Pub. L. 93–584 designated existing second par. as subsec. (c), substituted reference to subsec. (b) of this section for reference to this section, and inserted references to the dates of enactment, statute citations and code references of sections 20, 23 and 43 of Title 49.

1949—Act May 24, 1949, substituted ''20, 23, and 43'' for ''20, 43, and 49'' in second par.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 10 of Pub. L. 93–584 provided that: ''This Act [amending this section, sections 1336, 1398, 2323, 2341, and 2342 of this title, and section 305 of former Title 49, Transportation, and repealing sections 2324 and 2325 of this title] shall not apply to any action commenced on or before the last day of the first month beginning after the date of enactment [Jan. 2, 1975]. However, actions to enjoin or suspend orders of the Interstate Commerce Commission which are pending when this Act becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2322, 2323, 2342 of this title.

§ 2322. United States as party

All actions specified in section 2321 of this title shall be brought by or against the United States.

(June 25, 1948, ch. 646, 62 Stat. 969.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 48 (Mar. 3, 1911, ch. 231, § 211, 36 Stat. 1150; Oct. 22, 1913, ch. 32, 38 Stat. 219).

Word ''actions'' was substituted for ''cases and proceedings'', in view of Rule 2 of the Federal Rules of Civil Procedure.

A provision authorizing intervention by the United States was omitted. The United States, under the provisions of this section, is a necessary and indispensable original party, and hence intervention is unnecessary. (See *Lambert Run Coal Co. v. Baltimore & O. R. Co.*, 1922, 42 S.Ct. 349, 258 U.S. 377, 66 L.Ed. 671.)

§ 2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49.

The Surface Transportation Board and any party or parties in interest to the proceeding before the Board, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Board, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein.

(June 25, 1948, ch. 646, 62 Stat. 970; May 24, 1949, ch. 139, § 116, 63 Stat. 105; Pub. L. 93–584, § 6, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95–473, § 2(a)(3)(C), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 104–88, title III, § 305(c)(1)(C), (D), Dec. 29, 1995, 109 Stat. 945.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 45a (Mar. 3, 1911, ch. 231, §§ 212, 213, 36 Stat. 1150, 1151; Oct. 22, 1913, ch. 32, 38 Stat. 220).

The provision in the second sentence of section 45a of title 28, U.S.C., 1940 ed., authorizing the Attorney General to employ and compensate special attorneys was omitted as covered by sections 503 and 508 [now 543 and 548] of this title. The provision in the same sentence authorizing the court to make rules for the conduct and procedure of actions under this section were omitted as covered by the Federal Rules of Civil Procedure and section 2071 of this title relating to authority of district courts to promulgate local rules of procedure.

The last paragraph of section 45a of title 28, U.S.C., 1940 ed., was omitted as merely repetitive of the language immediately following the first proviso.

Word ''action'' was substituted for ''suit'' in conformity with Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This section corrects, in section 2323 of title 28, U.S.C., the reference to certain sections in title 49, U.S.C. The provisions which were formerly set out as section 49 of such title 49 are now set out as section 23 of such title.

AMENDMENTS

1995—Pub. L. 104–88 substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission'' and substituted ''the Board'' for ''the Commission'' in two places.

1978—Pub. L. 95–473 substituted ''enforcement actions and actions to collect civil penalties under subtitle IV of title 49'' for ''actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)'' in first par.

1975—Pub. L. 93–584 struck out reference to the district courts and the Supreme Court of the United States upon appeal from the district courts as the courts in which the Attorney General can represent the United States in first par.

1949—Act May 24, 1949, substituted ''20, 23, and 43'' for ''20, 43, and 49'' in first par.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.

[§§ 2324, 2325. Repealed. Pub. L. 93–584, § 7, Jan. 2, 1975, 88 Stat. 1918]

Section 2324, act June 25, 1948, ch. 646, 62 Stat. 970, related to power of court to restrain or suspend operation of orders of Interstate Commerce Commission pending final hearing and determination of action.

Section 2325, act June 25, 1948, ch. 646, 62 Stat. 970, related to requirement of a three judge district court to hear and determine interlocutory or permanent injunctions restraining enforcement, operation or execution of orders of Interstate Commerce Commission.

EFFECTIVE DATE OF REPEAL

Repeal applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this repeal becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as an Effective Date of 1975 Amendment note under section 2321 of this title.

CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

Sec.
2341. Definitions.
2342. Jurisdiction of court of appeals.
2343. Venue.
2344. Review of orders; time; notice; contents of petitions; service.
2345. Prehearing conference.
2346. Certification of record on review.
2347. Petitions to review; proceedings.
2348. Representation in proceeding; intervention.
2349. Jurisdiction of the proceeding.
2350. Review in Supreme Court on certiorari or certification.
2351. Enforcement of orders by district courts.
[2352, 2353. Repealed.]

AMENDMENTS

1982—Pub. L. 97–164, title I, § 138, Apr. 2, 1982, 96 Stat. 42, struck out item 2353 ''Decision of the Plant Variety Protection Office''.

1966—Pub. L. 89–773, § 4, Nov. 6, 1966, 80 Stat. 1323, struck out item 2352 ''Rules''.

Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 621, added chapter 158 and items 2341 to 2352.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2321 of this title; title 2 sections 1220, 1407; title 7 sections 149, 150gg, 163; title 8 section 1252; title 21 sections 104, 117, 122, 127, 134e, 135a; title 31 section 755; title 39 section 3628; title 42 sections 2239, 2242, 3612; title 45 section 431; title 46 App. section 1712; title 47 section 402; title 49 sections 13907, 20114; title 50 section 167h.

§ 2341. Definitions

As used in this chapter—

(1) ''clerk'' means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;

(2) ''petitioner'' means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and

(3) ''agency'' means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

(C) the Administration, when the order was entered by the Maritime Administration;

(D) the Secretary, when the order is under section 812 of the Fair Housing Act; and

(E) the Board, when the order was entered by the Surface Transportation Board.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622; amended Pub. L. 93–584, § 3, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 100–430, § 11(b), Sept. 13, 1988, 102 Stat. 1635; Pub. L. 102–365, § 5(c)(1), Sept. 3, 1992, 106 Stat. 975; Pub. L. 104–88, title III, § 305(d)(1)–(4), Dec. 29, 1995, 109 Stat. 945.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1031.	Dec. 29, 1950, ch. 1189, § 1, 64 Stat. 1129. Aug. 30, 1954, ch. 1073, § 2(a), 68 Stat. 961.

Subsection (a) of former section 1031 of title 5 is omitted as unnecessary because the term ''court of appeals'' as used in title 28 means a United States Court of Appeals and no additional definition is necessary.

In paragraph (3), reference to the United States Maritime Commission is omitted because that Commission was abolished by 1950 Reorg. Plan No. 21, § 306, eff. May 24, 1950, 64 Stat. 1277. Reference to ''Federal Maritime Commission'' is substituted for ''Federal Maritime Board'' on authority of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 75 Stat. 840.

REFERENCES IN TEXT

Section 812 of the Fair Housing Act, referred to in par. (3)(D), is classified to section 3612 of Title 42, The Public Health and Welfare.

AMENDMENTS

1995—Par. (3)(A). Pub. L. 104–88, § 305(d)(1), struck out ''the Interstate Commerce Commission,'' after ''Maritime Commission,''.

Par. (3)(E). Pub. L. 104–88, § 305(d)(2)–(4), added subpar. (E).

1992—Par. (3)(B). Pub. L. 102–365 inserted ''or the Secretary of Transportation'' after ''Secretary of Agriculture''.

1988—Par. (3)(D). Pub. L. 100–430 added subpar. (D).

1975—Par. (3)(A). Pub. L. 93–584 inserted reference to the Interstate Commerce Commission.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of

Pub. L. 100–430, set out as a note under section 3601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2149, 3804, 3805.

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communication Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and 841a)[1] or pursuant to part B or C of subtitle IV of title 49; and

(B) the Federal Maritime Commission issued pursuant to—

(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d)[2];

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

(6) all final orders under section 812 of the Fair Housing Act; and

(7) all final agency actions described in section 20114(c) of title 49.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622; amended Pub. L. 93–584, § 4, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95–454, title II, § 206, Oct. 13, 1978, 92 Stat. 1144; Pub. L. 96–454, § 8(b)(2), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97–164, title I, § 137, Apr. 2, 1982, 96 Stat. 41; Pub. L. 98–554, title II, § 227(a)(4), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 99–336, § 5(a), June 19, 1986, 100 Stat. 638; Pub. L. 100–430, § 11(a), Sept. 13, 1988, 102 Stat. 1635; Pub. L. 102–365, § 5(c)(2), Sept. 3, 1992, 106 Stat. 975; Pub. L. 103–272, § 5(h), July 5, 1994, 108 Stat. 1375; Pub. L. 104–88, title III, § 305(d)(5)–(8), Dec. 29, 1995, 109 Stat. 945; Pub. L. 104–287, § 6(f)(2), Oct. 11, 1996, 110 Stat. 3399.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1032.	Dec. 29, 1950, ch. 1189, § 2, 64 Stat. 1129. Aug. 30, 1954, ch. 1073, § 2(b), 68 Stat. 961.

The words ''have exclusive jurisdiction'' are substituted for ''shall have exclusive jurisdiction''.

In paragraph (1), the word ''by'' is substituted for ''in accordance with''.

In paragraph (3), the word ''now'' is omitted as unnecessary. The word ''under'' is substituted for ''pursuant to the provisions of''. Reference to ''Federal Maritime Commission'' is substituted for ''Federal Maritime Board'' on authority of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 75 Stat. 840. Reference to the United States Maritime Commission is omitted because that Commission was abolished by 1950 Reorg. Plan No. 21, § 306, eff. May 24, 1951, 64 Stat. 1277, and any existing rights are preserved by technical sections 7 and 8.

REFERENCES IN TEXT

Section 812 of the Fair Housing Act, referred to in par. (6), is classified to section 3612 of Title 42, The Public Health and Welfare.

AMENDMENTS

1996—Par. (3)(A). Pub. L. 104–287 amended Pub. L. 104–88, § 305(d)(6). See 1995 Amendment note below.

1995—Par. (3)(A). Pub. L. 104–88, § 305(d)(6), as amended by Pub. L. 104–287, inserted ''or pursuant to part B or C of subtitle IV of title 49'' before the semicolon.

Pub. L. 104–88, § 305(d)(5), substituted ''or 41'' for ''41, or 43''.

Par. (3)(B). Pub. L. 104–88, § 305(d)(7), redesignated cls. (ii), (iv), and (v) as (i), (ii), and (iii), respectively, and struck out former cls. (i) and (iii) which read as follows:

''(i) section 23, 25, or 43 of the Shipping Act, 1916 (46 U.S.C. App. 822, 824, or 841a);

''(iii) section 2, 3, 4, or 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 844, 845, 845a, or 845b);''.

Par. (5). Pub. L. 104–88, § 305(d)(8), added par. (5) and struck out former par. (5) which read as follows: ''all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code;''.

1994—Par. (7). Pub. L. 103–272 substituted ''section 20114(c) of title 49'' for ''section 202(f) of the Federal Railroad Safety Act of 1970''.

1992—Par. (7). Pub. L. 102–365, which directed the addition of par. (7) at end, was executed by adding par. (7) after par. (6) and before concluding provisions, to reflect the probable intent of Congress.

1988—Par. (6). Pub. L. 100–430 added par. (6).

1986—Par. (3). Pub. L. 99–336 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 as are subject to judicial review under section 830 of title 46;''.

1984—Par. (5). Pub. L. 98–554 substituted ''11901(j)(2)'' for ''11901(i)(2)''.

[1] So in original. The reference to ''841a'' probably should not appear.

[2] So in original. Probably should be followed by a closing parenthesis.

1982—Pub. L. 97–164 inserted ''(other than the United States Court of Appeals for the Federal Circuit)'' after ''court of appeals'' in provisions preceding par. (1), and struck out par. (6) which had given the court of appeals jurisdiction in cases involving all final orders of the Merit Systems Protection Board except as provided for in section 7703(b) of title 5. See section 1295(a)(9) of this title.

1980—Par. (5). Pub. L. 96–454 inserted ''and all final orders of such Commission made reviewable under section 11901(i)(2) of title 49, United States Code'' after ''section 2321 of this title''.

1978—Par. (6). Pub. L. 95–454 added par. (6).

1975—Par. (5). Pub. L. 93–584 added par. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6(f) of Pub. L. 104–287 provided that the amendment made by that section is effective Dec. 29, 1995.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100–430, set out as a note under section 3601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 5(b) of Pub. L. 99–336 provided that: ''The amendment made by this section [amending this section] shall apply with respect to any rule, regulation, or final order described in such amendment which is issued on or after the date of the enactment of this Act [June 19, 1986].''

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 this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93–584, set out as a note under section 2321 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 App. section 1710a.

§ 2343. Venue

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1033.	Dec. 29, 1950, ch. 1189, § 3, 64 Stat. 1130.

The section is reorganized for clarity and conciseness. The word ''is'' is substituted for ''shall be''. The word ''petitioner'' is substituted for ''party or any of the parties filing the petition for review'' in view of the definition of ''petitioner'' in section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2149, 3804, 3805.

§ 2344. Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1034.	Dec. 29, 1950, ch. 1189, § 4, 64 Stat. 1130.

The section is reorganized, with minor changes in phraseology. The words ''as prescribed by section 1033 of this title'' are omitted as surplusage. The words ''of the United States'' following ''Attorney General'' are omitted as unnecessary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2342 of this title; title 2 section 1407; title 7 sections 2149, 3804, 3805.

§ 2345. Prehearing conference

The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1035.	Dec. 29, 1950, ch. 1189, § 5, 64 Stat. 1130.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2149, 3804, 3805.

§ 2346. Certification of record on review

Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 623.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1036.	Dec. 29, 1950, ch. 1189, § 6, 64 Stat. 1130. Aug. 28, 1958, Pub. L. 85–791, § 31(a), 72 Stat. 951.

The words ''of the court of appeals in which the proceeding is pending'' are omitted as unnecessary in view of the definition of ''clerk'' in section 2341 of this title, and by reason of the exclusive jurisdiction of the court of appeals set forth in section 2342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2149, 3804, 3805.

§ 2347. Petitions to review; proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 623.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1037.	Dec. 29, 1950, ch. 1189, § 7, 64 Stat. 1130. Aug. 28, 1958, Pub. L. 85–791, § 31(b), 72 Stat. 951.

The headnotes of the subsections are omitted as unnecessary and to conform to the style of title 28.

In subsection (a), the words ''the petition'' following ''on a motion to dismiss'' are omitted as unnecessary. The word ''are'' is substituted for ''shall be''. The words ''in fact'' following ''when the agency has'' are omitted as unnecessary.

In subsection (b)(3), the words ''United States'' preceding ''district court'' are omitted as unnecessary because the term ''district court'' as used in title 28 means a United States district court. See section 451 of title 28, United States Code. The words ''or any petitioner'' are omitted as unnecessary in view of the definition of ''petitioner'' in section 2341 of this title. In the last sentence, the word ''is'' is substituted for ''shall be''.

In subsection (c), the words ''applies'' and ''shows'' are substituted for ''shall apply'' and ''shall show'', respectively.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2149, 3804, 3805; title 8 section 1252.

§ 2348. Representation in proceeding; intervention

The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 623.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1038.	Dec. 29, 1950, ch. 1189, § 8, 64 Stat. 1131.

In the first sentence, the words ''is responsible for and has control'' are substituted for ''shall be responsible for and have charge and control''.

In the last sentence, the word ''may'' is substituted for ''shall''. The word ''aforesaid'' following ''any party or intervenor'' is omitted as unnecessary. The words ''any intervenor'' and ''inaction'' are substituted for ''said intervenor or intervenors'' and ''nonaction'', respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 1407; title 7 sections 2149, 3804, 3805.

§ 2349. Jurisdiction of the proceeding

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 624; amended Pub. L. 98–620, title IV, § 402(29)(F), Nov. 8, 1984, 98 Stat. 3359.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1039.	Dec. 29, 1950, ch. 1189, § 9, 64 Stat. 1131. Sept. 13, 1961, Pub. L. 87–225, § 1, 75 Stat. 497.

The headnotes of the subsections are omitted as unnecessary and to conform to the style of title 28.

In subsection (a), the words ''has jurisdiction'' and ''has exclusive jurisdiction'' are substituted for ''shall have jurisdiction'' and ''shall have exclusive jurisdiction'', respectively. The words ''previously granted'' are substituted for ''theretofore granted'' as the preferred expression.

In subsection (b), the words ''does not'' are substituted for ''shall not''. The words ''of the United States'' following ''Attorney General'' are omitted as unnecessary. The words ''In a case in which'' are substituted for ''In cases where''. The word ''result'' is substituted for ''ensue''. In the fourth sentence, the words ''provided for above'' following the last word ''application'' are omitted as unnecessary. In the last sentence, the word ''applies'' is substituted for ''shall apply''.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out provisions that the hearing on an application for an interlocutory injunction be given preference and expedited and heard at the earliest practicable date after the expiration of the notice of hearing on the application, and that on the final hearing of any proceeding to review any order under this chapter, the same requirements as to precedence and expedition was to apply.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620 set out as an Effective Date note under section 1657 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2350 of this title; title 7 sections 2149, 3804, 3805.

§ 2350. Review in Supreme Court on certiorari or certification

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 624; amended Pub. L. 100–352, § 5(e), June 27, 1988, 102 Stat. 663.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1040.	Dec. 29, 1950, ch. 1189, § 10, 64 Stat. 1132.

The words ''of the United States'' following ''Supreme Court'' are omitted as unnecessary because the

term ''Supreme Court'' as used in title 28 means the Supreme Court of the United States.

The words ''section 2101(f) of this title'' are substituted for ''section 2101(e) of Title 28'' on authority of the Act of May 24, 1949, ch. 139, § 106(b), 63 Stat. 104, which redesignated subsection (e) of section 2101 as subsection (f).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–352 substituted ''1254(2)'' for ''1254(3)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2149, 3804, 3805.

§ 2351. Enforcement of orders by district courts

The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 624.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1042.	Dec. 29, 1950, ch. 1189, § 12, 64 Stat. 1132.

The words ''United States'' preceding ''district court'' are omitted as unnecessary because the term ''district court'' as used in title 28 means a United States district court. See section 451 of title 28, United States Code. The words ''have jurisdiction'' are substituted for ''are vested with jurisdiction''. The words ''heretofore or hereafter'' following ''order'' are omitted as unnecessary and any existing rights and liabilities are preserved by technical sections 7 and 8.

[§ 2352. Repealed. Pub. L. 89–773, § 4, Nov. 6, 1966, 80 Stat. 1323]

Section, Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 624, directed the several courts of appeals to adopt and promulgate rules, subject to the approval of the Judicial Conference of the United States, governing the practice and procedure, including prehearing conference procedure, in proceedings to review orders under this chapter. See section 2072 of this title.

SAVINGS PROVISION

Section 4 of Pub. L. 89–773 provided in part that the repeal of this section shall not operate to invalidate or repeal rules adopted under the authority of this section prior to the enactment of Pub. L. 89–773, which rules shall remain in effect until superseded by rules prescribed under authority of section 2072 of this title as amended by Pub. L. 89–773.

[§ 2353. Repealed. Pub. L. 97–164, title I, § 138, Apr. 2, 1982, 96 Stat. 42]

Section, added Pub. L. 91–577, title III, § 143(c), Dec. 24, 1970, 84 Stat. 1559, gave the court of appeals nonexclusive jurisdiction to hear appeals under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461). See section 1295(a)(8) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 159—INTERPLEADER

Sec.
2361. Process and procedure.

§ 2361. Process and procedure

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

(June 25, 1948, ch. 646, 62 Stat. 970; May 24, 1949, ch. 139, § 117, 63 Stat. 105.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 41(26) (Mar. 3, 1911, ch. 231, § 24, par. 26, as added Jan. 20, 1936, ch. 13, § 1, 49 Stat. 1096).

Jurisdiction and venue provisions of section 41(26) of title 28, U.S.C., 1940 ed., appear in sections 1335 and 1397 of this title.

Subsection (e) of section 41(26) of title 28, U.S.C., 1940 ed., relating to defense in nature of interpleader and joinder of additional parties, was omitted as unnecessary, such matters being governed by the Federal Rules of Civil Procedure.

Words, ''Notwithstanding any provision of part I of this title to the contrary'' were omitted as unnecessary, since the revised title contains no ''contrary provisions.''

Changes were made in phraseology.

1949 ACT

This section makes clear that section 2361 of title 28, U.S.C., applies only to statutory actions and not to general equity interpleader suits in which the jurisdictional amount and diversity of citizenship requirements are the same as in other diversity cases.

AMENDMENTS

1949—Act May 24, 1949, substituted ''In any civil action of interpleader or in the nature of interpleader under section 1335 under this title'' for ''In any interpleader action,'', and inserted ''or prosecuting'' between ''instituting'' and ''any proceeding''.

CHAPTER 161—UNITED STATES AS PARTY GENERALLY

Sec.
2401. Time for commencing action against United States.
2402. Jury trial in actions against United States.
2403. Intervention by United States or a State; constitutional question.

Sec.
2404. Death of defendant in damage action.
2405. Garnishment.
2406. Credits in actions by United States; prior disallowance.
2407. Delinquents for public money; judgment at return term; continuance.
2408. Security not required of United States.
2409. Partition actions involving United States.
2409a. Real property quiet title actions.
2410. Actions affecting property on which United States has lien.
2411. Interest.
2412. Costs and fees.
2413. Executions in favor of United States.
2414. Payment of judgments and compromise settlements.
2415. Time for commencing actions brought by the United States.
2416. Time for commencing actions brought by the United States—Exclusions.

HISTORICAL AND REVISION NOTES

1949 ACT

This section amends the analysis of chapter 161 of title 28, U.S.C., to conform item 2411 therein with the catch line of section 2411 of such title as amended by another section of this bill.

AMENDMENTS

1980—Pub. L. 96–481, title II, § 204(b), Oct. 21, 1980, 94 Stat. 2329, substituted ''Costs and fees'' for ''Costs'' in item 2412.

1976—Pub. L. 94–381, § 6, Aug. 12, 1976, 90 Stat. 1120, inserted ''or a State'' after ''United States'' in item 2403.

1972—Pub. L. 92–562, § 3(b), Oct. 25, 1972, 86 Stat. 1177, added item 2409a.

1966—Pub. L. 89–505, § 2, July 18, 1966, 80 Stat. 305, added items 2415 and 2416.

1961—Pub. L. 87–187, § 2, Aug. 30, 1961, 75 Stat. 416, substituted ''and compromise settlements'' for ''against the United States'' in item 2414.

1954—Act July 30, 1954, ch. 648, § 2(b), 68 Stat. 589, struck out ''denied'' in item 2402.

1949—Act May 24, 1949, ch. 139, § 118, 63 Stat. 105, substituted ''Interest'' for ''Interest on judgments against United States'' in item 2411.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 12 sections 209, 4621.

§ 2401. Time for commencing action against United States

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(June 25, 1948, ch. 646, 62 Stat. 971; Apr. 25, 1949, ch. 92, § 1, 63 Stat. 62; Pub. L. 86–238, § 1(3), Sept. 8, 1959, 73 Stat. 472; Pub. L. 89–506, § 7, July 18, 1966, 80 Stat. 307; Pub. L. 95–563, § 14(b), Nov. 1, 1978, 92 Stat. 2389.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(20), 942 (Mar. 3, 1911, ch. 231, § 24, part 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310(c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, § 1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, § 420, 60 Stat. 845).

Section consolidates provision in section 41(20) of title 28, U.S.C., 1940 ed., as to time limitation for bringing actions against the United States under section 1346(a) of this title, with section 942 of said title 28.

Words ''or within one year after the date of enactment of this Act whichever is later'', in section 942 of title 28, U.S.C., 1940 ed., were omitted as executed.

Provisions of section 41(20) of title 28, U.S.C., 1940 ed., relating to jurisdiction of district courts and trial by the court of actions against the United States are the basis of sections 1346(a) and 2402 of this title.

Words in subsec. (a) of this revised section, ''person under legal disability or beyond the seas at the time the claim accrues'' were substituted for ''claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim.'' (See reviser's note under section 2501 of this title.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., ''nor shall any of the said disabilities operate cumulatively'' were omitted. (See reviser's note under section 2501 of this title.)

A provision in section 41(20) of title 28, U.S.C., 1940 ed., that disabilities other than those specifically mentioned should not prevent any action from being barred was omitted as superfluous.

Subsection (b) of the revised section simplifies and restates said section 942 of title 28, U.S.C., 1940 ed., without change of substance.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

Subsection (b) amended in the Senate to insert the 1 year limitation on the bringing of tort actions and to include the limitation upon the time in which tort claims not exceeding $1000 must be presented to the appropriate Federal agencies for administrative disposition. 80th Congress Senate Report No. 1559, Amendment No. 48.

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (a), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–563 inserted Contract Disputes Act of 1978 exception.

1966—Subsec. (b). Pub. L. 89–506 struck out provisions dealing with a tort claim of $2,500 or under as a special category of tort claim requiring preliminary administrative action and substituted provisions requiring presentation of all tort claims to the appropriate Federal agency in writing within two years after the claim accrues and commencement of an action within six months of the date of mailing of notice of final denial of the claim by the agency to which it was presented for provisions requiring commencement of an action within two years after the claim accrues.

1959—Subsec. (b). Pub. L. 86–238 substituted ''$2,500'' for ''$1,000'' in two places.

1949—Subsec. (b). Act Apr. 25, 1949, the time limitation on bringing tort actions from 1 year to 2 years.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2671, 2679 of this title; title 30 section 1724; title 41 section 113; title 42 section 2212; title 45 section 1203; title 49 section 44309.

§ 2402. Jury trial in actions against United States

Subject to chapter 179 of this title, any action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury.

(June 25, 1948, ch. 646, 62 Stat. 971; July 30, 1954, ch. 648, § 2(a), 68 Stat. 589; Pub. L. 104–331, § 3(b)(3), Oct. 26, 1996, 110 Stat. 4069.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(20), 931(a) (Mar. 3, 1911, ch. 231, § 24, par. 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310(c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, § 1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, § 410(a), 60 Stat. 843).

Section consolidates non-jury provisions of sections 41(20) and 931(a) of title 28, U.S.C., 1940 ed. For other provisions of said section 931(a) relating to tort claims, see Distribution Table.

Word ''actions'' was substituted for ''suits'', in view of Rule 2 of the Federal Rules of Civil Procedure.

Provisions of title 28, U.S.C., 1940 ed., § 41(20) relating to jurisdiction of district courts and time for bringing actions against the United States are the basis of sections 1346 and 2401 of this title.

AMENDMENTS

1996—Pub. L. 104–331 substituted ''Subject to chapter 179 of this title, any action'' for ''Any action''.

1954—Act July 30, 1954, permitted a jury trial at the request of either party in actions under section 1346(a)(1) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as an Effective Date note under section 1296 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 113; title 42 section 2212.

§ 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971; Pub. L. 94–381, § 5, Aug. 12, 1976, 90 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 401 (Aug. 24, 1937, ch. 754, § 1, 50 Stat. 751).

Word ''action'' was added before ''suit or proceeding'', in view of Rule 2 of the Federal Rules of Civil Procedure.

Since this section applies to all Federal courts, the word ''suit'' was not required to be deleted by such rule.

''Court of the United States'' is defined in section 451 of this title. Direct appeal from decisions invalidating Acts of Congress is provided by section 1252 of this title.

Changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94–381, § 5(b), inserted ''or a State'' after ''United States'' in section catchline.

Subsecs. (a), (b). Pub. L. 94–381, § 5(a), designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–381 not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94–381, set out as a note under section 2284 of this title.

§ 2404. Death of defendant in damage action

A civil action for damages commenced by or on behalf of the United States or in which it is interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

(June 25, 1948, ch. 646, 62 Stat. 971.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 780a (June 16, 1933, ch. 103, 48 Stat. 311).

Substitution of parties, see rule 25(a) of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

§ 2405. Garnishment

In any action or suit commenced by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees. Any person so summoned shall appear in open court and depose in writing to the amount of his indebtedness to the corporation at the time of the service of the summons and at the time of making the deposition, and judgment may be entered in favor of the United States for the sum admitted by the garnishee to be due the corporation as if it had been due the United States. A judgment shall not be entered against any garnishee until after judgment has been rendered against the corporation, nor until the sum in which the garnishee is indebted is actually due.

