Clearinghouse Rule 98-084

98-084



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor George E. Meyer, Secretary

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STATE OF WISCONSIN)	
)	SS
DEPARTMENT OF NATURAL RESOURCES)	

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WM-21-98 was duly approved and adopted by this Department on September 23, 1998. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this ______ day of November, 1998

Herae Z. Meyer George E. Meyer, Secretary

(SEAL)



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to renumber NR 12.001(2), 12.15(11), 12.16(b), 19.80(1) and 19.80(4)(a)4.; amend NR 12.10(1)(b)Note, 12.16(2)(a), 19.76(1), and (4), 19.78(1)(a) and (b), 19.79(2) and (3), 19.80(3), and 19.81(1); repeal and recreate 19.78(3) and 19.79(4); and create NR 12.001(2)(a), 12.15(11)(b), 12.15(13), 12.16(2)(b)1. and 2., 19.76(3m), (4e), (4m), (7) and (8), 19.775, 19.79(1)(b), 19.79(5), 19.795, 19.80(1)(b), 19.80(1)(c), 19.80(4)(a)4.b., 19.80(4)(a)5., 19.80(4)(a)6., 19.80(6), and 19.81(3)(d) and (e), relating to the wildlife damage abatement and claims program.

WM-21-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.59, 29.598, and 227.11(2)(a), Stats.

Statutes interpreted: ss. 29.59 and 29.598, Stats.

In this order:

SECTIONS 1, 2, 10 & 11 define terms.

SECTION 3 clarifies the new law which adds coyotes to those species where landowners can hunt or trap year round without a license or permit.

SECTIONS 4, 5 & 6 clarify bear shooting permit procedures.

SECTIONS 7, 8, 9, 23 & 24 establish criteria for determining deer are unavailable to be harvested under shooting permits and creates a process for granting exemptions for future shooting permit and claims eligibility. Furthermore, these sections create uniformity between the shooting permit program and the Wildlife Damage Abatement and Claims Program (WDACP).

SECTION 12 requires participating counties to use administration, abatement & claims procedures described in the department's WDACP Technical Manual, which is incorporated into the rule by reference.

SECTIONS 13 and 14 require explicit deadlines for accounting and distribution of program funds to participating counties.

SECTIONS 15, 16 & 17 establish criteria for implementing the new abatement cost-sharing of 75% by participating counties and participation standards for enrollees. This language also requires enrollee's to fully cooperate in the abatement implementation needs of the county or its agent, and the county or its agent may terminate an enrollee's program participation if there are abusive or violent contacts initiated by the enrollee.

SECTIONS 18 & 27 establish explicit requirements and procedures for implementing new laws governing hunting access, and seek to make the hunting access requirement more enforceable.

SECTIONS 19 & 20 establish eligibility criteria which excludes crops which are stranded in the field over winter for claims eligibility.

SECTION 21 designates crops left unharvested, after 90% of these crops in the county have been harvested, to be not in compliance with normal agricultural practices.

SECTION 22 establishes the methodology for prorating claims when funds are insufficient to cover all eligible claims.

SECTION 25 requires counties to prescribe deer damage shooting permits where enrollees have a 2 year history of damage losses exceeding \$1,000.

SECTION 26 requires enrollee's to fully cooperate in the appraisal implementation needs of the county or its agent, and the county or its agent may terminate an enrollee's program participation if there are abusive or violent contacts initiated by the enrollee.

SECTIONS 28 & 29 establish the requirement that all permanent fence projects must be approved by the department prior to funding and entering into a contract with an enrollee in order to assure that projects are warranted and are cost-effective.

Section 1. NR 12.001(2) is renumbered NR 12.001(2)(b).

Section 2. NR 12.001(2)(a) is created to read:

NR 12.001(2)(a) "Lands suitable for hunting deer" has the meaning given in s. NR 19.76(4e).

