

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 and 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

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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” 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.

¹ So in original. Probably should be “1330”.

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.

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 79f, 825f, 825p; title 20 sections 1070c-3, 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, 2689f, 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 gener-

ally. 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 de-

scribed 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.

Trademark 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 rea-

sonably 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 "transi-

tion 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 Ap-

peal 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, designs, 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.

AMENDMENT OF ANALYSIS

For termination of amendment by section 503(b)(2)(B) of Pub. L. 105-304, see section 505 of Pub. L. 105-304, set out as an Effective and Termination Dates note under section 1301 of Title 17, Copyrights.

AMENDMENTS

1998—Pub. L. 105-304, title V, §§503(b)(2)(B), 505, Oct. 28, 1998, 112 Stat. 2917, 2918, temporarily inserted “designs,” after “mask works,” in item 1338.

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 trade-marks" 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 21 section 1603; 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 con-

strued 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:

<i>Title</i>	<i>Section</i>
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)

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 sub-

stituting 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 subsection¹ (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 subsection¹ 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

¹ So in original. Probably should be a reference to subsection (c). See 1994 Amendment note below.

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 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 21 section 1603; title 41 sections 607, 609; title 49 section 10709.

§ 1338. Patents, plant variety protection, copyrights, mask works, designs, 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, and to exclusive rights in designs under chapter 13 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; Pub. L. 105-304, title V, §503(b)(1), (2)(A), Oct. 28, 1998, 112 Stat. 2917.)

AMENDMENT OF SECTION

For termination of amendment by section 505 of Pub. L. 105-304, see Effective and Termination Dates of 1998 Amendment note below.

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

1998—Pub. L. 105-304, §§ 503(b)(2)(A), 505, temporarily inserted “designs,” after “mask works,” in section catchline. See Effective and Termination Dates of 1998 Amendment note below.

Subsec. (c). Pub. L. 105-304, §§ 503(b)(1), 505, temporarily inserted “, and to exclusive rights in designs under chapter 13 of title 17,” after “title 17”. See Effective and Termination Dates of 1998 Amendment note below.

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 subssecs. (a) and (b).

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Amendment by Pub. L. 105-304 effective Oct. 28, 1998, and to remain in effect until the end of the 2-year period beginning on such date, see section 505 of Pub. L. 105-304, set out as an Effective and Termination Dates note under section 1301 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.

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.

Trademarks, see sections 1057, 1114, 1115, and 1117 of Title 15, Commerce and Trade.

Jurisdiction of trademark 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.

Trademark 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 considered 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 654 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 judg-

ment 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 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 association, 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 court¹ 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.)

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.

¹ So in original. Probably should be capitalized.

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 jurisdiction, 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 subpoena 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 subpoena 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 subpoena 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 subpoenas 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 subpoena or order of the Senate or any committee or subcommittee of the Senate or to review, modify, suspend, terminate, or set aside any such subpoena 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 subpoena 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.]
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1395.	Fine, penalty or forfeiture.
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Sec.	
1402.	United States as defendant.
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AMENDMENT OF ANALYSIS

For termination of amendment by section 503(c)(3) of Pub. L. 105-304, see section 505 of Pub. L. 105-304, set out as an Effective and Termination Dates note under section 1301 of Title 17, Copyrights.

AMENDMENTS

1998—Pub. L. 105-304, title V, §§503(c)(3), 505, Oct. 28, 1998, 112 Stat. 2917, 2918, temporarily inserted “, mask works, and designs” in item 1400.

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 37 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 subssecs. (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, 6504; title 19 section 1337; title 22 sections 2907-5, 2908-5; 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, mask works, and designs

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs 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; Pub. L. 105-304, title V, §503(c)(1), (2), Oct. 28, 1998, 112 Stat. 2917.)

AMENDMENT OF SECTION

For termination of amendment by section 505 of Pub. L. 105-304, see Effective and Termination Dates of 1998 Amendment note below.

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

1998—Pub. L. 105-304, §§503(c)(2), 505, temporarily amended section catchline generally, substituting "Patents and copyrights, mask works, and designs" for "Patents and copyrights". See Effective and Termination Dates of 1998 Amendment note below.

Subsec. (a). Pub. L. 105-304, §§503(c)(1), 505, temporarily inserted "or designs" after "mask works". See Effective and Termination Dates of 1998 Amendment note below.

1988—Subsec. (a). Pub. L. 100-702 inserted "or exclusive rights in mask works" after "copyrights".

