

TITLE 6
APPEALS

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APPEALS FROM THE DISTRICT COURTS IN GENERAL

The appropriate Division of the Department should be advised immediately of all decisions by the district court in cases in which the Government or one of its officers or agencies may be a party. If an opinion was rendered by the court, at least one copy (and preferably two) should be promptly transmitted. The dates on which the opinion and judgment were entered should always be given. (This requirement is in addition to, and separate from, the request made upon clerks of courts for copies of all opinions rendered in both Government and non-Government cases.)

The Federal courts having failed to adopt a uniform interpretation or definition of what constitutes a judgment as that term is used in Rules 52 (a), 58, and 79 (a), Fed. Rules Civ. Proc., and the Criminal Appeals Act, 18 U. S. C. 3731, with resultant confusion and doubt as to when the time for the filing of notices of appeal commences to run, all United States Attorneys are cautioned to examine the docket of the district court immediately following the rendering of a decision after a trial or a decision on a motion for judgment. Should such examination disclose any docket entry which might possibly be construed as a final order, decree, or judgment (regardless of whether Findings of Fact and Conclusions of Law, or a formal judgment, have been signed), and should there be pending any question as to the desirability of an appeal by the Government, a protective notice of appeal should be filed if necessary, as provided in the next section, and a report should be promptly made to the Department. Should subsequent entries be made in the docket any of which also might be possibly construed as a final order, decree, or judgment, additional notices of appeal should be timely filed. Multiple notices of appeal may, if necessary, be consolidated, or some may be abandoned, but failure to have a necessary one filed within the time limitations prescribed by the rules or statutes may be fatal to the prosecution of an appeal.

Under 18 U. S. C. 3731, an appeal lies to the Supreme Court if a dismissal of an indictment or information, or any count thereof, or a decision arresting a judgment of conviction, is based exclusively upon the validity or construction of the statute upon which the indict-

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ment or information is founded. A direct appeal also lies from a judgment sustaining a motion in bar, when the defendant has not been put in jeopardy. Other appeals within the purview of 18 U. S. C. 3731 go to the court of appeals. In order to avoid any doubt regarding the proper court to which an appeal should be taken, the United States Attorney should endeavor to have included in any order or opinion dismissing an indictment or information or arresting a judgment of conviction for insufficiency of the indictment or information a specific statement that the decision is or is not based exclusively upon the invalidity or construction of the statute upon which the indictment or information is founded. In reporting, as provided below, on adverse decisions within the purview of 18 U. S. C. 3731, it is important that the Department be supplied, along with copies of the opinion and judgment, with copies of the indictment or information, the motion or motions of the defendant, and the briefs, if any, of both sides. Since appeals under 18 U. S. C. 3731 must be taken within 30 days (see the section below on time to appeal), the recommendation of the United States Attorney as to appeal should be made immediately.

In any case in which the district court's decision is adverse, in whole or in part, and is appealable, the United States Attorney should make a report without delay, stating fully the questions of law and fact involved in the case, with his unequivocal recommendation for or against review, and his reasons and any comments he may care to make. The United States Attorney should also check his files and correspondence to see that all documents which should be transmitted to the Department for consideration in connection with taking an appeal (including copies of opinions, findings of fact, conclusions of law, judgments, briefs, memoranda or lists of authorities, and transcripts of testimony, if available) have been sent forward; if there be any omissions, those documents should be transmitted to the Department with the report. This report is entirely distinct from any other reports required by the Department or by statute, and from those required to be made to any other officer or agency. It is essential that it be made promptly in order to give the Department adequate time in which to determine whether review should be sought.

The Department will procure the views of the interested agencies, and the Solicitor General will determine, on the basis of all of the reports and recommendations, whether an appeal should be taken. The United States Attorney will be notified as promptly as possible whether or not an appeal has been authorized.

