

Approved April 25, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at
Chairperson

1:40 ~~xxx~~ p.m. on March 31, 1986 in room 531 N of the Capitol.

All members were present except:

Senator Bogina
Senator Strick

Committee staff present:

Julian Efird - Research
Arden Ensley - Revisor

Conferees appearing before the committee:

Joyce Stover - Executive Director, Mined Land Board
Nadine Martinez - Attorney for Mined Land Board
Joyce Romero - Director, Department on Aging

The Chairman called the meeting to order and attention was turned to HB 3040 which would impose the provisions of the Kansas sunset law upon the Mined Land Conservation and Reclamation Board and the office of the Executive Director.

Joyce Stover distributed information to the Committee from the Kansas Corporation Commission, and the U.S. Department of the Interior commending the State Mined Land Conservation and Reclamation Board for correcting problems identified within the Department three years ago and stated that she felt they were functioning properly under the regulations. (Exhibit A). Nadine Martinez answered questions on behalf of the Board.

The Chairman stated that he would talk with the Chairman of the House Governmental Organization Committee before any action would be taken on this bill.

Joyce Romero addressed the Committee on behalf of HB 2699 which concerns the Kansas sunset law on the office of the Secretary of Aging and the Department of Aging. She outlined the programs within the agency and gave a very thorough overview of the Department's operations and future goals. (Exhibit B) The Director was commended for her excellent presentation by Senator Francisco and after a brief discussion Senator Winter made a motion to recommend HB 3040 favorable for passage. This was seconded by Senator Johnston and motion carried.

The Chairman then asked for a motion to approve the minutes of the March 24th and 25th minutes. This was so moved by Senator Winter, seconded by Senator Francisco and motion carried.

The meeting was then adjourned by the Chairman at 2:35 p.m.

GUEST LIST

COMMITTEE: Senate Governmental Organization

DATE: Mar. 31, 1980

NAME	ADDRESS	COMPANY/ORGANIZATION
Lynda Drew	610 W. 10th	KDOA
Harold C. Pitts	Topeka	TAKTA
Alice Knatt	610 W 10th	KDOA
Hattie Norman	308 Jeff	SACA
Joseph Hoover	Pittsburg, Ks	Mined Land Board (KCC)
M. Nading Martinez	KCC - Topeka	Mined Land
Joyce V. Courso	610 W. 10th	KDOA
Al Bramble	Lawrence, Ks.	SHL
Andie A. Gann	610 W 10th Topeka, Ks	KDOA
Ronald L. Harper	"	"



OFFICE OF SURFACE MINING RECLAMATION
and ENFORCEMENT

For Release February 7, 1986

Alan Cole (202) 343-4719

IMPROVEMENTS CITED IN KANSAS COAL MINE RECLAMATION PROGRAM

Improvements by the State of Kansas in its program for surface coal mine reclamation and enforcement have demonstrated the State's capability and intent to administer the program as required by the Surface Mining Control and Reclamation Act, according to the Interior Department's Office of Surface Mining Reclamation and Enforcement (OSMRE).

The record of program improvements and steps to strengthen the Kansas program was developed over a 3-year evaluation process, featuring public involvement through an open hearing and an extended comment period, conducted by OSMRE as part of its responsibility for overseeing the effectiveness of State coal mine reclamation programs.

Jed D. Christensen, the Acting Director of OSMRE, said, "I am pleased to announce this accomplishment by the State of Kansas. The State's achievements in improving the administration of the surface mine reclamation program, and paving the way for strengthening it further, deserve public recognition. We believe strongly in State primacy for surface coal mine regulation, so the action Kansas has taken to reinforce its own program should be seen as an extremely positive development."

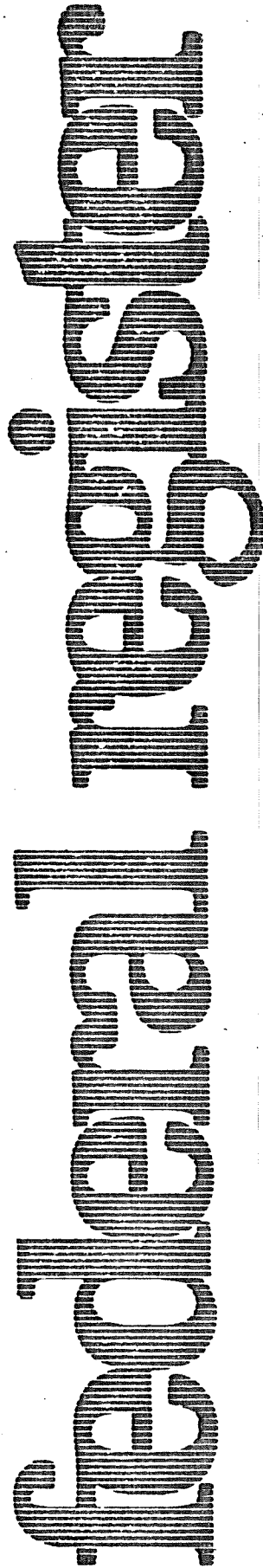
The evaluation process began in 1983. The official findings at the conclusion of the process cited additions to the State's technical staff, improved arrangement among State regulatory and support agencies, recent and upcoming revision in State regulations, and updated operating procedures. In addition, OSMRE will continue to monitor the Kansas program, providing additional assistance as necessary.

