

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

NOV 14 JUN 20 PM 3:48

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(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Department of Drug and Alcohol Programs (DDAP)

(2) Agency Number:
Identification Number: # 74-2

3060

(3) PA Code Cite: 28 Pa. Code §§ 701.1, 701.3 and 701.13

(4) Short Title:
General Provisions

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact:

Ronald G. Young, Director, Division of Program Licensure Phone No.: 717-783-8675
DDAP, 132 Kline Plaza, Harrisburg, PA, 17104
ryoung@pa.gov

Secondary Contact:

Tawny K. Mummah, Deputy General Counsel Phone No.: 717-787-9354
OGC, 333 Market Street, 17th Floor, Harrisburg, PA, 17101
tmummah@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulation is a matter of housekeeping to bring the drug and alcohol facilities and services regulations in line with Act 50 of 2010 (71 P.S. § 613.1) ("Act 50"). Effective July 1, 2012 the responsibility for all things drug and alcohol were transferred from the Department of Health (DOH) to DDAP. This final-omit regulation amends 28 Pa. Code Chapter 701 to clarify that DDAP is the Commonwealth agency responsible drug and alcohol treatment and prevention in Pennsylvania. Specifically, this final-omit regulation changes the title of Part V from Drug and Alcohol Facilities and Services to Department of Drug and Alcohol Programs (28 Pa. Code Part V), changes the definition for Department from DOH to DDAP (28 Pa. Code § 701.1), adds Act 50 to the Legal base section (28 Pa. Code § 701.3) and updates the Contact person from DOH to DDAP (28 Pa. Code § 701.13). The

purpose of the final-omit is to bring clarity and consistency to the regulations.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The final-omit regulation is authorized pursuant to Act 50 of 2010, which created DDAP. Specifically, Act 50 of 2010 amended the Administrative Code of 1929 and provided DDAP with the power to promulgate rules and regulations necessary to carry out the provisions of Article XXIII-A at 71 P.S. § 613.1(9).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The final-omit regulation is not mandated by federal or state law, federal or state court order, or federal regulations.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The final-form regulation is needed to make the drug and alcohol regulations consistent with Act 50 and is in response to comments to DDAP's proposed regulation by the Independent Regulatory Review Commission (IRRC). The proposed regulation to update Chapter 709 Standards for Licensure of Freestanding Treatment Facilities (28 Pa. Code § 709) is now a final-form regulation (Identification #74-1) that was simultaneously submitted with this final-omit regulation. All Commonwealth citizens will benefit as the regulation will now clearly reflect the General Assembly's decision to make DDAP the agency responsible for drug and alcohol treatment and prevention. The following is a section by section description of the house keeping changes made by this final-omit regulation:

Part V – Drug and Alcohol Facilities and Services – The title of Part V is changed from Drug and Alcohol Facilities and Services to Department of Drug and Alcohol Programs.

Section 701.1 General Definitions – The definition of Department is changed from DOH to DDAP.

Section 701.3 Legal Base – Act 50 is added to the authorizing statutes in the Legal base section.

Section 701.13 Contact person – The contact information for questions concerning 28 Pa. Code Part V is changed from the DOH to DDAP.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Historically, Pennsylvania has had a robust regulatory scheme for drug and alcohol facilities and activities. This final-omit regulation providing clarity and consistency will not affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The final-omit regulation will clarify that the use of the word Department in every section of 28 Pa. Code Part V is a reference to DDAP.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

A copy of the final-omit regulation was forwarded to CCAP, PACHSA, PCPA, PACDAA, DASPOP, PRO-A, PRO-ACT, PA Halfway House Association, PATOD, and the PA Psych Society (all the stakeholders involved with final-form regulation Identification # 74-1).

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The final-omit regulation will affect all Commonwealth citizens as it brings clarity and consistency to the drug and alcohol regulations.

Small businesses are defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, size standards are provided at 13 CFR § 121.201. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). Given that this final-omit regulation will not have a cost or savings effect on any of the licensed facilities regulated by DDAP, it will not affect those facilities that

are defined as a small business.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

This final-omit regulation is a matter of house keeping and does not require compliance by any person, group or entity, including small businesses.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no financial or economic impact of the final-omit regulation. If there is to be a social impact, it will be that the regulation is consistent with Act 50 and clearly provide that DDAP is the agency responsible for drug and alcohol treatment and prevention.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

N/A. There is no cost or adverse effects.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The benefit of the final-omit regulation is not quantifiable in a dollar figure, because there it is a matter of clarity and consistency.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A. There will be no costs or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A. There will be no costs or savings to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There is no additional paperwork for any group or entity associated with this final-omit regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

N/A. There is no fiscal savings or costs associated with this final-omit regulation.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Division of Program Licensure	2,097,698,48	2,068,291.36	1,799,699,18	1,386,011.13 (Thru 03/13/14)

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation.