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APPEALS FROM DISTRICT COURTS TO COURTS OF APPEALS

No appeal should be taken to the court of appeals without the Department's express authorization, as provided above, unless the time to appeal is about to expire and word has not been received from the Department. In that event, a regular notice of appeal should be filed in order to preserve the Government's right of appeal, and a report of that fact made to the Department. It is important that such a notice of appeal—called colloquially a "protective" notice—not be filed until 5 days before the time for appeal expires, to allow adequate time to the Department for consideration of the case.

An appeal from a district court to a court of appeals, in a criminal or in a civil case, is taken by filing a notice of appeal in the office of the clerk of the district court, as provided by Rule 37 (a), Fed. Rules Crim. Proc., in criminal cases, and by Rule 73, Fed. Rules Civ. Proc., in civil cases. Copies of these notices should be promptly forwarded to the Department.

When an appeal has been taken in a Government case by the other side, the United States Attorney will advise the Department at once and prepare a report covering in substance the matters required for the report prescribed above for cases which the Government loses in the district court, and forwarding the notice of appeal and other pertinent papers.

When an appeal by the Government has been authorized by the Solicitor General and has been noted, or where the Department has been advised that an appeal has been noted by the other side, the participation by the United States Attorney in the preparation, docketing and printing of the record will be as provided in the following subparagraphs:

TAX DIVISION CASES**Civil Tax Cases**

The United States Attorney has the responsibility of preparing the record but in most cases will receive advice and instruction from the Tax Division.

On Government appeals in cases handled in the district court by the United States Attorney, he should prepare the designation of record and statement of points if one is necessary, and should otherwise perfect the record and see to the docketing of the case in the court of appeals. If the taxpayer is the appellant, the United States Attorney should prepare the counter-designation and other necessary papers.

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It is advisable that all appeal documents be submitted to the Department for consideration in advance of filing.

In cases handled in the district court by the Tax Division, the Department will prepare the designation of record or counter-designation, as the case may be, and the statement of points if one is necessary.

United States Attorneys located in the Second, Third, Fourth, and Sixth Circuits should have a duplicate copy of the record prepared and transmitted to the Department. The duplicate record is necessary because under the rules of the courts of appeals of those circuits the printed record will usually consist of the portions of the record printed as appendices to the court of appeals briefs and in civil tax cases the Government's brief in the court of appeals will be prepared and filed by the Tax Division (see the section on briefing below).

In the other circuits, where the rules provide for a separately printed record, the United States Attorney should see that the Department receives three copies of the record as soon as it is printed.

Criminal Tax Cases

In criminal cases the United States Attorney has the entire responsibility for preparation of the record on appeal. The United States Attorney should make sure that the record accurately includes all matters necessary for a review of the case and should send three copies of the printed record to the Department as soon as printed.

CIVIL DIVISION CASES

The major portion of Civil Division appeals are handled by the Department but an appreciable portion of such appeals, particularly those primarily involving factual issues, are handled by the United States Attorney. He will be notified in all cases whether the appeal is to be handled by the Department or by him.

If the appeal is to be handled by the Department, the United States Attorney will be advised specifically of the steps which he is to take, including the preparation, docketing and printing of the record if the Government is the appellant.

When the handling of the appeal is assigned to the United States Attorney, he shall prepare the record and have it docketed and printed in due time if the Government is the appellant. See Rules 73-76, Fed. Rules Civ. Proc. Two copies of the record when printed should be forwarded to the Department.

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CRIMINAL DIVISION CASES

Normally, the United States Attorney handles Criminal Division cases on appeal to the court of appeals. Unless otherwise directed by the Department, the United States Attorney should prepare the record and have it docketed and printed in due time. See Rule 39, Fed. Rules Crim. Proc., and Rules 73-76, Fed. Rules Civ. Proc. Two copies of the record, when printed, should be forwarded to the Department.

