Mandates, and section 1651 of this title authorizing the Supreme Court to issue all writs necessary in aid of its jurisdiction.

Changes were made in phraseology.

§ 2107. Time for appeal to court of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

(1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and

(2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

(June 25, 1948, ch. 646, 62 Stat. 963; May 24, 1949, ch. 139, §§107, 108, 63 Stat. 104; Pub. L. 95–598, title II, §248, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 102–198, §12, Dec. 9, 1991, 105 Stat. 1627; Pub. L. 111–16, §6(3), May 7, 2009, 123 Stat. 1608; Pub. L. 112–62, §3, Nov. 29, 2011, 125 Stat. 757.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§227a, 230, and section 1142 of title 26, U.S.C., 1940 ed., Internal Revenue Code (Mar. 3, 1891, ch. 517, §11, 26 Stat. 829; Mar. 3, 1911, ch. 231, §129, 36 Stat. 1134; Feb. 13, 1925, ch. 229, §8(c), 43 Stat. 940; Feb. 28, 1927, ch. 228, 44 Stat. 1261; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; Feb. 10, 1939, ch. 2, §1142, 53 Stat. 165; Oct. 21, 1942, ch. 619, title V, §504(a), (c), 56 Stat. 957).

Section consolidates sections 227a and 230 of title 28, U.S.C., 1940 ed., with section 1142 of title 26, U.S.C., 1940 ed., Internal Revenue Code. Other provisions of such section 227a are incorporated in section 1292 of this title.

Section 227a of title 28, U.S.C., 1940 ed., provided a time limit of 30 days for appeals from patent-infringement decisions, and section 230 of title 28, U.S.C., 1940 ed., permitted 3 months for appeals generally. The revised section adopts the 30-day limit in conformity with recommendations of members of the Judicial Conference of the United States and proposed amendment to Rule 73 of the Federal Rules of Civil Procedure.

Section 1142 of title 26, U.S.C., 1940 ed., provided for 3 months within which to petition for appeal from a decision of The Tax Court. The second paragraph of the revised section reduces this to 60 days for reasons explained above. Other provisions of said section 1142 making a distinction between decisions before and after June 6, 1932, were omitted as executed.

Words ''in an action, suit, or proceeding of a civil nature'' were added in view of Rule 37 of the Federal Rules of Criminal Procedure prescribing a different limitation for criminal appeals.

Words ''notice of appeal is filed'' were substituted for provisions of sections 230 of title 28, U.S.C., 1940 ed., and 1142 of title 26, U.S.C., 1940 ed., for petition and allowance of appeal in order to eliminate the useless paper work involved in a pro forma application for appeal and perfunctory allowance of the same. The effect of the section is to require appeals to the courts of appeals in all cases to be taken by filing notice of appeal. See Rule 73(b) of Federal Rules of Civil Procedure.

The case of *Mosier v. Federal Reserve Bank of New York*, C.C.A. 1942, 132 F.2d 710, holds that the Federal Rules of Civil Procedure changing the method of ''taking'' an appeal, do not affect the time limitation prescribed by section 230 of title 28, U.S.C., 1940 ed.

Word ''order'' was added, in two places, after ''judgment'' so as to make the section cover all appeals of which the courts of appeals have jurisdiction, as set forth in section 1291 et seq. of this title.

The last paragraph was added in conformity with section 48 of title 11, U.S.C., 1940 ed., Bankruptcy, and other sections of that title regulating appellate procedure in bankruptcy matters.

The third paragraph was inserted to conform to the existing practice in Admiralty upon the recommendation of the Committee on the Federal Courts of the New York County Lawyers Association.

The time for appeal to the Court of Customs and Patent Appeals in patent and trade-mark cases is governed by section 89 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 60 of title 35, U.S.C., 1940 ed., Patents, and Rule 25 of the Rules of such court, and, in customs cases, by section 2601 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

By Senate amendment, all provisions relating to the Tax Court were eliminated. Therefore, section 1142 of title 26, U.S.C., Internal Revenue Code, was not one of the sources of this section as finally enacted. However, no change in the text of this section was necessary. See 80th Congress Senate Report No. 1559.

