

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### ENVIRONMENTAL QUALITY BOARD

#### [ 4 PA. CODE CH. 311 ]

#### Alternative Fuels Incentive Grant Fund Regulation

The Environmental Quality Board (Board) by this order amends 4 Pa. Code by rescinding Chapter 311 (relating to alternative fuels incentive grant fund) 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)) (CDL). Section 204(1) of the CDL 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.

Section 204(3) of the CDL 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. Chapter 311 was adopted under 75 Pa.C.S. §§ 7201—7204 (relating to alternative fuels). On November 29, 2004, the Alternative Fuels Incentive Act (act) (73 P. S. §§ 1647.1—1647.7) repealed this statute and abrogated inconsistent regulations promulgated thereunder. Because the 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 Board finds that the AFIG Program can be adequately and effectively administered utilizing the instructions contained in the act.

This order was adopted by the Board at its meeting of May 16, 2007.

#### A. Effective Date

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

#### B. Contact Persons

For further information contact David Althoff, Rachel Carson State Office Building, 15th Floor, 400 Market Street, P. O. Box 8772, Harrisburg, PA 17105-8772, (717) 705-0372; or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (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-omitted rulemaking is available on the Department of Environmental Protection's (Department) website: [www.dep.state.pa.us](http://www.dep.state.pa.us).

#### C. Statutory Authority

This final-omitted rulemaking is being made under the authority of section 7 of the 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

Chapter 311 was adopted under the authority of 75 Pa.C.S. §§ 7201—7204 which created the AFIG Fund in December 1992. On November 29, 2004, the act repealed this statute, created a comprehensive structure with which to manage the AFIG Program and repealed the existing regulations 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 act so the Program will be effectively administered and reduce confusion to the public.

#### E. Summary of Final Rulemaking

This final-omitted rulemaking rescinds and deletes Chapter 311 in its entirety.

#### F. Benefits and Costs

This final-omitted 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 final-omitted rulemaking.

#### G. Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on August 13, 2007, the Department submitted a copy of this final-omitted 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.

Under section 5.1(j.2) of the Regulatory Review Act, on September 19, 2007, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 20, 2007, and approved the final-omitted rulemaking.

#### H. 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 procedure is not required because Chapter 311 pertains exclusively to Commonwealth grants. Further, use of the notice of proposed rulemaking procedure is not necessary because the act abrogated inconsistent Chapter 311 regulations while providing a comprehensive structure with which to manage the AFIG Program so that the Program can be adequately and effectively administered utilizing the instructions contained in the act.

(3) This action is necessary and appropriate for administration of the authorizing acts identified in Section C of this Preamble and in the public interest.

*I. Order of the Board*

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

(a) The regulations of the Department of Environmental Protection, 4 Pa. Code Chapter 311, are amended by deleting §§ 311.1, 311.11, 311.12, 311.31—311.33, 311.51—311.56, 311.71 and 311.72 to read 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.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)*

**Fiscal Note:** 7-415. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART XII. (Reserved)**

**CHAPTER 311. (Reserved)**

**§ 311.1. (Reserved)**

**§ 311.11. (Reserved)**

**§ 311.12. (Reserved)**

**§§ 311.31—311.33. (Reserved)**

**§§ 311.51—311.56. (Reserved)**

**§ 311.71. (Reserved)**

**§ 311.72. (Reserved)**

[Pa.B. Doc. No. 07-1832. Filed for public inspection October 5, 2007, 9:00 a.m.]

**Title 58—RECREATION**

**GAME COMMISSION**

**[ 58 PA. CODE CH. 141 ]**

**Hunting and Trapping; Muzzleloading Firearms**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 26, 2007, meeting, amended § 141.18 (relating to permitted devices) to permit the lawful use of muzzleloading firearms using an electronic impulse to trigger discharge and illuminated nocks for arrows and bolts.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 37 Pa.B. 2838 (June 23, 2007).

*1. Purpose and Authority*

Each year the Commission is asked to review the potential permissive use of various devices for hunting or trapping purposes that are otherwise prohibited by statute or regulation. As part of the review process, the Commission generally considers to what degree the use of a given device might negatively impact principles of resource conservation, equal opportunity, fair chase or public safety. Two devices that have recently been presented to the Commission for consideration are: 1) muzzleloading firearms using an electronic impulse to trigger discharge; and 2) illuminated nocks for arrows and bolts. After thoughtful review of these devices, the Commission has determined that their use would have negligible impacts on the previously mentioned principles while still providing increased opportunity to hunters interested in using these devices. Therefore, the Commission amended § 141.18 to permit the lawful use of muzzleloading firearms using an electronic impulse to trigger discharge and illuminated nocks for arrows and bolts.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to “promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used.” Section 2102(a) of the code (relating to regulations) provides that “The Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendment to § 141.18 was adopted under this authority.

*2. Regulatory Requirements*

The final-form rulemaking amended § 141.18 to permit the lawful use of muzzleloading firearms using an electronic impulse to trigger discharge and illuminated nocks for arrows and bolts.

*3. Persons Affected*

Persons wishing to hunt through the use of muzzleloading firearms using an electronic impulse to trigger discharge or illuminated nocks for arrows and bolts, or both, will be affected by the final-form rulemaking.

*4. Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

*5. Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this amendment of the Commission in the manner provided in this order is necessary and

appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.18 to read as set forth at 37 Pa.B. 2838.

(b) The Executive Director of the Commission shall certify this order, 37 Pa.B. 2838 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-254 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 07-1833. Filed for public inspection October 5, 2007, 9:00 a.m.]