

In subsection (b)(1) of this section, the phrase "in the quantity present" is added to conform to the comparable provision concerning adulterated food under § 4-207(b)(1) of this subtitle. Since, in practice, the test to be applied is the same, the Commission to Revise the Annotated Code concluded that the same language should be used in both instances.

In subsection (b)(1)(i) of this section, the reference to the conditions of use "that are instructed, recommended, or suggested" in the labeling or advertisement is substituted for the reference to the conditions of use "prescribed" for clarity.

In subsection (b)(5) of this section, the reference to a finding under § 4-239 of this subtitle is substituted for the reference to the Federal Act. While, ultimately, the determination of whether a color additive is to be considered safe in this State is most apt to be made under the Federal Act, that determination may be made by the Secretary under this subtitle. Section 4-239 of this subtitle sets forth the process by which a determination is made under either the Federal Act or this subtitle.

#### 4-231. MISBRANDED COSMETICS.

##### (A) IN GENERAL.

FOR PURPOSES OF THIS SUBTITLE, A COSMETIC IS CONSIDERED MISBRANDED IF:

(1) ITS LABELING OR PACKAGING IS FALSE OR MISLEADING IN ANY WAY;

(2) IT IS IN PACKAGE FORM AND IT DOES NOT BEAR A LABEL THAT CONTAINS THE NAME AND PLACE OF BUSINESS OF THE MANUFACTURER, PACKER, OR DISTRIBUTOR;

(3) ANY WORD, STATEMENT, OR OTHER INFORMATION REQUIRED UNDER THIS SUBTITLE TO APPEAR ON ITS LABELING IS NOT:

(I) PLACED PROMINENTLY ON THE LABELING SO THAT IT IS CONSPICUOUS, AS COMPARED WITH OTHER WORDS, STATEMENTS, DESIGNS, OR SYMBOLS, ON THE LABELING; AND

(II) EXPRESSED IN TERMS LIKELY TO BE READ AND UNDERSTOOD BY THE ORDINARY INDIVIDUAL UNDER CUSTOMARY CONDITIONS OF PURCHASE AND USE; OR