The Surface Mining Control and Reclamation Act of 1977 established national standards for preventing environmental damage during coal mining and assuring land reclamation afterward.

The Act gives each coal State the right to set up and operate its own regulatory program for meeting those standards, with OSMRE responsible for overseeing the effectiveness of the State program. OSMRE also helps the State programs financially and through technical assistance and training. The Kansas program was approved by the Secretary of the Interior in 1982.

Last year Kansas produced 1,068,000 tons of coal from the five active coal mines regulated by the Kansas Mined Lands Conservation and Reclamation Board.

Tuesday
March 11, 1986



Part IV

**Department of the
Interior**

**Office of Surface Mining Reclamation and
Enforcement**

**30 CFR Parts 731, 732, 761, 772, 773,
779, 780, 783, and 784**

**Protecting Historic Properties From
Surface Coal Mining Operations;
Proposed Rule**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784

Protecting Historic Properties From Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend its rules with respect to the consideration of cultural and historic properties to clarify existing provisions in its regulatory program. Provisions addressing the definition of cemetery, collection of information on known historic properties by applicants for permits to conduct coal mining operations, consideration of historic properties by State regulatory authorities, collection of environmental information by applicants for permits to conduct coal mining operations, and preparation of reclamation plans by applicants for permits to conduct coal mining operations are being proposed. These rules are being proposed (1) in response to a decision by the U.S. District Court for the District of Columbia, (2) in order to facilitate the implementation of OSMRE's responsibilities under the National Historic Preservation Act of 1966, as amended (NHPA), and (3) to respond to a petition for rulemaking filed with OSMRE by the Society of Professional Archeologists (SOPA). The proposed rules would clarify the responsibilities of the OSMRE, State regulatory authorities, and applicants for permits to conduct coal mining and exploration operations to ensure appropriate consideration of important historic properties.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 5:00 p.m. eastern time on June 9, 1986.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule at 9:30 a.m. local time in Washington, DC, on May 13, 1986; in Denver, Colorado on May 20, 1986; and Knoxville, Tennessee on May 27, 1986. Upon request, OSMRE will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests

for public hearings until 5:00 p.m. eastern time on April 22, 1986.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining, Reclamation and Enforcement, Administrative Record, Room 5124B, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining, Reclamation and Enforcement, Administrative Record, Room 5124B-L, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Street, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in other locations will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT" by the time specified under "DATES."

FOR FURTHER INFORMATION CONTACT: Dr. Annetta L. Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone: 202-343-7951.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rules
- IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed revisions should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit five copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, dates, and addresses scheduled for hearings at Washington, DC, Denver, CO, and Knoxville, TN, are specified previously in this notice (see "DATES" and "ADDRESSES"). The time, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Annetta L. Clark (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on April 22, 1986. If no one has contacted Dr. Cheek to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE to prepare responses to clarify issues, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

Consideration of historic properties is required by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), as well as by other Federal statutes. Historic properties are addressed in sections 507(b)(13), 522(a)(3)(B) and 522(e)(3) of the Act. Additional requirements applicable to OSMRE's programs are found in sections 106 and 110 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

Section 507(b)(13) of the Act requires applicants for permits to conduct coal mining operations to include in their applications accurate maps showing all manmade features and significant known archeological sites existing on the date of application.

Section 522(a)(3)(B) of the Act authorizes regulatory authorities to determine that a surface area is unsuitable for all or certain types of coal mining if it would affect fragile or historic lands on which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems.

Section 522(e) of the Act lists several property types on which mining is prohibited. Specifically, this section states that no surface coal mining operations will be permitted "within one hundred feet of a cemetery" or "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless

approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site." Exceptions exist for valid existing rights and operations existing on August 3, 1977.

Section 106 of the National Historic Preservation Act, as amended, requires Federal agency heads, prior to authorizing expenditure of Federal funds on a Federal or federally assisted undertaking, or prior to issuing a Federal license for such an undertaking, to consider the effect of the undertaking on historic resources and to provide the Advisory Council on Historic Preservation (Advisory Council) with a reasonable opportunity to comment on the undertaking. Under the NHPA, OSMRE reviews State program provisions as well as its own operations to ensure that appropriate consideration is being given to important historic properties.

The revisions to the existing regulations proposed here respond to three basic concerns. First, opinions issued by the District Court of the District of Columbia require certain changes to the existing language. Second, the petition for rulemaking on this issue, submitted by SOPA, was determined to have merit and OSMRE has decided to propose regulations to respond to the issues raised in that petition. See the discussion of the Director's decision on this petition at 51 FR 3802, January 30, 1986, which is part of the basis and purpose for this rule. Third, OSMRE's experience with the process as it now operates, and comments from various interest groups, both suggest that greater clarity and specificity in the regulations is required so that the regulatory authorities can better assist the Secretary of the Interior (the Secretary) in implementing his responsibilities concerning historic resources.