LANDS DIVISION CASES

Lands Division cases on appeal to the court of appeals are primarily handled by the Department. The United States Attorney is charged with the responsibility of filing the record and docketing the case in the court of appeals within the time allowed or any extension thereof permissible under the applicable law or court rules. As soon as notice is received that an appeal has been authorized, the United States Attorney should promptly submit suggestions as to matter to be included in the record. The necessary appeal papers such as designation of record, statement of points, etc., will be forwarded by the Department for service and filing. When the Government's opponent has appealed, one copy of all appeal papers should be transmitted to the Department together with suggestions as to material to be included in a counterdesignation, etc. Such counterdesignation will be forwarded for service and filing. Any agreed statement under Rule 76, Fed. Rules Civ. Proc., must be submitted for the consideration of the Department prior to approval by the United States Attorney.

The Department should be advised promptly when the record on appeal is docketed in the court of appeals. Any designation of record or other document required under the rules of the appellate court will be prepared by the Department. In some instances the record will be printed under the supervision of the United States Attorney by the local Government contract printer. Specific instructions will be given by the Department in those cases.

Four copies of the printed record should be forwarded to the Department, one by air mail, as soon as they are received. Promptness is emphasized since the time for filing the brief usually is measured from the date the printed record is mailed by or received from the clerk of the appellate court. The letter transmitting the record should state the date from which the time for filing the Government's brief is calculated.

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In all divisions, in any case in which the record is required to be printed in the court of appeals (either separately or as appendices), the record is voluminous and the case is one in which there is a reasonable chance that the party losing in the court of appeals will seek review in the Supreme Court, arrangements should be made with opposing counsel, subject to the approval of the Department, for the printing of at least 40 extra copies (in order to avoid the necessity of reprinting in the Supreme Court), one-half of the cost of the entire printing to be paid by the party taking the case to the Supreme Court.

In connection with the printing of the record in cases likely to go to the Supreme Court, the United States Attorney should include all material necessary to the proper determination and disposition of the case if there should be further review. This is particularly important in cases in which each party prints portions of the record in an appendix to his brief, since the printed record in the Supreme Court will ordinarily consist of both appendices.

PREPARATION OF BRIEFS AND ORAL ARGUMENTS

The participation of the United States Attorney in the preparation of briefs and the oral argument of Government cases appealed by either side to the courts of appeals will be as follows:

TAX DIVISION CASES

Civil Tax Cases

On appeal by either party in a civil case, the Department normally advises the clerk of the court of appeals that the Tax Division will handle the case in the appellate court and that matters incident to it in that court should be forwarded to the Department.

The Government's brief in the appellate court is prepared by the Tax Division. After it has been reviewed and coordinated with other tax litigation pending in other courts, the brief is sent to the United States Attorney for printing by the contract printer in his district with instructions as to the number of copies which are to be filed, served upon opposing counsel, and supplied to the Department.

In most cases a member of the staff of the Tax Division will argue the case in the court of appeals, but the Department will endeavor to keep the United States Attorney advised of all developments in the case on appeal. Ordinarily it is not necessary for the United States Attorney to be present at the argument. If the United States Attorney feels that his attendance is important, for instance because of other cases pending in his district, authority is granted to him to appear

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with the representative from the Tax Division. In some instances, the United States Attorney will be requested to argue the case.

In instances where it is necessary to obtain stipulations or to obtain the consent of opposing counsel to proposed motions, the Tax Division may call upon the United States Attorney to handle these matters.

Criminal Tax Cases

As a general rule, the United States Attorney will prepare the brief and argue the case on appeal. In all such instances, a draft of the Government's brief should be submitted to the Department far enough ahead of the due date to give sufficient time for adequate review by the Tax Division. Fifteen copies of the printed brief for the Government should be forwarded to the Department, as well as copies of the other side's briefs.

CIVIL DIVISION CASES

In cases in which the United States Attorney has been advised that the appeal will be handled by the Department, the Department will prepare the briefs and have them printed, and the case will be argued by a member of the staff of the Civil Division (unless some other provision is made). The United States Attorney will be advised specifically of any steps which he is to take.

