Code of 1939. For distribution of the Internal Revenue Code of 1939 to the Internal Revenue Code of 1986, see Table I preceding section 1 of Title 26, Internal Revenue Code.

Section 151, act Aug. 27, 1935, ch. 740, §2, 49 Stat. 872, defined ''person'', ''Commissioner'', ''application'', ''permit'', ''bond'', ''regulation'', and ''articles'', was incorporated in section 3124(a)(3)–(8) of the Internal Revenue Code of 1939.

Section 152, act Aug. 27, 1935, ch. 740, §3, 49 Stat. 872, authorized Commissioner, his assistants, agents, and inspectors to investigate and report to United States attorney violations of this chapter and chapter 3 of this title, was incorporated in section 3117(a) of the Internal Revenue Code of 1939.

Section 153, act Aug. 27, 1935, ch. 740, §4, 49 Stat. 872, subjected violators of laws relating to denatured alcohol to laws relating to nondenatured alcohol, was incorporated in section 3111 of Internal Revenue Code of 1939.

Section 154, act Aug. 27, 1935, ch. 740, §5, 49 Stat. 873, related to revocation of manufacturer's permits for false descriptions of denatured alcohol, was incorporated in section 3114(c) of Internal Revenue Code of 1939.

Section 155, act Aug. 27, 1935, ch. 740, §6, 49 Stat. 873, required persons manufacturing or dealing in denatured alcohol to obtain a permit from Commissioner, was incorporated in section 3114(a) of Internal Revenue Code of 1939.

Section 156, act Aug. 27, 1935, ch. 740, §7, 49 Stat. 874, provided for revocation of permits by Commissioner where terms of permit have been violated or provisions of this chapter and chapter 3 of this title have not been conformed to or other laws and regulations relating to intoxicating liquor have been violated, was incorporated in section 3114(b) of Internal Revenue Code of 1939.

Section 157, act Aug. 27, 1935, ch. 740, §8, 49 Stat. 874, related to search, seizure, and forfeiture of liquor or property to be used in violation of this chapter or chapter 3 of this title or laws or regulations with respect to intoxicating liquor, was incorporated in section 3116 of Internal Revenue Code of 1939.

Section 158, act Aug. 27, 1935, ch. 740, §9, 49 Stat. 875, related to rights, privileges, powers, and protection of Commissioner and his assistants and employees, was incorporated in section 3121(a) of Internal Revenue Code of 1939.

Section 159, act Aug. 27, 1935, ch. 740, §10, 49 Stat. 875, related to penalties prescribed for violation of provisions of this chapter, was incorporated in section 3115(b) of Internal Revenue Code of 1939.

Section 160, act Aug. 27, 1935, ch. 740, §11, 49 Stat. 875, related to privileges and immunities of witnesses, was incorporated in section 3119 of Internal Revenue Code of 1939.

Section 161, act Aug. 27, 1935, ch. 740, §12, 49 Stat. 875, related to place of sale when delivery is made by a carrier for purposes of prosecution or revocation of any permit, was incorporated in section 3114(d) of Internal Revenue Code of 1939.

Section 162, act Aug. 27, 1935, ch. 740, §13, 49 Stat. 875, related to affidavits, information, and indictments for violation of this chapter, was incorporated in section 3120 of Internal Revenue Code of 1939.

Section 163, act Aug. 27, 1935, ch. 740, §14, 49 Stat. 876, related to inspection of records, liquor, and property with respect to this chapter by Commissioner, was incorporated in section 3121(c) of Internal Revenue Code of 1939.

Section 164, act Aug. 27, 1935, ch. 740, §2, 49 Stat. 872, authorized Commissioner to designate assistants or agents to perform certain duties, was incorporated in section 3121(d) of Internal Revenue Code of 1939.

Section 165, act Aug. 27, 1935, ch. 740, §15, 49 Stat. 876, provided that a conviction under this chapter or chapter 3 of this title will bar a subsequent prosecution under another law relating to intoxicating liquors, was incorporated in section 3115(c) of Internal Revenue Code of 1939.

Section 166, act Aug. 27, 1935, ch. 740, §16, 49 Stat. 876, provided that no tax will be assessed or collected where distilled spirits are lost, stolen, or destroyed by fire or other casualty, was incorporated in section 3113(a) of Internal Revenue Code of 1939.

Section 167, act Aug. 27, 1935, ch. 740, §1, 49 Stat. 872, provided that this chapter may be cited as ''Liquor Law Repeal and Enforcement Act''.

CHAPTER 8—FEDERAL ALCOHOL ADMINISTRATION ACT

SUBCHAPTER I—FEDERAL ALCOHOL ADMINISTRATION

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This chapter is referred to in title 15 section 1459; title 19 section 1754; title 26 section 5171.