Existing Regulatory Program

Provisions for consideration of historic properties were promulgated by OSMRE as part of the permanent regulatory program for surface coal mining reclamation operations on March 13, 1979 [44 FR 15324 *et seq.*] and on September 14, 1983 [48 FR 41348 *et seq.*]. Subsequent amendments to relevant sections of the individual parts which deal with historic properties were promulgated on the following dates: 30 CFR Part 731—June 17, 1982 (47 FR 26364), and January 18, 1983 (48 FR 2272); 30 CFR Part 732—January 23, 1981 (48 FR 7907), and June 17, 1982 (47 FR 26366 and 26367); 30 CFR Part 772—September 8, 1983 (48 FR 40634); 30 CFR Part 773—September 28, 1983 (48 FR

44391); and 30 CFR Part 779—August 24, 1979 (44 FR 49685), August 4, 1980 (45 FR 51550), April 5, 1983 (48 FR 14822), and September 14, 1983 (48 FR 41356). Taken together, these regulations establish certain procedures which affect the consideration of historic properties.

1. Applicants for a permit must identify eligible and listed properties based on all available information. §§ 779.12(b) and 779.24(i)]

The regulations further specify that available information includes, but is not limited to, data of State and local preservation agencies.

2. The State Historic Preservation Officer (SHPO) is notified of all permit applications, and given an opportunity to comment. [§§ 773.13(a)(3)(ii) and (b)]

3. The public is also notified in a local newspaper of the complete permit application and given an opportunity to comment. [§ 773.13]

4. Any person having an interest that may be adversely affected may request an informal conference to submit information to the regulatory authority. [§ 773.13(c)]

5. The regulatory authority, based on such comments, records of any informal conferences, and on the information in the application, may require modification of the permit application. [§ 773.15]

This modification could include a requirement to obtain additional information and conduct new analyses to determine whether historic properties eligible for inclusion in the National Register of Historic Places are present in a proposed permit area.

Although not mandatory, the use of a field survey or background research could be required by the regulatory authority at this time.

6. Regulatory authorities should be able to demonstrate through the record of their decision that they have given consideration to a State Historic Preservation Officer's well reasoned comments. [§ 773.15]

7. The regulatory authority has the authority to require the operator to conduct appropriate mitigation measures to preserve important historic resources. Such measures could include a variety of activities from photographic recordation through archeological data recovery. [§ 773.15]

8. Procedures are available for the administrative and judicial review of decisions on permits. [Part 775]

In the last year, OSMRE has directed substantial resources to interpreting the regulatory program to provide clearer guidance on appropriate consideration of important historic resources. OSMRE's historic preservation

requirements were set forth in several letters to SHPO's and the State regulatory authorities. In these letters, OSMRE sets forth the following basic concepts:

1. In accepting financial assistance for its program from OSMRE, a State regulatory authority assures the Secretary that it will assist him in his compliance with section 106 of the NHPA by consulting with the State Historic Preservation Officer on the identification of properties listed on or eligible for listing on the National Register of Historic Places and by complying with his requirements to avoid or mitigate adverse impacts upon such properties. (This assurance is required to be included in every Federal grant by the Office of Management and Budget Circular A-102, Attachment M.)

2. State programs must contain provisions no less effective than the permanent program regulations.

3. OSMRE requires through the national regulations that individual permit decisions by the State regulatory authority take into account comments or recommendations from the State Historic Preservation Officer concerning the effect of the decision on historic properties.

4. The national regulatory program provides the basis and authority for State programs to assure that appropriate consideration is given to historic properties.

District Court Decisions

Provisions for the consideration of historic properties promulgated as part of OSMRE's permanent program rulemaking of March, 1979, at Part 769 provided protection under section 522 of the Act for historic properties both actually listed on the National Register of Historic Places, and properties eligible to be listed on the National Register of Historic Places. These provisions of the permanent program regulations were challenged in the U.S. District Court for the District of Columbia. In an order issued in December, 1979, (*In re: Permanent Surface Mining Regulation Litigation*, C.A. No. 79-1144 (Order filed December 21, 1979, pg. 2)), the Court suspended language in OSMRE's regulations which extended protection to properties eligible for listing. In the same order, the Court suspended the language in the regulations which provided protection for privately owned places listed on the National Register of Historic Places. Consequently, OSMRE revised these regulations to limit the protections of section 522(e)(3) of the Act to publicly

owned properties listed on the National Register of Historic Places.

In an opinion resolving a subsequent challenge by the Society of Professional Archaeologists, other environmental groups, and industry to these same regulatory provisions, the District Court found (*In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 (D.D.C. 1985), Mem. Op. filed July 15, 1985, pg. 77 *et seq.*) that OSMRE had properly excluded properties eligible for listing on the National Register of Historic Places from the protections offered by section 522(e)(3) of the Act. However, the Court also determined that the exclusion of privately owned properties listed on the National Register of Historic Places from the protections offered by this same section was improper, and that the Congress intended to protect both privately owned and publicly owned places on the National Register of Historic Places. The provisions being proposed here would respond in part to these determinations of the District Court. (Part 761)

Citizen and environmental plaintiffs in *In Re: Permanent II* also challenged OSMRE's definition of "cemetery" found in 30 CFR 761.5. Section 522(e)(5) of the Act prohibits surface coal mining operations "within one hundred feet of a cemetery." Regulations of March, 1979 defined a cemetery as "any area of land where human bodies are interred." However, subsequent revisions to these provisions in September, 1983, defined "cemetery" to be "any area of land where human bodies are interred, except private family burial plots" (48 FR 41348 of Sept. 14, 1983). This revision was in response to the type of situation that arose in *Holmes Limestone Co. v. Andrus*, 655 F. 2d 732 (6th Cir. 1981), *cert. denied*, 456 U.S. 995 (1982), in which the owners of a private burial plot wanted to permit mining closer to the plot than the regulations would provide. The court concluded in the opinion of July 15, 1985, cited above, that the definition in the 1983 regulations is inconsistent with the Act. Consequently, the Court remanded the definition of cemetery included in 30 CFR 761.5. The currently proposed regulations would respond in part to this order by eliminating the exclusion for "private family burial grounds" from the definition of cemetery and, with one minor exception, reinstating the original definition from the 1979 regulations. (Parts 761, 773, 779)