In cases being handled by the United States Attorney, he shall prepare the Government's brief and conduct the oral argument. If the brief is to be submitted to the Department for review before filing, or he is to handle the appeal in some special way, he will receive specific instructions to that effect from the Department. Two copies of all briefs filed in the case by either side should be forwarded to the Department.

CRIMINAL DIVISION CASES

Unless he has been advised that the Department will handle the appeal or desires to review the brief, the United States Attorney will prepare the brief, have it printed, serve and file it, and designate the person to argue the appeal. Two copies of all briefs filed by either side should be forwarded to the Department.

LANDS DIVISION CASES

Briefs are prepared and printed in the Department. Suggestions as to matter that should be included in the brief should be submitted to the Department not later than 5 days after the printed record is received in cases where the Government is the appellant. When the

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Government is appellee, 4 copies of the appellant's brief should be forwarded to the Department, one by air mail, as soon as they are received, and suggestions as to matter to be incorporated in the Government's brief should be submitted within 5 days thereafter. When the Government's brief is printed, the necessary copies are forwarded by the Department to the clerk of the court for filing and copies are forwarded to the United States Attorney. Copies of all replies to Government briefs should be promptly forwarded to the Department.

The person to present the oral argument will be designated by the Department, but ordinarily it is the attorney who prepared the Government's brief. The Department should be promptly advised as soon as information as to the date of the argument is received.

**APPEALS FROM DISTRICT COURTS TO THE
SUPREME COURT**

No appeal shall be taken from a district court to the Supreme Court on behalf of the Government or its officers or agencies without the Department's express authorization, as provided above in the section on Appeals from the District Courts in General. If an appeal is authorized, the Department will be responsible for the taking of the appeal, will ordinarily prepare the necessary notice of appeal (which includes the designation of the portions of the record to be certified), and will transmit it to the United States Attorney for service on the other parties and for filing in the district court, as provided in Rule 10 of the Revised Rules of the Supreme Court (effective July 1, 1954). (The aid of the United States Attorney may be sought by the Department in the preparation or designation of the record on appeal.) The rules for service are provided in Rule 33 of the Revised Rules of the Supreme Court effective July 1, 1954; attention is particularly directed to the requirements that (1) service by mail on a person residing 500 miles or more must be by air mail, and (2) if proof of service is by certificate, the attorney signing the certificate must be a member of the bar of the Supreme Court. The United States Attorney will notify the Department promptly when he has served and filed the notice of appeal.

The requirements for making up the records in cases taken on appeal to the Supreme Court are set forth in Rule 12 of the Revised Rules of the Supreme Court, effective July 1, 1954. The record should be made up and transmitted to the Department (by the United States Attorney or the clerk of the district court) as soon as possible after the filing of a cross-designation (if any). Rule 13 of the Revised Rules of the Supreme Court provides that the record be docketed

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with the Supreme Court not more than 60 days after the filing of the notice of appeal. The Department will docket the record. Rule 13 also provides for enlargement of time for docketing the record "for good cause shown," but the United States Attorney should not apply for such enlargement unless the Department authorizes such an application. In no case in which an appeal is taken to the Supreme Court from a district court should the United States Attorney undertake to have the record printed. Such records are printed directly under the supervision of the clerk of the Supreme Court.

When appeal is taken by the other side from a district court to the Supreme Court, the Department will also primarily handle the matter. The United States Attorney should therefore immediately notify the Department when such an appeal is taken, and also make sure that copies of all necessary papers and documents are *immediately* transmitted to the Department by airmail, either by his office or by the appellant. In Criminal Division cases, the United States Attorney should pass on the sufficiency of appellant's designation of the portions of the record to be certified, and prepare, serve, and file a counterdesignation, if necessary. In other cases, these matters will be handled by the Department in consultation with the United States Attorney.

In all cases (whether appealed by the Government or the other side), after the record reaches the Department or the Supreme Court all matters will normally be handled without further participation by the United States Attorney. This includes the preparation and filing of the jurisdictional statement, or motion to dismiss or affirm, as well as the later stages of the appeal.

