

ANY REPRESENTATION MADE IN THE LABELING OF A DRUG OR DEVICE THAT WOULD BE A FALSE ADVERTISEMENT UNDER THIS SECTION IF IT APPEARED ELSEWHERE, IS A MISBRANDING OF THE DRUG OR DEVICE UNDER § 4-217 OF THIS SUBTITLE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Article 43, §§ 189B(1)(b) and 191A(b).

In subsection (c) of this section, references to a "device" are added. Since all of the other provisions of former Article 43, § 191A(b) addressed both drugs and devices, it appears that the omission of "device" in the former law was unintentional.

Subsection (e) of this section is included to state explicitly the intended relationship of the false advertisement provisions of this section to the provisions on misbranded drugs and devices under § 4-217 of this subtitle. A clarification was necessary in light of the definition of "advertisement" under § 4-101 of this subtitle, which expressly excludes from the meaning of "advertisement" any representation that is published in the labeling of a product.

4-249. GENERAL POWERS TO INSPECT; TAKING OF SAMPLES.

(A) GENERAL INSPECTIONS.

(1) FOR THE PURPOSE OF ENFORCING THIS SUBTITLE AND AFTER PRESENTATION OF APPROPRIATE CREDENTIALS TO THE OWNER, OPERATOR, OR AGENT IN CHARGE, THE SECRETARY OR A REPRESENTATIVE OF THE SECRETARY MAY ENTER AND INSPECT AT ANY REASONABLE TIME:

(I) ANY FACTORY, WAREHOUSE, OR OTHER ESTABLISHMENT IN WHICH ANY FOOD, DRUG, DEVICE, OR COSMETIC IS MANUFACTURED, PROCESSED, PACKED, OR HELD FOR A COMMERCIAL PURPOSE; AND

(II) ANY VEHICLE USED TO TRANSPORT OR HOLD ANY FOOD, DRUG, DEVICE, OR COSMETIC FOR A COMMERCIAL PURPOSE.

(2) AN INSPECTION CARRIED OUT UNDER THIS SECTION MAY INCLUDE AN INSPECTION OF THE ESTABLISHMENT OR VEHICLE ITSELF AND OF ANY PERTINENT EQUIPMENT, LABELING, AND FINISHED AND UNFINISHED PRODUCTS.

(3) AN INSPECTION CARRIED OUT UNDER THIS SECTION SHALL BE COMPLETED WITH REASONABLE PROMPTNESS.

(B) EXTENDED INSPECTIONS INVOLVING PRESCRIPTION DRUGS.