

miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original. This subsection<sup>1</sup> shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence.

(June 25, 1948, ch. 646, 62 Stat. 945; Aug. 28, 1951, ch. 351, §§1, 3, 65 Stat. 205, 206; Pub. L. 87-183, 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, un-

necessary 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.

<sup>1</sup> So in original. Probably should be “section”.