REVIEW OF COURT OF APPEALS' DECISIONS IN THE SUPREME COURT

When the case is decided by the court of appeals, the United States Attorney will immediately transmit a copy of the opinion, giving the date of the judgment. If the Government is unsuccessful, the opinion should be sent by air mail so that immediate consideration may be given to the filing of a petition for rehearing or to the seeking of review in the Supreme Court. If the decision is adverse, the United States Attorney will also promptly make such recommendations or suggestions for further proceedings as he may wish, in order to aid the Department in determining what further steps to take. The opinion of the court of appeals, as well as the other papers in that court, should also be forwarded promptly when the decision is favorable to the Government, in order to enable the Department to prepare an im-

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mediate and intelligent response if a petition for certiorari should be filed in the Supreme Court by the other side.

All matters in the Supreme Court are handled by the Department under the direction of the Solicitor General. Accordingly, all petitions for certiorari, briefs in opposition, etc., are prepared in the Department. Under Rule 33 (2) of the Revised Rules of the Supreme Court, effective July 1, 1954, petitions for certiorari will hereafter also be served on the United States Attorney (in addition to the Solicitor General) if he represented the Government in the Court of Appeals. Rule 33 (2) provides that service of petitions for certiorari must *likewise* be made on the Solicitor General, Department of Justice, Washington 25, D. C., and all other briefs and papers in Government cases must be served on the Solicitor General. Aside from petitions for certiorari (and the few other documents specified in Rule 33 (1), the United States Attorney should refuse to accept service of papers in Government cases in the Supreme Court, stating to counsel his lack of authority to do so. *Strict compliance with the requirement of service on the Solicitor General is absolutely necessary to the proper conduct of the Government's business in the Supreme Court.* The United States Attorney should immediately inform the Solicitor General of all attempts to make service upon him of papers other than those he is authorized to receive under Rule 33 (2).

Applications should not be made by the United States Attorney to the clerk of the Supreme Court for mandates or orders denying certiorari petitions in Government cases. These are sent by the clerk of the Supreme Court to the lower courts as a matter of course.

BAIL PENDING REVIEW AND CUSTODY OF PRISONERS PENDING HABEAS CORPUS APPEALS; PRESERVATION OF RIGHTS OF UNITED STATES IN CIVIL CASES PENDING REVIEW; STAYS

When the defendant in any criminal case, or petitioner in any habeas corpus case, shall be admitted by a court or judge to bail, pending a decision by the Supreme Court, the United States Attorney will at once advise the Department, stating when the bail was given and in what amount.

The regulations concerning bail are set forth in Rule 46, Fed. Rules Crim. Proc. The regulations concerning the custody of prisoners pending habeas corpus are set forth in Rule 49 of the Revised Rules of the Supreme Court, effective July 1, 1954.

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United States Attorneys are responsible, in cases handled by them, for preserving the Government's rights pending review and also pending determination of the question of whether review should be sought. In this connection, they should take the necessary steps to stay the issuance of mandates by the courts of appeals if the issuance of the mandate might prejudice the Government's interests. If the court of appeals refuses to stay the mandate or conditions its stay upon the seeking of review within a stated period, the Department should be immediately informed of that fact. Similarly, if a district court refuses to stay further proceedings or execution of its judgment or imposes conditions on review, the Department should be immediately informed.

In cases handled by the Department, the United States Attorney will be advised of what steps, if any, to take in order to preserve the Government's rights.

STATE COURT PROCEEDINGS

In appellate litigation in the State courts, the Department relies heavily upon the familiarity of the United States Attorney with local practices and procedures. He should keep the Department informed as to all adverse decisions subject to review in a higher State court, and should follow the general procedures set forth above for appeals from Federal district courts to the courts of appeals. However, due to his familiarity with local rules of appellate practice, the United States Attorney will be primarily responsible for the technical and procedural matters involved in the taking and perfecting of the appeal to the higher State court, including the preparation of the record and its docketing in the higher court.

