

1949—Act May 24, 1949, substituted “20, 23, and 43” for “20, 43, and 49” in first par.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93-584, set out as a note under section 2321 of this title.

[[§ 2324, 2325. Repealed. Pub. L. 93-584, § 7, Jan. 2, 1975, 88 Stat. 1918]

Section 2324, act June 25, 1948, ch. 646, 62 Stat. 970, related to power of court to restrain or suspend operation of orders of Interstate Commerce Commission pending final hearing and determination of action.

Section 2325, act June 25, 1948, ch. 646, 62 Stat. 970, related to requirement of a three judge district court to hear and determine interlocutory or permanent injunctions restraining enforcement, operation or execution of orders of Interstate Commerce Commission.

EFFECTIVE DATE OF REPEAL

Repeal applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this repeal becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93-584, set out as an Effective Date of 1975 Amendment note under section 2321 of this title.

CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

- Sec. 2341. Definitions.
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2351. Enforcement of orders by district courts. [2352, 2353. Repealed.]

AMENDMENTS

1982—Pub. L. 97-164, title I, §138, Apr. 2, 1982, 96 Stat. 42, struck out item 2353 “Decision of the Plant Variety Protection Office”.

1966—Pub. L. 89-773, §4, Nov. 6, 1966, 80 Stat. 1323, struck out item 2352 “Rules”.

§ 2341. Definitions

As used in this chapter—

- (1) “clerk” means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;
(2) “petitioner” means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and
(3) “agency” means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;

(C) the Administration, when the order was entered by the Maritime Administration;

(D) the Secretary, when the order is under section 812 of the Fair Housing Act; and

(E) the Board, when the order was entered by the Surface Transportation Board.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 622; amended Pub. L. 93-584, §3, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 100-430, §11(b), Sept. 13, 1988, 102 Stat. 1635; Pub. L. 102-365, §5(c)(1), Sept. 3, 1992, 106 Stat. 975; Pub. L. 104-88, title III, §305(d)(1)-(4), Dec. 29, 1995, 109 Stat. 945.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1031. Dec. 29, 1950, ch. 1189, §1, 64 Stat. 1129. Aug. 30, 1954, ch. 1073, §2(a), 68 Stat. 961.

Subsection (a) of former section 1031 of title 5 is omitted as unnecessary because the term “court of appeals” as used in title 28 means a United States Court of Appeals and no additional definition is necessary.

In paragraph (3), reference to the United States Maritime Commission is omitted because that Commission was abolished by 1950 Reorg. Plan No. 21, §306, eff. May 24, 1950, 64 Stat. 1277. Reference to “Federal Maritime Commission” is substituted for “Federal Maritime Board” on authority of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 75 Stat. 840.

REFERENCES IN TEXT

Section 812 of the Fair Housing Act, referred to in par. (3)(D), is classified to section 3612 of Title 42, The Public Health and Welfare.

AMENDMENTS

1995—Par. (3)(A). Pub. L. 104-88, §305(d)(1), struck out “the Interstate Commerce Commission,” after “Maritime Commission.”

Par. (3)(E). Pub. L. 104-88, §305(d)(2)-(4), added subpar. (E).

1992—Par. (3)(B). Pub. L. 102-365 inserted “or the Secretary of Transportation” after “Secretary of Agriculture”.

1988—Par. (3)(D). Pub. L. 100-430 added subpar. (D).

