

Notice Of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
[4 PA. Code Chapter 311]
[Alternative Fuels Incentive Grant Fund Regulation]

Order

The Environmental Quality Board (Board) by this order amends 4 PA. Code Chapter 311 (relating to Alternative Fuels Incentive Grant Fund Regulation) by reserving and deleting Chapter 311 in its entirety as set forth in Annex A.

Notice of proposed rulemaking is omitted under section 204 (1) and (3) of the act of July 31, 1968, P.L. 769, No. 240, (45 P.S. §1204 (1) and (3)). Subsection (1) provides that an agency may omit the notice of proposed rulemaking if the administrative regulation or change therein relates to Commonwealth property, loans, grants, benefits or contracts. Because Chapter 311 pertains exclusively to Commonwealth grants, notice of proposed rulemaking is not required.

Subsection (3) provides that an agency may omit the notice of proposed rulemaking if the agency finds for good cause that notice of proposed rulemaking is impracticable, unnecessary or contrary to the public interest. In this case using the Notice of Proposed Rulemaking procedure is unnecessary. The Alternative Fuels Incentive Grant Fund Regulations were adopted under the authority of the Act of December 16, 1992 (P.L. 1250, No 155.) (75 Pa. C.S. §§ 7201-7204). On November 29, 2004 the Alternative Fuels Incentive Act, (73 P.S. § 1647.1 *et seq.*) repealed this statute and abrogated inconsistent regulations promulgated thereunder. Because the Alternative Fuels Incentive Act provides a comprehensive structure with which to manage the Alternative Fuels Incentive Grant (AFIG) program and the existing, inconsistent Chapter 311 regulations have been abrogated, the Environmental Quality Board finds that the AFIG program can be adequately and effectively administered utilizing the instructions contained in the Alternative Fuels Incentive Act.

This order was adopted by the Board at its meeting of _____.

A. Effective Date

The amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Susan K. Summers, Rachel Carson State Office Building, 15th floor, 400 Market Street, P.O. Box 8772 Harrisburg, PA 17105-8772, 717-783-9242; or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17 105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice

users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

C. Statutory Authority

This final-form rulemaking is being made under the authority of Section 7 of the Alternative Fuels Incentive Act (73 P.S. § 1647.7) which directs the Department to promulgate regulations necessary to carry out the purposes of the act, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), authorizing and directing the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. Background of the Amendments

The Alternative Fuels Incentive Grant Fund Regulations [4 PA. Code Ch. 311] were adopted under the authority of 75 Pa. C.S. §§ 7201-7204 which created the Alternative Fuels Incentive Grant (AFIG) Fund in December 1992. On November 29, 2004 the Alternative Fuels Incentive Act, (73 P.S. § 1647.1 *et seq.*) repealed this statute, created a comprehensive structure with which to manage the AFIG program and repealed the existing regulation to the extent that they are inconsistent with the Act. The repeal of current AFIG regulations will eliminate conflicting requirements in the out-dated regulations and will allow the Department to use only the Alternative Fuels Incentive Act so the program will be effectively administered and reduce confusion to the public.

E. Summary of Final Rulemaking

This final rulemaking reserves and deletes 4 PA. Code Chapter 311 in its entirety.

F. Benefits and Costs

This final rulemaking will be cost neutral.

Compliance Assistance Plan

No compliance assistance plan is necessary because the AFIG program is a grant program and does not impose any compliance responsibilities on the public.

Paperwork requirements

No additional paperwork will be required as a result of this rulemaking.

G. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on _____, the Department submitted a copy of this final rulemaking with notice of proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the Department also submitted this rulemaking to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101-732-506). In addition to the final rulemaking, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the Department.

I. Findings of the Board

The Board finds that:

(1) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) is not required and is unnecessary.

(2) The use of the notice of proposed rulemaking procedures is not required because Chapter 311 pertains exclusively to Commonwealth grants. Further, use of the notice of proposed rulemaking procedures is not necessary because the Alternative Fuels Incentive Act abrogated inconsistent Chapter 311 regulations while providing a comprehensive structure with which to manage the Alternative Fuels Incentive Grant program such that the program can be adequately and effectively administered utilizing the instructions contained in the Act.

(3) These amendments are necessary and appropriate for administration of the authorizing acts identified in section C of this preamble and in the public interest.

J. Order of the Board

The Environmental Quality Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, 4 Pa. Code Chapter 311 are reserved and deleted as set forth in Annex A.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

Kathleen A. McGinty
Chairperson
Environmental Quality Board