

U.S.C. The provisions which were formerly set out as section 49 of such title 49, are now set out as section 23 of such title.

#### AMENDMENTS

1995—Pub. L. 104–88 substituted “Board’s” for “Commission’s” in section catchline and “Surface Transportation Board” for “Interstate Commerce Commission” in subsecs. (a) and (b).

1978—Subsec. (c). Pub. L. 95–473 substituted “enforcement actions and actions to collect civil penalties under subtitle IV of title 49” for “actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)”.

1975—Subsec. (a). Pub. L. 93–584 designated existing provisions as subsecs. (b) and (c) and added subsec. (a).

Subsec. (b). Pub. L. 93–584 designated existing first par. as subsec. (b) and substituted “in whole or in part, any order of the Interstate Commerce Commission other than for”, for “suspend, enjoin, annual or set aside in whole or in part any order of the Interstate Commerce Commission other than for”.

Subsec. (c). Pub. L. 93–584 designated existing second par. as subsec. (c), substituted reference to subsec. (b) of this section for reference to this section, and inserted references to the dates of enactment, statute citations and code references of sections 20, 23 and 43 of Title 49.

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

#### EFFECTIVE DATE OF 1995 AMENDMENT

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

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–584, § 10, Jan. 2, 1975, 88 Stat. 1918, provided that: “This Act [amending this section, sections 1336, 1398, 2323, 2341, and 2342 of this title, and section 305 of former Title 49, Transportation, and repealing sections 2324 and 2325 of this title] shall not apply to any action commenced on or before the last day of the first month beginning after the date of enactment [Jan. 2, 1975]. However, actions to enjoin or suspend orders of the Interstate Commerce Commission which are pending when this Act becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced.”

### § 2322. United States as party

All actions specified in section 2321 of this title shall be brought by or against the United States.

(June 25, 1948, ch. 646, 62 Stat. 969.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 48 (Mar. 3, 1911, ch. 231, § 211, 36 Stat. 1150; Oct. 22, 1913, ch. 32, 38 Stat. 219).

Word “actions” was substituted for “cases and proceedings”, in view of Rule 2 of the Federal Rules of Civil Procedure.

A provision authorizing intervention by the United States was omitted. The United States, under the provisions of this section, is a necessary and indispensable original party, and hence intervention is unnecessary. (See *Lambert Run Coal Co. v. Baltimore & O. R. Co.*, 1922, 42 S.Ct. 349, 258 U.S. 377, 66 L.Ed. 671.)

### § 2323. Duties of Attorney General; intervenors

The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in enforcement actions and ac-

tions to collect civil penalties under subtitle IV of title 49.

The Surface Transportation Board and any party or parties in interest to the proceeding before the Board, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party.

Communities, associations, corporations, firms, and individuals interested in the controversy or question before the Board, or in any action commenced under the aforesaid sections may intervene in said action at any time after commencement thereof.

The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or non-action of the Attorney General therein.

(June 25, 1948, ch. 646, 62 Stat. 970; May 24, 1949, ch. 139, § 116, 63 Stat. 105; Pub. L. 93–584, § 6, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95–473, § 2(a)(3)(C), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 104–88, title III, § 305(c)(1)(C), (D), Dec. 29, 1995, 109 Stat. 945.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Based on title 28, U.S.C., 1940 ed., § 45a (Mar. 3, 1911, ch. 231, §§ 212, 213, 36 Stat. 1150, 1151; Oct. 22, 1913, ch. 32, 38 Stat. 220).

The provision in the second sentence of section 45a of title 28, U.S.C., 1940 ed., authorizing the Attorney General to employ and compensate special attorneys was omitted as covered by sections 503 and 508 [now 543 and 548] of this title. The provision in the same sentence authorizing the court to make rules for the conduct and procedure of actions under this section were omitted as covered by the Federal Rules of Civil Procedure and section 2071 of this title relating to authority of district courts to promulgate local rules of procedure.

The last paragraph of section 45a of title 28, U.S.C., 1940 ed., was omitted as merely repetitive of the language immediately following the first proviso.

Word “action” was substituted for “suit” in conformity with Rule 2 of the Federal Rules of Civil Procedure. Changes were made in phraseology.

##### 1949 ACT

This section corrects, in section 2323 of title 28, U.S.C., the reference to certain sections in title 49, U.S.C. The provisions which were formerly set out as section 49 of such title 49 are now set out as section 23 of such title.

#### AMENDMENTS

1995—Pub. L. 104–88 substituted “Surface Transportation Board” for “Interstate Commerce Commission” and substituted “the Board” for “the Commission” in two places.

1978—Pub. L. 95–473 substituted “enforcement actions and actions to collect civil penalties under subtitle IV of title 49” for “actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43)” in first par.

1975—Pub. L. 93–584 struck out reference to the district courts and the Supreme Court of the United States upon appeal from the district courts as the courts in which the Attorney General can represent the United States in first par.

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

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1975 AMENDMENT

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

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

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

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

EFFECTIVE DATE OF REPEAL

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

CHAPTER 158—ORDERS OF FEDERAL AGENCIES; REVIEW

- Sec. 2341. Definitions.
2342. Jurisdiction of court of appeals.
2343. Venue.
2344. Review of orders; time; notice; contents of petition; service.
2345. Prehearing conference.
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2347. Petitions to review; proceedings.
2348. Representation in proceeding; intervention.
2349. Jurisdiction of the proceeding.
2350. Review in Supreme Court on certiorari or certification.
2351. Enforcement of orders by district courts. [2352, 2353. Repealed.]

AMENDMENTS

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

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

§ 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