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If a decision has been rendered by the highest State court to which the matter can be taken, the United States Attorney should follow the procedure set forth above for decisions of a Federal court of appeals. If the case is one in which review may be had in the Supreme Court on appeal (as distinguished from certiorari), and such an appeal is authorized by the Department, the aid of the United States Attorney may be sought in the filing of the appeal papers in the State court. In appeal cases from State courts the United States Attorney should follow the general procedure set forth above for appeals from Federal district courts to the Supreme Court.

TIME TO APPEAL OR PETITION FOR REVIEW OR CERTIORARI**CRIMINAL AND HABEAS CORPUS CASES**

In habeas corpus cases, and in proceedings under 28 U. S. C. 2255, petitions for writs of certiorari in cases to be taken to the Supreme Court must be applied for within 90 days after the entry of the judgment, but this time may be extended, for cause shown, not to exceed 60 days if the extension is obtained within the initial 90-day period. In criminal cases, petitions to the Supreme Court for writs of certiorari must be made within 30 days after the entry of the judgment, but this time may be extended not more than an additional 30 days for cause shown, provided the extension is granted within the initial 30-day period following the judgment of the court of appeals. If the judgment was entered in a district court in Alaska, Hawaii, Puerto Rico, Canal Zone, or Virgin Islands, the petition shall be deemed in time if mailed under a postmark dated within such 30-day period (Rule 37 (b) (2), Fed. Rules Crim. Proc.). See also below for direct appeals in cases holding a Federal statute unconstitutional.

Appeals in habeas corpus proceedings in which the United States or an officer or agency thereof is a party, from decisions of the district courts to the courts of appeals, must be noted within 60 days after entry of the judgment or decree appealed from (28 U. S. C. 2107).

In criminal cases, an appeal by a defendant may be taken within 10 days after entry of the judgment or order appealed from, but if a motion for a new trial or an arrest of judgment has been made within the 10-day period, an appeal from a judgment of conviction may be taken within 10 days after entry of the order denying the motion. An appeal by the Government under 18 U. S. C. 3731, whether to the court of appeals or to the Supreme Court, must be taken within 30 days after entry of the judgment or order appealed

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from; this time cannot be extended (Rule 37 (a) (2), Fed. Rules Crim. Proc.; 18 U. S. C. 3731).

An appeal to the court of appeals in a proceeding under 28 U. S. C. 2255, whether by the prisoner or the Government, must be taken within 60 days after entry of the order appealed from. (28 U. S. C. 2107, 2255; *Mercado v. United States*, 183 Fed. 2d 486 (C. A. 1); *United States v. Hayman*, 342 U. S. 205, 209).

Appeals from decisions of United States Commissioners to the district courts may be taken within 5 days after entry of judgment of conviction by the Commissioner (Rules of Proc. for Trials Before Comm. 4).

CIVIL CASES

In all civil cases, petitions for writs of certiorari in cases to be taken to the Supreme Court from Courts of Appeals or from State courts must be filed within 90 days after the entry of judgment, but this time may be extended not to exceed 60 days if the extension is obtained within the initial 90-day period (28 U. S. C. 1254, 1257 (3), 2101 (c)).

Appeals from State courts to the Supreme Court must be taken within 90 days after the entry of the judgment or decree; this time cannot be extended (28 U. S. C. 1257 (1, 2), 2101 (c)).

Appeals generally in civil actions, in which the United States or an officer or agency thereof is a party, from decisions of the district courts to the courts of appeals, must be taken within 60 days after entry of the judgment or decree appealed from (28 U. S. C. 2107).

An appeal from a decree of a District court in admiralty must be filed with a court of appeals within 90 days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within 15 days after its entry if it is an interlocutory decree (28 U. S. C. 2107).