SUBCHAPTER I—FEDERAL ALCOHOL ADMINISTRATION

§ 201. Short title

This subchapter may be cited as the ''Federal Alcohol Administration Act''.

(Aug. 29, 1935, ch. 814, title I, § 101, formerly § 1, 49 Stat. 977; renumbered title I, § 101, and amended Pub. L. 100–690, title VIII, § 8001(a)(1), (2), (b)(1), Nov. 18, 1988, 102 Stat. 4517, 4521.)

AMENDMENTS

1988—Pub. L. 100–690, § 8001(b)(1), amended section generally, substituting ''subchapter'' for ''chapter''.

SHORT TITLE

Section 201 of title II of act Aug. 29, 1935, as added Nov. 18, 1988, Pub. L. 100–690, title VIII, § 8001(a)(3), 102 Stat. 4518, provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'Alcoholic Beverage Labeling Act of 1988'.''

TRANSFER OF FUNCTIONS

Federal Alcohol Administration and offices of members and Administrator thereof were abolished and their functions directed to be administered under direction and supervision of Secretary of Treasury through Bureau of Internal Revenue [now Internal Revenue Service] in Department of Treasury, by Reorg. Plan No. III of 1940, § 2, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1232, set out in the Appendix to Title 5, Government Organization and Employees. See also, sections 8 and 9 of said plan for provisions relating to transfer of records, property, personnel, and funds. Section 2 of Reorg. Plan No. III of 1940 was repealed as executed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085, the first section of which enacted Title 31, Money and Finance. Department of the Treasury Order 221 of July 1, 1972, established the Bureau of Alcohol, Tobacco and Firearms and transferred to it the alcohol and functions of the Internal Revenue Service.

§ 202. General provisions

(a) to (d) Omitted

(e) Expenditures

Appropriations to carry out powers and duties of the Secretary of the Treasury under this chapter shall be available for expenditure, among other purposes, for personal services and rent in the District of Columbia and elsewhere, expenses for travel and subsistence, for law books, books of reference, magazines, periodicals, and newspapers, for contract stenographic reporting services, for subscriptions for library services, for purchase of samples for analysis or use as evidence, and for holding conferences of State and Federal liquor control officials.

(f) Utilization of other governmental agencies

The Secretary of the Treasury may, with the consent of the department or agency affected, utilize the services of any department or other agency of the Government to the extent necessary to carry out his powers and duties under this chapter and authorize officers and employees thereof to act as his agents.

(g) Applicability of other laws

The provisions including penalties, of sections 49 and 50 of title 15, shall be applicable to the jurisdiction, powers, and duties of the Secretary of the Treasury under this chapter, and to any person (whether or not a corporation) subject to the provisions of laws administered by the Secretary of the Treasury under this chapter.

(h) Reports to Secretary

The Secretary of the Treasury is authorized to require, in such manner and form as he shall prescribe, such reports as are necessary to carry out his powers and duties under this chapter.

(Aug. 29, 1935, ch. 814, title I, § 102, formerly § 2, 49 Stat. 977; 1940 Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Aug. 7, 1946, ch. 770, § 1(46), 60 Stat. 870; renumbered title I, § 102, Pub. L. 100–690, title VIII, § 8001(a)(1), (2), Nov. 18, 1988, 102 Stat. 4517.)

CODIFICATION

Subsections (a) to (d) provided for the creation of a Federal Alcohol Administration as a division of the Treasury Department. By act June 26, 1936, ch. 830, title V, 49 Stat. 1964, however, those subsections were repealed and a new Administration created as an independent agency. The repealing act was to be effective when the new administrators authorized thereby were appointed. While the officers so authorized were never appointed and the repeal therefore never became effective, subsections (a) to (d) have been omitted in view of Reorg. Plan No. III of 1940, set out in the Appendix to Title 5, Government Organization and Employees, which abolished the Administration and transferred its functions to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue [now Internal Revenue Service]. See, also, Transfer of Functions note set out under section 201 of this title.

AMENDMENTS

1946—Subsec. (i). Act Aug. 7, 1946, struck out subsec. (i) which related to reports to Congress by the Secretary of the Treasury with respect to the administration of the functions charged to the Secretary under this chapter.

§§ 202a, 202b. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 649

Section 202a, act June 26, 1936, ch. 830, title V, § 501, 49 Stat. 1964, established the Federal Alcohol Administration, and provided for appointment, duties, and pay of its employees.

Section 202b, act June 26, 1936, ch. 830, title V, § 502, 49 Stat. 1964, provided for appointment, pay, tenure, and powers of members of the Federal Alcohol Administration.

§ 202c. Omitted

CODIFICATION

Section, act June 26, 1936, ch. 830, title V, § 503, 49 Stat. 1965, which provided for repeal of former laws, was to have taken effect when a majority of the members authorized to be appointed took office under section 202b of this title. The members, however, were never appointed.

