

Regulatory Analysis Form

This space for use by IRRC

(1) Agency
Department of Environmental Protection

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INDEPENDENT REGULATORY

(2) I.D. Number (Governor's Office Use)

IRRC Number:

#7-415

2624

(3) Short Title
Alternative Fuels Incentive Grant Program (AFIG) Regulation

(4) PA Code Cite
4 Pa Code, Chapter 311

(5) Agency Contacts & Telephone Numbers
Primary Contact: Michele Tate, 783-6395
Secondary Contact: Kelly Jean Heffner, 783-8727

(6) Type of Rulemaking (Check One)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?
 No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The repeal of current AFIG regulations, which were promulgated in September 1994 under the authority of 75 Pa. C.S. §§ 7201-7204, will eliminate conflicting requirements in the out-dated regulations and will allow the Department to use only the amended statute so the program will be effectively administered and reduce confusion to the public.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Alternative Fuels Incentive Act (73 P.S. 1647.1 *et seq.*) The Department will use the final-omit process authorized under 45 P.S. §1204. (2006) because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest because amendments to the Act supercede and negate these regulations. The AFIG program can be adequately and effectively administered utilizing the instructions contained in the Act as amended.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by any federal or state law or court order, or federal regulation

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The repeal of current AFIG regulations, which were promulgated in September 1994 under the authority of 75 Pa. C.S. §§ 7201-7204, will eliminate conflicting requirements in the out-dated regulations and will allow the Department to use only the amended statute so the program will be effectively administered and reduce confusion to the public.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Not applicable.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All eligible applicants for AFIG funding will benefit. Since its inception in 1992, DEP has awarded almost \$32 million through AFIG for 999 projects in almost every county in the commonwealth. DEP has also awarded more than \$2.5 million since March 2005 to individuals who purchased hybrid electric vehicles. AFIG funds have leveraged more than \$118 million from public and private fleet operators, fuel providers and the federal government AFIG funded projects improve air quality and reduce dependence on foreign oil imports through the use of clean burning domestically produced fuels such as biodiesel and ethanol.

The repeal of current AFIG regulations, which were promulgated in September 1994 under the authority of 75 Pa. C.S. §§ 7201-7204, will eliminate conflicting requirements in the out-dated regulations and will allow the Department to use only the amended statute so the program will be effectively administered and reduce confusion to the public. DEP receives approximately 35 – 40 applications annually.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

Not applicable.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All eligible applicants for AFIG funding will be required to comply. Eligible applicants include Pennsylvania transit authorities, schools, colleges and universities, local government entities, private companies and Commonwealth residents. DEP receives approximately 35 – 40 applications annually.

Regulatory Analysis Form

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.
Not applicable. There is no oversight group for the AFIG program.

(17) 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.
No costs and/or savings are anticipated.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.
No costs and/or savings are anticipated.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required. No costs and/or savings are anticipated.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

Regulatory Analysis Form

(20a) Explain how the cost estimates listed above were derived.
No costs and/or savings are anticipated.

(20b) Provide the past three-year expenditure history for programs affected by the regulation. It is unknown what amount, if any, has been spent to provide security.

Program	FY-3 2003-04	FY-2 2004-05	FY-1 2005-06	Current FY 2006-07
Alternative Fuels Incentive Grants (#60079)	\$6,000,000	\$10,785,000	\$1,985,000	\$6,000,000

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The repeal of the current regulations will eliminate conflicting requirements in the out-dated regulations and will allow the Department to use only the amended statute so the program will be effectively administered and reduce confusion to the public.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.
Not applicable.

(24) 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.

There are no applicable federal standards.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

By establishing the Alternative Fuels Incentive Fund, Pennsylvania has been a national leader in the advancement of alternative fuel usage and production. Other states with programs that provide incentives for alternative fuels have greater flexibility.

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

These regulations delete existing regulations.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Since this is a Final Order with the Notice of Proposed Rulemaking omitted, there were no hearings or public information meetings prior to the submission.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

These regulations delete existing regulations.

