

Aug. 30, 1961, 75 Stat. 413; Pub. L. 93-595, §2(b), Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §695 (June 20, 1936, ch. 640, §1, 49 Stat. 1561).

Changes in phraseology were made.

#### AMENDMENTS

1975—Pub. L. 93-595 struck out subsec. (a) which had made admissible as evidence writings or records made as a memorandum or record of any act, transaction, occurrence, or event if made in the regular course of business, and struck out designation “(b)” preceding remainder of section. See Federal Rules of Evidence set out in Appendix to this title.

1961—Subsec. (b). Pub. L. 87-183 struck out “unless held in a custodial or fiduciary capacity or” after “may be destroyed in the regular course of business”.

1951—Act Aug. 29, 1951, §3, inserted reference to photographic copies in section catchline.

Subsecs. (a), (b). Act Aug. 28, 1951, §1, designated existing provisions as subsec. (a) and added subsec. (b).

### § 1733. Government records and papers; copies

(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

(c) This section does not apply to cases, actions, and proceedings to which the Federal Rules of Evidence apply.

(June 25, 1948, ch. 646, 62 Stat. 946; Pub. L. 93-595, §2(c), Jan. 2, 1975, 88 Stat. 1949.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§661-667, 671 (R.S. §§882-886, 889; July 31, 1894, ch. 174, §§17, 22, 28 Stat. 210; Mar. 2, 1895, ch. 177, §10, 28 Stat. 809; June 10, 1921, ch. 18, §§301, 302, 304, 310, 42 Stat. 23-25; May 10, 1934, ch. 277, §512, 48 Stat. 758; June 19, 1934, ch. 653, §6(a), 48 Stat. 1109).

The consolidation of sections 661-667 and 671 of title 28, U.S.C., 1940 ed., permitted omission of obsolete, unnecessary and repetitive provisions in such sections. For example, the provision in section 665 of title 28, U.S.C., 1940 ed., authorizing the court to require production of documents on a plea of non est factum, was omitted. Such plea is obsolete in Federal practice.

Numerous provisions with respect to authentication were omitted as covered by Rule 44 of the Federal Rules of Civil Procedure.

Likewise the provision that official seals shall be judicially noticed was omitted as unnecessary. Seals of Federal agencies are judicially noticed by States and Federal courts without statutory mandate. *Gardner v. Barney*, 1867, 6 Wall. 499, 73 U.S.C. 499, 18 L.Ed. 890, 31 C.J.S. 599 n. 27-30 and 23 C.J.S. 99 n. 41. The same principle unquestionably will apply to seals of Government corporations.

Words “of any corporation all the stock of which is beneficially owned by the United States, either directly or indirectly”, in section 661 of title 28, U.S.C., 1940 ed., were omitted as covered by “or agency”. The revised section was broadened to apply to “any department or agency”. (See reviser’s note under section 1345 of this title.)

Changes were made in phraseology.

#### REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c), are set out in the Appendix to this title.

#### AMENDMENTS

1975—Subsec. (c). Pub. L. 93-595 added subsec. (c).

### § 1734. Court record lost or destroyed, generally

(a) A lost or destroyed record of any proceeding in any court of the United States may be supplied on application of any interested party not at fault, by substituting a copy certified by the clerk of any court in which an authentic copy is lodged.

(b) Where a certified copy is not available, any interested person not at fault may file in such court a verified application for an order establishing the lost or destroyed record.

Every other interested person shall be served personally with a copy of the application and with notice of hearing on a day stated, not less than sixty days after service. Service may be made on any nonresident of the district anywhere within the jurisdiction of the United States or in any foreign country.

Proof of service in a foreign country shall be certified by a minister or consul of the United States in such country, under his official seal.

If, after the hearing, the court is satisfied that the statements contained in the application are true, it shall enter an order reciting the substance and effect of the lost or destroyed record. Such order, subject to intervening rights of third persons, shall have the same effect as the original record.

(June 25, 1948, ch. 646, 62 Stat. 946.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§681, 682, 683, and 684 (R.S. §§899, 900, 901, 902; Jan. 31, 1879, ch. 39, §1, 20 Stat. 277).

Sections 681, 682, and 684 of title 28, U.S.C., 1940 ed., contained repetitious language which was eliminated by the consolidation.

Section 683 of title 28, U.S.C., 1940 ed., applied only to cases removed to the Supreme Court, and was revised so as to be applicable to cases transmitted to other courts not in existence in 1871 when the section was originally enacted.

Changes were made in phraseology.

### § 1735. Court record lost or destroyed where United States interested

(a) When the record of any case or matter in any court of the United States to which the United States is a party, is lost or destroyed, a certified copy of any official paper of a United States attorney, United States marshal or clerk or other certifying or recording officer of any such court, made pursuant to law, on file in any department or agency of the United States and relating to such case or matter, shall, on being filed in the court to which it relates, have the same effect as an original paper filed in such court. If the copy so filed discloses the date and amount of a judgment or decree and the names of the parties thereto, the court may enforce the judgment or decree as though the original record had not been lost or destroyed.

(b) Whenever the United States is interested in any lost or destroyed records or files of a court of the United States, the clerk of such court and the United States attorney for the district shall take the steps necessary to restore such records or files, under the direction of the judges of such court.