HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	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.

Editorial Notes

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

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	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 determining 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

Derivation	U.S. Code	Revised Statutes and Statutes at Large
....	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 "applica-