Petition for Rulemaking

The Society of Professional Archaeologists (SOPA) filed a petition for rulemaking with OSMRE on

September 15, 1983. On August 23, 1985 (50 FR 34167), OSMRE published a notice requesting public comment on the rulemaking petition. The petition asserted that because of the absence of guidance in the regulatory program, State regulatory authorities are implementing historic preservation provisions inconsistently. Subsequently, SOPA joined with the National Trust for Historic Preservation in the legal challenge before the District Court of the District of Columbia to regulations implementing section 522 of the Surface Mining Control and Reclamation Act promulgated during regulatory reform. This case is discussed above under *District Court Issues*.

The SOPA's principal concerns in the petition were that the existing regulations are silent as to

1. How properties eligible for but not yet listed on the National Register of Historic Places are to be identified by applicants, and

2. What a State RA is to do when mining will impact such properties.

On December 13, 1985, the Director of OSMRE determined that the petition represented valid concerns. This decision is discussed in more detail in FR (cite of future notice responding to SOPA). The currently proposed rulemaking is the rulemaking the Director of OSMRE committed to do in his response to SOPA's petition.

Clarification of Existing Regulatory Provisions

OSMRE has received a large number of inquiries from State regulatory authorities, State Historic Preservation Officers, the professional archeological and historic preservation community, and the coal mining industry concerning the historic preservation requirements in the program. Clarification of the responsibility and authority of the State regulatory authorities regarding historic properties has been sought by a number of correspondents. Additionally, information on the effect of the provisions of the National Historic Preservation Act on the State programs has been sought by the States, industry, and the preservation community. Consequently, OSMRE has determined that clarification of provisions for the protection of historic properties is necessary to ensure that an appropriate balance is achieved between the public's interest in historic properties and the need to mine coal. (Parts 731, 732, 773, 779, 780, 783, and 784.)

Residual Issues

In addition to the three major factors which the proposed revisions would address, discussed above, several

revisions are being proposed to improve consistency within the regulations and to improve coordination with other relevant statutes. (Parts 773, 779)

III. Discussion of the Proposed Rules

30 CFR Part 731

Part 731 currently provides authority to the States to submit a program to OSMRE for review which, when approved, allows the State to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries. It also establishes general content requirements for program submissions.

Two changes in the language of this part are being proposed, both within § 731.14. This section currently details the content requirements for program submissions. Section 731.14(g)(10) requires program submissions to include a narrative description or other appropriate document of the State's proposed system for consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values, and historic, cultural, and archeological resources. The proposed language would remove the reference to historic, cultural, and archeological resources from § 731.14(g)(10), and create a new § 731.14(g)(17), that would specifically address these resources. The new paragraph would include a provision that would require State program submissions to include a discussion of the State's proposed system for consulting with State and local agencies having responsibility for historic, cultural, and archeological resources, as well as the State's system for making decisions regarding such resources. This provision is included to clarify the procedures to be followed in a specific State for the consideration of historic properties and to provide the Secretary with additional information to assess the effect of State program approval on cultural and historic resources.

30 CFR Part 732

Part 732 details the procedures and criteria that OSMRE uses in approving or disapproving State program submissions. Criteria for approval or disapproval of State programs and State program amendments are set forth at 30 CFR 732.15. For approval, such criteria require that a State's laws and regulations are in accordance with the provisions of the Surface Mining Act and consistent with the requirements of 30 CFR Chapter VII. The phrases

"consistent with" and "in accordance with" are defined at 30 CFR 730.5 and mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act.

(b) With regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

A new paragraph is being proposed at § 732.17(h)(4). The proposed change would clarify the requirement to coordinate review of State program amendments with the State Historic Preservation Officer, and would require that such amendments which have an impact on historic properties must also be submitted to the Advisory Council on Historic Preservation for comment. Comments by the SHPO, Advisory Council, or other interested persons are considered by OSMRE during review of State programs or State program amendments using the criteria of Part 732.

Under the proposal, the Advisory Council would be provided the same comment period the public is provided under paragraph (h)(3) of § 732.17. This section provides a minimum of 30 days for public comment for each proposed State program amendment, with certain exceptions when 15 days are allowed.

A 30 day review period is necessary in many instances because of the requirements placed on OSMRE by this part to process the large number of State program amendments in a timely manner. These proposed changes respond to the requirements placed on OSMRE by the National Historic Preservation Act of 1986, as amended.

30 CFR Part 761

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations established by Congress in section 522(e) of the Act for those types of operations on certain Federal, public, and private lands. Section 761.5 defines a series of terms used consistently throughout the regulations. Cemetery is defined as any area of land where human bodies are interred, except private family burial grounds. Section 761.11 discusses areas where mining is prohibited. The list of prohibited areas includes any lands where mining would adversely affect any publicly owned park or any publicly owned places included in the National Register of Historic Places, unless

approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place.