In cases pending in United States courts in which the United States or any officer or employee, as such officer or employee, is a party, or in which the United States has intervened and become a party, and the decision is against the constitutionality of an Act of Congress, an appeal may be taken by any party directly to the Supreme Court within 30 days after entry of a final or interlocutory judgment, decree or order; this time cannot be extended (28 U. S. C. 2101).

In cases where an injunction is sought against the enforcement of an Act of Congress upon the ground that such Act is unconstitutional, which cases are heard by a three-judge court, and there is a judgment, order, or decree denying or granting an interlocutory or permanent injunction, an appeal may be taken direct to the Supreme Court

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within 30 days after entry of the order, judgment, or decree; this time cannot be extended (28 U. S. C. 1252, 2101).

In cases seeking to enjoin the enforcement of orders of the Interstate Commerce Commission heard by a three-judge district court, an appeal may be taken direct to the Supreme Court from an order granting or denying an interlocutory injunction within 30 days after the entry of the order and within 60 days if the order is final; this time cannot be extended (28 U. S. C. 1253, 2101; 2325).

In civil suits under the antitrust laws in which the United States is complainant, appeals must be taken direct to the Supreme Court within 30 days from the judgment, order or decree appealed from, if interlocutory, and within 60 days if final; this time cannot be extended (15 U. S. C. 29; 28 U. S. C. 2101 (b)).

In civil suits under the Interstate Commerce Act wherein the United States is complainant, direct appeal to the Supreme Court from the decisions of the district court shall be taken within 30 days from the judgment, order or decree appealed from, if interlocutory, and within 60 days if final; this time cannot be extended (28 U. S. C. 2101; 49 U. S. C. 45).

In bankruptcy cases, petitions for review of an order of a referee must be filed in accordance with Section 39 (c) of the Bankruptcy Act, as amended (11 U. S. C., Sec. 67), within 10 days after the entry of the referee's order unless the time is extended for cause shown. Appeals to a court of appeals must be taken within 30 days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice should be filed within 5 days after service or, if such notice is not served and filed, then within 40 days from such entry. (Sec. 25 (a) of the Bankruptcy Act, 11 U. S. C., Sec. 48.)

In civil actions for infringement of patents, an appeal may be taken from a final decree to the court of appeals within 30 days from the entry of the decree (28 U. S. C. 1292, 2101).

Appeals to the court of appeals from 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 must be filed, in cases in which the United States is a party, within 60 days from the entry of such orders (28 U. S. C. 1292; Rule 73 (a), Fed. Rules Civ. Proc.).

In cases of arbitration between carriers and their employees as provided by 45 U. S. C. 157, in which petitions are filed to impeach the awards, as provided by 45 U. S. C. 159, the decisions of the district courts on such petitions may be appealed from to the courts of

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appeals by either party within 10 days from the decision of the district courts (45 U. S. C. 159, Par. 5).

Under the Agriculture Adjustment Act of 1938, any farmer who is dissatisfied with his farm marketing quota may, within 15 days after notice of such quota, have the same reviewed by a review committee, and if dissatisfied by the determination of the review committee may, within 15 days after notice is mailed to him by registered mail, file a bill in equity against the review committee in the court specified in the Act, for the purpose of obtaining a review of the determination of the committee (7 U. S. C. 1363-1366).

Under the Commodity Exchange Act, it is provided that certain orders of the agency set up to enforce the Act, may be reviewed on appeal to the court of appeals within 15 days after the entry of such orders (7 U. S. C. 8).

Cease and desist orders made by the Secretary of Agriculture under 7 U. S. C. 1599 may be reviewed by the proper court of appeals, upon the filing of a written petition therefor by the person aggrieved, within 30 days after the service of such orders (7 U. S. C. 1600).

Applications for review of decisions of the U. S. Customs Court to the Court of Customs and Patent Appeals in cases arising in the United States must be filed within 60 days, and in cases arising in the Territories and Possessions, within 90 days after the entry of the judgment or decree complained of (28 U. S. C. 2601).