1975—Par. (3)(A). Pub. L. 93-584 inserted reference to the Interstate Commerce Commission.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on the 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or

suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93-584, set out as a note under section 2321 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

- (1) all final orders of the Federal Communication Commission made reviewable by section 402(a) of title 47;
- (2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;
- (3) all rules, regulations, or final orders of—
 - (A) the Secretary of Transportation issued pursuant to section 50501, 50502, 56101-56104, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and
 - (B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;
- (4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;
- (5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;
- (6) all final orders under section 812 of the Fair Housing Act; and
- (7) all final agency actions described in section 20114(c) of title 49.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 622; amended Pub. L. 93-584, §4, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95-454, title II, §206, Oct. 13, 1978, 92 Stat. 1144; Pub. L. 96-454, §8(b)(2), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97-164, title I, §137, Apr. 2, 1982, 96 Stat. 41; Pub. L. 98-554, title II, §227(a)(4), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 99-336, §5(a), June 19, 1986, 100 Stat. 638; Pub. L. 100-430, §11(a), Sept. 13, 1988, 102 Stat. 1635; Pub. L. 102-365, §5(c)(2), Sept. 3, 1992, 106 Stat. 975; Pub. L. 103-272, §5(h), July 5, 1994, 108 Stat. 1375; Pub. L. 104-88, title III, §305(d)(5)-(8), Dec. 29, 1995, 109 Stat. 945; Pub. L. 104-287, §6(f)(2), Oct. 11, 1996, 110 Stat. 3399; Pub. L. 109-59, title IV, §4125(a), Aug. 10, 2005, 119 Stat. 1738; Pub. L. 109-304, §17(f)(3), Oct. 6, 2006, 120 Stat. 1708.)

The words “have exclusive jurisdiction” are substituted for “shall have exclusive jurisdiction”.

In paragraph (1), the word “by” is substituted for “in accordance with”.

In paragraph (3), the word “now” is omitted as unnecessary. The word “under” is substituted for “pursuant to the provisions of”. Reference to “Federal Maritime Commission” is substituted for “Federal Maritime Board” on authority of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 75 Stat. 840. Reference to the United States Maritime Commission is omitted because that Commission was abolished by 1950 Reorg. Plan No. 21, §306, eff. May 24, 1951, 64 Stat. 1277, and any existing rights are preserved by technical sections 7 and 8.

REFERENCES IN TEXT

Section 812 of the Fair Housing Act, referred to in par. (6), is classified to section 3612 of Title 42, The Public Health and Welfare.

AMENDMENTS

2006—Par. (3)(A). Pub. L. 109-304, §17(f)(3)(A), substituted “section 50501, 50502, 56101-56104, or 57109 of title 46” for “section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and 841a)”.

Par. (3)(B). Pub. L. 109-304, §17(f)(3)(B), added subpar. (B) and struck out former subpar. (B) which read as follows:

“(B) the Federal Maritime Commission issued pursuant to—

“(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

“(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

“(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d));”.

2005—Par. (3)(A). Pub. L. 109-59 inserted “, subchapter III of chapter 311, chapter 313, or chapter 315” before “of title 49”.

1996—Par. (3)(A). Pub. L. 104-287 amended Pub. L. 104-88, §305(d)(6). See 1995 Amendment note below.

1995—Par. (3)(A). Pub. L. 104-88, §305(d)(6), as amended by Pub. L. 104-287, inserted “or pursuant to part B or C of subtitle IV of title 49” before the semicolon.

Pub. L. 104-88, §305(d)(5), substituted “or 41” for “41, or 43”.

Par. (3)(B). Pub. L. 104-88, §305(d)(7), redesignated cls. (ii), (iv), and (v) as (i), (ii), and (iii), respectively, and struck out former cls. (i) and (iii) which read as follows:

“(i) section 23, 25, or 43 of the Shipping Act, 1916 (46 U.S.C. App. 822, 824, or 841a);

“(iii) section 2, 3, 4, or 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 844, 845, 845a, or 845b);”.

Par. (5). Pub. L. 104-88, §305(d)(8), added par. (5) and struck out former par. (5) which read as follows: “all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title and all final orders of such Commission made reviewable under section 11901(j)(2) of title 49, United States Code;”.

1994—Par. (7). Pub. L. 103-272 substituted “section 20114(c) of title 49” for “section 202(f) of the Federal Railroad Safety Act of 1970”.

1992—Par. (7). Pub. L. 102-365, which directed the addition of par. (7) at end, was executed by adding par. (7) after par. (6) and before concluding provisions, to reflect the probable intent of Congress.