§ 203. Unlawful businesses without permit; application to State agency

In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and

malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

(b) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

(c) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect July 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this subchapter.

(Aug. 29, 1935, ch. 814, title I, § 103, formerly § 3, 49 Stat. 978; Feb. 29, 1936, ch. 105, § 1, 49 Stat. 1152; 1940 Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; renumbered title I, § 103, and amended Pub. L. 100–690, title VIII, § 8001(a)(1), (2), (b)(2), Nov. 18, 1988, 102 Stat. 4517, 4521.)

CODIFICATION

In the original, subsections (a) and (b) of this section contained a final paragraph which provided as follows: ''This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this title takes office.''

AMENDMENTS

1988—Pub. L. 100–690, § 8001(b)(2), substituted ''subchapter'' for ''chapter'' wherever appearing.

1936—Subsec. (c). Act Feb. 29, 1936, extended the effective date from March 1, 1936, to July 1, 1936.

TRANSFER OF FUNCTIONS

''Secretary of the Treasury'' was substituted in text for ''Administrator'', meaning the Administrator of the Federal Alcohol Administration, pursuant to Reorg. Plan No. III of 1940, see note set out under section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 207 of this title; title 26 section 5171.

§ 204. Permits

(a) Who entitled thereto

The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Secretary of the Treasury finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to the date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) Refusal of permit; hearing

If upon examination of any application for a basic permit the Secretary of the Treasury has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the Secretary of the Treasury, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

(c) Form of application

The Secretary of the Treasury shall prescribe the manner and form of all applications for basic permits (including the facts to be set forth therein) and the form of all basic permits, and shall specify in any basic permit the authority conferred by the permit and the conditions thereof in accordance with the provisions of this subchapter. To the extent deemed necessary by the Secretary of the Treasury for the efficient administration of this subchapter, separate applications and permits shall be required by the Secretary of the Treasury with respect to distilled spirits, wine, and malt beverages, and the various classes thereof, and with respect to the various classes of persons entitled to permits hereunder. The issuance of a basic permit under this subchapter shall not operate to deprive the United States of its remedy for any violation of law.

(d) Conditions

A basic permit shall be conditioned upon compliance with the requirements of section 205 of

this title (relating to unfair competition and unlawful practices) and of section 206 of this title (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) Revocation, suspension, and annulment

A basic permit shall by order of the Secretary of the Treasury, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Secretary of the Treasury deems appropriate, if the Secretary finds that the permittee has wilfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Secretary finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Secretary finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

(f) Service of orders

Orders of the Secretary with respect to any denial of application, suspension, revocation, annulment, or other proceedings, shall be served (1) in person by any officer or employee of the Secretary designated by him or any internal revenue or customs officer authorized by the Secretary for the purpose, or (2) by mailing the order by registered mail, addressed to the applicant or respondent at his last known address in the records of the Secretary.

(g) Duration

A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold, or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Secretary of the Treasury.

(h) Appeal; procedure

An appeal may be taken by the permittee or applicant for a permit from any order of the Secretary of the Treasury denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary or unless there were reasonable grounds for failure so to do. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Secretary's order.

(i) Limitation

No proceeding for the suspension or revocation of a basic permit for violation of any condition thereof relating to compliance with Federal law shall be instituted by the Secretary more than eighteen months after conviction of the violation of Federal law, or, if no conviction has been had, more than three years after the violation occurred; and no basic permit shall be suspended or revoked for a violation of any such condition thereof if the alleged violation of Federal law has been compromised by any officer of the Government authorized to compromise such violation.

(Aug. 29, 1935, ch. 814, title I, §104, formerly §4, 49 Stat. 978; 1940 Reorg. Plan No. III, §2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §14, Aug. 28, 1958, 72 Stat. 946; renumbered title I, §104, and amended Pub. L. 100–690, title VIII, §8001(a)(1), (2), (b)(2), (3), Nov. 18, 1988, 102 Stat. 4517, 4521.)

CODIFICATION

In subsec. (h) of this section, ''section 1254 of title 28'' was substituted for ''sections 239 and 240 of the Judicial

Code, as amended'', on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–690, § 8001(b)(2), substituted ''subchapter'' for ''chapter'' wherever appearing.

Subsec. (d). Pub. L. 100–690, § 8001(b)(3), made technical amendment to references to sections 205 and 206 of this title to reflect renumbering of corresponding sections of original act.

1958—Subsec. (h). Pub. L. 85–791, in third sentence, substituted ''transmitted by the clerk of the court to the Secretary, or'' for ''served upon, the Secretary, or upon any'', substituted ''file in the court'' for ''certify and file in the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and in fourth sentence, substituted ''petition'' for ''transcript''.