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Amendment by Pub. L. 105-304 effective Oct. 28, 1998, and to remain in effect until the end of the 2-year period beginning on such date, see section 505 of Pub. L. 105-304, set out as an Effective and Termination Dates note under section 1301 of Title 17, 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 dif-

ferent 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 January 5, 1999)

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II. RULES FOR MULTICIRCUIT PETITIONS FOR REVIEW UNDER 28 U.S.C. §2112(a)(3)

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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, cross-claim, 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.
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1450.	Attachment or sequestration; securities.
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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 non-removable 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 re-

moval, 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 sections 2210, 14616.

§ 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 United 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 juris-

diction 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 460jj-2; title 20 section 1155; 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. Notwithstanding¹ 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, and to exclusive rights in designs under chapter 13 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; Pub. L. 105-304, title V, §503(d), Oct. 28, 1998, 112 Stat. 2917.)

AMENDMENT OF SECTION

For termination of amendment by section 505 of Pub. L. 105-304, see Effective and Termination Dates of 1998 Amendment note below.

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

1998—Subsec. (e). Pub. L. 105-304, §§503(d), 505, temporarily inserted “, and to exclusive rights in designs under chapter 13 of title 17,” after “title 17”. See Effective and Termination Dates of 1998 Amendment note below.

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. Notwithstanding 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 AND TERMINATION DATES OF 1998 AMENDMENT

Amendment by Pub. L. 105-304 effective Oct. 28, 1998, and to remain in effect until the end of the 2-year period beginning on such date, see section 505 of Pub. L. 105-304, set out as an Effective and Termination Dates note under section 1301 of Title 17, Copyrights.

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 *S 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 applicability 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 reappraisal 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 anti-dumping 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.

¹ So in original. Does not conform to section catchline.

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 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 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; 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, except any action under section 1605(a)(7) or 1610(f); 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; amended Pub. L. 105-277, div. A, §101(h) [title I, §117(b)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-491.)

AMENDMENTS

1998—Pub. L. 105-277 inserted “, except any action under section 1605(a)(7) or 1610(f)” after “punitive damages”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 applicable to any claim for which a foreign state is not immune under section 1605(a)(7) of this title arising before, on, or after Oct. 21, 1998, see section 101(h) [title I, §117(c)] of Pub. L. 105-277, set out as a note under section 1610 of this title.

WAIVER OF EXCEPTION TO IMMUNITY FROM ATTACHMENT OR EXECUTION

For provisions authorizing the President to waive the requirements of section 101(h) [title I, §117] of Pub. L. 105-277, amending this section, in the interest of national security, see section 101(h) [title I, §117(d)] of Pub. L. 105-277, set out as a note under section 1610 of this title.

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).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7).

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7), the Secretary of the Treasury and the Secretary of State shall fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) shall provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(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; Pub. L. 105-277, div. A, § 101(h) [title I, § 117(a)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-491.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsections (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

1998—Subsec. (f). Pub. L. 105-277 added subsec. (f).
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 1998 AMENDMENT

Pub. L. 105-277, div. A, § 101(h) [title I, § 117(c)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-491, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1606 of this title] shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of enactment of this Act [Oct. 21, 1998].”

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.

WAIVER OF EXCEPTION TO IMMUNITY FROM ATTACHMENT OR EXECUTION

Pub. L. 105-277, div. A, § 101(h) [title I, § 117(d)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-492, provided that: “The President may waive the requirements of this section [amending this section and section 1606 of this title and enacting provisions set out above] in the interest of national security.”

DETERMINATION TO WAIVE REQUIREMENTS RELATING TO BLOCKED PROPERTY OF TERRORIST-LIST STATES

Determination of President of the United States, No. 99-1, Oct. 21, 1998, 64 F.R. 59201, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 117 of the Treasury and General Government Appropriations Act, 1999 [section 101(h) [title I, § 117] of div. A of Pub. L. 105-277, amending this section and section 1606 of this title and enacting provisions set out as notes above], as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (approved October 21, 1998), I hereby determine that the requirements of section 117, including the requirement that any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), and proclamations, orders, regulations, and licenses issued pursuant thereto, be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state claiming such property is not immune from the jurisdiction of courts of the United States or of the States under section 1605(a)(7) of title 28, United States Code, would impede the ability of the President to conduct foreign policy in the interest of national security and would, in particular, impede the effectiveness of such prohibitions and regulations upon financial transactions, and, therefore, pursuant to section 117(d), I hereby waive the requirements of section 117 in the interest of national security.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1606, 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 organizations 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

Table with 2 columns: Chap. and Sec. listing sections 111 through 133 and their corresponding section numbers.

CHAPTER 111—GENERAL PROVISIONS

Sec.

Table with 2 columns: Sec. and text describing provisions such as Writs, State laws as rules of decision, Amendment of pleadings to show jurisdiction, etc.

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.