Proposed changes to § 761.5 would revise the definition of "cemetery" to include any area of land where human bodies are purposely interred, consistent with the order of the District Court discussed above. The word "purposely" has been included in the proposal to emphasize that only intentional interments are considered cemeteries. This would include private family burial grounds and other sites, such as the Indian burial mounds found throughout the Ohio River Valley.

Proposed changes to § 761.11(c) would revise the provisions concerning areas where mining is prohibited by Act of Congress. The proposed language would remove the restriction of the prohibition to publicly owned sites listed on the National Register of Historic Places and extend the same prohibition to privately owned listed sites, subject to valid existing rights. This proposed change is in response to the decision of the District Court, discussed above.

For the same reason, § 761.12(f) would also be revised to extend the procedures implementing the prohibition against mining to privately owned, as well as publicly owned, properties listed on the National Register of Historic Places.

30 CFR Part 772

This part establishes the requirements and procedures applicable to coal exploration operations. Specific consideration of historic properties is found in §§ 772.12(8) (i through iii). These paragraphs require that applications for permits for exploration removing more than 250 tons of coal must include a description of resources listed on the National Register of Historic Places, resources known to be eligible for listing on the National Register, and known archeological resources located within the proposed exploration area.

Proposed changes to § 772.12(a)(8) would clarify that the regulatory authority could require additional information regarding known or unknown historic resources needed to process permits for coal exploration.

30 CFR Part 773

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits, coordination with other laws, public participation, permit decisions and notification, permit conditions, and permit term and right of renewal. Specific consideration of historic properties is found in § 773.12,

which lists other laws with which surface coal mining regulatory programs must be coordinated. These include the National Historic Preservation Act of 1986, as amended, Executive Order 11593 (subsequently codified as section 110 of the NHPA), and for Federal programs only, the Archeological and Historic Preservation Act of 1974. Section 773.15 discusses the review of permit applications. It specifies that the regulatory authority must make a written finding prior to permit application approval that surface coal mining and reclamation operations will not adversely affect a private family burial ground. However, relocation of a private family burial ground, if authorized by applicable State law or regulations, shall not constitute an adverse affect.

Proposed changes to § 773.12 would add the Archeological Resources Protection Act (ARPA) to the existing list of Federal statutes with which the processing of permits for coal mining operations needs to be coordinated for Federal and Indian lands only. Any archeological excavation or removal of archeological materials from either Federal or Indian lands is governed by the provisions of ARPA. State and private lands are not covered by ARPA. ARPA requires a permit for such activities, issued by the land manager. Because OSMRE is responsible for environmental compliance activities prior to the issuance of permits to mine coal on Federal and Indian lands, coordination of processing of permits to conduct coal mining operations with the specific provisions of ARPA is needed to prevent delay and duplication of compliance activities.

Section 773.15(c)(11), which provides protection for private family burial grounds, would become unnecessary when the definition of cemetery would be revised to include family burial grounds. Under the proposed definition of cemetery, protection for private family burial grounds would be covered by the permit finding at § 773.15(c)(3)(ii) and by the prohibition of § 761.11. These two sections extend the requirements of section 522(e)(5) of the Act to all cemeteries. The statement appearing in § 773.15(c)(11) that cemeteries could be relocated if authorized under applicable State law would remain but be moved § 761.11(g).

In place of existing § 773.15(c)(11), a new paragraph, § 773.15(c)(11), would be added, requiring that the regulatory authority make a written finding that it has taken into account the effect of a proposed permitting action on properties listed on and eligible for listing on the

National Register of Historic Places. OSMRE intends that this be accomplished through a process similar to that listed above under the discussion of the *Existing Regulatory Program*, and under the clarifications enunciated in this proposal. In every case, the regulatory authority would be expected to evaluate concerns of the SHPO, if any, and take appropriate action.

30 CFR Parts 779 and 783

These two parts discuss minimum requirements for information on environmental resources for surface mining and underground mining permit applications, respectively. The two sections contain similar requirements and language for the two types of permits. Sections 779.12 and 783.12 discuss general environmental resources information which must be included in permit applications, including the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description is to be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.

Section 779.24 discusses the general requirements for maps which must accompany permit applications, which include an indication of the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas, and each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located on or within 100 feet of the proposed permit area.

Paragraph (b) of §§ 779.12 and 783.12 would be reformatted to place existing language in the introductory sentence and in paragraph (b)(1). A new paragraph (b)(2) would be added. A minor change is proposed for the existing language in §§ 779.12(b) and 783.12(b). A change in language from "archaeological features" to "archeological sites" in the discussion of environmental information required in permit applications would make the language in this section consistent with the Act and with the language in other sections of the regulations.

The new paragraphs would clarify that the regulatory authority can, when appropriate, require applicants to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places.

This could be accomplished through (1) the collection of additional information, (2) the conduct of field investigations, or (3) other appropriate measures. Because field investigations could be costly, it would be expected that they would be required only where substantial likelihood of undiscovered resources exists.

The proposed revisions include a minor change to §§ 779.24(j) and 783.24(j). These changes would remove specific references to Indian burial grounds, private cemeteries, and other areas where human bodies are interred, which would make the language in these sections consistent with the proposed definition of "cemetery" in § 761.5, discussed above.