Any party to a proceeding, aggrieved by an order of the Federal Power Commission under the Federal Power Act, 16 U. S. C. 791 (a)-825 (r), may obtain a review of such order in the proper court of appeals by filing in such court within 60 days after the entry of the order of the Commission, a written petition praying that such order be modified or set aside in whole or in part (16 U. S. C. 825 1).

Any person aggrieved by an order of the Securities and Exchange Commission under 15 U. S. C. 80 (a)-1 to 80 (a)-52, or under the last sentence of 72 (a) or 107 (f) of 11 U. S. C., may obtain a review of such order in the proper court of appeals by filing in such court within 60 days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part (15 U. S. C. 80 (a)-42).

Any order, affirmative or negative, issued by the Civil Aeronautics Board under 49 U. S. C. 401-681, except an order issued under Sec. 601, may be reviewed by the proper court of appeals upon the petition of any person having a substantial interest in such order filed within 60 days after the entry of such order (49 U. S. C. 646).

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Any party to a proceeding under 15 U. S. C. 717-717 (w), who is aggrieved by an order issued by the Federal Power Commission, may obtain a review of such order in the court of appeals having jurisdiction, by filing a petition within 60 days after entry of such order, praying that such order be modified or set aside in whole or in part (15 U. S. C. 717 (r)).

Any person or party aggrieved by an order of the Securities and Exchange Commission may obtain a review of such order by filing in the court of appeals having jurisdiction, within 60 days after entry of such order, a petition praying that such order be modified or set aside in whole or in part (15 U. S. C. 77 (i), 78 (y), 80 (x), 80 (b)-(13)).

When the Commissioner of Internal Revenue determines that there is a deficiency in respect of taxes imposed by the internal revenue laws, and notifies the taxpayer of such deficiency, the taxpayer may, within 90 days, file a petition in the Tax Court for a redetermination of such deficiency (26 U. S. C. 272).

When the Tax Court has rendered a decision on the petition referred to in the preceding paragraph, either party may file in the court of appeals, within 3 months, a petition to review the decision of the Tax Court (26 U. S. C. 1142).

Review of decisions of the Railroad Retirement Board may be had by any employee or other person aggrieved, within 1 year as provided by 45 U. S. C. 228 (k), in the proper district court, and within 90 days in reference to a claim for benefits as prescribed by 45 U. S. C. 355.

Appeals from decisions in condemnation cases under the Tennessee Valley Authority Act (16 U. S. C. 831-831dd) must be taken within 30 days to the court of appeals (16 U. S. C. 831x).

Appeals from orders of the Secretary of Agriculture made under the Packers and Stockyards Act, 1921 (7 U. S. C. 193) may be taken to the proper court of appeals within 30 days after the service of such order (7 U. S. C. 194).

Review of orders of the Federal Communications Commission, except those relating to radio licenses, may be had in the proper court of appeals by filing a petition for review within 60 days of the order (47 U. S. C. 402 (a), as amended by the Act of Dec. 29, 1950, 64 Stat. 1129, and the Act of July 16, 1952, 66 Stat. 711). Appeals from orders relating to radio licenses are taken only to the Court of Appeals for the District of Columbia Circuit within 30 days after public notice of the decision complained of (47 U. S. C. 402 (c), as amended by the Act of July 16, 1952, 66 Stat. 711).

TITLE 6: APPEALS

Any person who will be adversely affected by an order of the Department of Health, Education and Welfare, made under 21 U. S. C. 371 (Food and Drug Act), may, prior to the 90th day after such order is issued, file in the court of appeals having jurisdiction a petition seeking a judicial review of such order (21 U. S. C. 371).

COMPUTATION OF TIME

In both civil and criminal cases, the day of the act or event after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. (However, every effort should be made to file the appeal papers prior to the last day if it be a Sunday or holiday.) When a period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays are excluded in the computation. A half holiday is considered as other days and not as a holiday (Rule 45 (a), Fed. Rules Crim. Proc.; Rule 6 (a), Fed. Rules Civ. Proc.).