CHANGE OF NAME

''Court of appeals'' was substituted for ''circuit court of appeals'' pursuant to act June 25, 1948, as amended by act May 24, 1949.

TRANSFER OF FUNCTIONS

''Secretary of the Treasury'' and ''Secretary'' were substituted in subsecs. (a) to (c) and (e) to (i) for ''Administrator'', meaning the Administrator of the Federal Alcohol Administration, pursuant to Reorg. Plan No. III of 1940, see note set out under section 201 of this title.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

Section 35 of Pub. L. 85–791 provided that: ''This Act shall not be construed to repeal or modify any provision of the Administrative Procedure Act [subchapter II of chapter 5, and chapter 7, of Title 5, Government Organization and Employees].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 5171.

§ 205. Unfair competition and unlawful practices

It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate:

(a) Exclusive outlet

To require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce; or

(b) "Tied house"

To induce through any of the following means, any retailer, engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to such exceptions as the Secretary of the Treasury shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Secretary of the Treasury and prescribed by regulations by him; or (7) by requiring the retailer to take and dispose of a certain quota of any of such products; or

(c) Commercial bribery

To induce through any of the following means, any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means, or any of them, to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: (1) By commercial bribery; or (2) by offering or giving any bonus, premium, or compensation to any officer, or employee, or representative of the trade buyer; or

(d) Consignment sales

To sell, offer for sale, or contract to sell to any trade buyer engaged in the sale of distilled spirits, wine, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the

privilege of return or on any basis otherwise than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or his agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages—if such sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if such person or trade buyer engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products or if the direct effect of such sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce: *Provided*, That this subsection shall not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold; or

(e) Labeling

To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Secretary of the Treasury, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to the use by any person of a trade or brand name used by him or his predecessor in interest prior to August 29, 1935; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further*, That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent and Trademark Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, (1) no bottler of distilled spirits, no producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, and no brewer or wholesaler of malt beverages shall bottle, and (2) no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, respectively, after such date as the Secretary of the Treasury fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice), unless, upon application to the Secretary of the Treasury, he has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Secretary in such manner and form as he shall by regulations pre-

scribe: *Provided*, That any such bottler of distilled spirits, or producer, blender, or wholesaler of wine, or proprietor of a bonded wine storeroom, or brewer or wholesaler of malt beverages shall be exempt from the requirements of this subsection if, upon application to the Secretary, he shows to the satisfaction of the Secretary that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue are authorized and directed to withhold the release of distilled spirits from the bottling plant unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Secretary; and customs officers are authorized and directed to withhold the release from customs custody of distilled spirits, wine, and malt beverages, unless such certificates have been obtained. The District Courts of the United States, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Secretary upon any application under this subsection; or

(f) Advertising

To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Secretary of the Treasury, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific or irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except the statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages and wines are prohibited), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

The provisions of subsections (a), (b), and (c) of this section shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

In the case of malt beverages, the provisions of subsections (a), (b), (c), and (d) of this section shall apply to transactions between a retailer or trade buyer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes similar requirements with respect to similar transactions between a retailer or trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be. In the case of malt beverages, the provisions of this subsection and subsection (e) of this section shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, or the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling or advertising, as the case may be, of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

The Secretary of the Treasury shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing regulations to carry out the provisions of this section.

(Aug. 29, 1935, ch. 814, title I, § 105, formerly § 5, 49 Stat. 981; Feb. 29, 1936, ch. 105, § 2, 49 Stat. 1152; June 25, 1936, ch. 804, 49 Stat. 1921; June 26, 1936, ch. 830, title V, §§ 505, 506, 49 Stat. 1965, 1966; 1940 Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; Apr. 20, 1942, ch. 244, § 1(h), 56 Stat. 219; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949; renumbered title I, § 105, and amended Pub. L. 100–690, title VIII, § 8001(a)(1), (2), (b)(2), Nov. 18, 1988, 102 Stat. 4517, 4521.)

CODIFICATION

As originally enacted subsec. (e) of this section contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the

District of Columbia'' for ''district court of the United States for the District of Columbia''. However, the words ''United States District Court for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which states that ''the District of Columbia constitutes one judicial district''.

An amendment to the second proviso of subsec. (e) of this title was contained in act June 26, 1936, ch. 830, title V, §506, 49 Stat. 1965. The amendment was to have taken effect when a majority of the members of the Federal Alcohol Administration authorized to be appointed under section 202b of this title took office. However, the members were never appointed and section 202b of this title was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 649.

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–690, §8001(b)(2), substituted ''the date of the enactment of this title'' for ''the date of the enactment of this Act'', which had been translated editorially as ''August 29, 1935'', thereby requiring no change in text.

1942—Subsec. (f)(2). Act Apr. 20, 1942, substituted ''beverages and wines are prohibited'' for ''beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume,''.