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

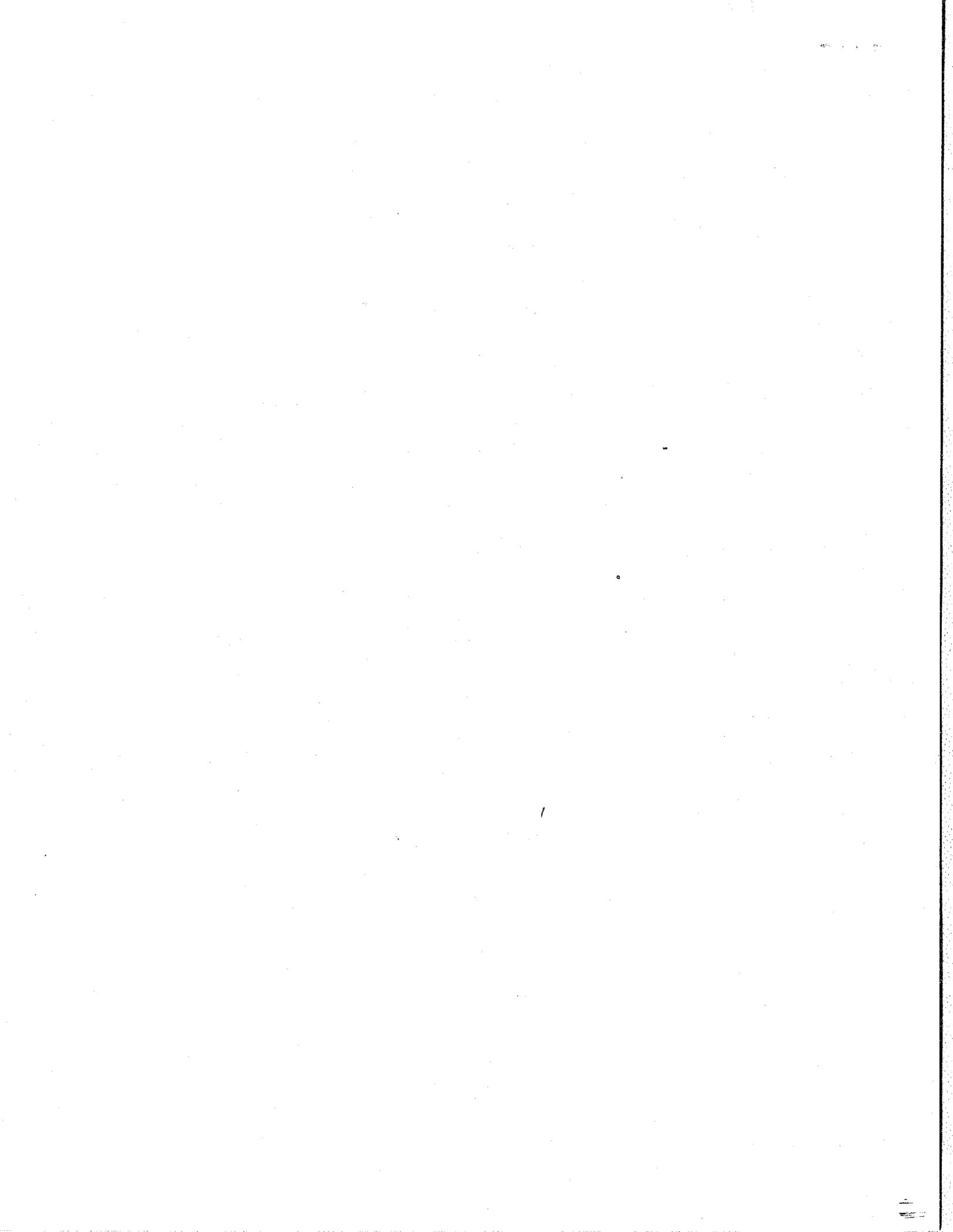
There are no special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

It is anticipated that these regulations will be deleted upon final publication.

(31) Provide the schedule for continual review of the regulation.

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 they were intended.



FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-415

DATE OF ADOPTION May 16, 2007

BY *Kathleen A. McGinty*

TITLE KATHLEEN A MCGINTY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY *Andrew C. Clark*