1988—Par. (6). Pub. L. 100-430 added par. (6).

1986—Par. (3). Pub. L. 99-336 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 as are subject to judicial review under section 830 of title 46;”.

1984—Par. (5). Pub. L. 98-554 substituted “11901(j)(2)” for “11901(i)(2)”.

1982—Pub. L. 97-164 inserted “(other than the United States Court of Appeals for the Federal Circuit)” after “court of appeals” in provisions preceding par. (1), and

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1032.	Dec. 29, 1950, ch. 1189, §2, 64 Stat. 1129. Aug. 30, 1954, ch. 1073, §2(b), 68 Stat. 961.

struck out par. (6) which had given the court of appeals jurisdiction in cases involving all final orders of the Merit Systems Protection Board except as provided for in section 7703(b) of title 5. See section 1295(a)(9) of this title.

1980—Par. (5). Pub. L. 96-454 inserted “and all final orders of such Commission made reviewable under section 11901(i)(2) of title 49, United States Code” after “section 2321 of this title”.

1978—Par. (6). Pub. L. 95-454 added par. (6).

1975—Par. (5). Pub. L. 93-584 added par. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6(f) of Pub. L. 104-287 provided that the amendment made by that section is effective Dec. 29, 1995.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-430 effective on 180th day beginning after Sept. 13, 1988, see section 13(a) of Pub. L. 100-430, set out as a note under section 3601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 5(b) of Pub. L. 99-336 provided that: “The amendment made by this section [amending this section] shall apply with respect to any rule, regulation, or final order described in such amendment which is issued on or after the date of the enactment of this Act [June 19, 1986].”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-584 not applicable to actions commenced on or before last day of first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93-584, set out as a note under section 2321 of this title.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

§ 2343. Venue

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 622.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1033, Dec. 29, 1950, ch. 1189, §3, 64 Stat. 1130.

The section is reorganized for clarity and conciseness. The word “is” is substituted for “shall be”. The word “petitioner” is substituted for “party or any of the parties filing the petition for review” in view of the definition of “petitioner” in section 2341 of this title.

§ 2344. Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

- (1) the nature of the proceedings as to which review is sought;
(2) the facts on which venue is based;
(3) the grounds on which relief is sought; and
(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 622.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1034, Dec. 29, 1950, ch. 1189, §4, 64 Stat. 1130.

The section is reorganized, with minor changes in phraseology. The words “as prescribed by section 1033 of this title” are omitted as surplusage. The words “of the United States” following “Attorney General” are omitted as unnecessary.

§ 2345. Prehearing conference

The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 622.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1035, Dec. 29, 1950, ch. 1189, §5, 64 Stat. 1130.

§ 2346. Certification of record on review

Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 623.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1036, Dec. 29, 1950, ch. 1189, §6, 64 Stat. 1130.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
		Aug. 28, 1958, Pub. L. 85-791, §31(a), 72 Stat. 951.

The words “of the court of appeals in which the proceeding is pending” are omitted as unnecessary in view of the definition of “clerk” in section 2341 of this title, and by reason of the exclusive jurisdiction of the court of appeals set forth in section 2342 of this title.

§ 2347. Petitions to review; proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

- (1) the additional evidence is material; and
- (2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 623.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1037.	Dec. 29, 1950, ch. 1189, §7, 64 Stat. 1130. Aug. 28, 1958, Pub. L. 85-791, §31(b), 72 Stat. 951.

The headnotes of the subsections are omitted as unnecessary and to conform to the style of title 28.

In subsection (a), the words “the petition” following “on a motion to dismiss” are omitted as unnecessary. The word “are” is substituted for “shall be”. The words “in fact” following “when the agency has” are omitted as unnecessary.

In subsection (b)(3), the words “United States” preceding “district court” are omitted as unnecessary because the term “district court” as used in title 28 means a United States district court. See section 451 of title 28, United States Code. The words “or any petitioner” are omitted as unnecessary in view of the definition of “petitioner” in section 2341 of this title. In the last sentence, the word “is” is substituted for “shall be”.