1936—Subsec. (e). Act Feb. 29, 1936, substituted ''August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages'' for ''March 1, 1936,''.

Subsec. (e). Act June 26, 1936, amended subsec. (e) generally.

CHANGE OF NAME

References to the Patent Office have been changed to the Patent and Trademark Office pursuant to Pub. L. 93–596, §3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

TRANSFER OF FUNCTIONS

''Secretary of the Treasury'' and ''Secretary'' were substituted in subsecs. (b), (e), and (f) for ''Administrator'', meaning the Administrator of the Federal Alcohol Administration, pursuant to Reorg. Plan No. III of 1940, see note set out under section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 204, 207 of this title; title 26 section 5206.

§206. Bulk sales and bottling

(a) Offenses

It shall be unlawful for any person—

(1) To sell or offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk except, under regulations of the Secretary of the Treasury, for export or to the following, or to import distilled spirits in bulk except, under such regulations, for sale to or for use by the following: A distiller, rectifier of distilled spirits, person operating a bonded warehouse qualified under the internal-revenue laws or a class 8 bonded warehouse qualified under the customs laws, a winemaker for the fortification of wines, a proprietor of an industrial alcohol plant, or an agency of the United States or any State or political subdivision thereof.

(2) To sell or offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk unless such warehouse receipts require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(3) To bottle distilled spirits unless the bottler is a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Penalty

Any person who violates the requirements of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both, and shall forfeit to the United States all distilled spirits with respect to which the violation occurs and the containers thereof.

(c) "In bulk" defined

The term ''in bulk'' mean in containers having a capacity in excess of one wine gallon.

(Aug. 29, 1935, ch. 814, title I, §106, formerly §6, 49 Stat. 985; 1940 Reorg. Plan No. III, §2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; renumbered title I, §106, Pub. L. 100–690, title VIII, §8001(a)(1), (2), Nov. 18, 1988, 102 Stat. 4517.)

REFERENCES IN TEXT

The internal-revenue laws, referred to in subsec. (a), are classified generally to Title 26, Internal Revenue Code.

The customs laws, referred to in subsec. (a), are classified generally to Title 19, Customs Duties.

TRANSFER OF FUNCTIONS

''Secretary of the Treasury'' was substituted in subsec. (a)(1) for ''Administrator'', meaning the Administrator of the Federal Alcohol Administration, pursuant to Reorg. Plan No. III of 1940, see note set out under section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 204 of this title.

§207. Penalties; jurisdiction; compromise of liability

The District Courts of the United States, and the United States court for any Territory, of the District where the offense is committed or threatened or of which the offender is an inhabitant or has his principal place of business, are vested with jurisdiction of any suit brought by the Attorney General in the name of the United States, to prevent and restrain violations of any of the provisions of this subchapter. Any person violating any of the provisions of section 203 or 205 of this title shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 for each offense. The Secretary of the Treasury is authorized, with respect to any violation of this subchapter, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation, that the United States may, on its own

motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation.

(Aug. 29, 1935, ch. 814, title I, § 107, formerly § 7, 49 Stat. 985; June 25, 1936, ch. 804, 49 Stat. 1921; 1940 Reorg. Plan No. III, § 2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; 1940 Reorg. Plan No. IV, § 2, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; renumbered title I, § 107, and amended Pub. L. 100–690, title VIII, § 8001(a)(1), (2), (b)(2), (4), Nov. 18, 1988, 102 Stat. 4517, 4521.)

CODIFICATION

As originally enacted this section contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia''. However, the words ''United States District Court for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which states that ''the District of Columbia constitutes one judicial district''.

AMENDMENTS

1988—Pub. L. 100–690, § 8001(b)(2), substituted ''subchapter'' for ''chapter'' in two places.

Pub. L. 100–690, § 8001(b)(4), made technical amendment to references to sections 203 and 205 of this title to reflect renumbering of corresponding sections of original act.

TRANSFER OF FUNCTIONS

''The Secretary of the Treasury is authorized'' and ''Secretary'' were substituted for ''Subject to the approval of the Attorney General, the Administrator is authorized'' and ''Administrator'', meaning the Administrator of the Federal Alcohol Administration, respectively, pursuant to Reorg. Plan No. IV of 1940, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the function of approving compromises made in accordance with this section from the Attorney General to the Secretary of the Treasury, to be exercised by him or under his direction and supervision by officer in the Department of the Treasury designated by him, and Reorg. Plan No. III of 1940, set out in the Appendix to Title V, which transferred the functions of the Administrator of the Federal Alcohol Administration to the Secretary of the Treasury. Reorg. Plan No. IV of 1940, in addition, contained the following proviso: ''*Provided*, That exclusive jurisdiction to compromise cases arising under the Federal Alcohol Administration Act which are pending before the courts or which have been or may hereafter be referred to the Department of Justice for action shall be vested in the Attorney General, and may be exercised by him or by any officer in the Department of Justice designated by him.'' See also note set out under section 201 of this title.