N/A. This final-omit regulation does not have an adverse impact on small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

N/A. There have been no special provisions developed because this final-omit regulation does not affect any groups or persons, other than to provide clarity and consistency.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

N/A. There were no other alternative regulatory provisions considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

N/A. This final-omit regulation does not have an adverse impact.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable

data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A. Data was not a basis for the final-omit regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|-------------------------|
| A. The date by which the agency must receive public comments: | <u>N/A</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>N/A</u> |
| D. The expected effective date of the final-form regulation: | <u>upon publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>upon publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

DDAP plans to continue to update and streamline its regulations. If it is determined through stakeholder feed back that the final-omit regulation is not effective, DDAP will consider seeking further revision.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>74-2</u></p> <p>DATE OF ADOPTION: <u>June 9, 2014</u></p> <p>BY: <u>Garold E. Tennis</u></p> <p>TITLE <u>Garold E. Tennis, Secretary</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Shawn E. Smith</u> Executive Deputy General Counsel</p> <p><u>6/20/14</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL-OMITTED RULEMAKING
DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS
Drug and Alcohol Facilities and Services
28 Pa. Code, Part V

FINAL-OMIT RULEMAKING
DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS
[28 Pa. Code CH.701]

The Department of Drug and Alcohol Programs (DDAP) hereby amends Sections 701.1, 701.3 and 701.13 (relating to the General Provisions) to read as set forth in Annex A. The regulation is a matter of housekeeping to bring the drug and alcohol regulations in line with Act 50 of 2010 (71 P.S. § 613.1) (“Act 50”). Effective July 1, 2012, the responsibility for all obligations related drug and alcohol in this Commonwealth was transferred from the Department of Health (DOH) to DDAP. This final-omit regulation amends 28 Pa. Code Part V to clarify that DDAP is the Commonwealth agency responsible drug and alcohol treatment and prevention in Pennsylvania. Specifically, this final-omit regulation changes the title of Part V from Drug and Alcohol Facilities and Services to Department of Drug and Alcohol Programs, changes the regulatory definition for Department from DOH to DDAP (28 Pa. Code § 701.1), adds Act 50 to the Legal base section (28 Pa. Code § 701.3) and updates the Contact person (28 Pa. Code § 701.13) from DOH to DDAP. The purpose of the final-omit is to bring clarity and consistency to the regulations.

A. Effective Date

The final-omit regulation will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information concerning the final-omit regulation, contact Ronald G. Young, Director, Division of Program Licensure, 132 Kline Plaza, Harrisburg, PA, 17104, (717)783-8675; or Tawny K. Mummah, Deputy General Counsel, Counsel to DDAP, at 333 Market Street, 17th Floor, Harrisburg, PA 17101, (717-787-9354). The final-omit regulation is electronically available on DDAP’s website at www.ddap.pa.gov.

C. Statutory Authority

This final-omit rulemaking is authorized pursuant to Act 50 of 2010, which created DDAP. Specifically, Act 50 of 2010 amended the Administrative Code of 1929 and provided DDAP with the power to promulgate rules and regulations necessary to carry out the provisions of Article XXIII-A at 71 P.S. §613.1(9).

D. Background and Purpose

Act 50 of 2010 transferred the powers, duties and functions of the DOH concerning drug or alcohol abuse to DDAP. The goal of this final-omit rulemaking is to provide clarity and consistency to the regulations.

DDAP is satisfied there is no reasonable alternative to proceeding with the regulation. DDAP is also satisfied the regulation meets the requirements of Executive Order No. 1996-1, "Regulatory Review and Promulgation."

E. Summary of Regulatory Requirements

The final-omit regulation is needed to make the drug and alcohol regulations consistent with Act 50 and is in response to comments to DDAP's proposed regulation by the Independent Regulatory Review Commission (IRRC). When reviewing DDAP's proposed regulation to update Chapter 709 Standards for Licensure of Freestanding Treatment Facilities (28 Pa. Code § 709), which is now a final-form regulation (Identification #74-1) that was simultaneously submitted with this final-omit regulation, IRRC raised a concern that there was a need for clarity in the drug and alcohol regulations.

All Commonwealth citizens will benefit as the regulations will now clearly reflect the General Assembly's decision to make DDAP the agency responsible for drug and alcohol treatment and prevention. The following is a section by section description of the house keeping changes made by this final-omit regulation:

Part V – Drug and Alcohol Facilities and Services – The title of Part V is changed from Drug and Alcohol Facilities and Services to Department of Drug and Alcohol Programs.

Section 701.1 General Definitions – The definition of Department is changed from DOH to DDAP.

Section 701.3 Legal Base – Act 50 is added to the authorizing statutes in the Legal base section.

Section 701.13 Contact person – The contact information for questions concerning 28 Pa. Code Part V will be changed from the DOH to DDAP.

F. Benefits, Cost and Compliance

The sole benefit of this final-omit regulation is to provide clarity and consistency between Act 50 and the drug and alcohol regulations. There is no cost or compliance associated with this house keeping regulation, because it merely reflects the transfer of the obligation for drug and alcohol treatment and prevention from DOH to DDAP.