In subsection (c), the words “applies” and “shows” are substituted for “shall apply” and “shall show”, respectively.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

§ 2348. Representation in proceeding; intervention

The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 623.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1038.	Dec. 29, 1950, ch. 1189, §8, 64 Stat. 1131.

In the first sentence, the words “is responsible for and has control” are substituted for “shall be responsible for and have charge and control”.

In the last sentence, the word “may” is substituted for “shall”. The word “aforesaid” following “any party or intervenor” is omitted as unnecessary. The words “any intervenor” and “inaction” are substituted for “said intervenor or intervenors” and “nonaction”, respectively.

§ 2349. Jurisdiction of the proceeding

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment de-

termining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 624; amended Pub. L. 98-620, title IV, §402(29)(F), Nov. 8, 1984, 98 Stat. 3359.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1039.	Dec. 29, 1950, ch. 1189, §9, 64 Stat. 1131. Sept. 13, 1961, Pub. L. 87-225, §1, 75 Stat. 497.

The headnotes of the subsections are omitted as unnecessary and to conform to the style of title 28.

In subsection (a), the words "has jurisdiction" and "has exclusive jurisdiction" are substituted for "shall have jurisdiction" and "shall have exclusive jurisdiction", respectively. The words "previously granted" are substituted for "theretofore granted" as the preferred expression.

In subsection (b), the words "does not" are substituted for "shall not". The words "of the United States" following "Attorney General" are omitted as unnecessary. The words "In a case in which" are substituted for "In cases where". The word "result" is substituted for "ensue". In the fourth sentence, the words "provided for above" following the last word "application" are omitted as unnecessary. In the last sentence, the word "applies" is substituted for "shall apply".

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out provisions that the hearing on an application for an interlocutory injunction be given preference and expedited and heard at the earliest practicable date after the expiration of the notice of hearing on the application, and that on the final hearing of any proceeding to review any order under this chapter, the same requirements as to precedence and expedition was to apply.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620 set out as an Effective Date note under section 1657 of this title.

§ 2350. Review in Supreme Court on certiorari or certification

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 624; amended Pub. L. 100-352, §5(e), June 27, 1988, 102 Stat. 663.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1040.	Dec. 29, 1950, ch. 1189, §10, 64 Stat. 1132.

The words "of the United States" following "Supreme Court" are omitted as unnecessary because the term "Supreme Court" as used in title 28 means the Supreme Court of the United States.

The words "section 2101(f) of this title" are substituted for "section 2101(e) of Title 28" on authority of the Act of May 24, 1949, ch. 139, §106(b), 63 Stat. 104, which redesignated subsection (e) of section 2101 as subsection (f).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-352 substituted "1254(2)" for "1254(3)".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

§ 2351. Enforcement of orders by district courts

The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

(Added Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 624.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1042.	Dec. 29, 1950, ch. 1189, §12, 64 Stat. 1132.

The words "United States" preceding "district court" are omitted as unnecessary because the term

“district court” as used in title 28 means a United States district court. See section 451 of title 28, United States Code. The words “have jurisdiction” are substituted for “are vested with jurisdiction”. The words “heretofore or hereafter” following “order” are omitted as unnecessary and any existing rights and liabilities are preserved by technical sections 7 and 8.

[§ 2352. Repealed. Pub. L. 89-773, § 4, Nov. 6, 1966, 80 Stat. 1323]

Section, Pub. L. 89-554, §4(e), Sept. 6, 1966, 80 Stat. 624, directed the several courts of appeals to adopt and promulgate rules, subject to the approval of the Judicial Conference of the United States, governing the practice and procedure, including prehearing conference procedure, in proceedings to review orders under this chapter. See section 2072 of this title.