AUG 1 2007
Andrew C. Clark
DATE OF APPROVAL

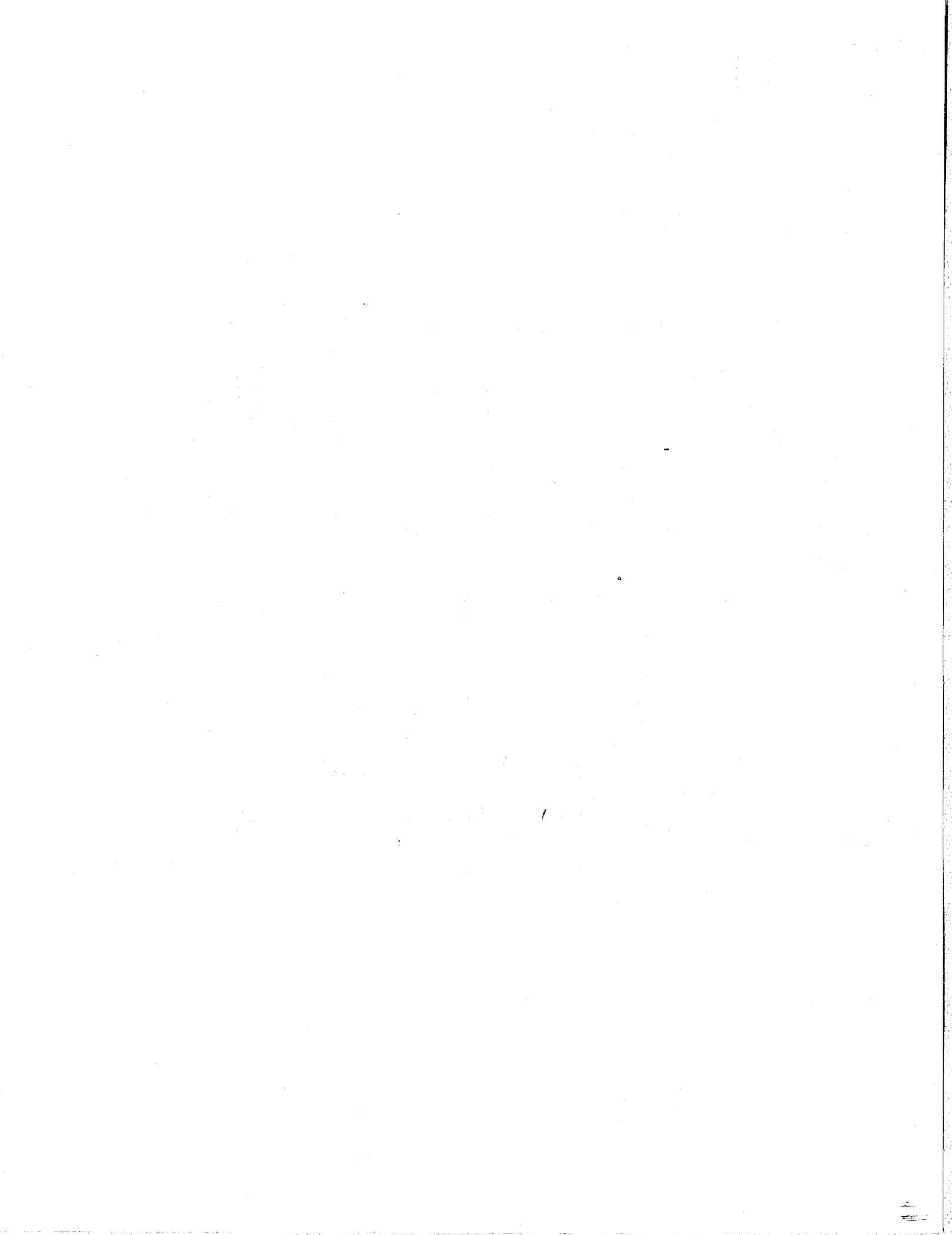
(Deputy General Counsel)
~~(Chief Counsel - Independent Agency)~~
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF FINAL-OMITTED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Alternative Fuels Incentive Grant Program (AFIG) Regulation



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 May 16, 2007.

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 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 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 August 13, 2007, 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

Annex A
TITLE 4. Administration
PART XII. PENNSYLVANIA ENERGY OFFICE
CHAPTER 311. ALTERNATIVE FUELS INCENTIVE
GRANT FUND
GENERAL

§ 311.1. Definitions. (Reserved)

FUNDING

§ 311.11. Percentage of project costs. (Reserved)

§ 311.12. Funding cycles. (Reserved)

ELIGIBILITY

§ 311.31. Eligible applicants. (Reserved)

§ 311.32. Eligible vehicles. (Reserved)

§ 311.33. Eligible costs. (Reserved)

GENERAL PROGRAM REQUIREMENTS

§ 311.51. Incentive Grant Agreement. (Reserved)

§ 311.52. Compliance with codes and standards. (Reserved)

§ 311.53. Training. (Reserved)

§ 311.54. Emissions testing. (Reserved)