When any garnishee deposes in open court that he is not and was not at the time of the service of the summons indebted to the corporation, an issue may be tendered by the United States upon such deposition. If, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs.

Any garnishee who fails to appear at the term to which he is summoned shall be subject to attachment for contempt.

(June 25, 1948, ch. 646, 62 Stat. 971.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§748, 749, and 750 (R.S. §§935, 936, 937).

Changes were made in phraseology.

§ 2406. Credits in actions by United States; prior disallowance

In an action by the United States against an individual, evidence supporting the defendant's claim for a credit shall not be admitted unless he first proves that such claim has been disallowed, in whole or in part, by the General Accounting Office, or that he has, at the time of the trial, obtained possession of vouchers not previously procurable and has been prevented from presenting such claim to the General Accounting Office by absence from the United States or unavoidable accident.

(June 25, 1948, ch. 646, 62 Stat. 972.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §774 (R.S., §§236, 951; June 10, 1921, ch. 18, §§304, 305, 42 Stat. 24).

Word "action" was substituted for "suits", in view of Rule 2 of the Federal Rules of Civil Procedure.

Section 774 of title 28, U.S.C., 1940 ed., provided that "no claim for a credit shall be admitted, upon trial", etc. This was changed to "evidence supporting the defendant's claim for a credit shall not be admitted", to clarify the meaning of the section. The case of *U.S. v. Heard*, D.C.Va. 1940, 32 F.Supp. 39, reviews the conflicting decisions on the question whether compliance with the section must be pleaded, and offers persuasive argument that it need not be, and that the section was designed as a rule of evidence. The wording of the remainder of the section also supports this conclusion, as pointed out by Judge Learned Hand in *U.S. v. Standard Aircraft Corp.*, D.C.N.Y. 1926, 16 F.2d 307, followed in the Heard case.

Changes in phraseology were made.

CROSS REFERENCES

Third party tort liability for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

§ 2407. Delinquents for public money; judgment at return term; continuance

In an action by the United States against any person accountable for public money who fails to pay into the Treasury the sum reported due the United States, upon the adjustment of his account the court shall grant judgment upon motion unless a continuance is granted as specified in this section.

A continuance may be granted if the defendant, in open court and in the presence of the United States attorney, states under oath that he is equitably entitled to credits which have been disallowed by the General Accounting Office prior to the commencement of the action, specifying each particular claim so rejected, and stating that he cannot safely come to trial.

A continuance may also be granted if such an action is commenced on a bond or other sealed instrument and the court requires the original instrument to be produced.

(June 25, 1948, ch. 646, 62 Stat. 972.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §781 (R.S. §957; June 10, 1921, ch. 18, §304, 42 Stat. 24).

Word "action" was substituted for "suit", in view of Rule 2 of the Federal Rules of Civil Procedure.

Words "court requires the original instrument to be produced" were substituted for "defendant pleads non est factum, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper certified in the affidavit". The plea of non est factum is obsolete under Rule 7(c) of the Federal Rules of Civil Procedure. Furthermore, the words deleted are superfluous, since a court would not require the production of an original instrument unless the proper procedure were taken to require such production.

Changes were made in phraseology.

§ 2408. Security not required of United States

Security for damages or costs shall not be required of the United States, any department or agency thereof or any party acting under the direction of any such department or agency on the issuance of process or the institution or prosecution of any proceeding.

Costs taxable, under other Acts of Congress, against the United States or any such department, agency or party shall be paid out of the contingent fund of the department or agency which directed the proceedings to be instituted.

(June 25, 1948, ch. 646, 62 Stat. 972.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §870 (R.S. §1001; Mar. 3, 1911, ch. 231, §§117, 289, 36 Stat. 1131, 1167; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; June 19, 1934, ch. 653, §7, 48 Stat. 1109).

Section 870 of title 28, U.S.C., 1940 ed., applied only to the Supreme Court and district courts. The revised section applies to all courts.

Words "process or the institution or prosecution of any proceeding" were substituted for "appeal, or other process in law, admiralty, or equity."

Word ''agency'' was substituted for ''any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly'', in view of the creation of many independent governmental agencies since the enactment of the original law on which this section is based.

Changes were made in phraseology.

§ 2409. Partition actions involving United States

Any civil action by any tenant in common or joint tenant owning an undivided interest in lands, where the United States is one of such tenants in common or joint tenants, against the United States alone or against the United States and any other of such owners, shall proceed, and be determined, in the same manner as would a similar action between private persons.

Whenever in such action the court orders a sale of the property or any part thereof the Attorney General may bid for the same in behalf of the United States. If the United States is the purchaser, the amount of the purchase money shall be paid from the Treasury upon a warrant drawn by the Secretary of the Treasury on the requisition of the Attorney General.

(June 25, 1948, ch. 646, 62 Stat. 972.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 766 (May 17, 1898, ch. 339, §§ 1, 2, 30 Stat. 416).

Provisions relating to service or commencement of the action and duty of United States attorneys to appear, defend, and file answer were omitted as surplusage and covered by Rules 2, 3, and 4 of the Federal Rules of Civil Procedure and section 507 of this title.

Words ''shall proceed, and be determined, in the same manner as would a similar action between private persons'' were substituted for ''shall proceed as other cases for partition by courts of equity, and in making such partition the court shall be governed by the same principles of equity that control courts of equity, in partition proceedings between private persons,'' in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

§ 2409a. Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(*l*) For purposes of this section, the term ''tide or submerged lands'' means ''lands beneath navigable waters'' as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

(Added Pub. L. 92–562, § 3(a), Oct. 25, 1972, 86 Stat. 1176; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–598, Nov. 4, 1986, 100 Stat. 3351.)

REFERENCES IN TEXT

Section 208 of the Act of July 10, 1952, referred to in subsec. (a), is section 208(a) to (d) of act July 10, 1952, ch. 651, 66 Stat. 560. Section 208(a) to (c) is classified to section 666 of Title 43, Public Lands. Section 208(d) is not classified to the Code.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsecs. (c) to (n). Pub. L. 99–598 added subsecs. (c) and (h) to (m), redesignated former subsecs. (c), (d), (e), (f), and (g) as (d), (e), (f), (g), and (n), respectively, and inserted '', except for an action brought by a State,'' in subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1346, 1402 of this title.

§ 2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) to quiet title to,

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) of interpleader or in the nature of interpleader with respect to,

real or personal property on which the United States has or claims a mortgage or other lien.

(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

(c) A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale. A sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days or the period allowable for redemption under State law, whichever is longer, and in any case in which, under the provisions of section 505 of the Housing Act of 1950, as amended (12 U.S.C. 1701k), and subsection (d) of section 3720 of title 38 of the United States Code, the right to redeem does not arise, there shall be no right of redemption. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head (or his delegate) of the department or agency of the United States which has charge of the administration of the laws in respect to which the claim of the United States arises. In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.

(d) In any case in which the United States redeems real property under this section or section 7425 of the Internal Revenue Code of 1986, the amount to be paid for such property shall be the sum of—

(1) the actual amount paid by the purchaser at such sale (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent satisfied by reason of such sale),

(2) interest on the amount paid (as determined under paragraph (1)) at 6 percent per annum from the date of such sale, and

(3) the amount (if any) equal to the excess of (A) the expenses necessarily incurred in connection with such property, over (B) the income from such property plus (to the extent such property is used by the purchaser) a reasonable rental value of such property.

(e) Whenever any person has a lien upon any real or personal property, duly recorded in the jurisdiction in which the property is located, and a junior lien, other than a tax lien, in favor of the United States attaches to such property, such person may make a written request to the officer charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to wholly or partly satisfy the lien of the United States, or that the claim of the United States has been satisfied or by lapse of time or otherwise has become unenforceable, such officer may issue a certificate releasing the property from such lien.

(June 25, 1948, ch. 646, 62 Stat. 972; May 24, 1949, ch. 139, § 119, 63 Stat. 105; Pub. L. 85–508, § 12(h), July 7, 1958, 72 Stat. 348; Pub. L. 86–507, § 1(20), June 11, 1960, 74 Stat. 201; Pub. L. 89–719, title II, § 201, Nov. 2, 1966, 80 Stat. 1147; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–647, title XXXVI, § 3630, Nov. 29, 1990, 104 Stat. 4966; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104–316, title I, § 114, Oct. 19, 1996, 110 Stat. 3834.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 901, 902, 904, 905 (Mar. 4, 1931, ch. 515, §§ 1, 2, 4, 5, 46 Stat. 1528, 1529; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; June 6, 1940, ch. 242, 54 Stat. 234; Dec. 2, 1942, ch. 656, §§ 1–3, 56 Stat. 1026).

Provisions including the districts of Hawaii and Puerto Rico, and the District Court of the United States for the District of Columbia, in section 901 of title 28, U.S.C., 1940 ed., were omitted as covered by ''any district court.'' See section 451 of this title.

Provisions in section 902 of title 28, U.S.C., 1940 ed., relating to process, were omitted as covered by Rule 4 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

1949 ACT

This amendment conforms the language of section 2410(b) of title 28, U.S.C., with that of the prior law with respect to service of process and complaint upon the United States in suits brought in State courts. This is provided for by rule 4(d)(4) of the Federal Rules of Civil Procedure with respect to such suits in United States district courts.

REFERENCES IN TEXT

The internal revenue laws, referred to in subsec. (b), are classified generally to Title 26, Internal Revenue Code.

Section 7425 of the Internal Revenue Code of 1986, referred to in subsec. (d), is classified to section 7425 of Title 26.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–316 struck out ''shall so report to the Comptroller General who'' after ''unenforceable, such officer'' in second sentence.

1991—Subsec. (c). Pub. L. 102–83 substituted ''section 3720 of title 38'' for ''section 1820 of title 38''.

1990—Subsec. (c). Pub. L. 101–647 inserted at end ''In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.''

1986—Subsec. (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1966—Subsec. (a). Pub. L. 89–719 substituted ''subject matter—

''(1) to quiet title to,

''(2) to foreclose a mortgage or other lien upon,

''(3) to partition,

''(4) to condemn, or

''(5) of interpleader or in the nature of interpleader with respect to,''

for ''subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon''.

Subsec. (b). Pub. L. 89–719 substituted ''complaint or pleading shall set forth'' for ''complaint shall set forth'', and inserted sentence requiring the complaint or pleading, in actions or suits involving liens arising under the internal revenue laws, to include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed.

Subsec. (c). Pub. L. 89–719 substituted ''judgment or decree in such action'' for ''judicial sale in such action'', ''discharge of the property from the mortgage or other lien'' for ''discharge of the property from liens and encumbrances'', and ''place where the court is situated'' for ''place where the property is situated'', and inserted provisions requiring an action to foreclose a mortgage or other lien, in which the United States is named as a party under this section, to seek a judicial sale, providing that the period of redemption where a sale is made with respect to a lien arising under the internal revenue laws is 120 days or the period allowable for redemption under State law, whichever is longer, and prohibiting the right of redemption in any case which, under the provisions of section 1701k of Title 12 and section 1820(d) of Title 38, the right to redeem does not arise.

Subsecs. (d), (e). Pub. L. 89–719 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (b). Pub. L. 86–507 inserted ''or by certified mail,'' after ''registered mail,''.

1958—Subsec. (a). Pub. L. 85–508 struck out provisions which extended section to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1949—Subsec. (b). Act May 24, 1949, conformed section with that of prior law with respect to service of process and complaint upon the United States in suits brought in State courts.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–647 effective 180 days after Nov. 29, 1990, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, see section 203 of Pub. L. 89–719, set out as a note under section 1346 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc.

No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

FEDERAL RULES OF CIVIL PROCEDURE

Pleas and demurrers abolished, see rule 7, Appendix to this title.

CROSS REFERENCES

Right of redemption under subsec. (c), exclusion where subordinate lien of United States derives from insurance under National Housing Act or Servicemen's Readjustment Act of 1944, see section 1701k of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1444, 2409a of this title; title 12 section 1017k; title 26 sections 6327, 7424, 7425, 7434, 7810; title 38 section 3720.

§ 2411. Interest

In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the overpayment rate established under section 6621 of the Internal Revenue Code of 1986 upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

(June 25, 1948, ch. 646, 62 Stat. 973; May 24, 1949, ch. 139, § 120, 63 Stat. 106; Pub. L. 93–625, § 7(a)(2), Jan. 3, 1975, 88 Stat. 2115; Pub. L. 97–164, title III, § 302(b), Apr. 2, 1982, 96 Stat. 56; Pub. L. 99–514, § 2, title XV, § 1511(c)(18), Oct. 22, 1986, 100 Stat. 2095, 2746.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 765, 931(a), 932, Mar. 3, 1877, ch. 359, § 10, 24 Stat. 507; Feb. 13, 1925, ch. 229, § 8, 43 Stat. 940; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; Aug. 2, 1946, ch. 753, §§ 410(a), 411, 60 Stat. 843, 844).

Section consolidates section 765 with provisions of sections 931(a) and 932, all of title 28, U.S.C., 1940 ed., relating to interest on judgments, the latter two sections being applicable to judgments in tort claims cases. For other provisions of said sections 931(a) and 932, see Distribution Table. Said section 932 made the provisions of said section 765 applicable to such judgments, therefore the provisions of said section 931(a) that ''the United States shall not be liable for interest prior to judgment'' was omitted as covered by the language of said section 765 providing that interest shall be computed from the date of the judgment.

Provisions of section 765 of title 28, U.S.C., 1940 ed., that when the findings of fact and the law applicable thereto have been filed in any case as provided in ''section 763'' [764] of title 28, U.S.C., 1940 ed., and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same, that, whereupon, the Attorney General shall determine and direct whether an appeal shall be taken or not, and that, when so directed, the district attorney shall cause an appeal to be perfected in accordance with the terms of the statutes and rules of practice governing the same were omitted as unnecessary and covered by section 507 of this title which provides for supervision of United States attorneys by the Attorney General.

Words of section 765 of title 28, U.S.C., 1940 ed., ''Until the time when an appropriation is made for the payment of the judgment or decree'' were omitted and words ''up to, but not exceeding, thirty days after the date of approval of any appropriation act providing for payment of the judgment'' were substituted. Substituted words clarify meaning and are in accord with congressional procedure in annual deficiency appropriation acts for payment of judgments against the United States. The substituted words will obviate necessity of repeating such provisions in appropriation acts.

Changes were made in phraseology.

1949 ACT

This section amends section 2411 of title 28, U.S.C., by restoring the provisions of section 177 of the former Judicial Code for the payment of interest on tax refunds.

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in text, is classified to section 6621 of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Pub. L. 99–514, § 1511(c)(18), substituted ''the overpayment rate established under section 6621'' for ''an annual rate established under section 6621''.

Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1982—Pub. L. 97–164 struck out ''(a)'' before ''In any judgment'' and struck out subsec. (b) which provided that, except as otherwise provided in subsection (a) of this section, on all final judgments rendered against the United States in actions instituted under section 1346 of this title, interest was to be computed at the rate of 4 per centum per annum from the date of the judgment up to, but not exceeding, thirty days after the date of approval of any appropriation Act providing for payment of the judgment.

1975—Subsec. (a). Pub. L. 93–625 substituted ''an annual rate established under section 6621 of the Internal Revenue Code of 1954'' for ''the rate of 6 per centum per annum''.

1949—Act May 24, 1949, restored provisions relating to payment of interest on tax refunds.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 6621 of Title 26, Internal Revenue Code.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 6612, 6622, 7434; title 31 section 1304.

§ 2412. Costs and fees

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated

in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection—

(A) ''fees and other expenses'' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) ''party'' means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined

in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5;

(C) ''United States'' includes any agency and any official of the United States acting in his or her official capacity;

(D) ''position of the United States'' means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) ''civil action brought by or against the United States'' includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978;

(F) ''court'' includes the United States Court of Federal Claims and the United States Court of Veterans Appeals;

(G) ''final judgment'' means a judgment that is final and not appealable, and includes an order of settlement;

(H) ''prevailing party'', in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

(I) ''demand'' means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to the Contract Disputes Act of 1978, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

(June 25, 1948, ch. 646, 62 Stat. 973; Pub. L. 89–507, § 1, July 18, 1966, 80 Stat. 308; Pub. L. 96–481, title II, § 204(a), (c), Oct. 21, 1980, 94 Stat. 2327, 2329; Pub. L. 97–248, title II, § 292(c), Sept. 3, 1982, 96 Stat. 574; Pub. L. 99–80, §§ 2, 6, Aug. 5, 1985, 99 Stat. 184, 186; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title III, § 301(a), title V, §§ 502(b), 506(a), title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4511–4513, 4516; Pub. L. 104–66, title I, § 1091(b), Dec. 21, 1995, 109 Stat. 722; Pub. L. 104–121, title II, § 232, Mar. 29, 1996, 110 Stat. 863.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 258, 931(a) (Mar. 3, 1911, ch. 231, § 152, 36 Stat. 1138; Aug. 2, 1946, ch. 753, § 410(a), 60 Stat. 843).

Section consolidates the last sentence of section 931(a) of title 28, U.S.C., 1940 ed., with section 258 of said title 28. For other provisions of said section 931(a), see Distribution Table.

Subsection (a) is new. It follows the well-known common-law rule that a sovereign is not liable for costs unless specific provision for such liability is made by law. This is a corollary to the rule that a sovereign cannot be sued without its consent.

Many enactments of Congress relating to fees and costs contain specific exceptions as to the liability of the United States. (See, for example, section 548 of title 28, U.S.C., 1940 ed.) A uniform rule, embodied in this section, will make such specific exceptions unnecessary.

Subsection (b) incorporates section 258 of title 28, U.S.C., 1940 ed.

Subsection (c) incorporates the costs provisions of section 931(a) of title 28, U.S.C., 1940 ed.

Words ''and for summoning the same,'' after ''witnesses,'' were omitted from subsection (b) as covered by ''those actually incurred for witnesses.''

Changes were made in phraseology.

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (d)(2)(E), (3), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

Section 7430 of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to section 7430 of Title 26, Internal Revenue Code.

AMENDMENTS

1996—Subsec. (d)(1)(D). Pub. L. 104–121, § 232(a), added subpar. (D).

Subsec. (d)(2)(A)(ii). Pub. L. 104–121, § 232(b)(1), substituted ''$125'' for ''$75''.

Subsec. (d)(2)(B). Pub. L. 104–121, § 232(b)(2), inserted before semicolon at end ''or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5''.

Subsec. (d)(2)(I). Pub. L. 104–121, § 232(b)(3)–(5), added subpar. (I).

1995—Subsec. (d)(5). Pub. L. 104–66 struck out par. (5) which read as follows: ''The Attorney General shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.''

1992—Subsec. (a). Pub. L. 102–572, § 301(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2)(F). Pub. L. 102–572, § 902(b)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Pub. L. 102–573, § 506(a), inserted before semicolon at end ''and the United States Court of Veterans Appeals''.

Subsec. (d)(5). Pub. L. 102–572, § 502(b), substituted ''The Attorney General shall report annually to the Congress on'' for ''The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title,''.

1986—Subsecs. (d)(2)(B), (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1985—Subsecs. (a), (b). Pub. L. 99–80, § 2(a)(1), substituted ''or any agency or any official of the United States'' for ''or any agency and any official of the United States''.

Subsec. (d). Pub. L. 99–80, § 6, repealed amendment made by Pub. L. 96–481, § 204(c), and provided that subsec. (d) was effective on or after Aug. 5, 1985, as if it had not been repealed by section 204(c). See 1980 Amendment note and Revival of Previously Repealed Provisions note below.

Subsec. (d)(1)(A). Pub. L. 99–80, § 2(a)(2), inserted '', including proceedings for judicial review of agency actions,'' after ''in tort)''.

Subsec. (d)(1)(B). Pub. L. 99–80, § 2(b), inserted provisions directing that whether or not the position of the United States was substantially justified must be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action was based) which is made in the civil action for which fees and other expenses are sought.

Subsec. (d)(2)(B). Pub. L. 99–80, § 2(c)(1), substituted ''$2,000,000'' for ''$1,000,000'' in cl. (i), and substituted ''or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;'' for ''(ii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization whose net worth did not exceed $5,000,000 at the time the civil action was filed, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, or (iii) a sole owner of an unincorporated business, or a partnership, corporation, association, or organization, having not more than 500 employees at the time the civil action was filed; and''.

Subsec. (d)(2)(D) to (H). Pub. L. 99–80, § 2(c)(2), added subpars. (D) to (H).

Subsec. (d)(4). Pub. L. 99–80, § 2(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(A) Fees and other expenses awarded under this subsection may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made in accordance with sections 2414 and 2517 of this title.

''(B) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded pursuant to this subsection in such fiscal years.''

Subsec. (f). Pub. L. 99–80, § 2(e), added subsec. (f).

1982—Subsec. (e). Pub. L. 97–248 added subsec. (e).

1980—Pub. L. 96–481, § 204(a), designated existing provisions as subsec. (a), struck out provision that payment of a judgment for costs shall be as provided in section 2414 and section 2517 of this title for the payment of judgments against the United States, and added subsecs. (b) to (d). Pub. L. 96–481, § 204(c), repealed subsec. (d) eff. Oct. 1, 1984. See Effective Date of 1980 Amendment note below.

1966—Pub. L. 89–507 empowered a court having jurisdiction to award judgment for costs, except as otherwise specifically provided by statute, to the prevailing party in any action brought by or against the United States or any agency or official of the United States acting in his official capacity, limited the judgment for costs when taxed against the Government to reimbursing in whole or in part the prevailing party for costs incurred by him in the litigation, required the payment of a judgment for costs to be as provided in section 2414 and section 2517 of this title for the payment of judgments against the United States and eliminated provisions which limited the liability of the United States for fees and costs to those cases in which liability was expressed provided for by Act of Congress, permitted the district court or the Court of Claims, in an action under section 1346(a) or 1491 of this title if the United States put in issue plaintiff's right to recover, to allow costs to the prevailing party from the time of joining such issue, and which authorized the allowance of costs to the successful claimant in an action under section 1346(b) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 applicable to civil actions and adversary adjudications commenced on or after Mar. 29, 1996, see section 233 of Pub. L. 104–121, set out as a note under section 504 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 506(b) of Pub. L. 102–572 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act [Oct. 29, 1992], to any appeal filed in that court on or after such date, and to any appeal from that court that is pending on such date in the United States Court of Appeals for the Federal Circuit.''

Section 506(d) of Pub. L. 102–572 provided that: ''This section [amending this section and enacting provisions set out under this section], and the amendment made by this section, shall take effect on the date of the enactment of this Act [Oct. 29, 1992].''

Amendment by section 902(b)(1) of 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 this title.

Amendment by sections 301(a) and 502(b) of Pub. L. 102–572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–80 applicable to cases pending on or commenced on or after Aug. 5, 1985, but with

provision for additional applicability to certain prior cases and to prior board of contracts appeals cases, see section 7 of Pub. L. 99–80, set out as a note under section 504 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to civil actions or proceedings commenced after Feb. 28, 1983, see section 292(e)(1) of Pub. L. 97–248, set out as an Effective Date note under section 7430 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 204(a) of Pub. L. 96–481 effective Oct. 1, 1981, and applicable to any adversary adjudication, as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and any civil action or adversary adjudication described in this section which is pending on, or commenced on or after, such date, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 504 of Title 5.

Section 204(c) of Pub. L. 96–481 which provided in part that effective Oct. 1, 1984, subsec. (d) of this section is repealed, except that the provisions of subsec. (d) shall continue to apply through final disposition of any adversary adjudication initiated before the date of repeal, was repealed by Pub. L. 99–80, § 6(b)(2), Aug. 5, 1985, 99 Stat. 186.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–507 provided that: ''These amendments [amending this section and section 2520 of this title] shall apply only to judgments entered in actions filed subsequent to the date of enactment of this Act [July 18, 1966]. These amendments shall not authorize the reopening or modification of judgments entered prior to the enactment of this Act.''

REVIVAL OF PREVIOUSLY REPEALED PROVISIONS

For revival of subsec. (d) of this section effective on or after Aug. 5, 1985, as if it had not been repealed by section 204(c) of Pub. L. 96–481, and repeal of section 204(c) of Pub. L. 96–481, see section 6 of Pub. L. 99–80, set out as a note under section 504 of Title 5, Government Organization and Employees.

SAVINGS PROVISION

Section 206 of Pub. L. 96–481, as amended by Pub. L. 99–80, § 3, Aug. 5, 1985, 99 Stat. 186, provided that:

''(a) Except as provided in subsection (b), nothing in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

''(b) Section 206(b) of the Social Security Act (42 U.S.C. 406(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 206(b)(2) of the Social Security Act shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 206(b) of that Act and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.''

NONLIABILITY OF JUDICIAL OFFICERS FOR COSTS

Pub. L. 104–317, title III, § 309(a), Oct. 19, 1996, 110 Stat. 3853, provided that: ''Notwithstanding any other provision of law, no judicial officer shall be held liable for any costs, including attorney's fees, in any action brought against such officer for an act or omission taken in such officer's judicial capacity, unless such action was clearly in excess of such officer's jurisdiction.''

FEE AGREEMENTS

Section 506(c) of Pub. L. 102–572 provided that: ''Section 5904(d) of title 38, United States Code, shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 5904(d) of title 38, United States Code, shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 5904 of title 38, United States Code, and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.''

FEDERAL RULES OF CIVIL PROCEDURE

Liability of United States for costs, see rule 54, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1931 of this title; title 5 section 504; title 10 section 2321; title 11 section 106; title 15 section 2060; title 18 section 293; title 25 section 450m–1; title 26 section 7430; title 31 section 3730; title 41 section 253d; title 42 sections 3612, 3614, 9606.

§ 2413. Executions in favor of United States

A writ of execution on a judgment obtained for the use of the United States in any court thereof shall be issued from and made returnable to the court which rendered the judgment, but may be executed in any other State, in any Territory, or in the District of Columbia.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 839 (R.S. § 986).

Words ''or in the District of Columbia'' were added on the authority of 14 Op. Atty. Gen. 384, declaring that, under this section, a writ of execution in favor of the United States, obtained from a Federal court in any State, could be executed in the District of Columbia. (See, also, section 1963 of this title.)

Changes in phraseology were made.

§ 2414. Payment of judgments and compromise settlements

Except as provided by the Contract Disputes Act of 1978, payment of final judgments rendered by a district court or the Court of International Trade against the United States shall be made on settlements by the Secretary of the Treasury. Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the Secretary of the Treasury after certification by the Attorney General that it is in the interest of the United States to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropria-

tions or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements.

(June 25, 1948, ch. 646, 62 Stat. 974; Pub. L. 87–187, § 1, Aug. 30, 1961, 75 Stat. 415; Pub. L. 95–563, § 14(d), Nov. 1, 1978, 92 Stat. 2390; Pub. L. 96–417, title V, § 512, Oct. 10, 1980, 94 Stat. 1744; Pub. L. 104–316, title II, § 202(k), Oct. 19, 1996, 110 Stat. 3843.)

HISTORICAL AND REVISION NOTES

Based on section 228 of title 31, U.S.C., 1940 ed., Money and Finance (Feb. 18, 1904, ch. 160, § 1, 33 Stat. 41; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Similar provisions of section 228 of title 31, U.S.C., 1940 ed., relating to judgments of the court of claims are incorporated in section 2517 of this title.

The second paragraph was added to make clear that the payment of judgments not appealed may be expedited by certificate to that effect.

Changes were made in phraseology.

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in first paragraph, is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1996—Pub. L. 104–316 in first par. substituted ''Secretary of the Treasury'' for ''General Accounting Office'' in two places.

1980—Pub. L. 96–417 provided for payment of final judgments rendered by the Court of International Trade against the United States on settlements by the General Accounting Office.

1978—Pub. L. 95–563 inserted Contract Disputes Act of 1978 exception.

1961—Pub. L. 87–187 provided for payment of final judgments rendered by a State or foreign court against the United States, its agencies or officials and compromise settlements and substituted ''and compromise settlements'' for ''against the United States'' in section catchline.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

CROSS REFERENCES

Appropriations for payments of judgments against the United States, computation of interest time, see section 1304 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 7 section 136m; title 16 sections 79g, 460bb–2; title 23 section 307; title 31 section 1304.