30 CFR Parts 780 and 784

These parts discuss minimum requirements for reclamation and operation plans to be included in surface mining and underground mining permit applications, respectively. Changes are proposed for §§ 780.31 and 784.17. The changes would include restructuring by placing the existing provision, as modified, in paragraph (a), and by adding a new paragraph (b).

Current language at §§ 780.31 and 784.17 states that, for any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in § 761.12(f). The existing sections are intended to implement the provisions of section 522(e)(3) of the Act, which states that, subject to valid existing rights (VER), no surface coal mining operations shall be permitted which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park of the historic site (section 522(e)(3) of SMCRA). This statutory language does not provide for impacts to occur absent this joint approval, or unless VER exists.

OSMRE proposes to amend these sections of the rules to track the statutory requirements of section 522(e)(3) to prevent impacts and, if the prohibition is not applicable, to protect such parks or places using a minimization standard. Thus, each permit application would need to include a description of the measures to be used either (1) to prevent impacts to publicly owned parks or any places listed on the National Register of Historic Places, or (2) if VER exists or

joint agency approval is to be obtained under § 761.12(f), to minimize impacts to such places. This revised language in §§ 780.31(a) and 784.17(a) would clarify that unless VER exists or joint approval is obtained, the statutory intent is avoidance, not minimization, of impacts.

The proposal would add a new paragraph (b) in §§ 780.31 and 784.17 to clarify the authority of the regulatory authority specifically to require operators to perform necessary mitigation and treatment activities for historic properties listed on or eligible for listing on the National Register of Historic Places prior to the commencement of any specific mining operations which would affect such properties. Paragraph (b) would not implement section 522(e)(3) of the Surface Mining Act, but would aid in enabling the States to assist the Secretary in fulfilling his responsibilities under section 106 of the National Historic Preservation Act. The proposed sections would allow regulatory authorities to require operators to perform the necessary activities either before or after permit issuance, so long as it occurs before the commencement of mining operations that would affect such properties.

Thus, proposed §§ 773.15(c)(11), 779.12(b), 780.31(b), 783.12(b) and 784.17(b) would clarify the State's authority and responsibility regarding historic properties.

V. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule contains information collection requirements requiring clearance from the Office of Management and the Budget (OMB) under The Federal Paperwork Reduction Act. Approval to include these new requirements is being requested from OMB.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

The primary purpose of this proposal is clarification of authorities OSMRE believes State regulatory authorities already have. Thus, no substantial impact is expected.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial

number of small entities. The primary purpose of this proposal is clarification of authorities OSMRE believes State regulatory authorities already have. Thus, no substantial impact is expected.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "ADDRESSES" section of this preamble. An EA on the final rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

List of Subjects

30 CFR Part 731

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 732

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 761

Coal mining, Historic preservation, Monuments and memorials, National Forests, National Parks, Reporting and recordkeeping requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR Part 772

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 773

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

For the reasons set forth in this preamble it is proposed to amend 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784 as set forth below.

Dated: February 14, 1986.

James E. Cason,
Acting Assistant Secretary, Land and Minerals Management

PART 731—SUBMISSION OF STATE PROGRAMS

1. The authority citation for part 731 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Section 731.14 is amended by revising paragraph (g)(10) and by adding a new paragraph (g)(17) to read as follows:

§ 731.14 Content requirements for program submissions.

(g)
(10) Consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values.

(17) Consulting with State and local agencies having responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

3. The authority citation for part 732 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

4. Section 732.17 is amended by redesignating paragraphs (h)(4) through (h)(12) as paragraphs (h)(5) through (h)(13), respectively, and by adding a new paragraph at (h)(4) to read as follows:

§ 732.17 State program amendments.

(h)
(4) All State program amendments shall be provided to the State Historic Preservation Officer for review no later than the beginning of the public comment period provided under paragraph (h)(3). All State program amendments which may have a

significant impact on historic resources shall be submitted to the Advisory Council on Historic Preservation for the same comment period provided in paragraph (h)(3) of this section.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

5. The authority citation for part 761 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522 and 701 of Pub. L. 95-691 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272, and 1291).

6. Section 761.5 is amended by revising the definition of "cemetery" to read as follows:

§ 761.5 Definitions.

For the purposes of this part—

Cemetery means any area of land where human bodies are purposely interred.

7. Section 761.11 is amended by revising paragraphs (c) and (g) to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

(c) On any lands where mining will adversely affect any publicly owned park or any places 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 park or place;

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

8. Section 761.12 is amended by revising paragraph (f)(1) to read as follows:

§ 761.12 Procedures.

(f)(1) Where the regulatory authority determines that the proposed surface coal mining operation would adversely affect any publicly owned park or any place included in the National Register of Historic Places, regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or any place listed on the National Register of Historic Places a copy of applicable parts of the permit application, together with a

request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

PART 772—REQUIREMENTS FOR COAL EXPLORATION

8. The authority citation for part 772 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

10. Section 772.12 is amended by adding a new paragraph, (b)(8)(iv), to read as follows:

§ 772.12 Permit requirements for exploration more than 250 tons of coal.

(b) . . .
(8) . . .

(iv) Any other information which the regulatory authority may require regarding known or unknown historic resources.