Section 3. NR 12.10(1)(b)Note: is amended to read:

NR 12.10(1)(b)Note: Animals listed in s. 29.24, Stats., are beaver, foxes, raccoons, rabbits, squirrels, coyotes and woodchucks. However, s. 29.24, Stats., provides for the protection of coyotes from hunting during an open season for hunting deer with firearms in an area that is closed by the department by rule to coyote hunting.

Section 4. NR 12.15(11) is renumbered NR 12.15(11)(a).

Section 5. NR 12.15(11)(b) is created to read:

NR 12.15(11)(b) Bear damage shooting permits. Participation of others under bear damage shooting permits shall be restricted to those persons who have applied for a Class A or B bear hunting license under application procedures described in s. NR 10.102(2), and who have indicated on bear hunting license applications their willingness to assist farmers having bear damage problems. Participants shall possess a Class A or B bear hunting license when engaged in bear damage shooting permit activities, such as hunting or baiting.

Section 6. NR 12.15(13) is created to read:

NR 12.15(13) USE RESTRICTIONS. Hunting bear with the aid of dogs under this chapter is prohibited, unless the department determines there are extraordinary conditions which warrant an exemption. When the department grants an exemption, permittees may restrict hunting access of bear hunters using dogs if trespass problems on adjoining private properties are likely to occur.

Section 7. NR 12.16(2)(a) is amended to read:

NR 12.16(2)(a) <u>Harvest objective</u>. The permittee and participants, unless granted an exemption under par. (b), shall kill at least 80% of the number of deer authorized for harvest on the permit and shall kill at least 50% of this the number of deer authorized for harvest during the first 45 days after permit issuance, to retain eligibility for future deer damage shooting permits. The permittee is not eligible for a shooting permit the next year if the permittee fails to comply with these harvest objectives unless a shooting permit is prescribed damage abatement under s. 29.598, Stats.

Section 8. NR 12.16(2)(b) is renumbered to NR 12.16(2)(b)1.

Section 9. NR 12.16(2)(b)2. is created to read:

NR 12.16(2)(b)2. The department may grant an exemption to the harvest objective requirement in par. (a) if there is compelling evidence that deer were unavailable to be shot. The following criteria and procedures shall be used to determine if deer were unavailable to be shot.

- a. Compelling evidence that deer were not available include accurate shooting permit participant hunting logs documenting significant hunter effort. These logs shall include participant names and phone numbers and dates participants hunted. If a significant number of hunters regularly attempted to remove deer, but were unsuccessful this information along with other supporting evidence may establish that deer were unavailable to be shot.
- b. A minimum of 5 hunter days per week for the duration of the permit valid period may be used as an indication of significant hunter effort. A minimum of 5 hunter days per week requirement means any combination of hunters hunting deer a total of five days under the permittee's deer damage shooting permit during each week of the valid period of the permit. One day of hunting shall be a total of at least 3 hours hunted in a day or a hunter successfully harvesting at least one deer in a day.
- c. If a permittee had difficulty getting participants, the permittee contacted the department, the county or its agent to seek assistance.
- d. Documents to support the information in the hunting log of significant hunter effort to meet the harvest objective include: written statements by these hunters with descriptions of hunting conditions; aerial photos documenting lack of deer habitat; records

that show the permittee was in regular contact with county or its agent and local department staff keeping them informed of the permittee's difficulty; that the permittee implemented reasonable measures prescribed by the county, its agent or the department to improve shooting permit performance; and any other evidence deemed appropriate by the county, its agent and local department staff.

e. The county, its agent and the department shall consult before making a recommendation to grant an exemption to the harvest objective requirement under this section. This group shall review the evidence and, if there is consensus that an exemption is warranted, shall recommend that the department grant an exemption allowing eligibility for a permit the subsequent year.

Section 10. NR 19.76(1) and (4) are amended to read:

- NR 19.76(1) "Contiguous land" means lands under the ownership , lease or control, other than by lease, of an applicant for deer, bear, turkey or goose damage payments which are connected to the lands subject to a claim application or separated only by a roadway, easement, license or waterway.
- (4) "Lands suitable for hunting" means lands contiguous land where the conduct of hunting is not likely to result in a violation of the law or damage to buildings and where it is probable an animal causing the damage may be harvested under s. 29.22(1), 167.30, or 941.20(1)(d), Stats., and shall include all areas within the contiguous land under the same ownership, lease or control except those areas identified by the county or its agent pursuant to s. NR 19.795.

