

sented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment.

(June 25, 1948, ch. 646, 62 Stat. 968; Pub. L. 86-507, §1(19), June 11, 1960, 74 Stat. 201; Pub. L. 94-381, §3, Aug. 12, 1976, 90 Stat. 1119; Pub. L. 98-620, title IV, §402(29)(E), Nov. 8, 1984, 98 Stat. 3359.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§47, 47a, 380, 380a, and 792 (Mar. 3, 1911, ch. 231, §§210, 266, 36 Stat. 1150, 1162; Mar. 4, 1943, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38 Stat. 220; Feb. 13, 1925, ch. 229, §1, 43 Stat. 938; Aug. 24, 1937, ch. 754, §3, 50 Stat. 752; Apr. 6, 1942, ch. 210, §3, 56 Stat. 199).

Provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., relating to the Supreme Court's jurisdiction of direct appeals appear in section 1253 of this title.

Provisions of sections 47, 380, and 380a of title 28, U.S.C., 1940 ed., requiring applications for injunctions restraining the enforcement, operation or execution of Federal or State statutes or orders of the Interstate Commerce Commission to be heard and determined by three-judge district courts appear in sections 2281, 2282, and 2325 of this title.

The provision for notice to the United States attorney for the district where the action is pending was added because of the necessity of the United States attorney's preparation for hearing as soon as possible, to expedite such a case.

Provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., respecting time for direct appeal appear in section 2101 of this title.

This revised section represents an effort to provide a uniform method of convoking three-judge district courts, and for procedure therein. It follows recommendations of a committee appointed by the Judicial Conference of the United States, composed of Circuit Judges Evan A. Evans, Kimbrough Stone, Orie L. Phillips, and Albert B. Maris.

The committee pointed out that section 380a of title 28, U.S.C., 1940 ed., is the latest and "most carefully drawn expression by Congress on the subject." Consequently, this section follows closely such section 380a and eliminates the discrepancies between sections 47, 47a, 380, and 380a of such title.

This section governs only the composition and procedure of three-judge district courts. The requirement that applications for injunctions be heard and determined by such courts will appear in other sections of this and other titles of the United States Code as Congress may enact from time to time. For example, see sections 2281, 2282, and 2325 of this title, sections 1213, 1215, 1255 of title 11, U.S.C., 1940 ed., Bankruptcy, section 28 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 44 of title 49, U.S.C., 1940 ed., Transportation.

United States District Judge W. Calvin Chestnut, has referred to the provisions relating to enforcement or setting aside or orders of the Interstate Commerce Commission as unfortunately lengthy and prolix. He has urged revision to insure uniform procedure in the several classes of so-called three-judge cases.

The provision that such notice shall be given by the clerk by registered mail, and shall be complete on the mailing thereof follows, substantially, rules 4(d)(4) and 5(b) of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

Editorial Notes

REFERENCES IN TEXT

The rules of civil procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-620 struck out provision that the hearing had to be given precedence and held at the earliest practicable day.

1976—Pub. L. 94-381 substituted "Three-judge court; when required" for "Three-judge district court" in section catchline, and generally revised section to alter the method by which three-judge courts are composed, the procedure used by such courts, and to conform its requirements to the repeal of sections 2281 and 2282 of this title.

1960—Pub. L. 86-507 substituted "by registered mail or by certified mail by the clerk and" for "by registered mail by the clerk, and".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-381, §7, Aug. 12, 1976, 90 Stat. 1120, provided that: "This Act [amending this section and section 2403 of this title and repealing sections 2281 and 2282 of this title] shall not apply to any action commenced on or before the date of enactment [Aug. 12, 1976]."

CHAPTER 157—SURFACE TRANSPORTATION BOARD ORDERS; ENFORCEMENT AND REVIEW

Sec.

- 2321. Judicial review of Board's orders and decisions; procedure generally; process.
- 2322. United States as party.
- 2323. Duties of Attorney General; intervenors.
- [2324, 2325. Repealed.]

Editorial Notes

AMENDMENTS

1995—Pub. L. 104-88, title III, §305(c)(1)(A), (E), Dec. 29, 1995, 109 Stat. 944, 945, substituted "SURFACE TRANSPORTATION BOARD" for "INTERSTATE COMMERCE COMMISSION" in chapter heading and "Board's" for "Commission's" in item 2321.

1975—Pub. L. 93–584, § 8, Jan. 2, 1975, 88 Stat. 1918, substituted “Judicial Review of Commission’s orders and decisions; procedure generally; process” for “Procedure generally; process” in item 2321 and struck out item 2324 “Stay of Commission’s order” and item 2325 “Injunction; three-judge court required”.

§ 2321. Judicial review of Board’s orders and decisions; procedure generally; process

(a) Except as otherwise provided by an Act of Congress, a proceeding to enjoin or suspend, in whole or in part, a rule, regulation, or order of the Surface Transportation Board shall be brought in the court of appeals as provided by and in the manner prescribed in chapter 158 of this title.

(b) The procedure in the district courts in actions to enforce, in whole or in part, any order of the Surface Transportation Board other than for payment of money or the collection of fines, penalties, and forfeitures, shall be as provided in this chapter.

(c) The orders, writs, and process of the district courts may, in the cases specified in subsection (b) and in enforcement actions and actions to collect civil penalties under subtitle IV of title 49, run, be served and be returnable anywhere in the United States.

(June 25, 1948, ch. 646, 62 Stat. 969; May 24, 1949, ch. 139, § 115, 63 Stat. 105; Pub. L. 93–584, § 5, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95–473, § 2(a)(3)(B), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 104–88, title III, § 305(c)(1)(B), (C), Dec. 29, 1995, 109 Stat. 945.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., § 44 (Oct. 22, 1913, ch. 32, 38 Stat. 220.)

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

The exception as to procedure in the infliction of criminal punishment was omitted as unnecessary, as Title 18, U.S.C., Crimes and Criminal Procedure, and the Federal Rules of Criminal Procedure govern procedure in criminal matters.

Changes were made in phraseology.

1949 ACT

This section corrects, in section 2321 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.

Editorial Notes

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 the”.

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.

Statutory Notes and Related Subsidiaries

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 1301 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 actions 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