PART 773—REQUIREMENTS ON PERMITS AND PERMIT PROCESSING

11. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a, Executive Order 11593, 16 U.S.C. 469 *et seq.*, and 16 U.S.C. 470aa *et seq.*

12. Section 773.12 is revised to read as follows:

§ 773.12 Regulatory requirements with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); Executive Order 11593; for

Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*) Where OSMRE is the regulatory authority and where lands covered by that Act are involved.

13. Section 773.15 is amended by revising paragraph (c)(11) to read as follows:

§ 773.15 Review of permit applications.

(c) . . .

(11) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places.

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

14. The authority citation for part 779 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98-146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

15. Section 779.12 is amended by revising paragraph (b) to read as follows:

§ 779.12 General environmental resources information.

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (1) The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. Based on this information, the applicant may recommend to the regulatory authority appropriate identification, evaluation, or mitigation measures.

(2) The regulatory authority may require the applicant to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places, through (i) collection of additional information, (ii) conduct of field investigation, or (iii) other appropriate analyses.

16. Section 779.24 is amended by revising paragraph (j) to read as follows:

§ 779.24 Maps: General requirements.

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

17. The authority citation for part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98-146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

18. Section 780.31 is revised to read as follows:

§ 780.31 Protection of public parks and historic places.

(a) For any public parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used (1) to prevent impacts, or (2) if valid existing rights exist or joint agency approval is to be obtained under § 761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant or operator to protect historic properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operation which would affect such properties.

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

19. The authority citation for part 783 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98-146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

§ 783.12 General environmental resources information.

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. (1) The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. Based on this information, the applicant may recommend to the regulatory authority appropriate identification, evaluation, or mitigation measure.

(2) The regulatory authority may require the applicant to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places, through the (i) collection of additional information, (ii) conduct of field investigation, or (iii) other appropriate analyses.

21. Section 783.24 is amended by revising paragraph (j) to read as follows:

783.24 Maps: General requirements.

* * * * *

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

* * * * *

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

22. The authority citation for part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98-146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

23. Section 784.17 is revised to read as follows:

784.17 Protection of public parks and historic places.

(a) For any public parks or places listed on the National Register of Historic Places that may be adversely

affected by the proposed operation, each plan shall described the measures to be used (1) to prevent impacts, or (2) if valid existing rights exist or joint agency approval is to be obtained under §761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant or operation to protect historic properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures prior to the commencement of any specific mining operations which would affect such properties.

[FR Doc. 86-5206 Filed 3-10-86; 8:45 am]
BILLING CODE 4310-05-M



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
WASHINGTON, D.C. 20240

Honorable John W. Carlin
Governor of Kansas
Topeka, Kansas 66612

Dear Governor Carlin:

On March 11, 1983, you were informed that the Office of Surface Mining Reclamation and Enforcement (OSMRE) had reason to believe that serious problems existed with regard to the State's administration of its permanent regulatory program governing surface coal mining and reclamation operations as approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The action in 1983 was initiated pursuant to 30 CFR 733.12(b) of the Federal regulations. At that time, problems were identified in the program areas of permitting, inspection and enforcement, administrative procedures and records, civil penalty assessments, bond release procedures, and staffing.

In response to OSMRE's letter, the State expressed its desire to maintain primacy and correct any problems that were identified. Since then, the State has worked diligently to correct those problems and we have been encouraged by the progress Kansas has made. The State has allocated additional staff resources and funding for the implementation of the Kansas regulatory program. The Mined Land Conservation and Reclamation Board (MLCRB) has developed a manual and procedures for preparing, reviewing, and tracking permit applications. The State has revised its inspection system and improved its inspection reports. The MLCRB has reviewed all permits for completeness, and is requiring operators to supply the data necessary for technically adequate permits. Kansas is following its bond release procedures and has taken steps to improve its civil penalty assessment procedures.

OSMRE will continue to work with the State on program areas as necessary. This is especially important until the State's permitting staff gains additional experience.

We appreciate the efforts of Mr. Michael Lennen, Chairman of the Kansas Corporation Commission, Ms. Joyce Stover, Executive Director, Mined Land Conservation and Reclamation Board, and your office over the last two years to strengthen the program. Congress clearly intended for the

Honorable John W. Carlin

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States to regulate the surface coal mining and reclamation operations within their borders. With the State's continual commitment, Kansas will be able to properly administer the program as Congress intended.

Thank you for your cooperation in this effort.

Sincerely,

~~THOMAS~~ THOMAS LENSEN

Acting Director

Enclosure

cc: Michael Lennen, KCC
Joyce Stover, MLCRB



KCC NEWS

KANSAS CORPORATION COMMISSION

4th Floor—State Office Bldg.
Topeka, Kansas 66612

MEDIA CONTACT:	Gary L. Haden	Office	Home
	Public Information Director	913/296-3432	273-5598

FOR IMMEDIATE RELEASE
FEB. 20, 1986

FOR MORE INFORMATION, CONTACT:
GALE CLEVINGER (913) 296-3306

MINED LAND BOARD COMMENDED BY U.S. DEPARTMENT OF THE INTERIOR

The State Mined Land Conservation and Reclamation Board (MLCRB) has been commended by the U.S. Department of the Interior for correcting problems identified by the federal agency in a "733" letter issued three years ago. The "733" letter refers to that section of the Code of Federal Regulations (CFR) that allows the Department of the Interior to notify a state that its surface coal mining and reclamation program is not in compliance with federal regulations and that specific steps must be taken to bring the program into compliance, if the State is to retain authority over the program.