Note: This definition of "land suitable for hunting" shall be used to determine hunter numbers for access to hunt species other than deer.

Section 11. NR 19.76(3m), (4e), (4m), (4t), (7) and (8) are created to read:

NR 19.76(3m) "Enrollee" means a farmer, grower, livestock raiser, beekeeper, nursery operator, orchardist, Christmas tree grower, or other person or corporation or partnership enrolled in the wildlife damage abatement and claims program for services under this program.

- (4e) "Land suitable for hunting deer" means woodlands, wetlands or other deer cover and cropland within 330 feet of deer cover on all contiguous land and where the conduct of hunting is not likely to result in a violation under s. 29.22(1), 167.30 or 941.20(1)(d), Stats., except those areas identified by the county or its agent pursuant to s. NR 19.795.
- (4m) "Livestock holding areas" means barns, pole sheds and other buildings for the protection and sheltering of livestock.
- (7) "Reasonable cause" means a presence of at least 2 hunters per 40 acres of land suitable for hunting or the presence of one hunter on less than 40 acres of land suitable for hunting; the hunter is intoxicated, has caused damage to property, littered, used abusive or

threatening language, used a firearm in violation with s. 941.20(1), Stats., used a vehicle or a permanent deer stand on enrolled land without being authorized by the enrollee; the hunter has otherwise engaged in, or displayed a propensity to engage in, conduct contrary to public safety or the protection of personal property; the hunter failed to seek permission or register to hunt; or failure of the hunter to comply with any of the conditions he or she certifies by his or her signature on hunting log forms provided by the county, its agent and the department, including failure to record the time of arrival and departure.

(8) "WDACP" means the wildlife damage abatement and claims program under s. 29.598, Stats., and this chapter.

Section 12. NR 19.775 is created to read:

NR 19.775 WDACP TECHNICAL MANUAL. The department's WDACP technical manual (Wildlife Damage Abatement and Claims Program Technical Manual, Volume 1/Reference Handbook/134pp., Volume 2/Field Handbook/153pp., Wis. Dept. of Natural Resources, July 1, 1998) shall specify WDACP procedures and requirements including the following:

- (1) Authorized wildlife damage abatement measures and methods for implementing and paying for these abatement measures.
- (2) Forms and procedures for payment and processing of statement of claims and applications for abatement assistance.
 - (3) Procedures and standards for determining the amount of wildlife damage.
 - (4) Procedures for record keeping, audits and inspections.

Note: Copies of any WDACP technical manual may be obtained from the Wildlife Damage Specialist, WDNR, Bureau of Wildlife Management, GEF 2, P.O. Box 7921, Madison, WI 53707-7921.

Section 13. NR 19.78(1)(a) and (b) are amended to read:

NR 19.78(1)(a) Except as provided in par. (b), the department shall, based upon the applicant's county's annual estimate of anticipated administrative and abatement costs indicated in its plan, advance to the county for administration purposes one-fourth the amount indicated in the plan annual estimate or one-fourth of such other amount deemed reasonable by the department no later than January 15 within 30 days following department approval of the application and plan of administration annual budget estimate.

(b) For the 1984 calendar year, The department may not process an advance until the county has submitted a final reimbursement request for the year previous to that for which participation is applied for. Upon receipt of this reimbursement request, the advance payment shall be paid within 30 days of plan approval of the annual budget estimate.

Section 14. NR 19.78(3) is repealed and recreated to read:

NR 19.78(3) REIMBURSEMENT DEADLINES. Counties shall submit reimbursement requests for administration and abatement costs to the department quarterly according to the following schedule: by May 31 for the first quarter, January 1 through March 31; by August 31 for the second quarter, April 1 through June 30; by November 31 for the third quarter, July 1 through September 30; and no later than March 1 for the final reimbursement request for the fourth quarter, October 1 through December 31.