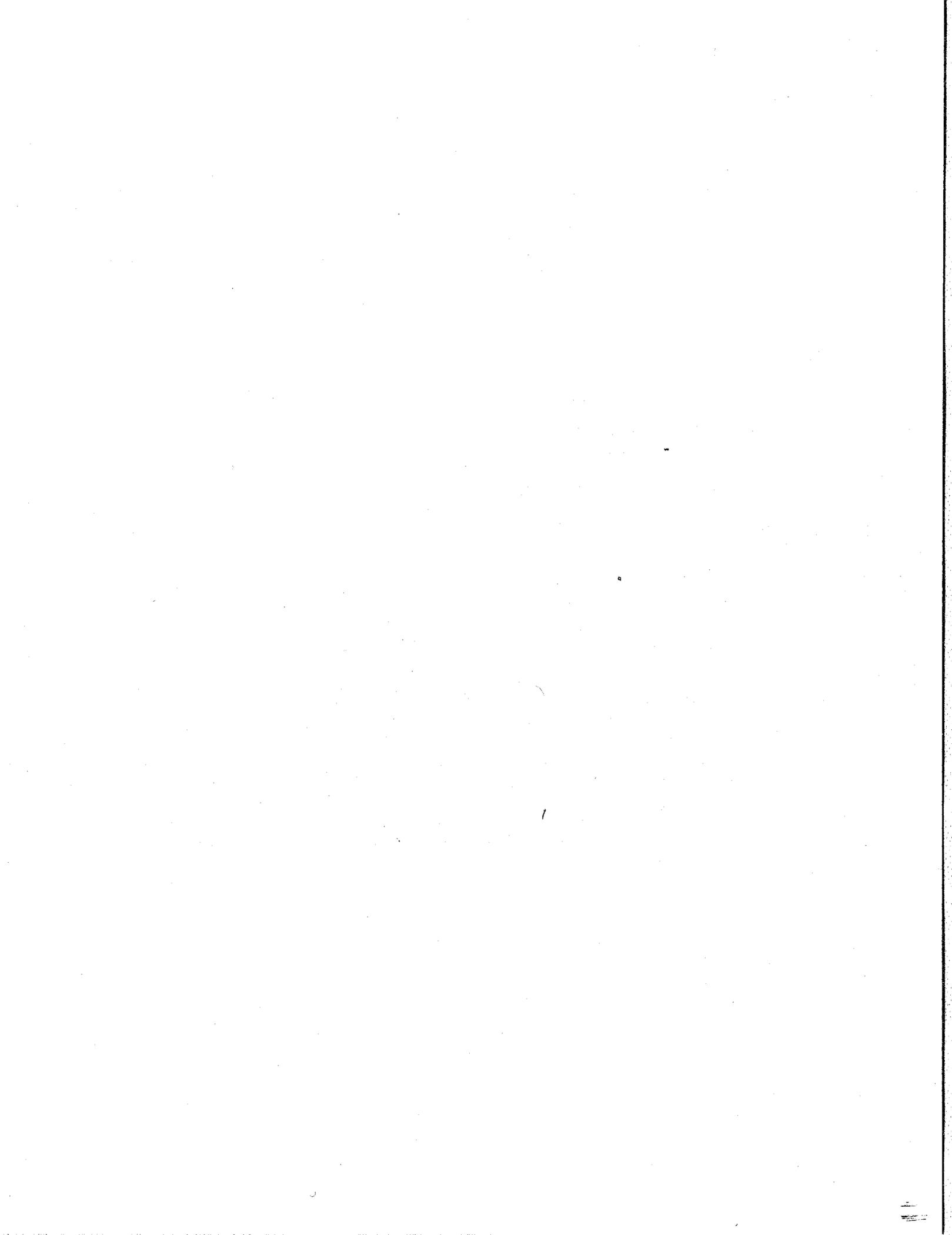
§ 311.55. Reporting. (Reserved)

§ 311.56. Sanctions. (Reserved)

ADMINISTRATION

§ 311.71. Application process. (Reserved)

§ 311.72. Selection criteria. (Reserved)





Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
August 13, 2007

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown #2
333 Market Street
Harrisburg, PA 17120

Re: Final-Omitted Rulemaking – Alternative Fuels Incentive Grant (AFIG) Program Regulation
(4 Pa. Code, Chapter 311)