SAVINGS PROVISION

Section 4 of Pub. L. 89-773 provided in part that the repeal of this section shall not operate to invalidate or repeal rules adopted under the authority of this section prior to the enactment of Pub. L. 89-773, which rules shall remain in effect until superseded by rules prescribed under authority of section 2072 of this title as amended by Pub. L. 89-773.

[§ 2353. Repealed. Pub. L. 97-164, title I, § 138, Apr. 2, 1982, 96 Stat. 42]

Section, added Pub. L. 91-577, title III, §143(c), Dec. 24, 1970, 84 Stat. 1559, gave the court of appeals non-exclusive jurisdiction to hear appeals under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461). See section 1295(a)(8) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

CHAPTER 159—INTERPLEADER

Sec.
2361. Process and procedure.

§ 2361. Process and procedure

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court. Such process and order shall be returnable at such time as the court or judge thereof directs, and shall be addressed to and served by the United States marshals for the respective districts where the claimants reside or may be found.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

(June 25, 1948, ch. 646, 62 Stat. 970; May 24, 1949, ch. 139, §117, 63 Stat. 105.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §41(26) (Mar. 3, 1911, ch. 231, §24, par. 26, as added Jan. 20, 1936, ch. 13, §1, 49 Stat. 1096).

Jurisdiction and venue provisions of section 41(26) of title 28, U.S.C., 1940 ed., appear in sections 1335 and 1397 of this title.

Subsection (e) of section 41(26) of title 28, U.S.C., 1940 ed., relating to defense in nature of interpleader and joinder of additional parties, was omitted as unnecessary, such matters being governed by the Federal Rules of Civil Procedure.

Words, “Notwithstanding any provision of part I of this title to the contrary” were omitted as unnecessary, since the revised title contains no “contrary provisions.”

Changes were made in phraseology.

1949 ACT

This section makes clear that section 2361 of title 28, U.S.C., applies only to statutory actions and not to general equity interpleader suits in which the jurisdictional amount and diversity of citizenship requirements are the same as in other diversity cases.

AMENDMENTS

1949—Act May 24, 1949, substituted “In any civil action of interpleader or in the nature of interpleader under section 1335 under this title” for “In any interpleader action,” and inserted “or prosecuting” between “instituting” and “any proceeding”.

CHAPTER 161—UNITED STATES AS PARTY GENERALLY

Sec.	
2401.	Time for commencing action against United States.
2402.	Jury trial in actions against United States.
2403.	Intervention by United States or a State; constitutional question.
2404.	Death of defendant in damage action.
2405.	Garnishment.
2406.	Credits in actions by United States; prior disallowance.
2407.	Delinquents for public money; judgment at return term; continuance.
2408.	Security not required of United States.
2409.	Partition actions involving United States.
2409a.	Real property quiet title actions.
2410.	Actions affecting property on which United States has lien.
2411.	Interest.
2412.	Costs and fees.
2413.	Executions in favor of United States.
2414.	Payment of judgments and compromise settlements.
2415.	Time for commencing actions brought by the United States.
2416.	Time for commencing actions brought by the United States—Exclusions.

HISTORICAL AND REVISION NOTES

1949 ACT

This section amends the analysis of chapter 161 of title 28, U.S.C., to conform item 2411 therein with the catch line of section 2411 of such title as amended by another section of this bill.

AMENDMENTS

1980—Pub. L. 96-481, title II, §204(b), Oct. 21, 1980, 94 Stat. 2329, substituted “Costs and fees” for “Costs” in item 2412.

1976—Pub. L. 94-381, §6, Aug. 12, 1976, 90 Stat. 1120, inserted “or a State” after “United States” in item 2403.

1972—Pub. L. 92-562, §3(b), Oct. 25, 1972, 86 Stat. 1177, added item 2409a.

1966—Pub. L. 89-505, §2, July 18, 1966, 80 Stat. 305, added items 2415 and 2416.

1961—Pub. L. 87-187, §2, Aug. 30, 1961, 75 Stat. 416, substituted “and compromise settlements” for “against the United States” in item 2414.