

Advisory Council On Historic Preservation

1522 K Street, NW
Washington, DC 20005

PROGRAMMATIC MEMORANDUM OF AGREEMENT
BETWEEN
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
AND THE
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT,
DEPARTMENT OF THE INTERIOR

I. Background

A. Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272, and the permanent program regulations for compliance with SMCRA, 30 CFR Chapter VII, provide protection to publicly owned properties listed on the National Register of Historic Places from the adverse effects of surface coal mining operations and of coal exploration activities of 250 tons or more. SMCRA and the regulatory program specifically prohibit, subject to valid existing rights, new surface coal mining operations and coal exploration activities of 250 tons or more that would have an adverse effect on any publicly owned park or publicly owned place included in the National Register of Historic Places, unless jointly approved by the regulatory authority and the Federal, State, or local agency with jurisdiction over the properties.

Also, Section 503 of SMCRA provides for States to obtain the approval of the Secretary of the Interior to regulate surface coal mining operations and coal exploration operations on non-Federal and non-Indian lands. Under 30 CFR Chapter VII the States will assume the responsibility for assuring that those properties protected under the National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470f, are considered by State regulatory authorities (SRA) before making decisions to approve surface coal mining or exploration operations.

B. Section 106 of NHPA requires that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted or licensed undertaking affecting properties included in or eligible for the National Register of Historic Places shall afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity for comment pursuant to its regulations at 36 CFR Part 800.

II. Purpose

A. This Programmatic Memorandum of Agreement (PMOA) sets forth the process for consultation with ACHP in connection with the Secretary of the Interior's approval of State permanent regulatory program submissions

received by OSM before or after the date of the execution of this agreement

B. This PMOA contains OSM's agreement to propose amendments to certain of its permanent program regulations related to historic resources

III. Effect of Programmatic Memorandum of Agreement

Implementation of this agreement shall constitute fulfillment of ACHP's and OSM's responsibilities under Section 106 of the National Historic Preservation Act and 36 CFR Part 800 with respect to the Secretary's approval or disapproval of the permanent regulatory programs of the following States which submitted programs prior to March 3, 1980, and any states which submit programs hereafter, including: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kentucky, Kansas, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

Pursuant to 36 CFR 800.8, implementation of this agreement shall constitute fulfillment of the Secretary's responsibilities under Section 106 of the NHPA for the proposed undertaking that would otherwise require numerous individual requests for comments under 36 CFR Part 800.

IV. OSM's Proposed Modification of Permanent Regulatory Procedure Regulations

A. Within 120 days after the effective date of this agreement, OSM will propose a modification to the permanent regulatory program as proposed rules in the Federal Register to require the following procedures under State programs:

The applicant for State approval to conduct coal exploration of 250 tons or more or surface coal mining operations shall be required to identify and describe any properties, whether publicly or privately owned, that are listed in the National Register of Historic Places and all properties determined eligible by the Secretary of the Interior for the National Register which may be adversely affected by the proposed activity. An applicant shall also identify and describe properties based on lists which the SRA maintains. These lists shall be based in turn on information provided to the SRA by the State Historic Preservation Officer (SHPO). Such lists shall include lists of National Register properties and those properties determined to be eligible for the National Register by the Secretary of the Interior, locations of public records listing historic properties and locations of lists maintained by organizations or officials that have expertise about cultural and historic properties in the area.

If the SHPO advises that information on historic properties in the permit area is incomplete and a field inspection is necessary to identify any such properties, the applicant shall consult with the SRA, which shall make the final determination of whether a field inspection must be conducted based upon all the information before it, including the SHPO's recommendation, as to the likelihood of harm or risk of destruction to historic properties. OSM will encourage SRAs to require field inspections in areas not previously

adequately inspected and require archeological/historical data recovery or avoidance.

The provisions of the following regulations shall not be proposed to be substantively changed at this time:

30 CFR 770.12(c), which requires that the review and issuance of permits be coordinated with the applicable provisions of NHPA, thus protecting all properties listed in, determined to be eligible for, or potentially eligible for the National Register of Historic Places.

2. 30 CFR 786.11(c)(1), which requires that written notification of permit applications be sent to Federal, State, and local government agencies including historic preservation agencies with jurisdiction over or an interest in the area of the proposed operations. This includes the SHPOs.
3. 30 CFR 780.31 and 30 CFR 784.17, which require that a permit applicant describe the measures to be used to prevent or minimize adverse effects on historic places. This will provide information of concern to SHPOs during review of the permit application.
4. 30 CFR 786.23, which requires that the regulatory authority consider public comments, including those of the SHPOs, in deciding to approve, require modification of, or deny applications for permits.

B. Pursuant to 30 CFR 732.17(c)(1), States with approved programs will be required to amend their programs to meet the requirements of the final permanent program regulations as outlined in this PMOA.

C. OSM shall consult with ACHP in the preparation of the proposed regulations to ensure that the intent of this PMOA is carried out.

V Review of State Programs by ACHP

ACHP will review proposed State programs or amendments to State programs that are submitted to OSM after the effective date of the PMOA. OSM will provide ACHP with the opportunity to comment on the proposed State programs pursuant to Section 503(b) of SMCRA prior to OSM's recommendations to the Secretary of the Interior on the approval or disapproval of the proposed programs.

VI. Effective Date, Revision and Termination

This agreement is effective on the date of the last signature. It may be revised or amended by mutual agreement of the signers. The agreement may be terminated by any of the signers, provided that the party initiating such termination provides 90 days notice and reasons therefore to the other party.

Robert Gawrey Aug 1, 1980 (date)
Executive Director, Advisory Council on
Historic Preservation

Joan M. Davenport (date) 8/12
Joan Davenport, Assistant Secretary,
Energy and Minerals

Larry C. Kim (date) 9/10/80
President, National Conference of State
Historic Preservation Officers

Richard H. Penner (date) 11-6-80
Chairman
Advisory Council on Historic Preservation