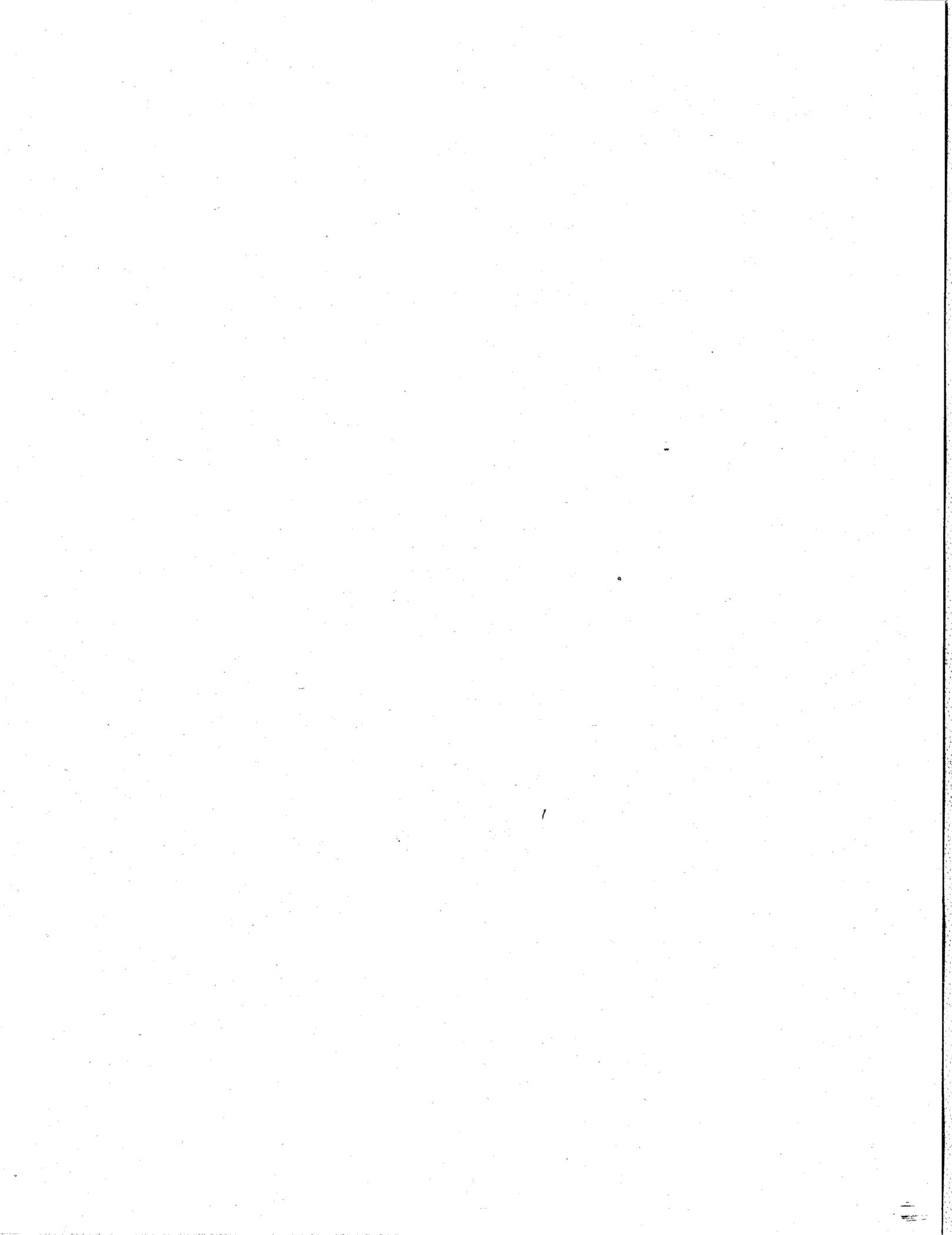
Dear Mr. Kaufmann:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-omitted rulemaking for review and comment by the Independent Regulatory Review Commission (Commission). The Environmental Quality Board approved this final-omitted rulemaking at its May 16, 2007, meeting.

The Alternate Fuels Incentive Grant Fund regulations (4 Pa. Code, Chapter 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 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 enclosed final-omitted rulemaking will repeal the current regulations to eliminate conflicting requirements in the out-dated regulations. Repealing the out-dated regulations will enhance the effective administration of the AFIG program, since the AFIG program can be adequately and effectively administered utilizing the instructions contained in the Act, as amended.

Notice of proposed rulemaking was omitted under section 204(1) and (3) of the Commonwealth Documents Law. 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. Furthermore, 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, use of the Notice of Proposed Rulemaking procedure is unnecessary.





Kim Kaufman, Executive Director

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August 13, 2007

The Department will provide the Commission with the assistance required to facilitate a thorough review of this final-omitted rulemaking.