Section 15. NR 19.79(2) and (3) are amended to read:

NR 19.79(2) Abatement measures rendered by a county under s. 29.598, Stats, are limited to those which are approved in the plan detailed in the WDACP technical manual, or authorized in writing by the department which are commonly accepted in the wildlife management profession as valid control measures and which are likely to be successful in reducing wildlife damage and shall be cost-effective as required by s. 29.598(5) (bm), Stats.

(3) Woven-wire deer-proof <u>barrier</u> fences, for which an application has been approved by the county and department, under s. NR 19.81, shall be included in the plan for the calendar year succeeding the fence application <u>, unless otherwise approved by the department</u>.

Section 16. NR 19.79(4) is repealed and recreated to read:

NR 19.79(4) The county shall, as a condition of providing abatement assistance, require full cooperation and assistance of the enrollee in operating, maintaining and applying all abatement measures. An enrollee who engages in abusive or threatening language shall also be considered uncooperative. Uncooperative enrollees shall be ineligible for program abatement assistance for the remainder of the calendar year. Upon determining an enrollee is uncooperative and ineligible for further program assistance the county or its agent shall notify the enrollee in writing that the enrollee's program participation is terminated.

Section 17. NR 19.79(5) is created to read:

NR 19.79(5)(a) Cost-sharing. In accordance with the WDACP technical manual, the county or its agent shall determine the actual costs of providing wildlife damage abatement assistance to provide 75% cost-sharing. For permanent damage abatement measures the enrollee shall provide 25% of the cost of materials and installation. For the purpose of determining the total cost of temporary damage abatement measures, cooperation by the enrollee in installation, construction, operation, notification if required, or maintenance of the temporary measure shall be considered 25% of its total costs. Permanent damage abatement measures include deer-barrier woven wire and high-profile electric fences. Temporary damage abatement measures include the use of temporary low-profile electric or barrier snow fencing, scare techniques, repellents, depredation shooting permits, trap and translocation, or other temporary methods determined by the department.

- (b) All of the following costs of abatement measures are eligible for reimbursement to the county:
 - 1. The costs of abatement equipment, supplies and services.
 - 2. Installation costs that are part of the of 75% WDACP cost-share.

Section 18. NR 19.795 is created to read:

NR 19.795 OPEN HUNTING ACCESS REQUIREMENT. (1) Enrollees shall have hunting access control over all contiguous land on which they seek wildlife damage abatement assistance or claims. Enrollees shall open their land to hunting, using one of the access options in sub. (3), during the regular hunting seasons for the species causing the damage for which they have enrolled in the WDACP as required by s. 29.598(7m), Stats. Enrollees may not charge any fees for hunting, hunting access or any other activity that includes hunting the species causing damage. This hunting access requirement shall also apply to enrollees who have also been issued a shooting permit under the authority of s. 29.59, Stats., and ch. NR 12.

- (2) Enrollees shall enroll with the county by completing an agreement which certifies their hunting access control for all contiguous lands of the same ownership or control where wildlife damage is occurring and for which they are seeking program services under this chapter.
 - (3) Enrollees shall choose one of the 2 following hunting access options:
- (a) Open public hunting for the species causing damage. The enrollee may not place limitations on which hunters or how many hunters may access the property enrolled by the enrollee. The enrollee may not require registration of hunters, but the hunter shall establish an acceptable arrangement with the enrollee for notifying the enrollee of the hunter's intent to hunt prior to hunting. The enrollee may choose how often notification is required and that notification be made in writing, by phone or in person each day the hunter intends to hunt or otherwise.
- (b) <u>Managed hunting access</u>. Enrollee notification and hunter registration with the enrollee is required. The following provisions shall apply to the managed hunting access option:
- 1. Land suitable for hunting. The county, or its agent, shall determine the area of land suitable for hunting in accordance with the WDACP technical manual and this chapter. The following criteria shall be used to determine land suitable for hunting:
- a. The acreage of land suitable for hunting as defined in s. NR 19.76(4) or (4e), depending on the species causing damage.
 - b. Enrollees may prohibit or restrict discharge of firearms within 100 yards of livestock holding areas.