§ 2415. Time for commencing actions brought by the United States

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further*, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before

sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a coparty, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.

(i) The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31.

(Added Pub. L. 89–505, § 1, July 18, 1966, 80 Stat. 304; amended Pub. L. 92–353, July 18, 1972, 86 Stat. 499; Pub. L. 92–485, Oct. 13, 1972, 86 Stat. 803; Pub. L. 95–64, July 11, 1977, 91 Stat. 268; Pub. L. 95–103, Aug. 15, 1977, 91 Stat. 842; Pub. L. 96–217, § 1, Mar. 27, 1980, 94 Stat. 126; Pub. L. 97–365, § 9, Oct. 25, 1982, 96 Stat. 1754; Pub. L. 97–394, title I, § 2, Dec. 30, 1982, 96 Stat. 1976; Pub. L. 97–452, § 2(d)(2), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–250, § 4(a), Apr. 3, 1984, 98 Stat. 118.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsecs. (a), (b), and (g), means the date of enactment of Pub. L. 89–505, which was approved July 18, 1966.

The Indian Claims Limitation Act of 1982, referred to in subsecs. (a) and (b), is Pub. L. 97–394, title I, §§ 2–6, Dec. 30, 1982, 96 Stat. 1976–1978, which amended this section and enacted provisions set out as notes below. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out below and Tables.

This Act, referred to in subsec. (h), probably means Pub. L. 89–505, July 18, 1966, 80 Stat. 304, which enacted this section and section 2416 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–250 substituted ''Indian Claims Limitation Act of 1982'' for ''Indian Claims Act of 1982'' wherever appearing.

1983—Subsec. (i). Pub. L. 97–452 substituted ''section 3716 of title 31'' for ''section 5 of the Federal Claims Collection Act of 1966''.

1982—Subsec. (a). Pub. L. 97–394, § 2(a), substituted ''sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim'' for ''after December 31, 1982'' in third proviso.

Subsec. (b). Pub. L. 97–394, § 2(b), substituted ''sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Act of 1982: *Provided*, That, for those claims that are on either of the two lists published pursuant to the Indian Claims Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim'' for ''December 31, 1982'' at end of proviso.

Subsec. (i). Pub. L. 97–365 added subsec. (i).

1980—Subsec. (a). Pub. L. 96–217, § 1(a), substituted ''December 31, 1982'' for ''April 30, 1980''.

Subsec. (b). Pub. L. 96–217, § 1(b), substituted ''December 31, 1982'' for ''April 1, 1980''.

1977—Subsec. (a). Pub. L. 95–103, § 1(a), substituted ''after April 1, 1980'' for ''after August 18, 1977''.

Pub. L. 95–64, § 1(a), substituted ''unless the complaint is filed after August 18, 1977'' for ''unless the complaint is filed more than eleven years after the right of action accrued'' in proviso covering actions for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status based upon rights of action which accrued on July 18, 1966, in accordance with subsec. (g).

Subsec. (b). Pub. L. 95–103, § 1(b), substituted ''on or before April 1, 1980'' for ''on or before August 18, 1977''.

Pub. L. 95–64, § 1(b), substituted ''may be brought on or before August 18, 1977'' for ''may be brought within eleven years after the right of action accrues'' in proviso covering actions for or on behalf of recognized tribes, bands, or groups of American Indians, including actions related to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status based upon rights of action which accrued on July 18, 1966, in accordance with subsec. (g).

1972—Subsec. (a). Pub. L. 92–485, § 1(a), inserted proviso relating to actions for money damages brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status.

Pub. L. 92–353, § 1(a), inserted proviso that an action for money damages brought by the United States on behalf of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued.

Subsec. (b). Pub. L. 92–485, § 1(b), inserted exception relating to actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status.

Pub. L. 92–353, § 1(b), increased the period of limitation to six years and ninety days for actions brought by the United States under the subsection for or on behalf of American Indians.

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–394, as amended by Pub. L. 98–250, § 4(b), Apr. 3, 1984, 98 Stat. 119, provided that: ''Sections 2 through 6 of this Act [amending this section and enacting provisions set out below] may be cited as the 'Indian Claims Limitation Act of 1982'.''

PUBLICATION OF LIST OF INDIAN CLAIMS; ADDITIONAL CLAIMS; TIME TO COMMENCE ACTION; REJECTION OF CLAIMS; CLAIMS RESOLVED BY LEGISLATION

Sections 3 to 6 of Pub. L. 97–394 provided that:

''SEC. 3. (a) Within ninety days after the enactment of this Act [Dec. 30, 1982], the Secretary of the Interior (hereinafter referred to as the 'Secretary') shall publish in the Federal Register a list of all claims accruing to any tribe, band or group of Indians or individual Indian on or before July 18, 1966, which have at any time been identified by or submitted to the Secretary under the 'Statute of Limitation Project' undertaken by the Department of the Interior and which, but for the provisions of this Act [see Short Title of 1982 Amendment note above], would be barred by the provisions of section 2415 of title 28, United States Code: *Provided*, That the Secretary shall have the discretion to exclude from such list any matter which was erroneously identified as a claim and which has no legal merit whatsoever.

''(b) Such list shall group the claims on a reservation-by-reservation, tribe-by-tribe, or State-by-State basis, as appropriate, and shall state the nature and geographic location of each claim and only such other additional information as may be needed to identify specifically such claims.

''(c) Within thirty days after the publication of this list, the Secretary shall provide a copy of the Indian Claims Limitation Act of 1982 [see Short Title of 1982 Amendment note above] and a copy of the Federal Register containing this list, or such parts as may be pertinent, to each Indian tribe, band or group whose rights or the rights of whose members could be affected by the provisions of section 2415 of title 28, United States Code.

''SEC. 4. (a) Any tribe, band or group of Indians or any individual Indian shall have one hundred and eighty days after the date of the publication in the Federal Register of the list provided for in section 3 of this Act to submit to the Secretary any additional specific claim or claims which such tribe, band or group of Indians or individual Indian believes may be affected by section 2415 of title 28, United States Code, and desires to have considered for litigation or legislation by the United States.

''(b) Any such claim submitted to the Secretary shall be accompanied by a statement identifying the nature of the claim, the date when the right of action allegedly accrued, the names of the potential plaintiffs and defendants, if known, and such other information needed to identify and evaluate such claim.

''(c) Not more than thirty days after the expiration of the one hundred and eighty day period provided for in subsection (a) of this section, the Secretary shall publish in the Federal Register a list containing the additional claims submitted during such period: *Provided*, That the Secretary shall have the discretion to exclude from such list any matter which has not been sufficiently identified as a claim.

''SEC. 5. (a) Any right of action shall be barred sixty days after the date of the publication of the list required by section 4(c) of this Act for those pre-1966 claims which, but for the provisions of this Act [see Short Title of 1982 Amendment note above], would have been barred by section 2415 of title 28, United States Code, unless such claims are included on either of the lists required by section 3 or 4(c) of this Act.

''(b) If the Secretary decides to reject for litigation any of the claims or groups or categories of claims contained on either of the lists required by section 3 or 4(c) of this Act, he shall send a report to the appropriate tribe, band, or group of Indians, whose rights or the rights of whose members could be affected by such rejection, advising them of his decision. The report shall identify the nature and geographic location of each rejected claim and the name of the potential plaintiffs and defendants if they are known or can be reasonably ascertained and shall, briefly, state the reasons why such claim or claims were rejected for litigation. Where the Secretary knows or can reasonably ascertain the identity of any of the potential individual Indian plaintiffs and their present addresses, he shall provide them with written notice of such rejection. Upon the request of any Indian claimant, the Secretary shall, without undue delay, provide to such claimant any nonprivileged research materials or evidence gathered by the United States in the documentation of such claim.

''(c) The Secretary, as soon as possible after providing the report required by subsection (b) of this section, shall publish a notice in the Federal Register identifying the claims covered in such report. With respect to any claim covered by such report, any right of action shall be barred unless the complaint is filed within one year after the date of publication in the Federal Register.

''SEC. 6. (a) If the Secretary determines that any claim or claims contained in either of the lists as provided in sections 3 or 4(c) of this Act is not appropriate for litigation, but determines that such claims may be appropriately resolved by legislation, he shall submit to the Congress legislation to resolve such claims or shall submit to Congress a report setting out options for legislative resolution of such claims.

''(b) Any right of action on claims covered by such legislation or report shall be barred unless the complaint is filed within 3 years after the date of submission of such legislation or legislative report to Congress.''

LEGISLATIVE PROPOSALS RESPECTING APPROPRIATENESS OF RESOLUTION BY LITIGATION OF UNRESOLVED INDIAN CLAIMS

Section 2 of Pub. L. 96–217 provided that: ''Not later than June 30, 1981, the Secretary of the Interior, after consultation with the Attorney General, shall submit to the Congress legislative proposals to resolve those Indian claims subject to the amendments made by the first section of this Act [amending this section] that the Secretary of the Interior or the Attorney General believes are not appropriate to resolve by litigation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2416 of this title; title 30 section 1724.

§ 2416. Time for commencing actions brought by the United States—Exclusions

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

(a) the defendant or the res is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason; or

(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances; or

(d) the United States is in a state of war declared pursuant to article I, section 8, of the Constitution of the United States.

(Added Pub. L. 89–505, §1, July 18, 1966, 80 Stat. 305.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2415 of this title; title 30 section 1724.

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

Sec.
2461. Mode of recovery.
2462. Time for commencing proceedings.
2463. Property taken under revenue law not repleviable.
2464. Security; special bond.
2465. Return of property to claimant; certificate of reasonable cause; liability for wrongful seizure.

§ 2461. Mode of recovery

(a) Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.

(b) Unless otherwise provided by Act of Congress, whenever a forfeiture of property is prescribed as a penalty for violation of an Act of Congress and the seizure takes place on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States, such forfeiture may be enforced by libel in admiralty but in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Subsection (a) was drafted to clarify a serious ambiguity in existing law and is based upon rulings of the Supreme Court. Numerous sections in the United States Code prescribe civil fines, penalties, and pecuniary forfeitures for violation of certain sections without specifying the mode of recovery or enforcement thereof. See, for example, section 567 of title 12, U.S.C., 1940 ed., Banks and Banking, section 64 of title 14, U.S.C., 1940 ed., Coast Guard, and section 180 of title 25, U.S.C., 1940 ed., Indians. Compare section 1 (21) of title 49, U.S.C., 1940 ed., Transportation.

A civil fine, penalty, or pecuniary forfeiture is recoverable in a civil action. *United States ex rel. Marcus v. Hess* et al., 1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 433, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163; *Hepner v. United States*, 1909, 29 S.Ct. 474, 213 U.S. 103, 53 L.Ed. 720, and cases cited therein.

Forfeiture of bail bonds in criminal cases are enforceable by procedure set out in Rule 46 of the Federal Rules of Criminal Procedure.

If the statute contemplates a criminal fine, it can only be recovered in a criminal proceeding under the Federal Rules of Criminal Procedure, after a conviction. The collection of civil fines and penalties, however, may not be had under the Federal Rules of Criminal Procedure, Rule 54(b)(5), but enforcement of a criminal fine imposed in a criminal case may be had by execution on the judgment rendered in such case, as in civil actions. (See section 569 of title 18, U.S.C., 1940 ed., Crimes and Criminal Procedure, incorporated in section 3565 of H.R. 1600, 80th Congress, for revision of the Criminal Code. See also Rule 69 of Federal Rules of Civil Procedure and Advisory Committee Note thereunder, as to execution in civil actions.)

Subsection (b) was drafted to cover the subject of forfeiture of property generally. Sections in the United States Code specifically providing a mode of enforcement of forfeiture of property for their violation and other procedural matters will, of course, govern and subsection (b) will not affect them. It will only cover cases where no mode of recovery is prescribed.

Words ''Unless otherwise provided by enactment of Congress'' were inserted at the beginning of subsection (b) to exclude from its application instances where a libel in admiralty is not required. For example, under sections 1607, 1609, and 1610 of title 19, U.S.C., 1940 ed., Customs Duties, the collector of customs may, by summary procedure, sell at public auction, without previous declaration of forfeiture or libel proceedings, any vessel, etc., under $1,000 in value in cases where no claim for the same is filed or bond given as required by customs laws.

Rule 81 of the Federal Rules of Civil Procedure makes such rules applicable to the appeals in cases of seizures on land. (See also *443 Cans of Frozen Egg Product v. United States*, 1912, 33 S.Ct. 50, 226 U.S. 172, 57 L.Ed. 174, and *Eureka Productions v. Mulligan*, C.C.A. 1940, 108 F.2d 760.) The proceeding, which resembles a suit in admiralty in that it is begun by a libel, is, strictly speaking, an ''action at law'' (The Sarah, 1823, 8 Wheat. 391, 21 U.S. 391, 5 L.Ed. 644; Morris's Cotton, 1869, 8 Wall. 507, 75 U.S. 507, 19 L.Ed. 481; Confiscation cases, 1873, 20 Wall. 92, 87 U.S. 92, 22 L.Ed. 320; *Eureka Productions v. Mulligan*, supra), even though the statute may direct that the proceedings conform to admiralty as near as may be. *In re Graham*, 1870, 10 Wall. 541, 19 L.Ed. 981, and *443 Cans of Frozen Egg Product v. United States*, supra.

Subsection (b) is in conformity with Rule 21 of the Supreme Court Admiralty Rules, which recognizes that a libel may be filed upon seizure for any breach of any enactment of Congress, whether on land or on the high seas or on navigable waters within the admiralty and maritime jurisdiction of the United States. Such rule also permits an information to be filed, but is rarely, if ever, used at present. Consequently, ''information'' has been omitted from the text and only ''libel'' is incorporated.

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, §31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373, provided that:

''SHORT TITLE

''SECTION 1. This Act may be cited as the 'Federal Civil Penalties Inflation Adjustment Act of 1990'.

''FINDINGS AND PURPOSE

''SEC. 2. (a) FINDINGS.—The Congress finds that—

''(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

''(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

''(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

''(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

''(b) PURPOSE.—The purpose of this Act is to establish a mechanism that shall—

''(1) allow for regular adjustment for inflation of civil monetary penalties;

''(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

''(3) improve the collection by the Federal Government of civil monetary penalties.

''DEFINITIONS

''SEC. 3. For purposes of this Act, the term—

''(1) 'agency' means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

''(2) 'civil monetary penalty' means any penalty, fine, or other sanction that—

''(A)(i) is for a specific monetary amount as provided by Federal law; or

''(ii) has a maximum amount provided for by Federal law; and

''(B) is assessed or enforced by an agency pursuant to Federal law; and

''(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

''(3) 'Consumer Price Index' means the Consumer Price Index for all-urban consumers published by the Department of Labor.

''CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

''SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter—

''(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act; and

''(2) publish each such regulation in the Federal Register.

''COST-OF-LIVING ADJUSTMENTS OF CIVIL MONETARY PENALTIES

''SEC. 5. (a) ADJUSTMENT.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

''(1) multiple of $10 in the case of penalties less than or equal to $100;

''(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

''(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

''(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

''(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

''(6) multiple of $25,000 in the case of penalties greater than $200,000.

''(b) DEFINITION.—For purposes of subsection (a), the term 'cost-of-living adjustment' means the percentage (if any) for each civil monetary penalty by which—

''(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

''(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

''ANNUAL REPORT

''SEC. 6. No later than January 1 of each year, the President shall submit a report on civil monetary penalties to the Congress which shall include—

''(1) to the extent possible, the number and amount of civil monetary penalties imposed pursuant to each provision of law providing for such civil monetary penalties, during the complete fiscal year preceding the submission of such report;

''(2) to the extent possible, the number and amount of such civil penalties collected during such fiscal year; and

''(3) any recommendations that the President determines appropriate to—

''(A) eliminate obsolete civil monetary penalties;

''(B) modify the amount of any civil monetary penalty; or

''(C) make any other legislative modifications concerning civil monetary penalties.

''SEC. 7. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.''

[Pub. L. 104–134, title III, § 31001(s)(2), Apr. 26, 1996, 110 Stat. 1321–373, provided that: ''The first adjustment of a civil monetary penalty made pursuant to the amendment made by paragraph (1) [amending Pub. L. 101–410, set out above] may not exceed 10 percent of such penalty.'']

[Memorandum of President of the United States, May 3, 1991, 56 F.R. 21911, delegated to Director of Office of Management and Budget responsibility of President for submitting reports on civil monetary penalties to Committee on Governmental Affairs of the Senate and Committee on Government Operations of the House of Representatives and to Congress as required by section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, set out above.]

[For authority of the Director of the Office of Management and Budget to consolidate reports required under the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, set out above, to be submitted between Jan. 1, 1995, and Sept. 30, 1997, or to adjust their frequency and due dates, see section 404 of Pub. L. 103–356, set out as a note under section 501 of Title 31, Money and Finance.]

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Appendix to this title.

§ 2462. Time for commencing proceedings

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from

the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 791 (R.S. § 1047).
Changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6533; title 30 section 1724; title 42 section 7413; title 49 section 21303.

§ 2463. Property taken under revenue law not repleviable

All property taken or detained under any revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 747 (R.S. § 934).
Changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7434.

§ 2464. Security; special bond

(a) Except in cases of seizures for forfeiture under any law of the United States, whenever a warrant of arrest or other process in rem is issued in any admiralty case, the United States marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the respondent or claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the district court where the case is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the court in such case. Such bond or stipulation shall be returned to the court, and judgment or decree thereon, against both the principal and sureties, may be secured at the time of rendering the decree in the original case. The owner of any vessel may deliver to the marshal a bond or stipulation, with sufficient surety, to be approved by the judge of the district court, conditioned to answer the decree of such court in all or any cases that are brought thereafter in such court against the vessel. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by libellants in such suits which are begun and pending against such vessel. Similar judgments or decrees and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such suits.

(b) The court may make necessary orders to carry this section into effect, particularly in giving proper notice of any such suit. Such bond or stipulation shall be indorsed by the clerk with a minute of the suits wherein process is so stayed. Further security may be required by the court at any time.

(c) If a special bond or stipulation in the particular case is given under this section, the liability as to said case on the general bond or stipulation shall cease. The parties may stipulate the amount of the bond or stipulation for the release of a vessel or other property to be not more than the amount claimed in the libel, with interest, plus an allowance for libellant's costs. In the event of the inability or refusal of the parties to so stipulate, the court shall fix the amount, but if not so fixed then a bond shall be required in the amount prescribed in this section.

(June 25, 1948, ch. 646, 62 Stat. 974.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 754 (R.S. § 941; Mar. 3, 1899, ch. 441, 30 Stat. 1354; Aug. 3, 1935, ch. 431, § 3, 49 Stat. 513).
Changes were made in phraseology.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 916g, 958, 959, 971f, 972g.

§ 2465. Return of property to claimant; certificate of reasonable cause; liability for wrongful seizure

Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution.

(June 25, 1948, ch. 646, 62 Stat. 975.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 818, 827 (R.S. §§ 970, 979).
Section consolidates sections 818 and 827 of title 28, U.S.C., 1940 ed., with changes of phraseology necessary to effect the consolidation.

The words ''in any proceeding to condemn or forfeit property'' were inserted in conformity with the uniform course of judicial decisions. See *Hammel v. Little*, App.D.C. 1936, 87 F.2d 907, and cases there cited.

The qualifying language of section 827 of title 28, U.S.C., 1940 ed., requiring the claimant to pay his own costs before the return of his property was omitted as unnecessary and involving a matter more properly for regulation by rule of court. (See sections 1913, 1914, and 1925 of this title.)

(See also section 2006 of this title with respect to actions against internal revenue officers and their liability for acts in the performance of official duties.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7328.

CHAPTER 165—UNITED STATES COURT OF FEDERAL CLAIMS PROCEDURE

Sec.
2501. Time for filing suit.
2502. Aliens' privilege to sue.
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2504. Plaintiff's testimony.
2505. Trial before judges.
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2512. Disbursing officers; relief.
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2516. Interest on claims and judgments.
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[2518. Repealed.]
2519. Conclusiveness of judgment.
2520. Fees.
2521. Subpoenas and incidental powers.
2522. Notice of appeal.

AMENDMENTS

1992—Pub. L. 102–572, title IX, §§902(a)(1), 910(b), Oct. 29, 1992, 106 Stat. 4516, 4520, substituted ''UNITED STATES COURT OF FEDERAL CLAIMS'' for ''UNITED STATES CLAIMS COURT'' in chapter heading and inserted ''and incidental powers'' in item 2521.

1982—Pub. L. 97–164, title I, §139(b)(2), (i)(2), (*l*), (n)(4), (*o*)(2), (q)(2), Apr. 2, 1982, 96 Stat. 42–44, substituted ''UNITED STATES CLAIMS COURT'' for ''COURT OF CLAIMS'' in chapter heading, substituted ''Proceedings generally'' for ''Proceedings before commissioners generally'' in item 2503, substituted ''Referral of cases by Comptroller General'' for ''Referral of cases by the Comptroller General or the head of an executive department or agency'' in item 2510, struck out item 2518 ''Certification of judgments for appropriation'', substituted ''Fees'' for ''Fees; cost of printing record'' in item 2520, and added item 2522.

1978—Pub. L. 95–563, §14(h)(2)(B), Nov. 1, 1978, 92 Stat. 2390, inserted ''or the head of an executive department or agency'' after ''Comptroller General'' in item 2510.

1954—Act Sept. 3, 1954, ch. 1263, §§46, 54(c), 55(d), 59(b), 68 Stat. 1243, 1247, 1248, substituted ''Trial before judges'' for ''Place of taking evidence'' in item 2505, and ''Calls and discovery,'' for ''Calls on departments for information'' in item 2507, rephrased item 2510, and added item 2521.

§ 2501. Time for filing suit

Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the General Accounting Office fails to act within six months after receiving the account.

(June 25, 1948, ch. 646, 62 Stat. 976; Sept. 3, 1954, ch. 1263, §52, 68 Stat. 1246; Pub. L. 97–164, title I, §139(a), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, §902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§250(2), 250a, and 262 (Mar. 3, 1911, ch. 231, §§145, 156, 36 Stat. 1136, 1139; June 10, 1921, ch. 18, §304, 42 Stat. 24; Aug. 30, 1935, ch. 831, §13, 49 Stat. 1049; July 13, 1943, ch. 231, 57 Stat. 553).

Section consolidates limitation provisions of sections 250(2), 250a, and 262 of title 28, U.S.C., 1940 ed.

Words ''a person under legal disability or beyond the seas at the time the claim accrues'' were substituted for ''married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued; entitled to the claim,''. The revised language will cover all legal disabilities actually barring suit. For example, the particular reference to married women is archaic, and is eliminated by use of the general language substituted.

Words ''nor shall any of the said disabilities operate cumulatively'' were omitted, in view of the elimination of the reference to specific disabilities. Also, persons under legal disability could not sue, and their suits should not be barred until they become able to sue. Similar sections of the U.S. Code do not contain any such provision. (For example, see section 502 of title 28, U.S.C., 1940 ed., incorporated in section 544 of this title.)

The section was extended to include claims referred by the head of an executive department in conformity with section 2510 of this title.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1954—Act Sept. 3, 1954, struck out '', or the claim is referred by the Senate or House of Representatives, or by the head of an executive department'' in first par.

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 this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 section 114.

§ 2502. Aliens' privilege to sue

(a) Citizens or subjects of any foreign government which accords to citizens of the United

[1] So in original. Does not conform to section catchline.

States the right to prosecute claims against their government in its courts may sue the United States in the United States Court of Federal Claims if the subject matter of the suit is otherwise within such court's jurisdiction.

(b) See section 7422(f) of the Internal Revenue Code of 1986 for exception with respect to suits involving internal revenue taxes.

(June 25, 1948, ch. 646, 62 Stat. 976; Pub. L. 89–713, § 3(b), Nov. 2, 1966, 80 Stat. 1108; Pub. L. 97–164, title I, § 139(a), Apr. 2, 1982, 96 Stat. 42; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 261 (Mar. 3, 1911, ch. 231, § 155, 36 Stat. 1139).

Changes were made in phraseology.

REFERENCES IN TEXT

Section 7422(f) of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified to section 7422(f) of Title 26, Internal Revenue Code.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1982—Subsec. (a). Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1966—Pub. L. 89–713 designated existing provisions as subsec. (a) and added subsec. (b).

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 this title.

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 this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 applicable to suits brought against officers, employees, or personal representatives instituted 90 days or more after Nov. 2, 1966, see section 3(d) of Pub. L. 89–713, set out as a note under section 7422 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7422.

§ 2503. Proceedings generally

(a) Parties to any suit in the United States Court of Federal Claims may appear before a judge of that court in person or by attorney, produce evidence, and examine witnesses.

(b) The proceedings of the Court of Federal Claims shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Court of Federal Claims may prescribe and in accordance with the Federal Rules of Evidence.

(c) The judges of the Court of Federal Claims shall fix times for trials, administer oaths or affirmations, examine witnesses, receive evidence, and enter dispositive judgments. Hearings shall, if convenient, be held in the counties where the witnesses reside.

(d) For the purpose of construing sections 1821, 1915, 1920, and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.

(June 25, 1948, ch. 646, 62 Stat. 976; Sept. 3, 1954, ch. 1263, § 53, 68 Stat. 1246; Pub. L. 97–164, title I, § 139(b)(1), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, §§ 902(a), 909, Oct. 29, 1992, 106 Stat. 4516, 4519.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 269, 276, and 278 (Mar. 3, 1911, ch. 231, §§ 168, 170, 36 Stat. 1140; Feb. 24, 1925, ch. 301, § 1, 43 Stat. 964; June 23, 1930, ch. 573, § 2, 46 Stat. 799).

Section consolidates provisions relating to proceedings before commissioners and reporter-commissioners contained in sections 269, 276, and 278 of title 28, U.S.C., 1940 ed.

Provisions of section 269 of title 28, U.S.C., 1940 ed., relating to appointment and compensation of commissioners are incorporated in section 792 of this title.

Words ''including reporter-commissioners'' after ''commissioners'' were inserted to clarify meaning and conform to Rule 54(a) of the Court of Claims authorizing oaths before reporter-commissioners.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

The Senate amended this section by inserting ''and when directed by the court his recommendations for conclusions of law'' following ''commissioner'' in the second paragraph. This amendment authorizes the Court to direct its commissioners to report recommendations for conclusions of law as well as findings of fact in cases assigned to them. 80th Congress Senate Report No. 1559, Amendment No. 50.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (b), are set out in the Appendix to this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572, § 902(a)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsecs. (b), (c). Pub. L. 102–572, § 902(a)(2), substituted ''Court of Federal Claims'' for ''Claims Court'' wherever appearing.

Subsec. (d). Pub. L. 102–572, § 909, added subsec. (d).

1982—Pub. L. 97–164 substituted ''Proceedings generally'' for ''Proceedings before commissioners generally'' in section catchline.

Subsec. (a). Pub. L. 97–164 substituted ''Parties to any suit in the United States Claims Court may appear before a judge of that court in person or by attorney, produce evidence, and examine witnesses'' for ''Parties to any suit in the Court of Claims may appear before a commissioner in person or by attorney, produce evidence and examine witnesses'' and redesignated as subsec. (c) provisions that, in accordance with rules and orders of the court, commissioners would fix times for trials, administer oaths or affirmations to and examine witnesses, receive evidence and report findings of fact, that when directed by the court, commissioners would report their recommendations for conclusions of law in cases assigned to them, and that hearings would, if convenient, be held in the counties where the witnesses resided.

Subsec. (b). Pub. L. 97–164 substituted ''The proceedings of the Claims Court shall be in accordance with such rules of practice and procedure (other than the rules of evidence) as the Claims Court may prescribe and in accordance with the Federal Rules of Evidence'' for ''The rules of the court shall provide for the filing in court of the commissioner's report of facts and recommendations for conclusions of law, and for oppor-

tunity for the parties to file exceptions thereto, and a hearing thereon before the court within a reasonable time'' and struck out provision that this section did not prevent the court from passing upon all questions and findings regardless of whether exceptions were taken before a commissioner.

