

INSTRUCTIONS:
NOTICE OF FINAL ACTION - Adopted as Proposed (AAP) /
Adopted as Amended (AAA) / Withdraw (2015)

FORM IS IN BOLD / INSTRUCTIONS ARE IN ITALICS AND UNBOLDED

NOTICE OF FINAL ACTION - ADOPTED AS PROPOSED (AAP)
(no changes to Proposal as printed)

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle __ *(INSERT 2 digit number and name of Subtitle)*

10. __. __. __ *(INSERT Subtitle number and chapter number and name of Chapter)*

Authority: _____ Article, §__-__,
Annotated Code of Maryland

HEADING

TITLE / SUBTITLE / CHAPTER / AUTHORITY should be copied directly from Notice of Proposed Action as printed in the Maryland Register.

Notice of Final Action

On *leave blank* , the Secretary of Health adopted *new/amendments to/the repeal of/the recodification of/amendments to and the recodification of* Regulation(s) xx under COMAR *codification number and name of chapter*. This action, which was proposed for adoption in *vol#:issue# Md. R. page# (date)*, has been adopted as proposed.

Effective Date:

ROBERT R. NEALL
Secretary of Health

Leave the date at the beginning blank. ORPC will fill this in after the Secretary has signed the Notice of Final Action.

The Notice of Final Action describes what the agency is doing. The Notice of Final Action should be drafted to conform with the Notice of Proposed Action as it appeared in the Maryland Register. The Division of State Documents may have altered the format of the Notice of Proposed Action during its editorial review. Please do not rely on the Proposing Unit's original draft version.

It is important that the agency not omit reference to any regulation on which action was proposed. Failure to list a regulation in the Notice of Final Action means that the regulation is not adopted. If an agency does want to take action on a regulation that was proposed, that fact must be stated in a second sentence in the Notice of Final Action.

In second sentence insert information from the Maryland Register in which the proposal was printed.

Leave the Effective Date blank UNLESS the effective date should be LATER than the usual 10 days after final publication.

NOTICE OF FINAL ACTION - ADOPTED AS AMENDED (AAA) (with non-substantive changes to Proposal as printed)

Changes at the Time of Final Action

When the Assistant Attorney General determines that changes requested by the Proposing Unit to the published Proposal are non-substantive in nature, these changes may be made at the time of final action.

A. General Information and Authority.

Since 1986, an assistant attorney general reviewing regulations must certify that changes to a proposal made at the time of final action do not differ substantively from the proposal. In State Government Article, §10-101, "substantively" is defined as follows:

"Substantively" means in a manner substantially affecting the rights, duties, or obligations of:

- (1) a member of a regulated group or profession; or*
- (2) a member of the public.*

The Attorney General Opinion which describes this analysis can be found at Opinion No. 90-003 (January 22, 1990).

State Government Article, §10-113, Annotated Code of Maryland, governs these certifications and reads as follows:

(a) If a unit wishes to change the text of a proposed regulation so that any part of the text differs substantively from the text previously published in the Register, the unit may not adopt the proposed regulation unless it is proposed anew and adopted in accordance with the requirements of §§10-111 and 10-112 of this subtitle.

(b) If the regulation is proposed anew, the changes in the text shall be shown with the symbols that the Administrator requires.

(c) (1) The Administrator shall refuse to publish the notice of adoption of a regulation that

differs from the text previously published unless the notice is accompanied by a certification from the Attorney General that the provisions of subsections (a) and (b) of this section are not applicable.

(2) The certification shall:

(i) be prepared in the form and according to guidelines specified by the Administrator;

(ii) contain a description of the nature of each change and the basis for the conclusion; and

(iii) be published in the Register as part of the notice of adoption.

B. Format.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:
Regulation . _ _: *(insert AAG's justification)*

SHOW CUT AND PASTE FROM Md.R. using:

1) [[double-bolded brackets (NOT IN ITALICS!)]] to indicate deletions;

2) Single underline and italics to indicate new text; and

3) (proposed text unchanged) for sections not changed from Maryland Register proposed text.

Attorney General Certification

The Attorney General Certification is published in the Register as part of the Notice of Final Action, after the Effective Date line, but before the Secretary's signature block.

After a brief introductory paragraph, which is boilerplate, the Proposing Unit lists the changes by codification number (such as Regulation .01A), and describes the change made and the reason that their Assistant Attorney General determined that the change is not substantive. The changes and discussion are, of course, keyed to the text as published in the Register and not to the Department's original submission.

C. Guidelines.

(1) Codification. By law, codification changes are not substantive. A codification change at the time of final action can be identified merely as follows: "codification is corrected". The nature of the change and the basis for the conclusion are inherent in that statement. Note, however, that codification changes most frequently occur because of additions to or deletions from the proposed text. Justification is required for these actions.

(2) Punctuation, Spelling, and Grammar. Punctuation, spelling, and grammar changes do not ordinarily affect substance. They can be stated merely as follows:

Punctuation is corrected

Spelling is corrected

Grammar is corrected

(3) Deletions as well as additions of text can be substantive changes.

(4) Cross-references. Corrections to cross-references can be substantive and should be carefully reviewed.

(5) Rephrasing to clarify intent should be fully explained.

(6) Other Changes. The nature of other changes should be described as fully but briefly as possible. The basis for determining that the change is not substantive should then be explained.

NOTICE OF WITHDRAWAL

Withdrawal of a proposal may occur at any time before adoption of the proposal. A withdrawal of a proposal constitutes a kind of final action.

In a letter dated June 9, 1993, an assistant attorney general advised the chairman of the AELR Committee that there are cases in which withdrawal of a regulation within a larger proposal may have a substantive effect on the remainder of the proposal. If the impact of a withdrawal produces a substantive change in the proposal, the Department is not free to adopt what remains. Instead, as with any other substantive change, the Department must repropose the regulations giving the public new notice and a new opportunity to comment. Assistant attorneys general who review regulations for legal sufficiency should scrutinize the withdrawal of a part of a proposal with an eye to its effect on the remaining parts of the proposal.

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle __ (INSERT 2 digit number and name of Subtitle)

10. _ . _ _ (INSERT Subtitle number and chapter number and name of Chapter)

Authority: _____ Article, §__ - ____,
Annotated Code of Maryland

HEADING

TITLE / SUBTITLE / CHAPTER / AUTHORITY should be copied directly from Notice of Proposed Action as printed in the Maryland Register.

Notice of Withdrawal

The Secretary of Health withdraws *new/amendments to/the repeal of/the recodification of/amendments to and the recodification of Regulation(s) xx* under COMAR codification number and name of chapter as published in *vol#:issue# Md. R. page# (date)*,

ROBERT R. NEALL
Secretary of Health

The Notice of Withdrawal should be drafted to conform with the Notice of Proposed Action as it appeared in the Maryland Register. The Division of State Documents may have altered the format of the Notice of Proposed Action during its editorial review. Please do not rely on the Proposing Unit's original draft version. Insert volume #, issue #, page # and date that the proposal was printed in the Maryland Register.

WITHDRAWAL BY OPERATION OF LAW

The Notice of Withdrawal at the expiration of the 1-year period is prepared by the Division of State Documents.