1949 ACT

This amendment to section 2107 of title 28, U.S.C., restores the former 15-day limitation of time within which to appeal from an interlocutory order in admiralty.

This amendment eliminates as surplusage the words ''in any such action, suit or proceeding,'' from the fourth paragraph of section 2107 of title 28, U.S.C., and corrects a typographical error in the same paragraph.

AMENDMENTS

2011—Subsec. (b). Pub. L. 112–62 added subsec. (b) and struck out former subsec. (b) which read as follows: ''In any such action, suit or proceeding in which the United States or an officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.''

2009—Subsec. (c). Pub. L. 111–16 substituted ''within 14 days'' for ''within 7 days'' in concluding provisions.

1991—Pub. L. 102–198 designated first and second pars. as subsecs. (a) and (b), respectively, added subsec. (c),

designated fifth par. as subsec. (d), and struck out third and fourth pars. which read as follows:

''In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

''The district court may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree.''

1978—Pub. L. 95–598 directed the amendment of section by inserting ''or the bankruptcy court'' after ''district court'' and by striking out the final par., which amendment did not become effective pursuant to section 402(b) of Pub. L. 95–598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1949—Act May 24, 1949, restored, in third par., the 15-day limitation of time within which to appeal from an interlocutory order in admiralty, and in fourth par., substituted ''The district court may'' for ''The district court, in any such action, suit, or proceeding, may'' and corrected spelling of ''excusable''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–62, § 4, Nov. 29, 2011, 125 Stat. 757, provided that: ''The amendment made by this Act [amending this section] shall take effect on December 1, 2011.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

FINDINGS

Pub. L. 112–62, § 2, Nov. 29, 2011, 125 Stat. 756, provided that: ''Congress finds that—

''(1) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure provide that the time to appeal for most civil actions is 30 days, but that the appeal time for all parties is 60 days when the parties in the civil action include the United States, a United States officer, or a United States agency;

''(2) the 60-day period should apply if one of the parties is—

''(A) the United States;

''(B) a United States agency;

''(C) a United States officer or employee sued in an official capacity; or

''(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States;

''(3) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure (as amended to take effect on December 1, 2011, in accordance with section 2074 of that title) should uniformly apply the 60-day period to those civil actions relating to a Federal officer or employee sued in an individual capacity for an act or omission occurring in connection with Federal duties;

''(4) the civil actions to which the 60-day periods should apply include all civil actions in which a legal officer of the United States represents the relevant officer or employee when the judgment or order is entered or in which the United States files the appeal for that officer or employee; and

''(5) the application of the 60-day period in section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure—

''(A) is not limited to civil actions in which representation of the United States is provided by the Department of Justice; and

''(B) includes all civil actions in which the representation of the United States is provided by a Federal legal officer acting in an official capacity, such as civil actions in which a Member, officer, or employee of the Senate or the House of Representatives is represented by the Office of Senate Legal Counsel or the Office of General Counsel of the House of Representatives.''

§ 2108. Proof of amount in controversy

Where the power of any court of appeals to review a case depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the case or by other competent evidence.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 231 (Feb. 13, 1925, ch. 229, § 9, 43 Stat. 941).

Words ''or in the Supreme Court'' were omitted. Section 7 of the 1925 act containing such words related to review by the Supreme Court of the United States of decisions of the Supreme Court of the Philippine Islands and designated a certain jurisdictional amount. Such section 7 has now become obsolete, in view of the recognition of the independence of the Philippines, title 48 U.S.C., 1940 ed., § 1240, Territories and Insular Possessions, and there is no other case wherein the power of the Supreme Court to review depends on the amount or value in controversy.

§ 2109. Quorum of Supreme Court justices absent

If a case brought to the Supreme Court by direct appeal from a district court cannot be heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. The decision of such court shall be final and conclusive. In the event of the disqualification or disability of one or more of such circuit judges, such court shall be filled as provided in chapter 15 of this title.

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on portions of section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates portions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., with changes of substance and phraseology.

The revised section includes the principal provisions of sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, in case of the absence of a quorum of qualified Justices of the Supreme Court.