Subsec. (c). Pub. L. 97–164 redesignated provisions in second and third sentences of former subsec. (a) as (c) and substituted ''The judges of the Claims Court'' for ''In accordance with rules and orders of the court, commissioners'' and ''enter dispositive judgments'' for ''report findings of fact and, when directed by the court, their recommendations for conclusions of law in cases assigned to them''.

1954—Act Sept. 3, 1954, designated former first par. subsec. (a), and former second par. subsec. (b), and incorporated in one place provisions relating to function of Commissioners.

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 this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 798 of this title.

§ 2504. Plaintiff's testimony

The United States Court of Federal Claims may, at the instance of the Attorney General, order any plaintiff to appear, upon reasonable notice, before any judge of the court and be examined on oath as to all matters pertaining to his claim. Such examination shall be reduced to writing by the judge, and shall be returned to and filed in the court, and may, at the discretion of the attorneys for the United States, be read and used as evidence on the trial. If any plaintiff, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all material matters within his knowledge, the court may order that the case shall not be tried until he fully complies with such order.

(June 25, 1948, ch. 646, 62 Stat. 976; Pub. L. 97–164, title I, § 139(c), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 274 (Mar. 3, 1911, ch. 231, § 166, 36 Stat. 1140).

Words ''Attorney General'' were substituted for ''attorney or solicitor appearing in behalf of the United States,'' in view of section 309 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims'', and ''judge'' for ''commissioner'' wherever appearing.

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 this title.

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 this title.

§ 2505. Trial before judges

Any judge of the United States Court of Federal Claims may sit at any place within the United States to take evidence and enter judgment.

(June 25, 1948, ch. 646, 62 Stat. 976; Sept. 3, 1954, ch. 1263, § 54(a), (b), 68 Stat. 1246; Pub. L. 97–164, title I, § 139(d), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 275 and 275a (Mar. 3, 1911, ch. 231, § 167, 36 Stat. 1140; Feb. 24, 1925, ch. 301, § 2, 43 Stat. 965; June 23, 1930, ch. 573, § 1, 46 Stat. 799; Oct. 16, 1941, ch. 443, 55 Stat. 741).

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims'' and ''enter judgment'' for ''report findings''.

1954—Act Sept. 3, 1954, substituted ''Trial before judges'' for ''Place of taking evidence'' in section catchline and repealed second par. relating to taking of testimony.

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 this title.

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 this title.

§ 2506. Interest of witness

A witness in a suit in the United States Court of Federal Claims shall not be exempt or disqualified because he is a party to or interested in such suit.

(June 25, 1948, ch. 646, 62 Stat. 977; Pub. L. 97–164, title I, § 139(e), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 274 (Mar. 3, 1911, ch. 231, § 186, 36 Stat. 1143; Feb. 5, 1912, ch. 28, 37 Stat. 61).

A provision that a witness should not be disqualified by color was omitted as obsolete and unnecessary, since no such disqualification could be invoked in absence of statutory authority.

A provision that the United States could examine any plaintiff or party interested is covered by the word ''exempt'' in the revised section, and by section 2504 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

§ 2507. Calls and discovery

(a) The United States Court of Federal Claims may call upon any department or agency of the United States or upon any party for any information or papers, not privileged, for purposes of discovery or for use as evidence. The head of any department or agency may refuse to comply with a call issued pursuant to this subsection when, in his opinion, compliance will be injurious to the public interest.

(b) Without limitation on account of anything contained in subsection (a) of this section, the court may, in accordance with its rules, provide additional means for the discovery of any relevant facts, books, papers, documents or tangible things, not privileged.

(c) The Court of Federal Claims may use all recorded and printed reports made by the committees of the Senate or House of Representatives.

(June 25, 1948, ch. 646, 62 Stat. 977; Sept. 3, 1954, ch. 1263, § 55(a)–(c), 68 Stat. 1247; Pub. L. 97–164, title I, § 139(f), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 272 (Mar. 3, 1911, ch. 231, § 164, 36 Stat. 1140).

Words ''or agency'' were added. (See reviser's note under section 1345 of this title.)

Changes were made in phraseology.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572, § 902(a)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (c). Pub. L. 102–572, § 902(a)(2), substituted ''Court of Federal Claims'' for ''Claims Court''.

1982—Subsec. (a). Pub. L. 97–164, § 139(f)(1), substituted ''United States Claims Court'' for ''Court of Claims''.

Subsec. (c). Pub. L. 97–164, § 139(f)(2), substituted ''Claims Court'' for ''Court of Claims''.

1954—Act Sept. 3, 1954, substituted ''Calls and discovery'' for ''Calls on departments for information'' in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

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 this title.

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 this title.

§ 2508. Counterclaim or set-off; registration of judgment

Upon the trial of any suit in the United States Court of Federal Claims in which any setoff, counterclaim, claim for damages, or other demand is set up on the part of the United States against any plaintiff making claim against the United States in said court, the court shall hear and determine such claim or demand both for and against the United States and plaintiff.

If upon the whole case it finds that the plaintiff is indebted to the United States it shall render judgment to that effect, and such judgment shall be final and reviewable.

The transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records and shall be enforceable as other judgments.

(June 25, 1948, ch. 646, 62 Stat. 977; July 28, 1953, ch. 253, § 10, 67 Stat. 227; Sept. 3, 1954, ch. 1263, § 47(a), 68 Stat. 1243; Pub. L. 97–164, title I, § 139(g), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 252 (Mar. 3, 1911, ch. 231, § 146, 36 Stat. 1137).

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1954—Act Sept. 3, 1954, struck out ''United States'' from name of Court of Claims in first par.

1953—Act July 28, 1953, substituted ''United States Court of Claims'' for ''Court of Claims'' in first par., and substituted ''shall be enforceable as other judgments'' for ''be a judgment of such district court and enforceable as such'' in third par.

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 this title.

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 this title.

§ 2509. Congressional reference cases

(a) Whenever a bill, except a bill for a pension, is referred by either House of Congress to the chief judge of the United States Court of Federal Claims pursuant to section 1492 of this title, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body. One member of the review panel shall be designated as presiding officer of the panel.

(b) Proceedings in a congressional reference case shall be under rules and regulations prescribed for the purpose by the chief judge who is hereby authorized and directed to require the application of the pertinent rules of practice of the Court of Federal Claims insofar as feasible. Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. None of the rules, rulings, findings, or conclusions authorized by this section shall be subject to judicial review.

(c) The hearing officer to whom a congressional reference case is assigned by the chief judge shall proceed in accordance with the applicable rules to determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. He shall append to his findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitable due from the United States to the claimant.

(d) The findings and conclusions of the hearing officer shall be submitted by him, together with the record in the case, to the review panel for review by it pursuant to such rules as may be provided for the purpose, which shall include provision for submitted the report of the hearing officer to the parties for consideration, exception, and argument before the panel. The panel, by majority vote, shall adopt or modify the findings or the conclusions of the hearing officer.

(e) The panel shall submit its report to the chief judge for transmission to the appropriate House of Congress.

(f) Any act or failure to act or other conduct by a party, a witness, or an attorney which would call for the imposition of sanctions under the rules of practice of the Court of Federal Claims shall be noted by the panel or the hearing officer at the time of occurrence thereof and upon failure of the delinquent or offending party, witness, or attorney to make prompt compliance with the order of the panel or the hearing officer a full statement of the circumstances shall be incorporated in the report of the panel.

(g) The Court of Federal Claims is hereby authorized and directed, under such regulations as it may prescribe, to provide the facilities and services of the office of the clerk of the court for the filing, processing, hearing, and dispatch of congressional reference cases and to include within its annual appropriations the costs thereof and other costs of administration, including (but without limitation to the items herein listed) the salaries and traveling expenses of the judges serving as hearing officers and panel members, mailing and service of process, necessary physical facilities, equipment, and supplies, and personnel (including secretaries and law clerks).

(June 25, 1948, ch. 646, 62 Stat. 977; Pub. L. 89–681, § 2, Oct. 15, 1966, 80 Stat. 958; Pub. L. 97–164, title I, § 139(h), Apr. 2, 1982, 96 Stat. 42; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 257 (Mar. 3, 1911, ch. 231, § 151, 36 Stat. 1138).

Jurisdiction provisions of section 257 of title 28, U.S.C., 1940 ed., appear in section 1492 of this title.

A provision as to the court's power to render judgment on a referred claim and its duty to report thereon to Congress, was omitted from this section as covered by sections 791(c) and 1492 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572, § 902(a)(1), substituted "United States Court of Federal Claims" for "United States Claims Court".

Subsecs. (b), (f), (g). Pub. L. 102–572, § 902(a)(2), substituted "Court of Federal Claims" for "Claims Court".

1982—Subsec. (a). Pub. L. 97–164, § 139(h)(1), substituted "chief judge" for "chief commissioner" wherever appearing, "United States Claims Court" for "Court of Claims", "judge as hearing officer" for "trial commissioner", "judges" for "commissioners", and "presiding officer" for "presiding commissioner".

Subsec. (b). Pub. L. 97–164, § 139(h)(2)(A)–(C), substituted "chief judge" for "chief commissioner", "Claims Court" for "Court of Claims", and "hearing officer" for "trial commissioner".

Subsec. (c). Pub. L. 97–164, § 139(h)(2)(A), (B), substituted "hearing officer" for "trial commissioner" and "chief judge" for "chief commissioner".

Subsec. (d). Pub. L. 97–164, § 139(h)(2)(A), (D), substituted "hearing officer" for "trial commissioner" wherever appearing and struck out "of commissioners" after "review panel".

Subsec. (e). Pub. L. 97–164, § 139(h)(2)(B), substituted "chief judge" for "chief commissioner".

Subsec. (f). Pub. L. 97–164, § 139(h)(2)(A), (C), substituted "Claims Court" for "Court of Claims", and "hearing officer" for "trial commissioner" wherever appearing.

Subsec. (g). Pub. L. 97–164, § 139(h)(2)(C), (E), substituted "Claims Court" for "Court of Claims" and "judges serving as hearing officers" for "commissioners serving as trial commissioners".

1966—Pub. L. 89–681 substituted provisions for reference of bills to the chief commissioner of the Court of Claims pursuant to section 1492 of this title for provisions calling simply for reference to the Court of Claims, substituted provisions naming the trial commissioner to whom a reference case is assigned by the chief commissioner for provisions simply naming the Court of Claims as the agency by which findings and conclusions are made, and inserted provisions for the designation of a trial commissioner and reviewing body consisting of three other commissioners, the promulgation of rules and regulations for Congressional reference cases by the chief commissioner, the procedure to be followed, and the supplying of facilities and personnel for the dispatch of Congressional reference cases.

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 this title.

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 this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1492 of this title.

§ 2510. Referral of cases by Comptroller General

(a) The Comptroller General may transmit to the United States Court of Federal Claims for trial and adjudication any claim or matter of which the Court of Federal Claims might take jurisdiction on the voluntary action of the claimant, together with all vouchers, papers, documents, and proofs pertaining thereto.

(b) The Court of Federal Claims shall proceed with the claims or matters so referred as in other cases pending in such Court and shall render judgment thereon.

(June 25, 1948, ch. 646, 62 Stat. 977; July 28, 1953, ch. 253, § 11, 67 Stat. 227; Sept. 3, 1954, ch. 1263,

§ 47(b), 68 Stat. 1243; Pub. L. 95–563, § 14(h)(1), (2)(A), Nov. 1, 1978, 92 Stat. 2390; Pub. L. 97–164, title I, § 139(i)(1), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 254 and 255 (Mar. 3, 1911, ch. 231, §§ 148, 149, 36 Stat. 1137, 1138; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Section consolidates procedural provisions of sections 254 and 255 of title 28, U.S.C., 1940 ed., relating to departmental reference cases.

Jurisdiction provisions of such section 254 appear in section 1493 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court'' wherever appearing.

1982—Pub. L. 97–164 substituted ''Referral of cases by Comptroller General'' for ''Referral of cases by the Comptroller General or the head of an executive department or agency'' in section catchline.

Subsec. (a). Pub. L. 97–164 substituted ''transmit to the United States Claims Court for trial and adjudication any claim or matter of which the Claims Court might take jurisdiction'' for ''transmit to the Court of Claims for trial and adjudication any claim or matter of which the Court of Claims might take jurisdiction'' in first sentence of subsec. (a). The second sentence of subsec. (a) was redesignated (b).

Subsec. (b). Pub. L. 97–164 designated as subsec. (b) the former second sentence of subsec. (a) and substituted ''The Claims Court'' for ''The Court of Claims'' and ''Court'' for ''court''. Former subsec. (b), which provided that the head of any executive department or agency could, with the prior approval of the Attorney General, refer to the Court of Claims for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the United States awarded by that department or agency which such head of such department or agency had concluded was not entitled to finality pursuant to the review standards specified in section 10(b) of the Contracts Disputes Act of 1978, with the head of each executive department or agency to make any referral under this section within 120 days of the receipt of a copy of the final appeal decision, that the Court of Claims was to review the matter referred in accordance with the standards specified in section 10(b) of the Contracts Disputes Act of 1978, and that the court was to proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, determine the issue of finality of the appeal decision, and render judgment thereon, take additional evidence, or remand the matter pursuant to the authority specified in section 1491 of this title was struck out.

1978—Pub. L. 95–563, inserted ''or the head of an executive department or agency'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

1954—Act Sept. 3, 1954, substituted ''Referral of cases by Comptroller General'' for ''Departmental reference cases'' in section catchline.

1953—Act July 28, 1953, struck out provisions relating to procedure in connection with departmental reference cases provided for by former section 1493 of this title; and, in connection with trial and adjudication of cases referred by the Comptroller General, inserted provision for rendering judgment, and struck out requirement that such cases be transmitted through the Secretary of the Treasury.

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 this title.

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 this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

§ 2511. Accounts of officers, agents or contractors

Notice of suit under section 1494 of this title shall be given to the Attorney General, to the Comptroller General, and to the head of the department requested to settle the account in question.

The judgment of the United States Court of Federal Claims in such suit shall be conclusive upon the parties, and payment of the amount found due shall discharge the obligation.

The transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records, and shall be enforceable as other judgments.

(June 25, 1948, ch. 646, 62 Stat. 977; July 28, 1953, ch. 253, § 12, 67 Stat. 227; Pub. L. 97–164, title I, § 139(j), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 287 (Mar. 3, 1911, ch. 231, § 180, 36 Stat. 1141; Feb. 13, 1925, ch. 229, § 3, 43 Stat. 939).

Words ''The Attorney General shall represent the United States at the hearing of said cause'' were omitted as covered by sections 309 and 310 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees.

Jurisdiction provisions of section 287 of title 28, U.S.C., 1940 ed., appear in section 1494 of this title.

A provision for continuances was omitted as unnecessary, in view of the inherent power of the court to grant continuances in any suit.

A provision in section 287 of title 28, U.S.C., 1940 ed., that section 274 of title 28, U.S.C., 1940 ed., should apply to cases under such section 287 was omitted as covered by section 2504 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''The judgment of the United States Claims Court in such suit shall be conclusive'' for ''The judgment of the Court of Claims in such suit, or of the Supreme Court upon review, shall be conclusive''.

1953—Act July 28, 1953, inserted ''to the Comptroller General,'' in first par., struck out third par. which provided for accrual to the United States of a right of action upon the judgment, with a limitation period extending to three years after judgment, and inserted provisions for filing and recording the transcript of such judgment in the clerk's office of any district court and for enforcement thereof.

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 this title.

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 this title.

§ 2512. Disbursing officers; relief

Whenever the United States Court of Federal Claims finds that any loss by a disbursing officer of the United States was without his fault or negligence, it shall render a judgment setting forth the amount thereof, and the General Accounting Office shall allow the officer such amount as a credit in the settlement of his accounts.

(June 25, 1948, ch. 646, 62 Stat. 978; Pub. L. 97–164, title I, § 139(j)(2), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 253 (Mar. 3, 1911, ch. 231, § 147, 36 Stat. 1137; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

Words ''paymaster, quartermaster, commissary of subsistence, or other'' were omitted as covered by words ''disbursing officer of the United States''. (See reviser's note under section 1496 of this title.)

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

§ 2513. Unjust conviction and imprisonment

(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

(c) No pardon or certified copy of a pardon shall be considered by the United States Court of Federal Claims unless it contains recitals that the pardon was granted after applicant had exhausted all recourse to the courts and that the time for any court to exercise its jurisdiction had expired.

(d) The Court may permit the plaintiff to prosecute such action in forma pauperis.

(e) The amount of damages awarded shall not exceed the sum of $5,000.

(June 25, 1948, ch. 646, 62 Stat. 978; Sept. 3, 1954, ch. 1263, § 56, 68 Stat. 1247; Pub. L. 97–164, title I, § 139(j)(2), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on sections 729–732 of title 18, U.S.C., 1940 ed., Crimes and Criminal Procedure (May 24, 1938, ch. 266, §§ 1–4, 52 Stat. 438.)

Sections 729–732 of title 18, U.S.C., 1940 ed., were consolidated and completely rewritten in order to clarify ambiguities which made the statute unworkable as enacted originally. Jurisdictional provisions of section 729 of title 18, U.S.C., 1940 ed., are incorporated in section 1495 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Subsec. (c). Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

1954—Subsec. (c). Act Sept. 3, 1954, substituted ''considered by'' for ''filed with''.

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 this title.

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 this title.

§ 2514. Forfeiture of fraudulent claims

A claim against the United States shall be forfeited to the United States by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof.

In such cases the United States Court of Federal Claims shall specifically find such fraud or attempt and render judgment of forfeiture.

(June 25, 1948, ch. 646, 62 Stat. 978; Pub. L. 97–164, title I, § 139(j)(2), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 279 and 280 (Mar. 3, 1911, ch. 231, §§ 172, 173, 36 Stat. 1141).

A provision of section 279 of title 28, U.S.C., 1940 ed., that a judgment of forfeiture shall forever bar the prosecution of the claim was omitted as covered by section 2518 of this title.

A provision of section 280 of title 28, U.S.C., 1940 ed., barring allowance by accounting officers of fraudulent claims under Act June 16, 1874, 18 Stat. 75, was omitted as obsolete.

A provision of section 280 of title 28, U.S.C., 1940 ed., barring allowance of fraudulent claims by Congress was omitted as unnecessary and superfluous.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

§ 2515. New trial; stay of judgment

(a) The United States Court of Federal Claims may grant a plaintiff a new trial on any ground established by rules of common law or equity applicable as between private parties.

(b) Such court, at any time while any suit is pending before it, or after proceedings for review have been instituted, or within two years after the final disposition of the suit, may grant the United States a new trial and stay the payment of any judgment upon satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done the United States.

(June 25, 1948, ch. 646, 62 Stat. 978; Pub. L. 97–164, title I, § 139(j)(2), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 281 and 282 (Mar. 3, 1911, ch. 231, §§ 174, 175, 36 Stat. 1141).

Words ''but until an order is made staying the payment of a judgment, the same shall be payable and paid as on March 3, 1911, was provided by law,'' in section 282 of title 28, U.S.C., 1940 ed., were omitted as surplusage.

Changes were made in phraseology.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Subsec. (a). 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 this title.

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 this title.

§ 2516. Interest on claims and judgments

(a) Interest on a claim against the United States shall be allowed in a judgment of the United States Court of Federal Claims only under a contract or Act of Congress expressly providing for payment thereof.

(b) Interest on a judgment against the United States affirmed by the Supreme Court after review on petition of the United States is paid at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately before the date of the judgment.

(June 25, 1948, ch. 646, 62 Stat. 978; Sept. 3, 1954, ch. 1263, § 57, 68 Stat. 1248; Pub. L. 97–164, title I, § 139(j)(2), title III, § 302(d), Apr. 2, 1982, 96 Stat. 43, 56; Pub. L. 97–258, § 2(g)(5), (m)(3), Sept. 13, 1982, 96 Stat. 1061, 1062; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 284 and section 226 of title 31, U.S.C., 1940 ed., Money and Finance (Sept. 30, 1890, ch. 1126, § 1, 26 Stat. 537; Mar. 3, 1911, ch. 231, § 177, 36 Stat. 1141; Nov. 23, 1921, ch. 136, § 1324(b), 42 Stat. 316; June 2, 1924, ch. 234, § 1020, 43 Stat. 346; Feb. 13, 1925, ch. 229, § 3(c), 43 Stat. 939; Feb. 26, 1926, ch. 27, §§ 1117, 1200, 44 Stat. 119, 125; May 29, 1928, ch. 852, § 615(a), 45 Stat. 877; June 22, 1936, ch. 690, § 808, 49 Stat. 1746).

Subdivision (b) of section 284 of title 28, U.S.C., 1940 ed., was omitted as covered by section 3771 of title 26, U.S.C., 1940 ed., Internal Revenue Code. Such omission required the exception in subdivision (a) of such section 284, reading: ''except as provided in subdivision (b)'', to be changed to read: ''or Act of Congress expressly providing for payment thereof.''

Subsection (b) of this section is based on the last sentence of section 226 of title 31, U.S.C., 1940 ed., Money and Finance.

Changes were made in phraseology.

1982 ACT

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
28:2516(b)	28:2516(b)(1st sentence words before ''from the date'').	

Section 2(g)(5) of the bill restates 28:2516(b) because the provisions in 28:2516(b) on the periods for computing interest were superseded by the source provisions restated in section 1304 of the revised title 31.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Subsec. (a). Pub. L. 97–164, § 139(j)(2), substituted ''United States Claims Court'' for ''Court of Claims''.

Subsec. (b). Pub. L. 97–258 substituted provisions that interest on a judgment against the United States is paid at a rate equal to the coupon issue yield equivalent of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately before the date of judgment for provisions that such interest would be paid at the rate of four percent per annum from the date of the filing of the transcript of the judgment in the Treasury Department to the date of mandate of affirmance by the Supreme Court and that the interest would not be allowed for any period after the term of the Supreme Court at which the judgment was affirmed, and repealed the amendment made by Pub. L. 97–164, § 302(d), eff. Oct. 1, 1982. See, also, section 1304(b) of Title 31, Money and Finance.

Pub. L. 97–164, §§ 302(d), 402, eff. Oct. 1, 1982, struck out ''at the rate of four percent per annum'' and all that follows through ''affirmance'' and inserted in lieu thereof '', from the date of the filing of the transcript of the judgment in the General Accounting Office to the date of the mandate of the affirmance, at a rate of interest equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment''.

1954—Subsec. (b). Act Sept. 3, 1954, inserted ''for any period'' after ''allowed'' in last sentence.

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 this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 2(g)(5) of Pub. L. 97–258 provided that the amendment made by that section is effective Oct. 1, 1982.

REPEAL

Section 302(d) of Pub. L. 97–164, cited as a credit to this section, was repealed by Pub. L. 97–258, § 2(m)(3), Sept. 13, 1982, 96 Stat. 1062, eff. Oct. 1, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 31 section 1304.

§ 2517. Payment of judgments

(a) Except as provided by the Contract Disputes Act of 1978, every final judgment rendered by the United States Court of Federal Claims against the United States shall be paid out of any general appropriation therefor, on presentation to the Secretary of the Treasury of a certification of the judgment by the clerk and chief judge of the court.

(b) Payment of any such judgment and of interest thereon shall be a full discharge to the United States of all claims and demands arising out of the matters involved in the case or controversy, unless the judgment is designated a partial judgment, in which event only the matters described therein shall be discharged.

(June 25, 1948, ch. 646, 62 Stat. 979; Pub. L. 95–563, § 14(e), (f), Nov. 1, 1978, 92 Stat. 2390; Pub. L. 97–164, title I, § 139(k), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–316, title II, § 202(*l*), Oct. 19, 1996, 110 Stat. 3843.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 285, and sections 225, 228, of title 31, U.S.C., 1940 ed., Money and Finance, (R.S. §§ 236, 1089; Feb. 18, 1904, ch. 160, § 1, 33 Stat. 41; Mar. 3, 1911, ch. 231, § 178, 36 Stat. 1141; June 10, 1921, ch. 18, §§ 304, 305, 42 Stat. 24; Feb. 13, 1925, ch. 229, § 3(c), 43 Stat. 939).

Section consolidates section 285 of title 28, U.S.C., 1940 ed., and sections 225 and 228 of title 31, U.S.C., 1940 ed., Money and Finance.

Words ''chief judge'' were substituted for ''the chief justice, or, in his absence, by the presiding judge of said court'' in section 225 of title 31, U.S.C., 1940 ed., Money and Finance, in conformity with chapter 7 of this title.

Words ''or, on review, by the Supreme Court, where the same are affirmed in favor of the claimant'' in section 225 of title 31, U.S.C., 1940 ed., were omitted as unnecessary.

Provisions of section 228 of title 31, U.S.C., 1940 ed., for payment of district court judgments are incorporated in section 2414 of this title.

Changes were made in phraseology.

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (a), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''General Accounting Office''.

1992—Subsec. (a). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Subsec. (a). Pub. L. 97–164, § 139(k)(1), substituted ''United States Claims Court'' for ''Court of Claims''.

Subsec. (b). Pub. L. 97–164, § 139(k)(2), struck out the comma after ''shall be discharged'' thereby correcting a technical error in the directory language in Pub. L. 95–563 which placed both a comma and a period after ''shall be discharged''.

1978—Subsec. (a). Pub. L. 95–563, § 14(e), inserted Contract Disputes Act of 1978 exception.

Subsec. (b). Pub. L. 95–563, § 14(f), inserted provision relating to discharge of partial judgments.

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 this title.

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 this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

CROSS REFERENCES

Appropriations for payments of judgments against the United States, computation of interest time, see section 1304 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2412 of this title; title 16 section 460bb–2; title 25 sections 640d–27, 1300i–11; title 31 section 1304.

[§ 2518. Repealed. Pub. L. 97–164, title I, § 139(*l*), Apr. 2, 1982, 96 Stat. 43]

Section, act June 25, 1948, ch. 646, 62 Stat. 979, related to certification of Court of Claims judgments for appropriation.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

§ 2519. Conclusiveness of judgment

A final judgment of the United States Court of Federal Claims against any plaintiff shall forever bar any further claim, suit, or demand against the United States arising out of the matters involved in the case or controversy.

(June 25, 1948, ch. 646, 62 Stat. 979; Pub. L. 97–164, title I, § 139(m), Apr. 2, 1982, 96 Stat. 43; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 286 (Mar. 3, 1911, ch. 231, § 179, 36 Stat. 1141).

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—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 this title.

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 this title.

§ 2520. Fees

The United States Court of Federal Claims shall by rules impose a fee not exceeding $120, for the filing of any petition.

(June 25, 1948, ch. 646, 62 Stat. 979; Sept. 3, 1954, ch. 1263, § 58, 68 Stat. 1248; Pub. L. 89–507, § 2, July 18, 1966, 80 Stat. 308; Pub. L. 97–164, title I, § 139(n)(1)–(3), Apr. 2, 1982, 96 Stat. 43, 44; Pub. L. 100–702, title X, § 1012(a)(1), Nov. 19, 1988, 102 Stat. 4668; Pub. L. 102–572, title IX, § 902(a)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 283 and 283a (Mar. 3, 1911, ch. 231, § 176, 36 Stat. 1141; Mar. 3, 1933, ch. 212, title II, § 19, 47 Stat. 1519).

This section consolidates section 283, with a part of section 283a, of title 28, U.S.C., 1940 ed.

The last subsection of section 283a of title 28, U.S.C., 1940 ed., appears in section 793 of this title.

Language in section 283a of title 28, U.S.C., 1940 ed., referring to cases instituted after March 3, 1933, was omitted as executed.

For liability of the United States for costs, both in actions in district courts and in suits in the Court of Claims, see section 2412 of this title.

Changes were made in phraseology.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1988—Pub. L. 100–702 substituted ''$120'' for ''$60''.

1982—Pub. L. 97–164 substituted ''Fees'' for ''Fees; cost of printing record'' as section catchline, struck out designation ''(a)'' at beginning of section, in the resulting undesignated first sentence substituted ''United States Claims Court'' for ''Court of Claims'' and ''$60'' for ''$10'', and struck out subsecs. (b) and (c) which directed the clerk to collect a fee of 10 cents a folio for preparing and certifying a transcript of the record for the purpose of a writ of certiorari sought by the plaintiff and for furnishing certified copies of judgments or other documents, with not less than $5 to be charged for each certified copy of findings of fact and opinion of the court to be filed in the Supreme Court, and which also directed the clerk to collect for each certified copy of the court's findings of fact and opinion a fee of 25 cents for five pages or less, 35 cents for those over five and not more than ten pages, 45 cents for those over ten and not more than twenty pages, and 50 cents for those of more than twenty pages.