- c. Permanent deer fences. Land inside a permanent deer fence, which meets construction and maintenance standards in the WDACP technical manual, may not be considered land suitable for hunting.
- 2. Hunting access map. The county or its agent shall provide property maps to enrollees using aerial photos or plat maps to identify property boundaries and land suitable for hunting. The county, in consultation with the enrollee and in accordance with the WDACP technical manual, may delineate hunting zones for parcels of the property to assist the enrollee in distributing hunting effort to promote distribution of hunting effort and safety. The enrollee shall use these maps to explain to hunters boundaries and hunting constraints on the enrolled property.
- 3. Registration. To register for hunting access, hunters shall contact the program enrollee after obtaining the county's list. The county or its agent shall provide the current year's list and a fact-sheet which describes the WDACP hunting access system and the obligations of the hunter under this system. The hunter shall arrange a meeting with the enrollee. The enrollee shall describe the registration process, including completion of a hunting log, where the log will be located on the property, any hunting constraints on the property, and any information necessary to promote safety and prevent trespass. The registration form shall be provided to the enrollee by the county or its agent and be in the form of a log book following the format in the WDACP technical manual. The enrollee shall keep his or her hunting log current, recording hunters under this section and shooting permit participant hunters under ch. NR 12 to show compliance with the hunting access requirement. Enrollees shall make these records available for review by the county, its agent and department staff as required by s. 29.598(8r)(a), Stats.
- 4. Hunting access. Hunting access shall be on a first come, first serve basis. Hunters may contact enrollees before the dates they intend to hunt, but may not register until their intended hunting date. Hunters shall register by signing in on the hunting log every time they arrive to hunt and signing out on the hunting log every time they leave.
- 5. Hunter densities. The enrollee shall allow at least 2 hunters per 40 acres of land suitable for hunting at any given time of the appropriate hunting season. The enrollee and hunting members of the immediate family that reside in the enrollee's household may be counted towards this hunter density restriction.
- 6. Refusal. Enrollees may refuse hunting access for reasonable cause as defined in s. NR 19.76(7).
- 7. Complaints. Upon receiving a written complaint from a hunter denied access, the county, its agent or the department shall review hunting access records required under this chapter to verify compliance. Verification that access requirements have been violated shall require the county or its agent to deny further abatement and claims assistance to the enrollee for the calendar year in which the violation occurred. In addition, an enrollee may be subject to the penalties in s. 29.598(10), Stats.

- 8. Enrollee registration. An enrollee and his or her immediate family who live year round on the enrollee's property shall register by signing in on the daily hunting access log when they hunt.
- 9. Parking. Enrollees shall ensure adequate parking exists with enough parking area to accommodate the minimum required number of hunters and shall clearly describe these arrangements to the hunters.
- (4) The county shall maintain the current year's list of all enrollees and make the list available upon request for public inspection.
- (5) Hunters may hunt only the species causing damage unless the enrollee or landowner has granted permission to hunt other species.

Note: Hunting other species or engaging in other activities not authorized by the enrollee or landowner may be considered trespass in violation of s. 943.13, Stats.

- (6) Enrollees may restrict hunting access of bear hunters using dogs if trespass on adjoining private properties is likely to occur.
- (7) Motorized vehicles may not be used anywhere but the designated drive-way and parking location on the enrollee's land unless authorized by the enrollee.
- (8) Access hunters may not use permanent deer stands on enrolled properties unless authorized by the enrollee. An access hunter may use his or her own portable stand, but it shall be removed daily at the end of shooting hours, unless otherwise authorized by the enrollee. When registering on the hunting log, the hunter shall certify that he or she holds the enrollee and landowner harmless from any injuries associated with the hunter's hunting activity on the enrolled property, including any authorized use of hunting stands.
- (9) Exemption. The hunting access requirement does not apply to enrollees where the damage is to apiaries on lands where the applicant does not have hunting access control, pursuant to s. 29.598(7m)(am), Stats.
- (10) Posting. Enrollees may not post the enrolled land "no hunting" or "no trespassing" and shall remove any such existing signs. Enrollees may post their lands "hunting by permission only".

