

tion thereof be subject to imprisonment for not more than one year or a fine of not less than \$1,000 nor more than \$5,000, or both such imprisonment and fine.

(June 25, 1938, ch. 675, § 706, formerly § 702A, formerly June 30, 1906, ch. 3915, § 10A, as added June 22, 1934, ch. 712, 48 Stat. 1204; amended Aug. 27, 1935, ch. 739, 49 Stat. 871; June 25, 1938, ch. 675, § 1002(a), formerly § 902(a), 52 Stat. 1059, renumbered § 1002(a), Pub. L. 111-31, div. A, title I, § 101(b)(2), June 22, 2009, 123 Stat. 1784; renumbered § 702A of act June 25, 1938, July 12, 1943, ch. 221, title II, 57 Stat. 500; Pub. L. 102-300, § 6(b)(2), June 16, 1992, 106 Stat. 240; renumbered § 706, Pub. L. 102-571, title I, § 106(3), Oct. 29, 1992, 106 Stat. 4498; Pub. L. 103-80, § 3(dd)(2), Aug. 13, 1993, 107 Stat. 779.)

CODIFICATION

Section was formerly classified to section 372a of this title prior to renumbering by Pub. L. 102-571.

Section, which formerly was not a part of the Federal Food, Drug, and Cosmetic Act, originally was classified to section 14a of this title. Section 1002(a) of act June 25, 1938, set out as an Effective Date note under section 301 of this title, provided that the section should remain in force and effect and be applicable to the provisions of this chapter. Act July 12, 1943, renumbered this section as 702A of the Federal Food, Drug, and Cosmetic Act.

PRIOR PROVISIONS

A prior section 376, act June 25, 1938, ch. 675, § 706, 52 Stat. 1058, as amended, which related to listing and certification of color additives for foods, drugs, devices, and cosmetics, was renumbered section 721 of act June 25, 1938, by Pub. L. 102-571, title I, § 106(4), Oct. 29, 1992, 106 Stat. 4498, and transferred to section 379e of this title.

AMENDMENTS

1993—Pub. L. 103-80 struck out “of Agriculture” after “Secretary” in two places.

1992—Pub. L. 102-300, which directed the amendment of the section by striking out “of Health, Education, and Welfare” wherever appearing, could not be executed because such words did not appear in the original statutory text. See 1993 Amendment note above and Transfer of Functions note below.

TRANSFER OF FUNCTIONS

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 377. Revision of United States Pharmacopoeia; development of analysis and mechanical and physical tests

The Secretary, in carrying into effect the provisions of this chapter, is authorized on and after July 12, 1943, to cooperate with associations and scientific societies in the revision of the United States Pharmacopoeia and in the development of methods of analysis and mechanical and physical tests necessary to carry out the work of the Food and Drug Administration.

(July 12, 1943, ch. 221, title II, 57 Stat. 500; 1953 Reorg. Plan No. 1, § 5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CODIFICATION

Section was enacted as part of the Labor-Federal Security Appropriation Act, 1944, and not as part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 378. Advertising of foods

(a) Determination of misbranding; notification of Federal Trade Commission by Secretary; contents

(1) Except as provided in subsection (c) of this section, before the Secretary may initiate any action under subchapter III of this chapter—

(A) with respect to any food which the Secretary determines is misbranded under section 343(a)(2) of this title because of its advertising, or

(B) with respect to a food's advertising which the Secretary determines causes the food to be so misbranded,

the Secretary shall, in accordance with paragraph (2), notify in writing the Federal Trade Commission of the action the Secretary proposes to take respecting such food or advertising.

(2) The notice required by paragraph (1) shall—

(A) contain (i) a description of the action the Secretary proposes to take and of the advertising which the Secretary has determined causes a food to be misbranded, (ii) a statement of the reasons for the Secretary's determination that such advertising has caused such food to be misbranded, and

(B) be accompanied by the records, documents, and other written materials which the Secretary determines supports his determination that such food is misbranded because of such advertising.

(b) Action by Federal Trade Commission precluding action by Secretary; exception

(1) If the Secretary notifies the Federal Trade Commission under subsection (a) of this section of action proposed to be taken under subchapter III of this chapter with respect to a food or food advertising and the Commission notifies the Secretary in writing, within the 30-day period beginning on the date of the receipt of such notice, that—

(A) it has initiated under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] an investigation of such advertising to determine if it is prohibited by such Act or any order or rule under such Act,

(B) it has commenced (or intends to commence) a civil action under section 5, 13, or 19 [15 U.S.C. 45, 53, or 57b] with respect to such advertising or the Attorney General has commenced (or intends to commence) a civil ac-