1966—Subsec. (d). Pub. L. 89–507 repealed subsec. (d) which required the cost of printing the record in every pending case to be taxed against the losing party except when the judgment is against the United States. See section 2412 of this title.

1954—Subsec. (a). Act Sept. 3, 1954, struck out ''and the hearing of any case before the court, a judge, or a commissioner'' after ''petition''.

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 this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(a)(2) of Pub. L. 100–702 provided that: ''The amendment made by this subsection [amending this section] shall take effect 30 days after the date of enactment of this title [Nov. 19, 1988].''

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 this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–507 applicable only to judgments in actions filed subsequent to July 18, 1966, and such amendment not to authorize the reopening or modification of judgments entered prior to July 18, 1966, see section 3 of Pub. L. 89–507, set out as a note under section 2412 of this title.

§ 2521. Subpoenas and incidental powers

(a) Subpoenas requiring the attendance of parties or witnesses and subpoenas requiring the production of books, papers, documents or tangible things by any party or witness having custody or control thereof, may be issued for purposes of discovery or for use of the things produced as evidence in accordance with the rules and orders of the court. Such subpoenas shall be issued and served and compliance therewith shall be compelled as provided in the rules and orders of the court.

(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.

(Added Sept. 3, 1954, ch. 1263, § 59(a), 68 Stat. 1248; amended Pub. L. 102–572, title IX, § 910(a), Oct. 29, 1992, 106 Stat. 4519.)

AMENDMENTS

1992—Pub. L. 102–572 inserted ''and incidental powers'' in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

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 this title.

§ 2522. Notice of appeal

Review of a decision of the United States Court of Federal Claims shall be obtained by filing a notice of appeal with the clerk of the Court of Federal Claims within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts.

(Added Pub. L. 97–164, title I, § 139(q)(1), Apr. 2, 1982, 96 Stat. 44; amended Pub. L. 102–572, title IX, § 902(a), Oct. 29, 1992, 106 Stat. 4516.)

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court''.

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 this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

[CHAPTER 167—REPEALED]

[§§ 2601 to 2604. Repealed. Pub. L. 97–164, title I, § 140, Apr. 2, 1982, 96 Stat. 44]

Section 2601, acts June 25, 1948, ch. 646, 62 Stat. 979; June 2, 1970, Pub. L. 91–271, title I, § 103, 84 Stat. 275; Oct. 10, 1980, Pub. L. 96–417, title IV, § 403(a)–(d), title V, § 501(27), (28), 94 Stat. 1740–1742, provided for appeals to the Court of Customs and Patent Appeals from final judgments or orders of the Court of International Trade and for the procedures to be followed in such appeals. See section 1295(a)(5) of this title.

Section 2602, acts June 25, 1948, ch. 646, 62 Stat. 980; Oct. 14, 1966, Pub. L. 89–651, § 8(c)(3), 80 Stat. 902; June 2, 1970, Pub. L. 91–271, title I, § 104, 84 Stat. 276; Oct. 10, 1980, Pub. L. 96–417, title IV, § 403(e)(1), 94 Stat. 1741, provided for the precedence of enumerated civil actions in the Court of Customs and Patent Appeals. See section 1296 of this title.

Section 2603, added Pub. L. 96–417, title IV, § 404(a), Oct. 10, 1980, 94 Stat. 1741, provided that, except as provided in section 2639 or 2641(b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence would apply in the Court of Customs and Patent Appeals in any appeal from the Court of International Trade.

Section 2604, added Pub. L. 96–417, title IV, § 405(a), Oct. 10, 1980, 94 Stat. 1741, authorized the chief judge of the Court of Customs and Patent Appeals to summon annually the judges of the court to a judicial conference for the purpose of considering the business of the court and improvements in the administration of justice of the court.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

Sec.
2631. Persons entitled to commence a civil action.
2632. Commencement of a civil action.
2633. Procedure and fees.
2634. Notice.
2635. Filing of official documents.
2636. Time for commencement of action.
2637. Exhaustion of administrative remedies.
2638. New grounds in support of a civil action.
2639. Burden of proof; evidence of value.
2640. Scope and standard of review.
2641. Witnesses; inspection of documents.
2642. Analysis of imported merchandise.
2643. Relief.
2644. Interest.
2645. Decisions.
2646. Retrial or rehearing.
[2647. Repealed.]

AMENDMENTS

1984—Pub. L. 98–620 title IV, § 402(29)(G), Nov. 8, 1984, 98 Stat. 3359, struck out item 2647 ''Precedence of cases''.

1980—Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1730, substituted ''COURT OF INTERNATIONAL TRADE PROCEDURE'' for ''CUSTOMS COURT PROCEDURE'' in chapter heading, ''Persons entitled to commence a civil action'' for ''Time for commencement of action'' in item 2631, ''Commencement of a civil action'' for ''Customs Court procedures and fees'' in item 2632, ''Procedure and fees'' for ''Precedence of cases'' in item 2633, ''Filing of official documents'' for ''Burden of proof; evidence of value'' in item 2635, ''Time for commencement of action'' for ''Analysis of imported merchandise'' in item 2636, ''Exhaustion of administrative remedies'' for ''Witnesses; inspection of documents'' in item 2637, ''New grounds in support of a civil action'' for ''Decisions; findings of fact and conclusions of law; effect of opinions'' in item 2638, ''Burden of proof; evidence of value'' for ''Retrial or rehearing'' in item 2639, and added items 2640 to 2647.

1979—Pub. L. 96–39, title X, § 1001(b)(4)(F), July 26, 1979, 93 Stat. 306, substituted ''Precedence of cases'' for ''Precedence of American manufacturer, producer, or wholesaler cases'' in item 2633.

1970—Pub. L. 91–271, title I, § 123(e), June 2, 1970, 84 Stat. 282, substituted ''Time for commencement of action'' for ''Appeal for reappraisement; assignment to single judge; hearing'' in item 2631, ''Customs Court procedures and fees' for ''Notice'' in item 2632, ''Precedence of American manufacturer, producer, or wholesaler cases'' for ''Evidence of value, upon reappraisement; burden of proof'' in item 2633, ''Notice'' for ''Witnesses; inspection of documents'' in item 2634, ''Burden of proof; evidence of value'' for ''Decision of single judge in reappraisement appeal'' in item 2635, ''Analysis of imported merchandise'' for ''Review of single judge's decision; disqualification of judges; remand; presumption'' in item 2636, ''Witnesses; inspection of documents'' for ''Review of decisions of divisions'' in item 2637, ''Decisions; findings of fact and conclusions of law; effect of opinions'' for ''Precedence of classification cases'' in item 2638, and ''Retrial or rehearing'' for ''Analysis of imported merchandise'' in item 2639, and struck out item 2640 ''Rehearing or retrial'', item 2641 ''Frivolous protest or appeal'', and item 2642 ''Amendment of protests, appeals, and pleadings''.

1949—Act May 24, 1949, ch. 139, § 121, 63 Stat. 106, substituted ''Amendment of protests, appeals, and pleadings'' for ''Disqualification of judge'' in item 2642.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 19 sections 1499, 1514, 1516, 1516a.

§ 2631. Persons entitled to commence a civil action

(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

(d)(1) A civil action to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act may be commenced in the Court of International Trade by a worker, group of workers, certified or recognized union, or authorized representative of such worker or group that applies for assistance under such Act and is aggrieved by such final determination.

(2) A civil action to review any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act may be commenced in the Court of International Trade by a firm or its representative that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

(3) A civil action to review any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act may be commenced in the Court of International Trade by a community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

(e) A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke such license or permit under section 641(b)(5) or (c)(2) of such Act, may be commenced in the Court of International Trade by the person whose license or permit was denied or revoked.

(2) A civil action to review any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit or impose a monetary penalty in lieu thereof under section 641(d)(2)(B) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person against whom the decision was issued.

(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

(h) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.

(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

(C) in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(k) In this section—

(1) ''interested party'' has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

(2) ''party-at-interest'' means—

(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

(B) a manufacturer, producer, or wholesaler in the United States of a like product;

(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product;

(D) a trade or business association a majority of whose members manufacture,

produce, or wholesale a like product in the United States,[1] and

(E) an association composed of members who represent parties-at-interest described in subparagraph (B), (C), or (D).

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1730; amended Pub. L. 98–573, title II, § 212(b)(3), title VI, § 612(b)(3), Oct. 30, 1984, 98 Stat. 2983, 3034; Pub. L. 103–182, title VI, § 684(a)(2), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsecs. (a), (h), (j)(1)(A), is classified to section 1515 of Title 19, Customs Duties.

Section 514 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1514 of Title 19.

Section 516 of the Tariff Act of 1930, referred to in subsecs. (b), (j)(1)(A), is classified to section 1516 of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsecs. (c), (j)(1)(B), is classified to section 1516a of Title 19.

The Trade Act of 1974, referred to in subsec. (d)(1) to (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) of Title 19. Sections 223, 251, and 271 of the Trade Act of 1974 are classified to sections 2273, 2341, and 2371, respectively, of Title 19. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsecs. (e), (k)(2)(A), is classified to section 2515(b)(1) of Title 19.

Section 777 of the Tariff Act of 1930, referred to in subsecs. (f), (j)(1)(C), is classified to section 1677f of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (g), is classified to section 1641 of Title 19.

Section 499(b) of the Tariff Act of 1930, referred to in subsec. (g)(3), is classified to section 1499(b) of Title 19.

Section 771(9) of the Tariff Act of 1930, referred to in subsec. (k)(1), is classified to section 1677(9) of Title 19.

PRIOR PROVISIONS

A prior section 2631, acts June 25, 1948, ch. 646, 62 Stat. 980; May 24, 1949, ch. 139, § 122, 63 Stat. 106; June 2, 1970, Pub. L. 91–271, title I, § 112, 84 Stat. 278; Jan. 3, 1975, Pub. L. 93–618, title III, § 321(f)(2), 88 Stat. 2048, related to time for commencement of action, prior to the general revision of this chapter by Pub. L. 96–417. See section 2636 of this title.

AMENDMENTS

1993—Subsec. (g)(3). Pub. L. 103–182 added par. (3).

1984—Subsec. (g). Pub. L. 98–573, § 212(b)(3), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

''(1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

''(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.''

Subsec. (k)(2)(E). Pub. L. 98–573, § 612(b)(3), added subpar. (E).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 212(b)(3) of Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

Amendment by section 612(b)(3) of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under subtitle A or B of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., 1673 et seq.), and to reviews begun under section 751 of that Act (19 U.S.C. 1675), on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98–573, as amended, set out as a note under section 1671 of Title 19.

EFFECTIVE DATE

Chapter effective Nov. 1, 1980, unless otherwise provided, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

Subsecs. (d) and (g) to (j) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417.

APPLICATION OF 1993 AMENDMENT

For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1581 of this title.

§ 2632. Commencement of a civil action

(a) Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

(b) A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

(c) A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1732.)

REFERENCES IN TEXT

Sections 515 and 516 of the Tariff Act of 1930, referred to in subsec. (b), are classified to sections 1515 and 1516, respectively, of Title 19, Customs Duties.

Section 516A of the Tariff Act of 1930, referred to in subsec. (c), is classified to section 1516a of Title 19.

PRIOR PROVISIONS

A prior section 2632, acts June 25, 1948, ch. 646, 62 Stat. 980; June 2, 1970, Pub. L. 91–271, title I, § 113, 84 Stat. 279; Jan. 3, 1975, Pub. L. 93–618, title III, § 321(f)(3), 88 Stat. 2048; July 26, 1979, Pub. L. 96–39, title X,

[1] So in original. The comma probably should be a semicolon.

§ 1001(b)(4)(C), 93 Stat. 306, related to Customs Court procedure and fees, prior to the general revision of this chapter by Pub. L. 96–417. See section 2633 of this title.

EFFECTIVE DATE

Subsec. (a) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 2633. Procedure and fees

(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than $5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

(b) The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1732.)

PRIOR PROVISIONS

A prior section 2633, acts June 25, 1948, ch. 646, 62 Stat. 980; June 2, 1970, Pub. L. 91–271, title I, § 114, 84 Stat. 279; July 26, 1979, Pub. L. 96–39, title X, § 1001(b)(4)(D), 93 Stat. 306, related to precedence of cases, prior to the general revision of this chapter by Pub. L. 96–417. See section 2647 of this title.

SCHEDULE OF FEES

(Effective November 1, 1988, as amended to July 1, 1998)

As provided by 28 U.S.C. § 2633(a) and the Rules of the United States Court of International Trade, the clerk of the court shall collect the fees set forth below. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4 and 12 of Additional Fees. No fees under this schedule shall be charged to federal agencies or programs, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

Filing Fees—USCIT R. 3(b)

1. For filing an action other than one commenced under 28 U.S.C. § 1581(a) or (d)(1), $150.00.
2. For filing an action commenced under 28 U.S.C. § 1581(a), $120.00.
3. For filing an action commenced under 28 U.S.C. § 1581(d)(1), $25.00.
4. For filing a complaint in an action commenced under 28 U.S.C. § 1581(a) or (b) prior to March 1, 1987, $25.00.
5. For filing a complaint in an action commenced under 28 U.S.C. § 1581(a) on or after November 1, 1997, $30.00.

Attorney Admission Fees—USCIT R. 74(b)(3)

For the original admission of an attorney to practice, including a certificate of admission, $50.00.

Additional Fees—USCIT R. 80(g)

The clerk shall collect in advance from the parties fees for miscellaneous services as are consistent with the ''Judicial Conference Schedule of Additional Fees for the United States District Courts.'' The additional fees that are applicable to the court are as follows:

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid (e.g., filing a petition to perpetuate testimony pursuant to Rule 27, the filing of letters rogatory or letters of request, and the registering of a judgment pursuant to 28 U.S.C. § 1963), $20.00.
2. For every search of the records of the court for each case searched, $15.00. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. The court has adopted guidelines consistent with those promulgated by the Judicial Conference of the United States to provide guidance in the application of this fee.
3. For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5.00.
4. For exemplification of any document or paper, $10.00.
5. For reproducing any record or paper, including paper copies made from either original documents; or microfiche or microfilm reproductions of the original records, $.50 per page. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.
6. For reproduction of magnetic tape recordings, either cassette or reel-to-reel (including the cost of materials), $15.00.
7. For each microfiche sheet of film or microfilm jacket copy of any court record, where available, $3.00.
8. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.00.
9. For a check paid into the court which is returned for lack of funds, $25.00.
10. For a duplicate certificate of admission or certificate of good standing, $15.00.
11. For handling registry funds, a charge shall be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.
12. For usage of electronic access to court data for each minute of usage, $.60. The court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. This fee shall apply to the United States. The court has adopted an advisory note consistent with that approved by the Judicial Conference of the United States clarifying the policy with respect to exemptions from this fee.

PRACTICE COMMENT: Any reference in the Schedule of Fees pertaining to electronic access or an automated database will apply only as of the date on which the Clerk's Office has an automated database that is available to the public. As of July 1, 1998, that automated database is not available.

§ 2634. Notice

Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1733.)

PRIOR PROVISIONS

A prior section 2634, acts June 25, 1948, ch. 646, 62 Stat. 981; June 2, 1970, Pub. L. 91–271, title I, § 115, 84 Stat. 280, related to notice, prior to the general revision of this chapter by Pub. L. 96–417. See section 2634 of this title.

§ 2635. Filing of official documents

(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.

(b)(1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

(B)(i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, comment, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

(A) a copy of the contested determination and the findings or report upon which such determination was based;

(B) a copy of any reported hearings or conferences conducted by the agency; and

(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1733; amended Pub. L. 103–182, title VI, § 684(d), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (a), (b)(1), and (c), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended. Title VII of the Tariff Act of 1930 is classified generally to subtitle IV (§ 1671 et seq.) of chapter 4 of Title 19, Customs Duties. Sections 515, 516, 516A, and 777 of the Tariff Act of 1930 are classified to sections 1515, 1516, 1516a, and 1677f, respectively, of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

PRIOR PROVISIONS

A prior section 2635, acts June 25, 1948, ch. 646, 62 Stat. 981; June 2, 1970, Pub. L. 91–271, title I, § 116, 84 Stat. 280, related to burden of proof and evidence of value, prior to the general revision of this chapter by Pub. L. 96–417. See section 2639 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

''(A) the consumption or other entry and the entry summary;

''(B) the commercial invoice;

''(C) the special customs invoice;

''(D) a copy of the protest or petition;

''(E) a copy of the denial, in whole or in part, of the protest or petition;

''(F) the importer's exhibits;

''(G) the official and other representative samples;

''(H) any official laboratory reports; and

''(I) a copy of any bond relating to the entry.

''(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.''

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701 (b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 1641.

§ 2636. Time for commencement of action

(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within the time specified in such section.

(d) A civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or a final determination of the Secretary of Commerce under section 251 or section 271 of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

(e) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

(f) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

(g) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1734; amended Pub. L. 98–573, title II, § 212(b)(4), title VI, § 623(b)(1), Oct. 30, 1984, 98 Stat. 2984, 3041; Pub. L. 103–182, title VI, § 684(a)(3), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsec. (c), is classified to section 1516a of Title 19.

Sections 223, 251, and 271 of the Trade Act of 1974, referred to in subsec. (d), are classified to sections 2273, 2341, and 2371, respectively, of Title 19.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (e), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (f), is classified to section 1677f(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (g), is classified to section 1641 of Title 19.

Section 499(b) of the Tariff Act of 1930, referred to in subsec. (h), is classified to section 1499(b) of Title 19.

PRIOR PROVISIONS

A prior section 2636, acts June 25, 1948, ch. 646, 62 Stat. 981; June 2, 1970, Pub. L. 91–271, title I, § 117, 84 Stat. 280, related to analysis of imported merchandise, prior to the general revision of this chapter by Pub. L. 96–417. See section 2642 of this title.

AMENDMENTS

1993—Subsecs. (h), (i). Pub. L. 103–182 added subsec. (h) and redesignated former subsec. (h) as (i).

1984—Subsec. (c). Pub. L. 98–573, § 623(b)(1)(A), amended subsec. (c) generally, striking out ", other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act," and substituting "within the time specified in such section" for "within thirty days after the date of the publication of such determination in the Federal Register".

Subsec. (d). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d), which provided that civil actions contesting certain determinations by the administering authority under sections 703(b), (c), and 733(b), (c), of the Tariff Act of 1930 were barred unless commenced in accordance with the rules of the Court of International Trade within 10 days after publication of the determination in the Federal Register, was struck out.

Subsecs. (e) to (g). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsecs. (f) to (h) as (e) to (g), respectively. Former subsec. (e) redesignated (d).

Subsec. (h). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 98–573, § 212(b)(4), amended subsec. (h) generally, substituting "customs broker's license or permit under subsection (b) or (c) of section 641 of the Tariff Act of 1930, or the revocation or suspension of such license or permit or the imposition of a monetary penalty in lieu thereof by such Secretary under section 641(d) of such Act," for "customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act".

Subsec. (i). Pub. L. 98–573, § 623(b)(1)(B), redesignated subsec. (i) as (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 212(b)(4) of Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

Amendment by section 623(b)(1) of Pub. L. 98–573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98–573, set out as a note under section 1671 of Title 19.

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

APPLICATION OF 1993 AMENDMENT

For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 sections 1514, 1515.

§ 2637. Exhaustion of administrative remedies

(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1735.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516 of Title 19.

PRIOR PROVISIONS

A prior section 2637, acts June 25, 1948, ch. 646, 62 Stat. 982; June 2, 1970, Pub. L. 91–271, title I, § 118, 84 Stat. 280; July 26, 1979, Pub. L. 96–39, title X, § 1001(b)(4)(E), 93 Stat. 306, related to witnesses and inspection of documents, prior to the general revision of this chapter by Pub. L. 96–417. See section 2641 of this title.

EFFECTIVE DATE

Subsec. (c) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 2638. New grounds in support of a civil action

In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—

(1) applies to the same merchandise that was the subject of the protest; and

(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1736.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in text, is classified to section 1515 of Title 19, Customs Duties.

Section 514 of the Tariff Act of 1930, referred to in par. (2), is classified to section 1514 of Title 19.

PRIOR PROVISIONS

A prior section 2638, acts June 25, 1948, ch. 646, 62 Stat. 982; June 2, 1970, Pub. L. 91–271, title I, § 119, 84 Stat. 281, related to decisions, findings of fact and conclusions of law, and effect of opinions, prior to the gen-

eral revision of this chapter by Pub. L. 96–417. See section 2645 (a) and (c) of this title.

§ 2639. Burden of proof; evidence of value

(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1736.)

REFERENCES IN TEXT

Sections 515, 516, and 516A of the Tariff Act of 1930, referred to in subsec. (a)(1), are classified to sections 1515, 1516, and 1516a, respectively, of Title 19, Customs Duties.

PRIOR PROVISIONS

A prior section 2639, acts June 25, 1948, ch. 646, 62 Stat. 982; June 2, 1970, Pub. L. 91–271, title I, § 120, 84 Stat. 281, provided for retrial or rehearing, prior to the general revision of this chapter by Pub. L. 96–417. See section 2646 of this title.

EFFECTIVE DATE

Subsec. (a)(2) of this section applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(A) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

Subsec. (b) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2641 of this title; title 19 section 1499.

§ 2640. Scope and standard of review

(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

(3) Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

(4) Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.

(5) Civil actions commenced to review any decision of the Secretary of the Treasury under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section.

(6) Civil actions commenced under section 1582 of this title.

(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act, the court shall review the matter as specified in section 284 of such Act.

(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.

(e) In any civil action not specified in this section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1736; amended Pub. L. 98–573, title II, § 212(b)(5), Oct. 30, 1984, 98 Stat. 2984; Pub. L. 103–182, title VI, § 684(a)(4), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in subsec. (a)(1), is classified to section 1515 of Title 19, Customs Duties.

Section 516 of the Tariff Act of 1930, referred to in subsec. (a)(2), is classified to section 1516 of Title 19.

Section 305(b)(1) of the Trade Agreements Act of 1979, referred to in subsec. (a)(3), is classified to section 2515(b)(1) of Title 19.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (a)(4), is classified to section 1677f(c)(2) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (a)(5), is classified to section 1641 of Title 19.

Section 516A of the Tariff Act of 1930, referred to in subsec. (b), is classified to section 1516a of Title 19.

Sections 223, 251, 271, and 284 of the Trade Act of 1974, referred to in subsec. (c), are classified to sections 2273, 2341, 2371, and 2395, respectively, of Title 19.

Section 499(b) of the Tariff Act of 1930, referred to in subsec. (d), is classified to section 1499(b) of Title 19.

PRIOR PROVISIONS

A prior section 2640, act June 25, 1948, ch. 646, 62 Stat. 982, authorized the division which had decided a case or the single judge who had decided an appeal for a reappraisement to grant a rehearing or retrial, prior to repeal by Pub. L. 91–271, title I, § 121, June 2, 1970, 84 Stat. 281. See section 2646 of this title.

AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103–182 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (a)(5). Pub. L. 98–573 amended par. (5) generally, substituting ''under section 641 of the Tariff Act of 1930, with the exception of decisions under section 641(d)(2)(B), which shall be governed by subdivision (d) of this section'' for ''to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

EFFECTIVE DATE

Subsecs. (a)(5), (c), and (d) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

Subsec. (a)(6) of this section applicable with respect to civil actions commenced on or after the 90th day after Nov. 1, 1980, see section 701(c)(1)(A) of Pub. L. 96–417.

APPLICATION OF 1993 AMENDMENT

For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1581 of this title.

§ 2641. Witnesses; inspection of documents

(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1737.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (a), are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 2641, act June 25, 1948, ch. 646, 62 Stat. 982, authorized the Customs Court to assess a penalty of not less than $5 nor more than $250 against any person filing a frivolous protest or appeal, prior to repeal by Pub. L. 91–271, title I, § 121, June 2, 1970, 84 Stat. 281.

§ 2642. Analysis of imported merchandise

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1737; amended Pub. L. 103–182, title VI, § 684(a)(5), Dec. 8, 1993, 107 Stat. 2219.)

REFERENCES IN TEXT

Section 499(b) of the Tariff Act of 1930, referred to in text, is classified to section 1499(b) of Title 19, Customs Duties.

PRIOR PROVISIONS

A prior section 2642, act May 24, 1949, ch. 139, § 123, 63 Stat. 106, authorized the Customs Court under its rules and in its discretion to permit the amendment of protests, appeals and pleadings, prior to repeal by Pub. L. 91–271, title I, § 121, June 2, 1970, 84 Stat. 281. See section 2633(b) of this title.

AMENDMENTS

1993—Pub. L. 103–182 inserted before period at end ''or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930''.

APPLICATION OF 1993 AMENDMENT

For purposes of applying amendment by Pub. L. 103–182, any decision or order of Customs Service denying, suspending, or revoking accreditation of a private laboratory on or after Dec. 8, 1993, and before regulations to implement 19 U.S.C. 1499(b) are issued to be treated as having been denied, suspended, or revoked under such section 1499(b), see section 684(b) of Pub. L. 103–182, set out as a note under section 1581 of this title.

§ 2643. Relief

(a) The Court of International Trade may enter a money judgment—

(1) for or against the United States in any civil action commenced under section 1581 or 1582 of this title; and

(2) for or against the United States or any other party in any counterclaim, cross-claim, or third-party action under section 1583 of this title.

(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.

(c)(1) Except as provided in paragraphs (2), (3), (4), and (5) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974, or any final determination of the Secretary of Commerce under section 251 or section 271 of such Act.

(3) In any civil action involving an application for the issuance of an order directing the admin-

istering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, the Court of International Trade may not order declaratory relief.

(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

(e) In any proceeding involving assessment or collection of a monetary penalty under section 641(b)(6) or 641(d)(2)(A) of the Tariff Act of 1930, the court may not render judgment in an amount greater than that sought in the initial pleading of the United States, and may render judgment in such lesser amount as shall seem proper and just to the court.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1737; amended Pub. L. 98–573, title II, § 212(b)(6), Oct. 30, 1984, 98 Stat. 2984; Pub. L. 100–449, title IV, § 402(b), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 103–182, title IV, § 414(b), Dec. 8, 1993, 107 Stat. 2147.)

REFERENCES IN TEXT

Sections 223, 251, and 271 of the Trade Act of 1974, referred to in subsec. (c)(2), are classified to sections 2273, 2341, and 2371, respectively, of Title 19, Customs Duties.

Section 777(c)(2) of the Tariff Act of 1930, referred to in subsec. (c)(3), is classified to section 1677f(c)(2) of Title 19.

Section 516A(f)(10) of the Tariff Act of 1930, referred to in subsec. (c)(5), is classified to section 1516a(f)(10) of Title 19.

Section 641 of the Tariff Act of 1930, referred to in subsec. (e), is classified to section 1641 of Title 19.

AMENDMENTS

1993—Subsec. (c)(5). Pub. L. 103–182 substituted ''merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930)'' for ''Canadian merchandise''.

1988—Subsec. (c). Pub. L. 100–449 substituted ''(4), and (5)'' for ''and (4)'' in par. (1) and added par. (5).

1984—Subsec. (e). Pub. L. 98–573 added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], but not applicable to any final determination described in section 1516a(a)(1)(B) or (2)(B)(i), (ii), or (iii) of Title 19, Customs Duties, notice of which is published in the Federal Register before such date, or to a determination described in section 1516a(a)(2)(B)(vi) of Title 19, notice of which is received by the Government of Canada or Mexico before such date, or to any binational panel review under the United States-Canada Free-Trade Agreement, or to any extraordinary challenge arising out of any such review that was commenced before such date, see section 416 of Pub. L. 103–182, set out as an Effective Date note under section 3431 of Title 19.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100–449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100–449, set out in a note under section 2112 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–573 effective on close of 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

EFFECTIVE DATE

Subsecs. (a) and (c)(2), (4) of this section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

For provisions relating to effect of termination of NAFTA country status on sections 401 to 416 of Pub. L. 103–182, see section 3451 of Title 19, Customs Duties.

§ 2644. Interest

If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1986. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1738; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 515 of the Tariff Act of 1930, referred to in text, is classified to section 1515 of Title 19, Customs Duties.