§ 208. Interlocking directorates

(a) Offenses

Except as provided in subsection (b) of this section, it shall be unlawful for any individual to take office, after August 29, 1935, as an officer or director of any company, if his doing so would make him an officer or director of more than one company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of any such company and of a company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, or of more than one company which is an affiliate of any company engaged in business as a distiller, rectifier, or blender of distilled spirits, unless, prior to taking such office, application made by such individual to the Secretary of the Treasury has been granted and after due showing has been made to him that service by such individual as officer or director of all the foregoing companies of which he is an officer or director together with service in the company with respect to which application is made will not substantially restrain or prevent competition in interstate or foreign commerce in distilled spirits. The Secretary of the Treasury shall, by order, grant or deny such application on the basis of the proof submitted to him and his finding thereon. The District Courts of the United States, and the United States court for any Territory shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the Secretary upon any application under this subsection.

(b) Conditions of lawfully taking office

An individual may, without regard to the provisions of subsection (a) of this section, take office as an officer or director of a company described in said subsection while holding the position of officer or director of any other such company if such companies are affiliates at the time of his taking office and if—

(1) Such companies are affiliates on August 29, 1935; or

(2) Each of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State; or

(3) One or more such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the laws of such State, and the other one or more of such companies not so organized, is in existence on August 29, 1935; or

(4) One or more of such companies has been organized under the law of a State to comply with a requirement thereof under which, as a condition of doing business in such State, such company must be organized under the law of such State, and not more than one of such companies is a company which has not been so organized and which has been organized after August 29, 1935.

(c) "Company" defined

As used in this section, the term ''company'' means a corporation, joint stock company, business trust, or association, but does not include any agency of a State or political subdivision thereof or any officer or employee of any such agency.

(d) Penalty

Any individual taking office in violation of this section shall be punished by a fine of not exceeding $1,000.

(Aug. 29, 1935, ch. 814, title I, §108, formerly §8, 49 Stat. 986; June 25, 1936, ch. 804, 49 Stat. 1921; 1940 Reorg. Plan No. III, §2, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; renumbered title I, §108, and amended Pub. L. 100–690, title VIII, §8001(a)(1), (2), (b)(2), Nov. 18, 1988, 102 Stat. 4517, 4521.)

CODIFICATION

As originally enacted subsec. (a) of this section contained a reference to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia''. However, the words ''United States District Court for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which states that ''the District of Columbia constitutes one judicial district''.

AMENDMENTS

1988—Subsecs. (a), (b)(1), (3), (4). Pub. L. 100–690, §8001(b)(2), substituted ''the date of the enactment of this title'' for ''the date of the enactment of this Act'', which had been translated editorially as ''August 29, 1935'', thereby requiring no change in text.

TRANSFER OF FUNCTIONS

''Secretary of the Treasury'' and ''Secretary'' were substituted for ''Administrator'', meaning the Administrator of the Federal Alcohol Administration, pursuant to Reorg. Plan No. III of 1940, see note set out under section 201 of this title.

§§ 209, 210. Omitted

CODIFICATION

Section 209, acts Aug. 29, 1935, ch. 814, title I, §109, formerly §9, 49 Stat. 987; June 26, 1936, ch. 830, title V, §507, 49 Stat. 1966; renumbered title I, §109, Nov. 18, 1988, Pub. L. 100–690, title VIII, §8001(a)(1), (2), 102 Stat. 4517, which related to disposal of forfeited alcoholic beverages, was superseded. See section 5688 of Title 26, Internal Revenue Code.

Section 210, act Aug. 29, 1935, ch. 814, title I, §110, formerly §10, 49 Stat. 987; renumbered title I, §110, Nov. 18, 1988, Pub. L. 100–690, title VIII, §8001(a)(1), (2), 102 Stat. 4517, abolished the Federal Alcohol Control Administration established by Ex. Ord. No. 6474, Dec. 4, 1933; Ex. Ord. No. 6576, Jan. 25, 1934; Ex. Ord. No. 6683, Apr. 19, 1934; Ex. Ord. No. 6788, June 30, 1934; Ex. Ord. No. 6829, Aug. 21, 1934, issued under provisions of section 702 of Title 15, Commerce and Trade.

§211. Miscellaneous provisions

(a) Definitions

As used in this subchapter—

(1) The term ''United States'' means the several States and Territories and the District of Columbia; the term ''State'' includes a Territory and the District of Columbia; and the term ''Territory'' means Alaska, Hawaii, and Puerto Rico.