G. Regulatory Review

Under Section 5a(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on June 9, 2014, DDAP submitted a copy of the notice of final-omit rulemaking to IRRC and the Chairpersons of the Senate and House Standing Committees (Public Health and Welfare Committee and Human Services Committee). On the same date, the final-form rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 – 732-506).

Under Section 5a(j.1) of the Regulatory Review Act (71 P.S. § 745.5a(j.1)), on _____, 2014, the final-omit regulation was _____ approved by the House Committee and on _____, 2014 the final-omit regulation was _____ approved by the Senate Committee. Under Section 5a(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), the final-omit regulation was approved by IRRC on _____, 2014.

H. *Findings*

DDAP finds that:

- (1) The adoption of the final-omit regulation in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.
- (2) Pursuant to Section 204 of the Commonwealth Documents Law (CDL), DDAP finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are unnecessary, because it is in the public interest to expedite this amended regulation.

I. *Order*

DDAP, acting under the authorizing statute, orders the following:

- (1) The current title at 28 Pa. Code Part V is hereby amended to read as set forth in Annex “A.”
- (2) The current regulation at 28 Pa. Code Chapter 701 (relating to the General Provisions) is hereby amended to read as set forth in Annex “A.”
- (3) The Secretary of DDAP shall submit this order and Annex “A” to the Office of General Counsel and the Office of Attorney General for approval as required by law.
- (4) The Secretary of DDAP shall certify and deposit under this order and Annex “A” with the Legislative Reference Bureau as required by law.
- (5) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

Garold E. Tennis, *Secretary*
Department of Drug and Alcohol Programs

Annex A

TITLE 28. HEALTH AND SAFETY

**PART V. ~~[DRUG AND ALCOHOL FACILITIES AND SERVICES]~~
DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS**

CHAPTER 701. GENERAL PROVISIONS

Subchapter A. GENERAL DEFINITIONS

§ 709.21. General definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Department – The Department of **DRUG AND ALCOHOL PROGRAMS** [~~Health~~] of the Commonwealth.

§ 701.3. Legal base.

This part is issued under the authority contained in the following statutes:

* * * * *

(4) The Health Care Facilities Act (35 P.S. § 448.101 – 448.904).

(5) **ACT 50 OF 2010 (71 P.S. § 613.1)**

§ 709.13. Contact person.

Questions concerning this part should be directed to the **DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS, DIVISION OF PROGRAM LICENSURE, 132 KLINE PLAZA, HARRISBURG, PA 17104** [~~Office of Policy and Planning, Office of Drug and Alcohol Programs, Department of Health, Health and Welfare Building, Harrisburg, Pennsylvania 17120.~~]



June 20, 2014

VIA HAND DELIVERY

John F. Mizner, Esquire
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Agency/ID/Docket No. 74-2
Final-Omitted Rulemaking
Department of Drug and Alcohol Programs
28 Pa. Code §§ 709.21, Part V
General Provisions

Dear Chairman Mizner:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Pursuant to Section 745.5(a) of the Regulatory Review Act (71 P.S. §§745.1-745.15), the Department of Drug and Alcohol Programs (DDAP) submitted a copy of the Notice of Rulemaking to the Independent Regulatory Review Commission (IRRC), DDAP's standing committees and the Office of Attorney General.

In preparing this final-omitted rulemaking, DDAP has determined that the proposed rulemaking procedure in Section 201 and 202 of the Commonwealth Documents Law are unnecessary. (45 P.S. § 1203(3)).

The undersigned is the contact person for this rulemaking.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tawny K. Mummah", is written over a horizontal line.

Tawny K. Mummah
Deputy General Counsel
Counsel to DDAP
(717) 787-9354

TKM/krm
Enclosures

cc: Robert A. Mulle, Office of Attorney General
Senator Patricia Vance
Representative Gene DiGirolamo

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: #74-2

SUBJECT: Drug and Alcohol Facilities and Services
28 Pa. Code Part V

AGENCY: Department of Drug and Alcohol Programs

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TYPE OF REGULATION

- () Proposed Regulation
- () Final Regulation
- (x) Final Regulation with Notice of Proposed Rulemaking Omitted
- () 120-day Emergency Certification of the Attorney General
- () 120-day Emergency Certification of the Governor
- () Delivery of Tolled Regulation
 - () With Revisions () Without Revisions

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<u>HOUSE COMMITTEE - Human Services Committee</u>
6-20-14	<i>Paula Schadel</i>	MAJORITY CHAIR <u>Rep. Gene DiGirolamo</u>
		MINORITY CHAIR _____
		<u>SENATE COMMITTEE - Public Health & Welfare</u>
6-20-14	<i>Nancy Evers</i>	MAJORITY CHAIR <u>Sen. Patricia Vance</u>
		MINORITY CHAIR _____
		<u>INDEPENDENT REGULATORY REVIEW COMMISSION</u>
6-20-14	<i>K Cooper</i>	<u>ATTORNEY GENERAL (for Final Omitted only)</u>
		<u>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</u>