Section 6621 of the Internal Revenue Code of 1986, referred to in text, is classified to section 6621 of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EFFECTIVE DATE

Section applicable with respect to civil actions commenced on or after Nov. 1, 1980, see section 701(b)(1)(B) of Pub. L. 96–417, set out as an Effective Date of 1980 Amendment note under section 251 of this title.

§ 2645. Decisions

(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

(1) a statement of findings of fact and conclusions of law; or

(2) an opinion stating the reasons and facts upon which the decision is based.

(b) After the Court of International Trade has rendered a judgment, the court may, upon the

motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Court of International Trade within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1738; amended Pub. L. 97–164, title I, § 141, Apr. 2, 1982, 96 Stat. 45.)

AMENDMENTS

1982—Subsec. (c). Pub. L. 97–164 substituted ''is taken to the Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Court of International Trade within the time and in the manner prescribed for appeals to United States courts of appeals from the United States district courts'' for ''is taken to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title''.

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 this title.

§ 2646. Retrial or rehearing

After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

(Added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1739.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2645 of this title.

[§ 2647. Repealed. Pub. L. 98–620, title IV, § 402(29)(G), Nov. 8, 1984, 98 Stat. 3359]

Section, added Pub. L. 96–417, title III, § 301, Oct. 10, 1980, 94 Stat. 1739; amended Pub. L. 98–573, title VI, § 623(b)(2), Oct. 30, 1984, 98 Stat. 3041, related to precedence of cases.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of this title.

CHAPTER 171—TORT CLAIMS PROCEDURE

Sec.
2671. Definitions.
2672. Administrative adjustment of claims.
2673. Reports to Congress.
2674. Liability of United States.
2675. Disposition by federal agency as prerequisite; evidence.
2676. Judgment as bar.
2677. Compromise.
2678. Attorney fees; penalty.
2679. Exclusiveness of remedy.
2680. Exceptions.

SENATE REVISION AMENDMENT

As printed in this report, this chapter should have read ''173'' and not ''171''. It was properly numbered ''173'' in the bill. However, the chapter was renumbered ''171'', without change in its section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1966—Pub. L. 89–506, § 9(b), July 18, 1966, 80 Stat. 308, substituted ''claims'' for ''claims of $2,500 or less'' in item 2672.

1959—Pub. L. 86–238, § 1(2), Sept. 8, 1959, 73 Stat. 472, substituted ''$2,500'' for ''$1,000'' in item 2672.

CROSS REFERENCES

Costs in tort claims cases, see section 2412 of this title.

Interest on judgments against the United States, computation, see section 2411 of this title.

Jurisdiction of district courts in tort claims cases, see section 1346 of this title.

Jury trial denied in action against the United States, see section 2402 of this title.

Review of tort claims cases, see section 1291 of this title.

Time for commencing tort action against the United States, see section 2401 of this title.

Venue in tort claims actions, see section 1402 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 995, 1346 of this title; title 2 section 190g; title 5 sections 3102, 3111, 3373, 3374, 5564; title 7 sections 2272, 2279b, 2279c; title 10 sections 1588, 2113, 2360, 2904; title 12 sections 209, 4621; title 14 sections 93, 821, 823a; title 15 sections 637, 4102, 4105; title 16 sections 450ss–3, 565a–2, 698u–3, 742f, 742*l*, 773a, 1421e, 1703, 3602, 3640, 4604, 5608, 5708; title 19 section 1630; title 20 sections 76*l*, 4420; title 22 sections 2124c, 2504, 3508, 3761, 4606; title 23 section 307; title 24 sections 421, 422; title 25 sections 450k, 1638c, 1680c, 2020, 3115, 3733; title 29 section 1706; title 31 sections 3723, 3724; title 32 section 509; title 33 section 569c; title 37 section 554; title 39 section 409; title 42 sections 233, 2021d, 2212, 2297c–5, 3788, 5055, 7142, 12620, 12651b, 12651g, 12655n; title 43 section 1737; title 46 App. section 740; title 48 section 1905; title 49 sections 106, 20107.

§ 2671. Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term ''Federal agency'' includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

''Employee of the government'' includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

''Acting within the scope of his office or employment'', in the case of a member of the mili-

tary or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

(June 25, 1948, ch. 646, 62 Stat. 982; May 24, 1949, ch. 139, § 124, 63 Stat. 106; Pub. L. 89–506, § 8, July 18, 1966, 80 Stat. 307; Pub. L. 97–124, § 1, Dec. 29, 1981, 95 Stat. 1666; Pub. L. 100–694, § 3, Nov. 18, 1988, 102 Stat. 4564.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 941 (Aug. 2, 1946, ch. 753, § 402, 60 Stat. 842).

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2671 of title 28, U.S.C.

AMENDMENTS

1988—Pub. L. 100–694 inserted ''the judicial and legislative branches,'' after ''departments,'' in first par.

1981—Pub. L. 97–124 inserted ''members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32,'' in definition of ''Employee of the government'' and ''or a member of the National Guard as defined in section 101(3) of title 32'' in definition of ''Acting within the scope of his office or employment''.

1966—Pub. L. 89–506 expanded definition of ''Federal agency'' to include military departments.

1949—Act May 24, 1949, corrected spelling of ''office''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–694 effective Nov. 18, 1988, and applicable to all claims, civil actions, and proceedings pending on, or filed on or after, Nov. 18, 1988, see section 8 of Pub. L. 100–694, set out as a note under section 2679 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–124 applicable only with respect to claims arising on or after Dec. 29, 1981, see section 4 of Pub. L. 97–124, set out as a note under section 1089 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

SEVERABILITY

Section 7 of Pub. L. 100–694 provided that: ''If any provision of this Act [see Short Title of 1988 Amendment note under section 1 of this title] or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation.''

CONGRESSIONAL FINDINGS AND PURPOSES

Section 2 of Pub. L. 100–694 provided that:

''(a) FINDINGS.—The Congress finds and declares the following:

''(1) For more than 40 years the Federal Tort Claims Act [28 U.S.C. 1346(b), 2671 et seq.] has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

''(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

''(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

''(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in Westfall v. Erwin, have seriously eroded the common law tort immunity previously available to Federal employees.

''(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

''(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

''(7) In its opinion in Westfall v. Erwin, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

''(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1988 Amendment note under section 1 of this title] to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States.''

CROSS REFERENCES

Peace Corps volunteers deemed employees of the United States for purposes of this chapter, see section 2504 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 8 section 1357; title 16 section 4604; title 20 section 4420; title 23 section 307; title 25 section 450f; title 42 section 12555n.

§ 2672. Administrative adjustment of claims

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the

authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all offices of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

(June 25, 1948, ch. 646, 62 Stat. 983; Apr. 25, 1949, ch. 92, § 2(b), 63 Stat. 62; May 24, 1949, ch. 139, § 125, 63 Stat. 106; Sept. 23, 1950, ch. 1010, § 9, 64 Stat. 987; Pub. L. 86–238, § 1(1), Sept. 8, 1959, 73 Stat. 471; Pub. L. 89–506, §§ 1, 9(a), July 18, 1966, 80 Stat. 306, 308; Pub. L. 101–552, § 8(a), Nov. 15, 1990, 104 Stat. 2746.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 921 (Aug. 2, 1946, ch. 753, § 403, 60 Stat. 843).

The phrase "accruing on and after January 1, 1945" was omitted because executed as of the date of the enactment of this revised title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2672 of title 28, U.S.C.

AMENDMENTS

1990—Pub. L. 101–552 inserted at end of first par. "Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee."

1966—Pub. L. 89–506 substituted "claims" for "claims of $2,500 or less" in section catchline, authorized administrative settlement of tort claims, in accordance with regulations prescribed by the Attorney General, of up to $25,000 and, with the prior written approval of the Attorney General or his designee, in excess of $25,000, inserted "compromise" and "settlement" to list of administrative acts that would be final and conclusive on all officers of the government, authorized the payment of administrative settlements in excess of $2,500 in the manner similar to judgments and compromises in like causes, and made appropriations and funds which were available for the payment of such judgments and compromises available for the payment of awards, compromises, or settlements under this chapter.

1959—Pub. L. 86–238 substituted "$2,500" for "$1,000" in section catchline and text.

1950—Act Sept. 23, 1950, struck out requirement for specific authorization for payment of tort claims in appropriation acts.

1949—Act Apr. 25, 1949, inserted "accruing on or after January 1, 1945" after "United States" in first par.

Act May 24, 1949, substituted "2677" for "2678" in third par.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 10 of Pub. L. 89–506 provided that: "This Act [amending this section, sections 2401, 2671, 2675, 2677, 2678, and 2679 of this title, section 724a of former Title 31, Money and Finance, and former section 4116 of Title 38, Veterans' Benefits], shall apply to claims accruing six months or more after the date of its enactment [July 18, 1966]."

LAWS UNAFFECTED

Section 424(b) of act Aug. 2, 1946, ch. 753, title IV, 60 Stat. 856, provided that: "Nothing contained herein shall be deemed to repeal any provision of law authorizing any Federal agency to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or loss of property or on account of personal injury or death, in cases in which such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under part 2 of this title."

CROSS REFERENCES

Allowance of claims for property loss, personal injury, or death incident to noncombat activities of Army, Navy, or Air Force, see section 2733 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2678, 2679 of this title; title 5 section 8477; title 7 section 2262a; title 8 section 1357; title 10 sections 1054, 1089, 2733; title 15 section 2081; title 21 section 904; title 22 sections 1474, 2669, 2702; title 23 section 307; title 29 section 1706; title 31 section 1304; title 32 section 715; title 38 sections 515, 1151, 7316; title 39 section 2603; title 42 sections 233, 2212, 2458a, 5055.

§ 2673. Reports to Congress

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of

each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

(June 25, 1948, ch. 646, 62 Stat. 983.)

REPEAL

Section 1(1) of Pub. L. 89–348, Nov. 8, 1965, 79 Stat. 1310, repealed the requirement that an annual report to Congress be made of the administrative adjustment of tort claims of $2,500 or less, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 922 (Aug. 2, 1946, ch. 753, § 404, 60 Stat. 843).

Changes were made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 8 section 1357.

§ 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

(June 25, 1948, ch. 646, 62 Stat. 983; Pub. L. 100–694, §§ 4, 9(c), Nov. 18, 1988, 102 Stat. 4564, 4567.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 931(a) (Aug. 2, 1946, ch. 753, § 410(a), 60 Stat. 843).

Section constitutes the liability provisions in the second sentence of section 931(a) of title 28, U.S.C., 1940 ed.

Other provisions of section 931(a) of title 28, U.S.C., 1940 ed., are incorporated in sections 1346(b), 1402, 2402, 2411, and 2412 of this title, but the provision of such section 931(a) that the United States shall not be liable for interest prior to judgment was omitted as unnecessary in view of section 2411 of this title, which provides that interest on judgments against the United States shall be computed from the date of judgment. Such section 2411 is made applicable to tort-claim actions by section 932 of title 28, U.S.C., 1940 ed.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

For Senate amendment to this section, see 80th Congress Senate Report No. 1559, amendment No. 60.

AMENDMENTS

1988—Pub. L. 100–694 inserted two pars. at end entitling the United States and the Tennessee Valley Authority to assert any defense based upon judicial or legislative immunity.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–694 effective Nov. 18, 1988, and applicable to all claims, civil actions, and proceedings pending on, or filed on or after, Nov. 18, 1988, see section 8 of Pub. L. 100–694 set out as a note under section 2679 of this title.

CROSS REFERENCES

Interest on judgments, computation, see section 2411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 8 section 1357.

§ 2675. Disposition by federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time or presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.

(June 25, 1948, ch. 646, 62 Stat. 983; May 24, 1949, ch. 139, § 126, 63 Stat. 107; Pub. L. 89–506, § 2, July 18, 1966, 80 Stat. 306.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 931(b) (Aug. 2, 1946, ch. 753, § 410(b), 60 Stat. 844).

Section constitutes all of section 931(b), except the first sentence, of title 28, U.S.C., 1940 ed. The remainder of such section 931(b) is incorporated in section 2677 of this title.

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2675(b) of title 28, U.S.C.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–506, § 2(a), required that all administrative claims be filed with the agency or department and finally denied by the agency and sent by certified or registered mail prior to the filing of a court action against the United States, provided that the claimant be given the option of considering the claim to have been denied if the agency fails to make final disposition of the claim within six months of presentation of the claim to the agency, and provided that the requirements of the subsection would not apply to claims asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

Subsec. (b). Pub. L. 89–506, § 2(b), struck out provisions under which a claimant could, upon 15 days written notice, withdraw a claim from the agency and institute an action thereon.

1949—Subsec. (b). Act May 24, 1949, substituted ''section'' for ''subsection''.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

CROSS REFERENCES

District courts, jurisdiction of tort claims cases, see section 1346 of this title.

Jury trial denied in actions against the United States, see section 2402 of this title.

Time for commencing tort action against the United States, see section 2401 of this title.

Venue in tort claims actions, see section 1402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2679 of this title; title 5 section 8477; title 8 section 1357; title 23 section 307.

§ 2676. Judgment as bar

The judgment in an action under section 1346 (b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

(June 25, 1948, ch. 646, 62 Stat. 984.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 931(b) (Aug. 2, 1946, ch. 753, § 410(b), 60 Stat. 844).

Section constitutes the first sentence of section 931(b) of title 28, U.S.C., 1940 ed. Other provisions of such section 931(b) are incorporated in section 2675 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 8 section 1357.

§ 2677. Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 89–506, § 3, July 18, 1966, 80 Stat. 307.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 934 (Aug. 2, 1946, ch. 753, § 413, 60 Stat. 845).

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered ''2676'' by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1966—Pub. L. 89–506 struck out provision requiring that approval of court be obtained before Attorney General could arbitrate, compromise, or settle a claim after commencement of an action thereon.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2672, 2678 of this title; title 5 section 8477; title 8 section 1357; title 10 sections 1054, 1089; title 22 section 2702; title 31 section 1304; title 38 sections 1151, 7316; title 42 sections 233, 2458a, 5055.

§ 2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 89–506, § 4, July 18, 1966, 80 Stat. 307.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 944 (Aug. 2, 1946, ch. 753, § 422, 60 Stat. 846).

Words ''shall be guilty of a misdemeanor'' and ''shall, upon conviction thereof'', in the second sentence, were omitted in conformity with revised title 18, U.S.C., Crimes and Criminal Procedure (H.R. 1600, 80th Cong.). See sections 1 and 2 of said revised title 18.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered "2677" by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1966—Pub. L. 89–506 raised the limitations on allowable attorneys fees from 10 to 20 percent for administrative settlements and from 20 to 25 percent for fees in cases after suit is filed and removed the requirement of agency or court allowance of the amount of attorneys fees.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 8 section 1357.

§ 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

(June 25, 1948, ch. 646, 62 Stat. 984; Pub. L. 87–258, § 1, Sept. 21, 1961, 75 Stat. 539; Pub. L. 89–506, § 5(a), July 18, 1966, 80 Stat. 307; Pub. L. 100–694, §§ 5, 6, Nov. 18, 1988, 102 Stat. 4564.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 945 (Aug. 2, 1946, ch. 753, § 423, 60 Stat. 846).

Changes were made in phraseology.

SENATE REVISION AMENDMENT

The catchline and text of this section were changed and the section was renumbered ''2678'' by Senate amendment. See 80th Congress Senate Report No. 1559.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d)(3), are set out in the Appendix to this title.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–694, § 5, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.''

Subsec. (d). Pub. L. 100–694, § 6, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Upon a certification by the Attorney General that the defendant employee was acting within the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings deemed a tort action brought against the United States under the provisions of this title and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (b) of this section is not available against the United States, the case shall be remanded to the State court.''

1966—Subsec. (b). Pub. L. 89–506 inserted reference to section 2672 of this title and substituted ''remedy'' for ''remedy by suit''.

1961—Pub. L. 87–258 designated existing provisions as subsec. (a) and added subsecs. (b) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8 of Pub. L. 100–694 provided that:

''(a) GENERAL RULE.—This Act and the amendments made by this Act [enacting section 831c–2 of Title 16, Conservation, amending this section and sections 2671 and 2674 of this title, and enacting provisions set out as notes under this section and section 2671 of this title] shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

''(b) APPLICABILITY TO PROCEEDINGS.—The amendments made by this Act [amending this section and sections 2671 and 2674 of this title] shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

''(c) PENDING STATE PROCEEDINGS.—With respect to any civil action or proceeding pending in a State court to which the amendments made by this Act apply, and as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

''(d) CLAIMS ACCRUING BEFORE ENACTMENT.—With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of this Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(5) of title 28, United States Code (as amended by section 6 of this Act) shall be that period within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89–506, set out as a note under section 2672 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87–258 provided that: ''The amendments made by this Act [amending this section] shall be deemed to be in effect six months after the enactment hereof [Sept. 21, 1961] but any rights or liabilities then existing shall not be affected.''

CROSS REFERENCES

For civil actions for injury or loss of property or personal injury or death against the Tennessee Valley Authority, see section 831c–2 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 7 section 943; title 8 section 1357; title 19 sections 1920, 2350; title 20 section 1082; title 25 section 450f; title 33 section 2718; title 42 sections 233, 2458a, 3211, 12651d.

§ 2680. Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741–752, 781–790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1–31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

[(g) Repealed. Sept. 26, 1950, ch. 1049, § 13 (5), 64 Stat. 1043.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided*, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, ''investigative or law enforcement officer'' means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(*l*) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(June 25, 1948, ch. 646, 62 Stat. 984; July 16, 1949, ch. 340, 63 Stat. 444; Sept. 26, 1950, ch. 1049, §§ 2(a)(2), 13(5), 64 Stat. 1038, 1043; Pub. L. 86–168, title II, § 202(b), Aug. 18, 1959, 73 Stat. 389; Pub. L. 93–253, § 2, Mar. 16, 1974, 88 Stat. 50.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 943 (Aug. 2, 1946, ch. 753, § 421, 60 Stat. 845).

Changes were made in phraseology.

Section 946 of title 28, U.S.C., 1940 ed., which was derived from section 424(b) of the Federal Tort Claims Act, was omitted from this revised title. It preserved the existing authority of federal agencies to settle tort claims not cognizable under section 2672 of this title. Certain enumerated laws granting such authority were specifically repealed by section 424(a) of the Federal Tort Claims Act, which section was also omitted from this revised title. These provisions were not included in this revised title as they are not properly a part of a code of general and permanent law.

SENATE REVISION AMENDMENT

Sections 2680 and 2681 were renumbered ''2679'' and ''2680'', respectively, by Senate amendment. See 80th Congress Senate Report No. 1559.

REFERENCES IN TEXT

Sections 741–752 of title 46, referred to in subsec. (d), are popularly known as the ''Suits in Admiralty Act'' and are classified to Title 46, Appendix, Shipping.

Sections 781–790 of title 46, referred to in subsec. (d), are popularly known as the ''Public Vessels Act'' and are classified to Title 46, Appendix.

Sections 1–31 of Title 50, Appendix, referred to in subsec. (e), was in the original source of this section (section 943 of act Aug. 2, 1946) a reference to the Trading with the Enemy Act, as amended. The Trading with the Enemy Act is now comprised of sections 1 to 43, which are classified to sections 1 to 6, 7 to 39, and 41 to 44 of Title 50, Appendix, War and National Defense.

The date of the enactment of this proviso, referred to in subsec. (h), means Mar. 16, 1974, the date on which Pub. L. 93–253, which enacted the proviso, was approved.

Panama Canal Company, referred to in subsec. (m), deemed to refer to Panama Canal Commission, see section 3602(b)(5) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1974—Subsec. (h). Pub. L. 93–253 inserted proviso.

1959—Subsec. (n). Pub. L. 86–168 added subsec. (n).

1950—Subsec. (g). Act Sept. 26, 1950, § 13(5), repealed subsec. (g).

Subsec. (m). Act Sept. 26, 1950, § 2, substituted ''Panama Canal Company'' for ''Panama Railroad Company''.

1949—Subsec. (m). Act July 16, 1949, added subsec. (m).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86–168.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Sept. 26, 1950, to take effect upon effective date of transfer to the Panama Canal Company, pursuant to the provisions of section 256 of the former Canal Zone Code, as added by section 10 of that act, of the Panama Canal together with the facilities and appurtenances related thereto, see section 14 of act Sept. 26, 1950.

TRANSFER OF FUNCTIONS

Coast Guard transferred to Department of Transportation and all functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of all other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of certain functions relating to claims and litigation, insofar as they pertain to the Air Force, from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order No. 34 [§ 1a(2)(4)], eff. July 1, 1949.

NORTHERN MARIANA ISLANDS—APPLICABILITY OF SUBSEC. (k)

Pub. L. 97–357, title II, § 204, Oct. 19, 1982, 96 Stat. 1708, provided: ''That the Northern Mariana Islands shall not be considered a foreign country for purposes of subsection (k) of section 2680 of title 28, United States Code, with respect to claims which accrued no more than two years prior to the effective date of this Act [Oct. 19, 1982].''

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

APPLICABILITY OF SUBSEC. (j)

Joint Res. July 3, 1952, ch. 570, § 1(a)(32), 66 Stat. 333, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, and Joint Res. June 30, 1953, ch. 172, 67 Stat.

132, provided that subsec. (j) of this section, in addition to coming into full force and effect in time of war, should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Title 50 Appendix, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond Aug. 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

Joint Res. July 3, 1952, ch. 570, § 6, 66 Stat. 334, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions of subsec. (j) of this section until July 3, 1952. This repeal was made effective June 16, 1952, by section 7 of Joint Res. July 3, 1952.

CROSS REFERENCES

For civil actions for injury or loss of property or personal injury or death against the Tennessee Valley Authority, see section 831c–2 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8477; title 8 section 1357; title 10 sections 1054, 1089; title 15 section 2053; title 19 section 1630; title 21 section 904; title 22 sections 1474, 2702; title 31 section 3724; title 38 section 7316; title 42 sections 233, 2458a.

CHAPTER 173—ATTACHMENT IN POSTAL SUITS

Sec.
2710. Right of attachment.
2711. Application for warrant.
2712. Issue of warrant.
2713. Trial of ownership of property.
2714. Investment of proceeds of attached property.
2715. Publication.
2716. Personal notice.
2717. Discharge.
2718. Interest on balances due department.

§ 2710. Right of attachment

(a) Where debts are due from a defaulting or delinquent postmaster, contractor, or other officer, agent or employee of the Post Office Department, a warrant of attachment may issue against all property and legal and equitable rights belonging to him, and his sureties, or either of them, where he—

(1) is a nonresident of the district where he was appointed, or has departed from that district for the purpose of permanently residing outside thereof, or of avoiding the service of civil process; and

(2) has conveyed away, or is about to convey away any of his property, or has removed or is about to remove the same from the district wherein it is situated, with intent to defraud the United States.

(b) When the property has been removed, the marshal of the district into which it has been removed, upon receipt of certified copies of the warrant, may seize the property and convey it to a convenient place within the jurisdiction of the court which issued the warrant. Alias warrants may be issued upon due application. The warrant first issued remains valid until the return day thereof.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 706.)

CODIFICATION

Section was derived from R.S. § 924, which was originally classified to section 737 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 924 was reclassified to section 837 of Title 39. R.S. § 924 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2710 of this title.

CHANGE OF NAME

References to Post Office Department, Postal Service, Postal Field Service, Field Postal Service, or Departmental Service or Departmental Headquarters of Post Office Department to be considered references to United States Postal Service pursuant to Pub. L. 91–375, § 6(*o*), Aug. 12, 1970, 84 Stat. 783, set out as a Cross Reference note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Chapter effective Sept. 1, 1960, see section 11 of Pub. L. 86–682.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2711 of this title.

§ 2711. Application for warrant

A United States attorney or assistant United States attorney or a person authorized by the Attorney General—

(1) upon his own affidavit or that of another credible person, stating the existence of either of the grounds of attachments enumerated in section 2710 of this title and

(2) upon production of legal evidence of the debt

may apply for a warrant of attachment to a judge, or, in his absence, to the clerk of any court of the United States having original jurisdiction of the cause of action.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 707.)

CODIFICATION

Section was derived from R.S. § 925, which was originally classified to section 738 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 925 was reclassified to section 838 of Title 39. R.S. § 925 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2711 of this title.

§ 2712. Issue of warrant

Upon an order of a judge of a court, or, in his absence and upon the clerk's own initiative, the clerk shall issue a warrant for the attachment of the property belonging to the person specified in the affidavit. The marshal shall execute the warrant forthwith and take the property attached, if personal, in his custody, subject to the interlocutory or final orders of the court.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 707.)

CODIFICATION

Section was derived from R.S. § 926, which was originally classified to section 739 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 926 was reclassified to section 839 of Title 39. R.S. § 926 was repealed by section

12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2713 of this title.

§ 2713. Trial of ownership of property

Not later than twenty days before the return day of a warrant issued under section 2712 of this title, the party whose property is attached, on notice to the United States Attorney, may file a plea in abatement, denying the allegations of the affidavit, or denying ownership in the defendant of the property attached. The court, upon application of either party, shall order a trial by jury of the issues. Where the parties, by consent, waive a trial by jury, the court shall decide the issues. A party claiming ownership of the property attached and seeking its return is limited to the remedy afforded by this section, but his right to an action of trespass, or other action for damages, is not impaired.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 707.)

CODIFICATION

Section was derived from R.S. § 927, which was originally classified to section 740 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 927 was reclassified to section 840 of Title 39. R.S. § 927 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2713 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Pleas abolished, see rule 7, Appendix to this title.

§ 2714. Investment of proceeds of attached property

When the property attached is sold on an interlocutory order or is producing revenue, the money arising from the sale or revenue shall be invested, under the order of the court, in securities of the United States. The accretions therefrom are subject to the order of the court.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 707.)

CODIFICATION

Section was derived from R.S. § 928, which was originally classified to section 741 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 928 was reclassified to section 841 of Title 39. R.S. § 928 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2714 of this title.

§ 2715. Publication

The marshal shall cause publication of an executed warrant of attachment—

(1) for two months in case of an absconding debtor, and

(2) for four months in case of a nonresident debtor

in a newspaper published in the district where the property is situated pursuant to the details of the order under which the warrant is issued.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 707.)

CODIFICATION

Section was derived from R.S. § 929, which was originally classified to section 742 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 929 was reclassified to section 842 of Title 39. R.S. § 929 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2715 of this title.

§ 2716. Personal notice

After the first publication of the notice of attachment, a person indebted to, or having possession of property of a defendant and having knowledge of the notice, shall answer for the amount of his debt or the value of the property. Any disposal or attempted disposal of the property, to the injury of the United States, is unlawful. When the person indebted to, or having possession of the property of a defendant, is known to the United States attorney or marshal, the officer shall cause a personal notice of the attachment to be served upon him, but the lack of the notice does not invalidate the attachment.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 707.)

CODIFICATION

Section was derived from R.S. § 930, which was originally classified to section 743 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 930 was reclassified to section 843 of Title 39. R.S. § 930 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2716 of this title.

§ 2717. Discharge

The court, or a judge thereof, upon—

(1) application of the party when property has been attached and

(2) execution to the United States of a penal bond, approved by a judge, in double the value of the property attached and conditioned upon the return of the property or the payment of any judgment rendered by the court

may discharge the warrant of attachment as to the property of the applicant.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 708.)

CODIFICATION

Section was derived from R.S. § 931, which was originally classified to section 744 of former Title 28. Following the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 931 was reclassified to section 844 of Title 39. R.S. § 931 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2717 of this title.

§ 2718. Interest on balances due department

In suits for balances due the Post Office Department may recover interest at the rate of 6 per centum per year from the time of default.

(Added Pub. L. 86–682, § 9, Sept. 2, 1960, 74 Stat. 708.)

CODIFICATION

Section was derived from R.S. § 964, which was originally classified to section 788 of former Title 28. Fol-

lowing the general revision and enactment of Title 28 by act June 25, 1948, R.S. § 964 was reclassified to section 846 of Title 39. R.S. § 964 was repealed by section 12(c) of Pub. L. 86–682 (section 1 of which revised and enacted Title 39), and reenacted by section 9 thereof as section 2718 of this title.