(2) The term ''interstate or foreign commerce'' means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(3) The term ''person'' means individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term ''trade buyer'' means any person who is a wholesaler or retailer.

(4) The term ''affiliate'' means any one of two or more persons if one of such persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other or others of such persons; and any one of two or more persons subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(5) The term ''distilled spirits'' means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(6) The term ''wine'' means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918 as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

(7) The term ''malt beverage'' means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, or malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(8) The term ''bottle'' means any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.

(b) Right to amend or repeal

The right to amend or repeal the provisions of this subchapter is expressly reserved.

(c) Separability

If any provision of this subchapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Aug. 29, 1935, ch. 814, title I, §117, formerly §17, 49 Stat. 989; 1940 Reorg. Plan No. III, §2, eff. June

30, 1940, 5 F.R. 2108, 54 Stat. 1232; renumbered title I, § 117, and amended Pub. L. 100–690, title VIII, § 8001(a)(1), (2), (b)(2), Nov. 18, 1988, 102 Stat. 4517, 4521.)

REFERENCES IN TEXT

The Revenue Act of 1918, referred to in subsec. (a)(6), is act Feb. 24, 1919, ch. 18, 40 Stat. 1057. Sections 610 and 617 of the Revenue Act of 1918, relating to the definition of ''wine'', were originally classified to sections 441 and 444 of former Title 26, and were thereafter included as sections 3036, 3044 and 3045 of the Internal Revenue Code of 1939. Provisions of the Internal Revenue Code of 1986 relating to the definition and classification of wine appear in sections 5373(a), 5381 to 5388, and 5392 of Title 26, Internal Revenue Code.

CODIFICATION

As originally enacted subsection (a)(1) of this section defined the term ''Administrator'' whose appointment was authorized under section 202 of this title. This definition is no longer effective since Reorg. Plan No. III of 1940, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Federal Alcohol Administration and provided that its functions, funds, personnel, and property should be transferred to the Secretary of the Treasury to be administered through the Bureau of Internal Revenue [now Internal Revenue Service]. See, also, Transfer of Functions note set out under section 201 of this title.

AMENDMENTS

1988—Pub. L. 100–690, § 8001(b)(2), substituted ''this subchapter'' for ''this chapter'' wherever appearing.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 5392.

§ 212. Omitted

CODIFICATION

Section, act June 26, 1936, ch. 830, title V, § 504, 49 Stat. 1965, proposed a transfer of the appropriations authorized for the Federal Alcohol Administration created by section 202 of this title to the Administration created by section 202b of this title. It was to have taken effect when a majority of the members authorized to be appointed under section 202b of this title took office. The members, however, were never appointed.

SUBCHAPTER II—ALCOHOLIC BEVERAGE LABELING

§ 213. Declaration of policy and purpose

The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce. The Congress finds that requiring such reminders on all containers of alcoholic beverages is appropriate and necessary in view of the substantial role of the Federal Government in promoting the health and safety of the Nation's population. It is therefore the policy of the Congress, and the purpose of this subchapter, to exercise the full reach of the Federal Government's constitutional powers in order to establish a comprehensive Federal program, in connection with the manufacture and sale of alcoholic beverages in or affecting interstate commerce, to deal with the provision of warning or other information with respect to any relationship between the consumption or abuse of alcoholic beverages and health, so that—

(1) the public may be adequately reminded about any health hazards that may be associated with the consumption or abuse of alcoholic beverages through a nationally uniform, nonconfusing warning notice on each container of such beverages; and

(2) commerce and the national economy may be—

(A) protected to the maximum extent consistent with this declared policy,

(B) not impeded by diverse, nonuniform, and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health, and

(C) protected from the adverse effects that would result from a noncomprehensive program covering alcoholic beverage containers sold in interstate commerce, but not alcoholic beverage containers manufactured and sold within a single State.

(Aug. 29, 1935, ch. 814, title II, § 202, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4518.)

EFFECTIVE DATE

Section 210 of title II of act Aug. 29, 1935, as added Nov. 18, 1988, Pub. L. 100–690, title VIII, § 8001(a)(3), 102 Stat. 4521, provided that: ''Except as provided in section 204(a) [27 U.S.C. 215(a)], this title [enacting this subchapter] shall take effect on the date of its enactment into law [Nov. 18, 1988].''

SHORT TITLE

For short title of title II of act Aug. 29, 1935, which is classified to this subchapter, as the ''Alcoholic Beverage Labeling Act of 1988'', see section 201 of act Aug. 29, 1935, set out as a note under section 201 of this title.

§ 214. Definitions

As used in this subchapter—

(1) The term ''alcoholic beverage'' includes any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.

(2) The term ''bottle'' means to fill a container with an alcoholic beverage and to seal such container.

(3) The term ''bottler'' means a person who bottles an alcoholic beverage.