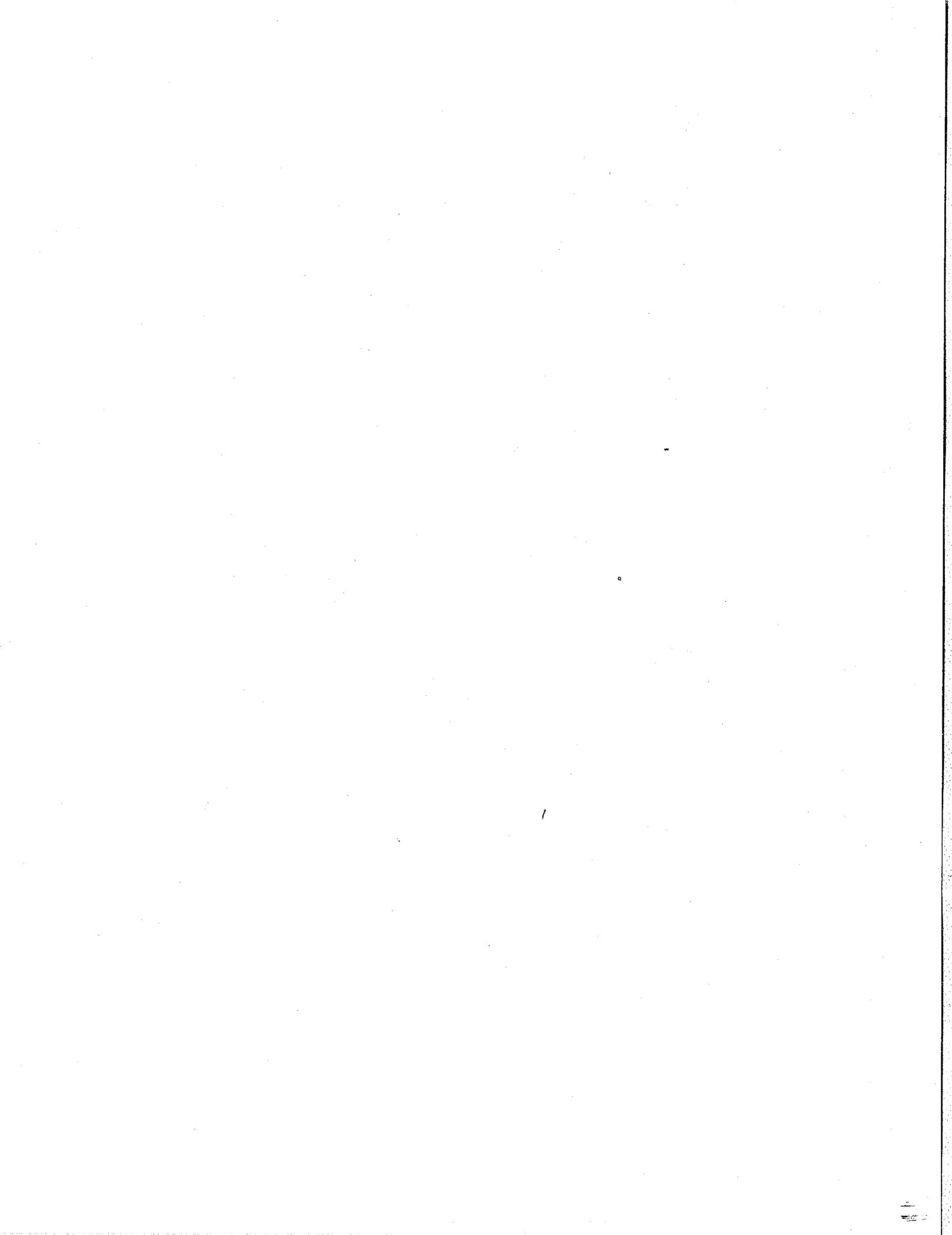
Please contact me at the number above if you have any questions or need additional information

Sincerely,

Michele L. Tate

Michele L. Tate
Regulatory Coordinator

Enclosures





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

I.D. NUMBER: 7- 415
SUBJECT: Alternative Fuels Incentive Grant Program (AFIG)
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- 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
 - a. With Revisions
 - b. Without Revisions

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/13/07	<i>D. Jones</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8-13-07	<i>K. Beasly</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8-13-07	<i>Giada Castelli</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8-13-07	<i>A. Rybarczyk</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
8/13/07	<i>Carolyn D. Jones</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
8/13/07	<i>St. Helms</i>	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