CHANGE OF NAME

References to Post Office Department, Postal Service, Postal Field Service, Field Postal Service, or Departmental Service or Departmental Headquarters of Post Office Department to be considered references to United States Postal Service pursuant to Pub. L. 91–375, § 6(*o*), Aug. 12, 1970, 84 Stat. 783, set out as a Cross References note preceding section 101 of Title 39, Postal Service.

CHAPTER 175—CIVIL COMMITMENT AND REHABILITATION OF NARCOTIC ADDICTS

Sec.
2901. Definitions.
2902. Discretionary authority of court; examination, report, and determination by court; termination of civil commitment.
2903. Authority and responsibilities of the Surgeon General; institutional custody; aftercare; maximum period of civil commitment; credit toward sentence.
2904. Civil commitment not a conviction; use of test results.
2905. Delegation of functions by Surgeon General; use of Federal, State, and private facilities.
2906. Absence of offer by the court to a defendant of an election under section 2902(a) or any determination as to civil commitment, not reviewable on appeal or otherwise.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 257.

§ 2901. Definitions

As used in this chapter—

(a) ''Addict'' means any individual who habitually uses any narcotic drug as defined by section 102(16)[1] of the Controlled Substances Act so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction.

(b) ''Surgeon General'' means the Surgeon General of the Public Health Service.

(c) ''Crime of violence'' includes voluntary manslaughter, murder, rape, mayhem, kidnaping, robbery, burglary or housebreaking in the nighttime, extortion accompanied by threats of violence, assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable as a felony, or an attempt or conspiracy to commit any of the foregoing offenses.

(d) ''Treatment'' includes confinement and treatment in an institution and under supervised aftercare in the community and includes, but not limited to, medical, educational, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence, and his susceptibility to addiction.

[1] See References in Text note below.

(e) ''Felony'' includes any offense in violation of a law of the United States classified as a felony under section 3581 of title 18 of the United States Code, and further includes any offense in violation of a law of any State, any possession or territory of the United States, the District of Columbia, the Canal Zone, or the Commonwealth of Puerto Rico, which at the time of the offense was classified as a felony by the law of the place where that offense was committed.

(f) ''Conviction'' and ''convicted'' mean the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, but do not include a final judgment which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory.

(g) ''Eligible individual'' means any individual who is charged with an offense against the United States, but does not include—

(1) an individual charged with a crime of violence.

(2) an individual charged with unlawfully importing, selling, or conspiring to import or sell, a narcotic drug.

(3) an individual against whom there is pending a prior charge of a felony which has not been finally determined or who is on probation or whose sentence following conviction on such a charge, including any time on parole, supervised release, or mandatory release, has not been fully served: *Provided*, That an individual on probation, parole, supervised release, or mandatory release shall be included if the authority authorized to require his return to custody consents to his commitment.

(4) an individual who has been convicted of a felony on two or more occasions.

(5) an individual who has been civilly committed under this Act, under the District of Columbia Code, or any State proceeding because of narcotic addiction on three or more occasions.

(Added Pub. L. 89–793, title I, § 101, Nov. 8, 1966, 80 Stat. 1438; amended Pub. L. 91–513, title III, § 1102(*l*), Oct. 27, 1970, 84 Stat. 1293; Pub. L. 92–420, § 2, Sept. 16, 1972, 86 Stat. 677; Pub. L. 98–473, title II, § 228(c), Oct. 12, 1984, 98 Stat. 2030.)

REFERENCES IN TEXT

Section 102(16) of the Controlled Substances Act, referred to in subsec. (a), was redesignated section 102(17) of the Controlled Substances Act by Pub. L. 98–473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071, and is classified to section 802(17) of Title 21, Food and Drugs.

For definition of Canal Zone, referred to in subsec. (e), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

This Act, referred to in subsec. (g)(5), probably means Pub. L. 89–793, which enacted this chapter, section 4251 et seq. of Title 18, Crimes and Criminal Procedure, sections 3402 and 3411 et seq. of Title 42, The Public Health and Welfare, amended section 7237 of Title 26, Internal Revenue Code, and section 257 of Title 42, and enacted provisions set out as notes under sections 4202 of Title 18 and 3401 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 42 and Tables.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–473, § 228(c)(1), substituted ''section 3581'' for ''section 1''.

Subsec. (g)(3). Pub. L. 98–473, § 228(c)(2), inserted references to supervised release.

1972—Subsec. (d). Pub. L. 92–420 substituted ''by eliminating his dependence on addicting drugs, or by controlling his dependence,'' for ''by correcting his antisocial tendencies and ending his dependence on addicting drugs''.

1970—Subsec. (a). Pub. L. 91–513 substituted ''as defined by section 102(16) of the Controlled Substances Act'' for ''as defined by section 4731 of the Internal Revenue Code of 1954, as amended,''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 235(a)(1)(B)(ii)(IV) of Pub. L. 98–473 provided that the amendment made by Pub. L. 98–473 is effective Oct. 12, 1984.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 5 of Pub. L. 92–420 provided that: ''This Act [amending this section, section 4251 of Title 18, Crimes and Criminal Procedure, and section 3411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under this section] shall take effect immediately upon enactment [Sept. 16, 1972]. Sections 2 and 3 [amending section 4251 of Title 18 and section 3411 of Title 42, respectively] shall apply to any case pending in a district court of the United States in which an appearance has not been made prior to the effective date [Sept. 16, 1972].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91–513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE

Chapter effective three months after Nov. 8, 1966, and applicable to any case pending in a district court of the United States in which an appearance has not been made prior to such effective date, see section 605 of Pub. L. 89–793, title VI, Nov. 8, 1966, 80 Stat. 1450, set out as a note under section 3401 of Title 42, The Public Health and Welfare.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91–513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91–513, set out as a note under section 171 of Title 21, Food and Drugs.

§ 2902. Discretionary authority of court; examination, report, and determination by court; termination of civil commitment

(a) If the United States district court believes that an eligible individual is an addict, the court may advise him at his first appearance or thereafter at the sole discretion of the court that the prosecution of the criminal charge will be held in abeyance if he elects to submit to an immediate examination to determine whether he is an addict and is likely to be rehabilitated through treatment. In offering an individual an election, the court shall advise him that if he elects to be examined, he will be confined during the examination for a period not to exceed sixty days; that if he is determined to be an addict who is likely to be rehabilitated, he will be civilly committed to the Surgeon General for treatment; that he may not voluntarily withdraw from the examination or any treatment which may follow; that the treatment may last for thirty-six months; that during treatment, he will be confined in an institution and, at the discretion of the Surgeon General, he may be conditionally released for supervised aftercare treatment in the community; and that if he successfully completes treatment the charge will be dismissed, but if he does not, prosecution on the charge will be resumed. An individual upon being advised that he may elect to submit to an examination shall be permitted a maximum of five days within which to make his election. Except on a showing that a timely election could not have been made, an individual shall be barred from an election after the prescribed period. An individual who elects civil commitment shall be placed in the custody of the Attorney General or the Surgeon General, as the court directs, for an examination by the Surgeon General during a period not to exceed thirty days. This period may, upon notice to the court and the appropriate United States attorney, be extended by the Surgeon General for an additional thirty days.

(b) The Surgeon General shall report to the court the results of the examination and recommend whether the individual should be civilly committed. A copy of the report shall be made available to the individual and the United States attorney. If the court, acting on the report and other information coming to its attention, determines that the individual is not an addict or is an addict not likely to be rehabilitated through treatment, the individual shall be held to answer the abeyant charge. If the court determines that the individual is an addict and is likely to be rehabilitated through treatment, the court shall commit him to the custody of the Surgeon General for treatment, except that no individual shall be committed under this chapter if the Surgeon General certifies that adequate facilities or personnel for treatment are unavailable.

(c) Whenever an individual is committed to the custody of the Surgeon General for treatment under this chapter the criminal charge against him shall be continued without final disposition and shall be dismissed if the Surgeon General certifies to the court that the individual has successfully completed the treatment program. On receipt of such certification, the court shall discharge the individual from custody and dismiss the charge against him. If prior to such certification the Surgeon General determines that the individual cannot be further treated as a medical problem, he shall advise the court. The court shall thereupon terminate the commitment, and the pending criminal proceeding shall be resumed.

(d) An individual committed for examination or treatment shall not be released on bail or on his own recognizance.

(e) Whoever escapes or attempts to escape while committed to institutional custody for examination or treatment, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to the penalties provided in sections 751 and 752 of title 18, United States Code.

(Added Pub. L. 89–793, title I, § 101, Nov. 8, 1966, 80 Stat. 1439.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2906 of this title; title 18 section 3161.

§ 2903. Authority and responsibilities of the Surgeon General; institutional custody; aftercare; maximum period of civil commitment; credit toward sentence

(a) An individual who is committed to the custody of the Surgeon General for treatment under this chapter shall not be conditionally released from institutional custody until the Surgeon General determines that he has made sufficient progress to warrant release to a supervisory aftercare authority. If the Surgeon General is unable to make such a determination at the expiration of twenty-four months after the commencement of institutional custody, he shall advise the court and the appropriate United States attorney whether treatment should be continued. The court may affirm the commitment or terminate it and resume the pending criminal proceeding.

(b) An individual who is conditionally released from institutional custody shall, while on release, remain in the legal custody of the Surgeon General and shall report for such supervised aftercare treatment as the Surgeon General directs. He shall be subject to home visits and to such physical examination and reasonable regulation of his conduct as the supervisory aftercare authority establishes, subject to the approval of the Surgeon General. The Surgeon General may, at any time, order a conditionally released individual to return for institutional treatment. The Surgeon General's order shall be a sufficient warrant for the supervisory aftercare authority, a probation officer, or any Federal officer authorized to serve criminal process within the United States to apprehend and return the individual to institutional custody as directed. If it is determined that an individual has returned to the use of narcotics, the Surgeon General shall inform the court of the conditions under which the return occurred and make a recommendation as to whether treatment should be continued. The court may affirm the commitment or terminate it and resume the pending criminal proceeding.

(c) The total period of treatment for any individual committed to the custody of the Surgeon General shall not exceed thirty-six months. If, at the expiration of such maximum period, the Surgeon General is unable to certify that the individual has successfully completed his treatment program the pending criminal proceeding shall be resumed.

(d) Whenever a pending criminal proceeding against an individual is resumed under this chapter, he shall receive full credit toward the service of any sentence which may be imposed for any time spent in the institutional custody of the Surgeon General or the Attorney General or any other time spent in institutional custody in connection with the matter for which sentence is imposed.

(Added Pub. L. 89–793, title I, § 101, Nov. 8, 1966, 80 Stat. 1440.)

§ 2904. Civil commitment not a conviction; use of test results

The determination of narcotic addiction and the subsequent civil commitment under this chapter shall not be deemed a criminal conviction. The results of any tests or procedures conducted by the Surgeon General or the supervisory aftercare authority to determine narcotic addiction may only be used in a further proceeding under this chapter. They shall not be used against the examined individual in any criminal proceeding except that the fact that he is a narcotic addict may be elicited on his cross-examination as bearing on his credibility as a witness.

(Added Pub. L. 89–793, title I, § 101, Nov. 8, 1966, 80 Stat. 1441.)

§ 2905. Delegation of functions by Surgeon General; use of Federal, State, and private facilities

(a) The Surgeon General may from time to time make such provision as he deems appropriate authorizing the performance of any of his functions under this chapter by any other officer or employee of the Public Health Service, or with the consent of the head of the Department or Agency concerned, by any Federal or other public or private agency or officer or employee thereof.

(b) The Surgeon General is authorized to enter into arrangements with any public or private agency or any person under which appropriate facilities or services of such agency or person, will be made available, on a reimbursable basis or otherwise, for the examination or treatment of individuals who elect civil commitment under this chapter.

(Added Pub. L. 89–793, title I, § 101, Nov. 8, 1966, 80 Stat. 1441.)

§ 2906. Absence of offer by the court to a defendant of an election under section 2902(a) or any determination as to civil commitment, not reviewable on appeal or otherwise

The failure of a court to offer a defendant an election under section 2902(a) of this chapter, or a determination relative to civil commitment under this chapter shall not be reviewable on appeal or otherwise.

(Added Pub. L. 89–793, title I, § 101, Nov. 8, 1966, 80 Stat. 1441.)

CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

Subchapter		Sec.[1]
A.	Definitions and general provisions	3001
B.	Prejudgment remedies	3101
C.	Postjudgments[2] remedies	3201
D.	Fraudulent transfers[2]	3301

SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

Sec.
3001. Applicability of chapter.

[1] Editorially supplied.
[2] So in original. Does not conform to subchapter heading.

Sec.
3002. Definitions.
3003. Rules of construction.
3004. Service of process; enforcement; notice.
3005. Application of chapter to judgments.
3006. Affidavit requirements.
3007. Perishable personal property.
3008. Proceedings before United States magistrates.
3009. United States marshals' authority to designate keeper.
3010. Co-owned property.
3011. Assessment of surcharge on a debt.
3012. Joinder of additional defendant.
3013. Modification or protective order; supervision of enforcement.
3014. Exempt property.
3015. Discovery as to debtor's financial condition.

§ 3001. Applicability of chapter

(a) IN GENERAL.—Except as provided in subsection (b), the[1] chapter provides the exclusive civil procedures for the United States—

(1) to recover a judgment on a debt; or

(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) LIMITATION.—To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

(c) AMOUNTS OWING OTHER THAN DEBTS.—This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4933.)

EFFECTIVE DATE

Section 3631 of title XXXVI of Pub. L. 101–647 provided that:

''(a) Except as provided in subsection (b), this Act [probably should be ''title'', meaning title XXXVI of Pub. L. 101–647, which enacted this chapter and section 2044 of this title, amended sections 550, 1962, 1963, and 2410 of this title, section 523 of Title 11, Bankruptcy, and sections 3142 and 3552 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as a note under section 1 of this title] and the amendments made by this Act [title] shall take effect 180 days after the date of the enactment of this Act [Nov. 29, 1990].

''(b)(1) The amendments made by title I of this Act [probably should be ''subtitle A of this title'', meaning subtitle A (§§ 3611, 3302 [3612]) of title XXXVI of Pub. L. 101–647, which enacted this chapter] shall apply with respect to actions pending on the effective date of this Act [probably should be title XXXVI of Pub. L. 101–647] in any court on—

''(A) a claim for a debt; or

''(B) a judgment for a debt.

''(2) All notices, writs, orders, and judgments in effect in such actions shall continue in effect until superseded or modified in an action under chapter 176 of title 28 of the United States Code, as added by title I of this Act [subtitle A of this title].

''(3) For purposes of this subsection—

''(A) the term 'court' means a Federal, State, or local court, and

''(B) the term 'debt' has the meaning given such term in section and [sic] 3002(3) of such chapter.''

§ 3002. Definitions

As used in this chapter:

(1) ''Counsel for the United States'' means—

(A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and

(B) any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.

(2) ''Court'' means any court created by the Congress of the United States, excluding the United States Tax Court.

(3) ''Debt'' means—

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).

(4) ''Debtor'' means a person who is liable for a debt or against whom there is a claim for a debt.

(5) ''Disposable earnings'' means that part of earnings remaining after all deductions required by law have been withheld.

(6) ''Earnings'' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(7) ''Garnishee'' means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

(8) ''Judgment'' means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.

(9) ''Nonexempt disposable earnings'' means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

(10) ''Person'' includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

(11) ''Prejudgment remedy'' means the remedy of attachment, receivership, garnishment,

[1] So in original. Probably should be ''this''.

or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

(12) ''Property'' includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—

(A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and

(B) Indian lands subject to restrictions against alienation imposed by the United States.

(13) ''Security agreement'' means an agreement that creates or provides for a lien.

(14) ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

(15) ''United States'' means—

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

(16) ''United States marshal'' means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4933.)

REFERENCES IN TEXT

Section 303 of the Consumer Credit Protection Act, referred to in par. (9), is classified to section 1673 of Title 15, Commerce and Trade.

§ 3003. Rules of construction

(a) TERMS.—For purposes of this chapter—

(1) the terms ''includes'' and ''including'' are not limiting;

(2) the term ''or'' is not exclusive; and

(3) the singular includes the plural.

(b) EFFECT ON RIGHTS OF THE UNITED STATES.—This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law—

(1) to collect taxes or to collect any other amount collectible in the same manner as a tax;

(2) to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;

(3) to appoint or seek the appointment of a receiver; or

(4) to enforce a security agreement.

(c) EFFECT ON OTHER LAWS.—This chapter shall not be construed to supersede or modify the operation of—

(1) title 11;

(2) admiralty law;

(3) section 3713 of title 31;

(4) section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673);

(5) a statute of limitation applicable to a criminal proceeding;

(6) the common law or statutory rights to set-off or recoupment;

(7) any Federal law authorizing, or any inherent authority of a court to provide, injunctive relief;

(8) the authority of a court—

(A) to impose a sanction under the Federal Rules of Civil Procedure;

(B) to appoint a receiver to effectuate its order; or

(C) to exercise the power of contempt under any Federal law;

(9) any law authorizing the United States to obtain partition, or to recover possession, of property in which the United States holds title; or

(10) any provision of any other chapter of this title, except to the extent such provision is inconsistent with this chapter.

(d) PREEMPTION.—This chapter shall preempt State law to the extent such law is inconsistent with a provision of this chapter.

(e) EFFECT ON RIGHTS OF THE UNITED STATES UNDER FOREIGN AND INTERNATIONAL LAW.—This chapter shall not be construed to curtail or limit the rights of the United States under foreign law, under a treaty or an international agreement, or otherwise under international law.

(f) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—Except as provided otherwise in this chapter, the Federal Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4935.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsecs. (c)(8)(A) and (f), are set out in the Appendix to this title.

§ 3004. Service of process; enforcement; notice

(a) MANNER OF SERVICE.—A complaint, notice, writ, or other process required to be served in an action or proceeding under this chapter shall be served in accordance with the Federal Rules of Civil Procedure unless otherwise provided in this chapter.

(b) NATIONWIDE ENFORCEMENT.—(1) Except as provided in paragraph (2)—

(A) any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State; and

(B) such writ, order, or judgment may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

(2) If the debtor so requests, within 20 days after receiving the notice described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or judgment was issued shall be transferred to the district court for the district in which the debtor resides.

(c) NOTICE AND OTHER PROCESS.—At such time as counsel for the United States considers ap-

propriate, but not later than the time a prejudgment or postjudgment remedy is put into effect under this chapter, counsel for the United States shall exercise reasonable diligence to serve on the debtor and any person who the United States believes, after exercising due diligence, has possession, custody, or control of the property, a copy of the application for such remedy, the order granting such remedy, and the notice required by section 3101(d) or 3202(b).

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4936.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

§ 3005. Application of chapter to judgments

This chapter shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date of this chapter.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4936.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in text, see section 3631 of Pub. L. 101–647, set out as an Effective Date note under section 3001 of this title.

§ 3006. Affidavit requirements

Any affidavit required of the United States by this chapter may be made on information and belief, if reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4936.)

§ 3007. Perishable personal property

(a) AUTHORITY TO SELL.—If at any time during any action or proceeding under this chapter the court determines on its own initiative or upon motion of any party, that any seized or detained personal property is likely to perish, waste, or be destroyed, or otherwise substantially depreciate in value during the pendency of the proceeding, the court shall order a commercially reasonable sale of such property.

(b) DEPOSIT OF SALE PROCEEDS.—Within 5 days after such sale, the proceeds shall be deposited with the clerk of the court, accompanied by a statement in writing and signed by the United States marshal, to be filed in the action or proceeding, stating the time and place of sale, the name of the purchaser, the amount received, and an itemized account of expenses.

(c) PRESUMPTION.—For purposes of liability on the part of the United States, there shall be a presumption that the price paid at a sale under subsection (a) is the fair market value of the property or portion.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4937.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3102, 3103 of this title.

§ 3008. Proceedings before United States magistrates

A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4937.)

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

§ 3009. United States marshals' authority to designate keeper

Whenever a United States marshal is authorized to seize property pursuant to this chapter, the United States marshal may designate another person or Federal agency to hold for safekeeping such property seized.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4937.)

§ 3010. Co-owned property

(a) LIMITATION.—The remedies available to the United States under this chapter may be enforced against property which is co-owned by a debtor and any other person only to the extent allowed by the law of the State where the property is located. This section shall not be construed to limit any right or interest of a debtor or co-owner in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof or in a qualified retirement arrangement.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) the term ''retirement system for Federal military or civilian personnel'' means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or by regulation pursuant to statutory authority; and

(2) the term ''qualified retirement arrangement'' means a plan qualified under section 401(a), 403(a), or 409 of the Internal Revenue Code of 1986 or a plan that is subject to the requirements of section 205 of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4937.)

REFERENCES IN TEXT

Sections 401(a), 403(a), and 409 of the Internal Revenue Code of 1986, referred to in subsec. (b)(2), are classified to sections 401(a), 403(a), and 409, respectively, of Title 26, Internal Revenue Code.

Section 205 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(2), is classified to section 1055 of Title 29, Labor.

§ 3011. Assessment of surcharge on a debt

(a) SURCHARGE AUTHORIZED.—In an action or proceeding under subchapter B or C, and subject to subsection (b), the United States is entitled

to recover a surcharge of 10 percent of the amount of the debt in connection with the recovery of the debt, to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

(b) LIMITATION.—Subsection (a) shall not apply if—

(1) the United States receives an attorney's fee in connection with the enforcement of the claim; or

(2) the law pursuant to which the action on the claim is based provides any other amount to cover such costs.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4937.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3002 of this title; title 12 section 3768.

§ 3012. Joinder of additional defendant

The United States or the debtor may join as an additional defendant in an action or proceeding under this chapter any person reasonably believed to owe money (including money owed on account of a requirement to provide goods or services pursuant to a loan or loan guarantee extended under Federal law) to the debtor arising out of the transaction or occurrence giving rise to a debt.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4938.)

§ 3013. Modification or protective order; supervision of enforcement

The court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure under this chapter.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4938.)

§ 3014. Exempt property

(a) ELECTION TO EXEMPT PROPERTY.—An individual debtor may, in an action or proceeding under this chapter, elect to exempt property listed in either paragraph (1) or, in the alternative, paragraph (2). If such action or proceeding is against debtors who are husband and wife, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2). If the debtors cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). Such property is either—

(1) property that is specified in section 522(d) of title 11, as amended from time to time; or

(2)(A) any property that is exempt under Federal law, other than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.

(b) EFFECT ON ASSERTION AND MANNER OF DETERMINATION.—

(1) STATEMENT.—A court may order the debtor to file a statement with regard to any claimed exemption. A copy of such statement shall be served on counsel for the United States. Such statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the debtor's ownership interest.

(2) HEARING.—The United States or the debtor, by application to the court in which an action or proceeding under this chapter is pending, may request a hearing on the applicability of any exemption claimed by the debtor. The court shall determine the extent (if any) to which the exemption applies. Unless it is reasonably evident that the exemption applies, the debtor shall bear the burden of persuasion.

(3) STAY OF DISPOSITION.—Assertion of an exemption shall prevent the United States from selling or otherwise disposing of the property for which such exemption is claimed until the court determines whether the debtor has a substantial nonexempt interest in such property. The United States may not take possession of, dispose of, sell, or otherwise interfere with the debtor's normal use and enjoyment of an interest in property the United States knows or has reason to know is exempt.

(c) DEBTORS IN JOINT CASES.—Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4938.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3101, 3202 of this title; title 18 section 3613.

§ 3015. Discovery as to debtor's financial condition

(a) IN GENERAL.—Except as provided in subsection (b), in an action or proceeding under subchapter B or C, the United States may have discovery regarding the financial condition of the debtor in the manner in which discovery is authorized by the Federal Rules of Civil Procedure in an action on a claim for a debt.

(b) LIMITATION.—Subsection (a) shall not apply with respect to an action or proceeding under subchapter B unless there is a reasonable likelihood that the debt involved exceeds $50,000.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4939.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

SUBCHAPTER B—PREJUDGMENT REMEDIES

Sec.
3101. Prejudgment remedies.
3102. Attachment.
3103. Receivership.
3104. Garnishment.
3105. Sequestration.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3011, 3015 of this title.

§3101. Prejudgment remedies

(a) APPLICATION.—(1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

(3) Such application shall—

(A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

(b) GROUNDS.—Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that—

(1) the debtor—

(A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

(2) a prejudgment remedy is required to obtain jurisdiction within the United States and the prejudgment remedy sought will result in obtaining such jurisdiction.

(c) AFFIDAVIT.—(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

(2) The affidavit shall state—

(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;

(B) one or more of the grounds specified in subsection (b); and

(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

(3) No bond is required of the United States.

(d) NOTICE AND HEARING.—(1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the Federal districts in the State in which the court is located and shall be in substantially the following form:

''NOTICE

''You are hereby notified that this [property] is being taken by the United States Government ('the Government'), which says that [name of debtor] owes it a debt of $ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

''In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

''[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

''If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

''If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

''At the hearing you may explain to the judge why you think you do not owe the money to the

Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

''If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

''Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.''

(2) By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—

(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;

(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

(C) the existence of any ground set forth in subsection (b); and

(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

(e) ISSUANCE OF WRIT.—On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4939.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3004, 3102, 3103, 3104, 3105 of this title.

§ 3102. Attachment

(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property garnished or in receivership, or income sequestered, under this subchapter.

(b) AVAILABILITY OF ATTACHMENT.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

(A) the contract is not fully secured by real or personal property; or

(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States; or

(4) in an action to recover a fine, penalty, or tax.

(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States marshal of the district where property described in subsection (a) is located to attach the property.

(2) Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial districts until sufficient property is attached.

(3) The writ of attachment shall contain—

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the attachment; and

(E) a reasonable description of the property to be attached.

(d) LEVY OF ATTACHMENT.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property specified for attachment if found within the district. The marshal may not sell property unless ordered by the court.

(2) In performing the levy, the United States marshal may enter any property owned, occupied, or controlled by the debtor, except that the marshal may not enter a residence or other building unless the writ expressly authorizes the marshal to do so or upon specific order of the court.

(3) Levy on real property is made by entering the property and posting the writ and notice of levy in a conspicuous place upon the property.

(4) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(5) The United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of levy on—

(A) the debtor against whom the writ is issued; and

(B) the person who has possession of the property subject to the writ;

in the same manner that a summons is served in a civil action and make the return thereof.

(e) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of attachment shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the levy.

(2) The return shall describe the property attached with sufficient certainty to identify it and shall state the location where it was attached, the date and time it was attached, and the disposition made of the property. If no property was attached, the return shall so state.

(3) If the property levied on is claimed, replevied under subsection (j)(2), or sold under section 3007 after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

(4) If personal property is replevied, the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

(f) LEVY OF ATTACHMENT AS LIEN ON PROPERTY; SATISFACTION OF LIEN.—(1) A levy on property under a writ of attachment under this section creates a lien in favor of the United States on the property or, in the case of perishable property sold under section 3007, on the proceeds of the sale.

(2) Such lien shall be ranked ahead of any other security interests perfected after the later of the time of levy and the time a copy of the notice of levy is filed under subsection (d)(5).

(3) Such lien shall arise from the time of levy and shall continue until a judgment in the action is obtained or denied, or the action is otherwise dismissed. The death of the debtor whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

(g) REDUCTION OR DISSOLUTION OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the debtor may submit a motion to the court for a reduction of the amount of the attachment or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the property to be released, if after a hearing the court finds that the amount of the attachment is excessive or unreasonable or if the attachment is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

(4) If any property claimed to be exempt is levied on, the debtor may, at any time after such levy, request that the court vacate such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to the debtor.

(h) REPLEVIN OF ATTACHED PROPERTY BY DEBTOR; BOND.—If attached property is not sold before judgment, the debtor may replevy such property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the reasonable value of the property to be replevied or double the value of the claim, whichever is less.

(i) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed, or sold, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(j) JUDGMENT AND DISPOSITION OF ATTACHED PROPERTY.—

(1) JUDGMENT FOR THE UNITED STATES.—On entry of judgment for the United States, the court shall order the proceeds of personal property sold pursuant to section 3007 to be applied to the satisfaction of the judgment, and shall order the sale of any remaining personal property and any real property levied on to the extent necessary to satisfy the judgment.

(2) JUDGMENT FOR THE UNITED STATES WHEN PERSONAL PROPERTY REPLEVIED.—With respect to personal property under attachment that is replevied, the judgment which may be entered shall be against the debtor against whom the writ of attachment is issued and also against the sureties on the debtor's replevin bond for the value of the property.