(4) The term ''commerce'' means—

(A) commerce between any State, the District of Columbia, the Commonwealth of

Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

(C) commerce wholly within the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

(5) The term ''container'' means the innermost sealed container irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

(6) The term ''health'' includes, but is not limited to, the prevention of accidents.

(7) The term ''person'' means an individual, partnership, joint stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, any State agency, or any officer or employee thereof.

(8) The term[1] ''sale'' and ''distribution'' include sampling or any other distribution not for sale.

(9) The term ''Secretary'' means the Secretary of the Treasury.

(10) The term ''State'' includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

(11) The term ''State law'' includes State statutes, regulations, and principles and rules having the force of law.

(12) The term ''United States'', when used in geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

(Aug. 29, 1935, ch. 814, title II, § 203, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4518.)

§ 215. Labeling requirement

(a) Statement required on container

On and after the expiration of the 12-month period following November 18, 1988, it shall be unlawful for any person to manufacture, import, or bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the following statement:

"GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.''.

(b) Conspicuous and prominent location of statement on container

The statement required by subsection (a) of this section shall be located in a conspicuous and prominent place on the container of such beverage, as determined by the Secretary, shall be in type of a size determined by the Secretary, and shall appear on a contrasting background. The Secretary shall make such determinations within 90 days after November 18, 1988.

(c) Alcoholic beverages intended for export; beverages intended for Armed Forces of the United States

Subsection (a) of this section shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States: *Provided*, That this exemption shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

(d) Powers of Secretary; rules and regulations; consultation and coordination with Surgeon General

The Secretary shall—

(1) have the power to—

(A) ensure the enforcement of the provisions of this subchapter, and

(B) issue regulations to carry out this subchapter, and

(2) consult and coordinate the health awareness efforts of the labeling requirements of this subchapter with the Surgeon General of the United States.

(Aug. 29, 1935, ch. 814, title II, § 204, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4519.)

REFERENCES IN TEXT

The internal revenue laws of the United States, referred to in subsec. (c), are classified generally to Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 217 of this title.

§ 216. Preemption

No statement relating to alcoholic beverages and health, other than the statement required by section 215 of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or

[1] So in original. Probably should be ''terms''.

other package, irrespective of the material from which made, that contains such a container.

(Aug. 29, 1935, ch. 814, title II, § 205, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4520.)

§ 217. Report to Congress

If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 24-month period following November 18, 1988, the Secretary finds that available scientific information would justify a change in, addition to, or deletion of the statement, or any part thereof, set forth in section 215(a) of this title, the Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this subchapter as the Secretary determines to be appropriate and in the public interest.

(Aug. 29, 1935, ch. 814, title II, § 206, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4520.)

§ 218. Civil penalties

Any person who violates the provisions of this subchapter shall be subject to a civil penalty of not more than $10,000, and each day shall constitute a separate offense.

(Aug. 29, 1935, ch. 814, title II, § 207, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4520.)

§ 219. Injunction proceedings; compromise of liability

(a) The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this subchapter upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

(b) The Secretary is authorized, with respect to any violation of this subchapter, to compromise the liability arising with respect to such violation upon payment of a sum for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts.

(Aug. 29, 1935, ch. 814, title II, § 208, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4520.)

§ 219a. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this subchapter and this chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Aug. 29, 1935, ch. 814, title II, § 209, as added Pub. L. 100–690, title VIII, § 8001(a)(3), Nov. 18, 1988, 102 Stat. 4521.)

CHAPTER 9—LIQUOR ENFORCEMENT ACT OF 1936

§§ 221 to 228. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 221, act June 25, 1936, ch. 815, § 1, 49 Stat. 1928, related to citation of this chapter.

Section 222, act June 25, 1936, ch. 815, § 2, 49 Stat. 1928, related to definitions. See sections 1262 and 3615 of Title 18, Crimes and Criminal Procedure.

Section 223, act June 25, 1936, ch. 815, § 3, 49 Stat. 1928, related to transportation of liquor into States where sale is prohibited. See section 1262 of Title 18.

Section 224, act June 25, 1936, ch. 815, § 4, 49 Stat. 1928, related to searches and seizures. See section 3615 of Title 18.

Section 225, act June 25, 1936, ch. 815, § 5, 49 Stat. 1929, related to enforcement of this chapter. See section 1261 of Title 18.

Section 226, act June 25, 1936, ch. 815, § 10, 49 Stat. 1929, related to effect of this chapter on other laws.

Section 227, act June 25, 1936, ch. 815, § 11, 49 Stat. 1930, related to separability provisions of this chapter.

Section 228, act June 25, 1936, ch. 815, § 12, 49 Stat. 1930, related to effective date of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal of sections 221 to 228 effective Sept. 1, 1948, see section 20 of act June 25, 1948.