Section 19. NR 19.80(1) is renumbered to NR 19.80(1)(a).

Section 20. NR 19.80(1)(b) is created to read:

NR 19.80(1)(b) Row crops which are stranded by weather catastrophe over winter are not eligible for wildlife damage claims.

Section 21. NR 19.80(1)(c) is created to read:

NR 19.80(1)(c) Row and forage crops remaining unharvested after 90% of these crops have been harvested in the county are not in compliance with normal agricultural practices, as required by s. 29.598(6)(dm), Stats.

Section 22. NR 19.80(3) is amended to read:

NR 19.80(3) If the approved claims exceed the funds available, claims shall be paid on a prorated basis. When prorating claims, the department shall pay a percent of each eligible claim equivalent to the percent of the total approved claim amount that can be paid with the total available funds.

Section 23. NR 19.80(4)(a)4. is renumbered to NR 19.80(4)(a)4.a.

Section 24. NR 19.80(4)(a)4.b. is created to read:

NR 19.80(4)(a)4.b. The county may adopt an exemption recommendation resulting from procedures described in s. NR 12.16(2)(b)2. for a permittee enrolled in the WDACP.

Section 25. NR 19.80(4)(a)5. is created to read.

NR 19.80(4)(a)5. If an enrollee has participated in the WDACP the previous 2 years, and each year had in excess of \$1,000 of appraised deer damage losses documented on claim applications on contiguous land, to be eligible for claims the enrollee shall apply for a deer damage shooting permit under s. 29.59, Stats., and ch. NR 12 and comply with subd. 4.

Section 26. NR 19.80(4)(a)6. Is created to read.

NR 19.80(4)(a)6. The county shall, as a condition of providing claims assistance, require full cooperation and assistance of the enrollee in operating, maintaining and applying appraisal equipment as deemed needed by the county or its agent. An enrollee who engages in abusive or threatening language shall also be considered uncooperative. Uncooperative enrollees shall be ineligible for program claims assistance for the remainder of the calendar year. Upon determining an enrollee is uncooperative and ineligible for further program assistance the county or its agent shall notify the enrollee in writing that the enrollee's program participation is terminated.

Section 27. NR 19.80(6) is created to read:

NR 19.80(6) In order to be eligible for claims a claimant shall comply with the hunting access provisions described in s. NR 19.795.

Section 28. NR 19.81(1) is amended to read:

NR 19.81(title) WOVEN-WIRE AND ELECTRIC DEER BARRIER FENCE

CONSTRUCTION. (1) Specific applications and funding for woven-wire and electric deer proof barrier fences shall be approved by the department and county and included in the

county plan. Woven-wire and electric deer barrier fences are permanent, high-profile fences built to function 15 years or more.

Section 29. NR 19.81 is created to read:

NR 19.81(5)(a) The county and its agent shall follow permanent deer fence project development, contracting, bidding, funding, billing, and contract term inspection procedures detailed in the WDACP technical manual.

(b) A permanent fence contract approved by the department shall be used by the county and its agent for any WDACP funded fence. In addition, the county and its agent may not solicit bids for a fence contract without written approval of the department. This contract shall be signed by the enrollee, the county and its agent, and the department prior to expenditure of program funds for fence costs.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 23, 1998.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

November 6, 1998

George E Meyer, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor George E. Meyer, Secretary

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November 6, 1998

Mr. Gary L. Poulson Assistant Revisor of Statutes 131 West Wilson Street - Suite 800 Madison, WI

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WM-21-98. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

George E. Meyer Secretary

Enc.