(3) RESTORATION OF PROPERTY AND EXONERATION OF REPLEVIN BOND.—If the attachment is vacated or if the judgment on the claim for the debt is for the person against whom the writ attachment is issued, the court shall order the property, or proceeds of perishable property sold under section 3007, restored to the debtor and shall exonerate any replevin bond.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4942.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3101, 3203 of this title.

§ 3103. Receivership

(a) APPOINTMENT OF A RECEIVER.—If the requirements of section 3101 are satisfied, a court

may appoint a receiver for property in which the debtor has a substantial nonexempt interest if the United States shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

(b) POWERS OF RECEIVER.—(1) The appointing court may authorize a receiver—

(A) to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and

(B) to administer, collect, improve, lease, repair or sell pursuant to section 3007 such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

(c) DURATION OF RECEIVERSHIP.—A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

(d) ACCOUNTS; REQUIREMENT TO REPORT.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver's accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States with a copy thereof.

(e) MODIFICATION OF POWERS; REMOVAL.—On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver's powers at any time.

(f) PRIORITY.—If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

(g) COMPENSATION OF RECEIVERS.—(1) A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

(2) If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

(3) At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4944.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3101 of this title.

§ 3104. Garnishment

(a) IN GENERAL.—If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in section 3205(c)(10).

(b) WRIT.—(1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment under this section, except that for purposes of this section—

(A) earnings of the debtor shall not be subject to garnishment; and

(B) a reference in such subsections to a judgment debtor shall be deemed to be a reference to a debtor.

(2) The United States shall include in its application for a writ of garnishment—

(A) the amount of the claim asserted by the United States for a debt; and

(B) the date the writ is issued.

(c) LIMITATION.—The value of property garnished shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(1) property securing the debt; and

(2) property attached or in receivership, or income sequestered, under this subchapter.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4945.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3002, 3101 of this title.

§ 3105. Sequestration

(a) PROPERTY SUBJECT TO SEQUESTRATION.—(1) Any income from property in which the debtor has a substantial nonexempt interest may be sequestered pursuant to a writ of sequestration in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The amount of income sequestered shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property attached, garnished, or in receivership under this subchapter.

(b) AVAILABILITY OF SEQUESTRATION.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to sequester income from property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

(A) the contract is not fully secured by real or personal property; or

(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States; or

(4) in an action to recover a fine, penalty, or tax.

(c) ISSUANCE OF WRIT; CONTENTS.—(1) Subject to subsections (a) and (b), a writ of sequestration shall be issued by the court directing the United States marshal of the district where income described in subsection (a) is located to sequester the income.

(2) Several writs of sequestration may be issued at the same time, or in succession, and sent to different judicial districts until sufficient income is sequestered.

(3) The writ of sequestration shall contain—

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the sequestration; and

(E) a reasonable description of the income to be sequestered.

(d) EXECUTION OF WRIT.—(1) The United States marshal receiving the writ shall proceed without delay to execute the writ.

(2) The United States marshal shall file a copy of the notice of sequestration in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of sequestration on—

(A) the debtor against whom the writ is issued; and

(B) the person who has possession of the income subject to the writ;

in the same manner that a summons is served in a civil action and make the return thereof.

(e) DEPOSIT OF SEQUESTERED INCOME.—A person who has possession of the income subject to a writ of sequestration shall deposit such income with the clerk of the court, accompanied by a statement in writing stating the person's name, the name of the debtor, the amount of such income, the property from which such income is produced, and the period during which such income is produced.

(f) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of sequestration shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the execution.

(2) The return shall describe the income sequestered with sufficient certainty to identify it and shall state the location where it was sequestered, and the date and time it was sequestered. If no income was sequestered, the return shall so state.

(3) If sequestered income is claimed after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the income.

(g) REDUCTION OR DISSOLUTION OF SEQUESTRATION.—(1) If an excessive or unreasonable sequestration is made, the debtor may submit a motion to the court for a reduction of the amount of the sequestration or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the income to be released, if after a hearing the court finds that the amount of the sequestration is excessive or unreasonable or if the sequestration is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the sequestration if the amount of the debt is unliquidated and unascertainable by calculation.

(h) PRESERVATION OF INCOME UNDER SEQUESTER.—If personal property in custody of the United States marshal under a writ of sequestration is not claimed, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(i) JUDGMENT AND DISPOSITION OF SEQUESTERED INCOME.—

(1) JUDGMENT FOR THE UNITED STATES.—On entry of judgment for the United States, the court shall order the sequestered income to be applied to the satisfaction of the judgment.

(2) RESTORATION OF INCOME.—If the sequestration is vacated or if the judgment on the claim for the debt is for the person against whom the writ of sequestration is issued, the court shall order the income restored to the debtor.

(Added Pub. L. 101–647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4946.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3101 of this title.

SUBCHAPTER C—POSTJUDGMENT REMEDIES

Sec.
3201. Judgment liens.
3202. Enforcement of judgments.
3203. Execution.
3204. Installment payment order.
3205. Garnishment.
3206. Discharge.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3011, 3015 of this title.

§ 3201. Judgment liens

(a) CREATION.—A judgment in a civil action shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986. A lien created under this paragraph is for the amount necessary to satisfy the judgment, including costs and interest.

(b) PRIORITY OF LIEN.—A lien created under subsection (a) shall have priority over any other lien or encumbrance which is perfected later in time.

(c) DURATION OF LIEN; RENEWAL.—(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if—

(A) the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

(B) the court approves the renewal of such lien under this paragraph.

(d) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien.

(e) EFFECT OF LIEN ON ELIGIBILITY FOR FEDERAL GRANTS, LOANS OR PROGRAMS.—A debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency of the United States that is responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants, loans, and funds.

(f) SALE OF PROPERTY SUBJECT TO JUDGMENT LIEN.—(1) On proper application to a court, the court may order the United States to sell, in accordance with sections 2001 and 2002, any real property subject to a judgment lien in effect under this section.

(2) This subsection shall not preclude the United States from using an execution sale pursuant to section 3203(g) to sell real property subject to a judgment lien.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4948.)

REFERENCES IN TEXT

Section 6323(f) of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 6323(f) of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3102, 3105 of this title; title 8 section 1183a; title 12 section 3758; title 18 section 3613.

§ 3202. Enforcement of judgments

(a) ENFORCEMENT REMEDIES.—A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

(b) NOTICE.—On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

''NOTICE

''You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of $[amount] for [reason of debt].

''In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

''[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

''If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

''If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

''At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving

this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

''If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after your[1] receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

''Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.''

(c) SERVICE.—A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

(d) HEARING.—By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

(1) to the probable validity of any claim of exemption by the judgment debtor;

(2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and

(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—

(A) the probable validity of the claim for the debt which is merged in the judgment; and

(B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

(e) SALE OF PROPERTY.—The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.

[1] So in original. Probably should be ''you''.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4949.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3004 of this title.

§ 3203. Execution

(a) PROPERTY SUBJECT TO EXECUTION.—All property in which the judgment debtor has a substantial nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.

(b) CREATION OF EXECUTION LIEN.—A lien shall be created in favor of the United States on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States has a judgment lien shall relate back to the judgment lien date.

(c) WRIT OF EXECUTION.—

(1) ISSUANCE.—On written application of counsel for the United States, the court may issue a writ of execution. Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

(2) FORM OF WRIT.—

(A) GENERAL CONTENTS.—A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

(B) ADDITIONAL CONTENTS.—(i) Except as provided in clauses (ii) and (iii), the writ shall direct the United States marshal to satisfy the judgment by levying on and selling property in which the judgment debtor has a substantial nonexempt interest, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest.

(ii) A writ of execution issued on a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

(iii) A writ of execution on a judgment for the recovery of personal property or its value shall direct the marshal, in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a substantial nonexempt interest.

(d) LEVY OF EXECUTION.—

(1) IN GENERAL.—Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

(2) DEATH OF JUDGMENT DEBTOR.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ shall be recognized and enforced by the court for the district in which the estate of the deceased is located. The execution lien may be enforced—

(A) against the executor, administrator, or personal representative of the estate of the deceased; or

(B) if there be none, against the deceased's property coming to the heirs or devisees or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

(3) RECORDS OF UNITED STATES MARSHAL.—(A) A United States marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

(B) The United States marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

(C) The United States marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States who requests the writ. The writ shall be returned not more than—

(i) 90 days after the date of issuance if levy is not made; or

(ii) 10 days after the date of sale of property on which levy is made.

(e) APPOINTMENT OF RECEIVER.—Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

(f) REPLEVY; REDEMPTION.—

(1) BEFORE EXECUTION SALE.—(A) Before execution sale, the United States marshal may return property[1] to the judgment debtor any personal property taken in execution, on—

(i) satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

(ii) receipt from the judgment debtor of a bond—

(I) payable to the United States, with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time and place named in the bond to be sold under subsection (g); or

(II) for the payment to the marshal of a fair value thereof which shall be stated in the bond.

(B) A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States marshal the stipulated value of such property.

(C) If the judgment debtor fails to deliver such property to the United States marshal pursuant to the terms of the delivery described in subparagraph (A)(ii)(I) and fails to pay the United States marshal the stipulated value of such property, the United States marshal shall endorse the bond ''forfeited'' and return it to the court from which the writ of execution issued. If the judgment is not fully satisfied, the court shall issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

(2) AFTER EXECUTION SALE.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

(g) EXECUTION SALE.—

(1) GENERAL PROCEDURES.—An execution sale under this section shall be conducted in a commercially reasonable manner—

(A) SALE OF REAL PROPERTY.—

(i) IN GENERAL.—(I) Except as provided in clause (ii), real property, or any interest therein, shall be sold, after the expiration of the 90-day period beginning on the date of levy under subsection (d), for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

(II) The court may order the sale of any real property after the expiration of the 30-day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90-day period beginning on the date of levy.

(III) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as a street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor's reasonable objections, for a reasonable period before the day of sale.

(IV) The United States marshal shall serve written notice of public sale by per-

[1] So in original. The word ''property'' probably should not appear.

sonal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale, to the last known address of each such person.

(ii) SALE OF CITY LOTS.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

(iii) SALE OF RURAL PROPERTY.—If the real property is not located in a city or town, the judgment debtor may—

(I) divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court;

(II) furnish a survey of such prepared by a registered surveyor; and

(III) designate the order in which those lots shall be sold.

When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

(B) SALE OF PERSONAL PROPERTY.—(i) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location if ordered by the court. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless—

(I) the property consists of shares of stock in corporations;

(II) by reason of the nature of the property, it is impractical to exhibit it; or

(III) the debtor's interest in the property does not include the right to the exclusive possession.

(ii)(I) Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d).

(II) The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30-day period.

(iii) Notice of the time and place of the sale of personal property shall be given by the United States marshal by posting notice thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

(iv) The United States marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have a substantial interest in the property.

(2) POSTPONEMENT OF SALE.—The United States marshal may postpone an execution sale from time to time by continuing the required posting or publication of notice until the date to which the sale is postponed, and appending, at the foot of each such notice of a current copy of the following:

''The above sale is postponed until the day of , 19 , at o'clock .M., , United States Marshal for the District of , by , Deputy, dated .''

(3) SALE PROCEDURES.—

(A) BIDDING REQUIREMENTS.—A bidder at an execution sale of property, may be required by the United States marshal to make a cash deposit of as much as 20 percent of the sale price proposed before the bid is accepted.

(B) RESALE OF PROPERTY.—If the terms of the sale are not complied with by the successful bidder, the United States marshal shall proceed to sell the property again on the same day if there is sufficient time. If there is insufficient time, the marshal shall schedule and notice a subsequent sale of the property as provided in paragraphs (1) and (2).

(4) RIGHTS AND LIABILITIES OF PURCHASERS.—

(A) TRANSFER OF TITLE AFTER SALE.—

(i) If property is sold under this subsection and the successful bidder complies with the terms of the sale, the United States marshal shall execute and deliver all documents necessary to transfer to the successful bidder, without warranty, all the rights, titles, interests, and claims of the judgment debtor in the property.

(ii) If the successful bidder dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the successful bidder's estate. Such delivery to the estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(B) PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT NOTICE.—The purchaser of property sold under execution shall be deemed to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the judgment debtor.

(C) LIABILITY OF SUCCESSFUL BIDDER WHO FAILS TO COMPLY.—A successful bidder at an execution sale who fails to comply with the terms of the sale shall forfeit to the United States the cash deposit or, at the election of the United States, shall be liable to the United States, on a subsequent sale of the property, for all net losses incurred by the United States as a result of such failure.

(h) DISPOSITION OF PROCEEDS; FURTHER LEVY.—

(1) DISTRIBUTION OF SALE PROCEEDS.—(A) The United States marshal shall first deliver to

the judgment debtor such amounts to which the judgment debtor is entitled from the sale of partially exempt property.

(B) The United States marshal shall next deduct from the proceeds of an execution sale of property an amount equal to the reasonable expenses incurred in making the levy of execution and in keeping and maintaining the property.

(C) Except as provided in subparagraph (D), the United States marshal shall deliver the balance of the proceeds to the counsel for the United States as soon as practicable.

(D) If more proceeds are received from the execution sale than is necessary to satisfy the executions held by the United States marshal, the marshal shall pay the surplus to the judgment debtor.

(2) FURTHER LEVY IF EXECUTION NOT SATISFIED.—If the proceeds of the execution sale of the property levied on are insufficient to satisfy the execution, the United States marshal shall proceed on the same writ of execution to levy other property of the judgment debtor.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4950.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3103, 3201, 3202 of this title; title 8 section 1183a.

§ 3204. Installment payment order

(a) AUTHORITY TO ISSUE ORDER.—Subject to subsection (c), if it is shown that the judgment debtor—

(1) is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment; or

(2) is diverting or concealing substantial earnings from any source, or property received in lieu of earnings;

then upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration after a hearing, the income, resources, and reasonable requirements of the judgment debtor and the judgment debtor's dependents, any other payments to be made in satisfaction of judgments against the judgment debtor, and the amount due on the judgment in favor of the United States.

(b) MODIFICATION OF ORDER.—On motion of the United States or the judgment debtor, and upon a showing that the judgment debtor's financial circumstances have changed or that assets not previously disclosed by the judgment debtor have been discovered, the court may modify the amount of payments, alter their frequency, or require full payment.

(c) LIMITATION.—(1) An order may not be issued under subsection (a), and if so issued shall have no force or effect, against a judgment debtor or with respect to whom there is in effect a writ of garnishment of earnings issued under this chapter and based on the same debt.

(2) An order may not be issued under subsection (a) with respect to any earnings of the debtor except nonexempt disposable earnings.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1183a.

§ 3205. Garnishment

(a) IN GENERAL.—A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in subsection (c)(10).

(b) WRIT.—

(1) GENERAL REQUIREMENTS.—The United States shall include in its application for a writ of garnishment—

(A) the judgment debtor's name, social security number (if known), and last known address;

(B) the nature and amount of the debt owed and the facts that not less than 30 days has elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and

(C) that the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

(2) PROPER GARNISHEE FOR PARTICULAR PROPERTY.—

(A) If the property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association shall be the garnishee.

(B) If the property consists of an interest in a partnership interest, any partner other than the debtor shall be the garnishee on behalf of the partnership.

(C) If the property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee, except that—

(i) subject to clause (ii), in the case of a security which is transferable in the manner set forth in State law, the entity that carries on its books an account in the

name of the debtor in which is reflected such security shall be the garnishee; and

(ii) notwithstanding clause (i), the pledgee shall be the garnishee if such security is pledged.

(c) PROCEDURES APPLICABLE TO WRIT.—

(1) COURT DETERMINATION.—If the court determines that the requirements of this section are satisfied, the court shall issue an appropriate writ of garnishment.

(2) FORM OF WRIT.—The writ shall state—

(A) The nature and amount of the debt, and any cost and interest owed with respect to the debt.

(B) The name and address of the garnishee.

(C) The name and address of counsel for the United States.

(D) The last known address of the judgment debtor.

(E) That the garnishee shall answer the writ within 10 days of service of the writ.

(F) That the garnishee shall withhold and retain any property in which the debtor has a substantial nonexempt interest and for which the garnishee is or may become indebted to the judgment debtor pending further order of the court.

(3) SERVICE OF WRIT.—The United States shall serve the garnishee and the judgment debtor with a copy of the writ of garnishment and shall certify to the court that this service was made. The writ shall be accompanied by—

(A) an instruction explaining the requirement that the garnishee submit a written answer to the writ; and

(B) instructions to the judgment debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections.

(4) ANSWER OF THE GARNISHEE.—In its written answer to the writ of garnishment, the garnishee shall state under oath—

(A) whether the garnishee has custody, control or possession of such property;

(B) a description of such property and the value of such interest;

(C) a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and

(D) the amount of the debt the garnishee anticipates owing to the judgment debtor in the future and whether the period for payment will be weekly or another specified period.

The garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States.

(5) OBJECTIONS TO ANSWER.—Within 20 days after receipt of the answer, the judgment debtor or the United States may file a written objection to the answer and request a hearing. The party objecting shall state the grounds for the objection and bear the burden of proving such grounds. A copy of the objection and request for a hearing shall be served on the garnishee and all other parties. The court shall hold a hearing within 10 days after the date the request is received by the court, or as soon thereafter as is practicable, and give notice of the hearing date to all the parties.

(6) GARNISHEE'S FAILURE TO ANSWER OR PAY.—If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter judgment against the garnishee for the value of the judgment debtor's nonexempt interest in such property (including nonexempt disposable earnings). The court may award a reasonable attorney's fee to the United States and against the garnishee if the writ is not answered within the time specified therein and a petition requiring the garnishee to appear is filed as provided in this section.

(7) DISPOSITION ORDER.—After the garnishee files an answer and if no hearing is requested within the required time period, the court shall promptly enter an order directing the garnishee as to the disposition of the judgment debtor's nonexempt interest in such property. If a hearing is timely requested, the order shall be entered within 5 days after the hearing, or as soon thereafter as is practicable.

(8) PRIORITIES.—Judicial orders and garnishments for the support of a person shall have priority over a writ of garnishment issued under this section. As to any other writ of garnishment or levy, a garnishment issued under this section shall have priority over writs which are issued later in time.

(9) ACCOUNTING.—(A) While a writ of garnishment is in effect under this section, the United States shall give an annual accounting on the garnishment to the judgment debtor and the garnishee.

(B) Within 10 days after the garnishment terminates, the United States shall give a cumulative written accounting to the judgment debtor and garnishee of all property it receives under a writ of garnishment. Within 10 days after such accounting is received, the judgment debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting shall state grounds for the objection. The court shall hold a hearing on the objection within 10 days after the court receives the request for a hearing, or as soon thereafter as is practicable.

(10) TERMINATION OF GARNISHMENT.—A garnishment under this chapter is terminated only by—

(A) a court order quashing the writ of garnishment;

(B) exhaustion of property in the possesion,[1] custody, or control of the garnishee in which the debtor has a substantial nonexempt interest (including nonexempt disposable earnings), unless the garnishee reinstates or reemploys the judgment debtor

[1] So in original. Probably should be ''possession,''.

within 90 days after the judgment debtor's dismissal or resignation; or

(C) satisfaction of the debt with respect to which the writ is issued.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4956.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3002, 3104 of this title; title 8 section 1183a.

§ 3206. Discharge

A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4959.)

SUBCHAPTER D—FRAUDULENT TRANSFERS INVOLVING DEBTS

Sec.
3301. Definitions.
3302. Insolvency.
3303. Value for a transfer or obligation.[1]
3304. Transfer fraudulent as to a debt to the United States.
3305. When transfer is made or obligation is incurred.
3306. Remedies of the United States.
3307. Defenses, liability and protection of transferee.[1]
3308. Supplementary provision.

§ 3301. Definitions

As used in this subchapter:

(1) ''Affiliate'' means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) ''Asset'' means property of a debtor, but does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or coowner.

(3) ''Claim'' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) ''Creditor'' means a person who has a claim.

(5) ''Insider'' includes—

(A) if the debtor is an individual—

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in clause (ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in clause (iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in clause (iii); or

(v) a person in control of the debtor.[1]

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

(4)[2] ''Lien'' means a charge against or an interest in property to secure payment of a debt and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

(5)[3] ''Relative'' means an individual related, by consanguinity or adoption, within the third

[1] So in original. Does not conform to section catchline.

[1] So in original. The period probably should be a semicolon.

[2] So in original. Probably should be ''(6)''.

[3] So in original. Probably should be ''(7)''.

degree as determined by the common law, a spouse, or an individual so related to a spouse within the third degree as so determined.

(6)[4] ''Transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(7)[5] ''Valid lien'' means a lien that is effective against the holder of a judicial lien subsequently obtained in legal or equitable proceeding.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4959.)

§ 3302. Insolvency

(a) IN GENERAL.—Except as provided in subsection (c), a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) PRESUMPTION.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) CALCULATION.—A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of—

(1) all of the partnership's assets; and

(2) the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

(d) ASSETS.—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

(e) DEBTS.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4961.)

§ 3303. Value for transfer or obligation

(a) TRANSACTION.—Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) REASONABLY EQUIVALENT VALUE.—For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

(c) PRESENT VALUE.—A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4961.)

§ 3304. Transfer fraudulent as to a debt to the United States

(a) DEBT ARISING BEFORE TRANSFER.—Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.—(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

(C) the transfer or obligation was disclosed or concealed;

(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(E) the transfer was of substantially all the debtor's assets;

(F) the debtor absconded;

(G) the debtor removed or concealed assets;

(H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

[4] So in original. Probably should be ''(8)''.

[5] So in original. Probably should be ''(9)''.

(J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4961.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3303, 3306, 3307 of this title.

§ 3305. When transfer is made or obligation is incurred

For the purposes of this subchapter:

(1) A transfer is made—

(A) with respect to an asset that is real property (other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire, otherwise than under this subchapter, a judicial lien that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as approved in paragraph (1) and the transfer is not so perfected before the commencement of an action or proceeding for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action or proceeding.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred—

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing executed by the obligor, when such writing is delivered to or for the benefit of the obligee.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4962.)

§ 3306. Remedies of the United States

(a) IN GENERAL.—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;

(2) a remedy under this chapter against the asset transferred or other property of the transferee; or

(3) any other relief the circumstances may require.

(b) LIMITATION.—A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought—

(1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or

(3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4963.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3307 of this title.

§ 3307. Defenses, liability, and protection of transferee

(a) GOOD FAITH TRANSFER.—A transfer or obligation is not voidable under section 3304(b) with respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

(b) LIMITATION.—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States under section 3306(a)(1), the United States may recover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. The judgment may be entered against—

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

(c) VALUE OF ASSET.—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEES.—Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) EXCEPTIONS.—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

(f) LIMITATION OF VOIDABILITY.—A transfer is not voidable under section 3304(a)(2)—

(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4963.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3303, 3304, 3306 of this title.

§ 3308. Supplementary provision

Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.

(Added Pub. L. 101–647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4964.)

CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION

Sec.
3701. Definitions.
3702. Unlawful sports gambling.
3703. Injunctions.
3704. Applicability.

§ 3701. Definitions

For purposes of this chapter—

(1) the term ''amateur sports organization'' means—

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term ''governmental entity'' means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),

(3) the term ''professional sports organization'' means—

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term ''person'' has the meaning given such term in section 1 of title 1, and

(5) the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

(Added Pub. L. 102–559, § 2(a), Oct. 28, 1992, 106 Stat. 4227.)

EFFECTIVE DATE

Section 3 of Pub. L. 102–559 provided that: ''This Act [enacting this chapter and provisions set out as a note under section 1 of this title] shall take effect on January 1, 1993.''

§ 3702. Unlawful sports gambling

It shall be unlawful for—

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

(Added Pub. L. 102–559, § 2(a), Oct. 28, 1992, 106 Stat. 4228.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3704 of this title.

§ 3703. Injunctions

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

(Added Pub. L. 102–559, § 2(a), Oct. 28, 1992, 106 Stat. 4228.)

§ 3704. Applicability

(a) Section 3702 shall not apply to—

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—

(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

(B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—

(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

(4) parimutuel animal racing or jai-alai games.

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

(Added Pub. L. 102–559, § 2(a), Oct. 28, 1992, 106 Stat. 4228.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(3)(A), is Jan. 1, 1993, see section 3 of Pub. L. 102–559, set out as an Effective Date note under section 3701 of this title.

CHAPTER 179—JUDICIAL REVIEW OF CERTAIN ACTIONS BY PRESIDENTIAL OFFICES

Sec.
3901. Civil actions.
3902. Judicial review of regulations.
3903. Effect of failure to issue regulations.
3904. Expedited review of certain appeals.
3905. Attorney's fees and interest.
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3907. Other judicial review prohibited.
3908. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1296, 1346, 2402 of this title; title 3 section 435.

§ 3901. Civil actions

(a) PARTIES.—In an action under section 1346(g) of this title, the defendant shall be the employing office alleged to have committed the violation involved.

(b) JURY TRIAL.—In an action described in subsection (a), any party may demand a jury trial where a jury trial would be available in an action against a private defendant under the relevant law made applicable by chapter 5 of title 3. In any case in which a violation of section 411 of title 3 is alleged, the court shall not inform the jury of the maximum amount of compensatory damages available under section 411(b)(1) or 411(b)(3) of title 3.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4070.)

EFFECTIVE DATE

Chapter effective Oct. 1, 1997, see section 3(d) of Pub. L. 104–331, set out as a note under section 1296 of this title.

§ 3902. Judicial review of regulations

In any proceeding under section 1296 or 1346(g) of this title in which the application of a regulation issued under chapter 5 of title 3 is at issue, the court may review the validity of the regulation in accordance with the provisions of subparagraphs (A) through (D) of section 706(2) of title 5. If the court determines that the regulation is invalid, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provisions with respect to which the invalid regulation was issued. Except as provided in this section, the validity of regulations issued under this chapter is not subject to judicial review.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4070.)

§ 3903. Effect of failure to issue regulations

In any proceeding under section 1296 or 1346(g) of this title, if the President, the designee of the President, or the Federal Labor Relations Authority has not issued a regulation on a matter for which chapter 5 of title 3 requires a regulation to be issued, the court shall apply, to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4070.)

§ 3904. Expedited review of certain appeals

(a) IN GENERAL.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order of a court upon the constitutionality of any provision of chapter 5 of title 3.

(b) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal referred to in subsection (a), advance the appeal on the docket, and expedite the appeal to the greatest extent possible.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4070.)

§ 3905. Attorney's fees and interest

(a) ATTORNEY'S FEES.—If a covered employee, with respect to any claim under chapter 5 of title 3, or a qualified person with a disability, with respect to any claim under section 421 of title 3, is a prevailing party in any proceeding under section 1296 or section 1346(g), the court may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

(b) INTEREST.—In any proceeding under section 1296 or section 1346(g), the same interest to compensate for delay in payment shall be made

available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

(c) PUNITIVE DAMAGES.—Except as otherwise provided in chapter 5 of title 3, no punitive damages may be awarded with respect to any claim under chapter 5 of title 3.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4070.)

REFERENCES IN TEXT

Sections 706 and 717 of the Civil Rights Act of 1964, referred to in subsecs. (a) and (b), are classified to sections 2000e–5 and 2000e–16, respectively, of Title 42, The Public Health and Welfare.

§ 3906. Payments

A judgment, award, or compromise settlement against the United States under this chapter (including any interest and costs) shall be paid—

(1) under section 1304 of title 31, if it arises out of an action commenced in a district court of the United States (or any appeal therefrom); or

(2) out of amounts otherwise appropriated or available to the office involved, if it arises out of an appeal from an administrative proceeding under chapter 5 of title 3.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4071.)

§ 3907. Other judicial review prohibited

Except as expressly authorized by this chapter and chapter 5 of title 3, the compliance or noncompliance with the provisions of chapter 5 of title 3, and any action taken pursuant to chapter 5 of title 3, shall not be subject to judicial review.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4071.)

§ 3908. Definitions

For purposes of applying this chapter, the terms ''employing office'' and ''covered employee'' have the meanings given those terms in section 401 of title 3.

(Added Pub. L. 104–331, § 3(c), Oct. 26, 1996, 110 Stat. 4071.)