The MLCRB, which is chaired by KCC Chairman Michael Lennen, is responsible for reviewing applications for permission to conduct the surface mining of coal in the state, enforcing applicable regulations and for ensuring that the land is properly restored once the mining ceases.

On March 11, 1983, the Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior notified the Governor's office that it believed serious problems existed in the administration of the state's surface coal mining and reclamation program.

OSMRE identified problems in several areas including the issuance of permits; inspection of mining operations and enforcement of related regulations; administrative procedures and recordkeeping; assessment of civil penalties against operators in violation of regulations; staffing and bond release procedures. (The MLCRB holds bonds for all mined areas under permit, the amounts of which are based on what it would cost the State to reclaim the land if the operator were to go out of business and the bond had to be forfeited. Specific standards must be met before the Board releases the bond).

The letter from the Office of Surface Mining Reclamation and Enforcement stated that most of the problems with the program in Kansas appeared to stem from a lack of commitment by the MLCRB to develop and implement effective procedures to enforce the State's mined land conservation and reclamation program.

In a follow-up report dated Jan. 31, 1986, and a subsequent letter to the Governor, the OSMRE reported that the State had worked over the past three years to correct the problems and the Office was encouraged by the progress.

The report noted that the State allocated additional staff, including the hiring of a new executive director, and allocated additional funding for the program; the MLCRB developed a manual and procedures for preparing, reviewing and tracking permit applications; the State revised its inspection system and improved its inspection reports; the MLCRB reviewed all permits for completeness and is requiring operators to supply the data necessary for technically adequate permits; and the State has taken steps to improve the procedures it uses to assess civil penalties.

The Office of Surface Mining Reclamation and Enforcement commended the efforts of KCC Chairman Michael Lennen,

MLCRB Letter 733 p. 3

MLCRB Executive Director Joyce Stover, both of whom were appointed to their respective positions after the the "733" letter was issued, and the Governor's Office to strengthen the program.

The Office of Surface Mining Reclamation and Enforcement will continue to work with the State on its mined land program, however the action initiated through CFR 733 has been terminated.

Congress, through the Surface Mining Control and Reclamation Act of 1977, granted states the authority to regulate surface coal mining and reclamation operations within their borders. The U.S. Department of the Interior is responsible for monitoring individual state programs.

The State of Kansas received conditional approval of its surface coal mining and reclamation program on Jan. 21, 1981. Full approval was granted on April 14, 1982.

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PRESENTATION
SENATE GOVERNMENTAL ORGANIZATION
MARCH 31, 1986

MISSION STATEMENT

Operating within the state and federal mandates, the purpose of the Kansas Department on Aging is to serve the elderly and to assist Older Kansans to live independently with self-sufficiency and dignity to the maximum feasible extent. To achieve this purpose, the Department functions with the following mission:

- (a) To develop a coordinated system of services for Older Kansans, especially those in greatest economic and social need;
- (b) To develop legislation, policies, and plans that serve the interests and need of Older Kansans;
- (c) To develop adequate resources for those services, plans, and policies;
- (d) To administer funds effectively and efficiently so the mission is met; and
- (e) To insure older people are full participants in all processes.

The Department on Aging was established effective July 1, 1977 by an act known as the Kansas Act on Aging (K.S.A. 75-5901). Creation of the Department was a positive response on the part of the State to the needs of a growing population of elderly which will continue to grow and have extensive needs well into the next century. The many elderly who advocated for the creation of a separate department did so in part, because they wanted to be served by a department that did not have attached to it the stigma of welfare programs.

The Act creating the department specifies that the Department shall be the single state agency for receiving and disbursing federal funds made available under the Older Americans Act (Public Law 89-73) or other federal programs for the aging. The legislation states that the secretary shall have the following powers and duties (for the sake of brevity I will now summarize the specific powers and duties):

- (1) Evaluate programs, services and facilities for the aged and determine if needs of the aged are being met and if not to make appropriate recommendations.
- (2) Function as the sole state agency to develop a comprehensive plan to meet the needs of the state's senior citizens.
- (3) Receive and disburse federal and state funds relative to the aged.

- (4) To provide consultation and assistance to communities and groups developing local and area services for senior citizens.
- (5) Promote community education regarding the problems of senior citizens through institutes, publications, radio, television and the press.
- (6) Cooperate with agencies of the federal government in studies and conferences designed to examine the needs of senior citizens and to develop programs and facilities to meet those needs.
- (7) Establish and maintain information and referral sources.
- (8) Provide staff support as may be reasonably required by the State Advisory Council on Aging.
- (9) Establish policies for the administration of the department and disbursement of funds for which it is responsible.
- (10) Keep informed of developments of research, studies and programs.
- (11) Adopt such rules and regulations as may be necessary to administer the provisions of the act.

With the creation of the Department, a 19 member state advisory council on aging was formed with representatives being specified from various constituencies. The council is to provide advocacy for the elderly and affairs of the department, the Governor's office and other public and private, state and local agencies affecting the aging. Additionally, the advisory council is to prepare an annual report evaluating aging services and facilities, to comment on the state plan, and other duties as specified.

In 1980 the act was amended to provide for a long term care ombudsman within the Department. Also in 1980, the Secretary was authorized to establish and operate a toll-free telephone hot-line system to assist Older Kansans and others in obtaining information and access to services. In 1982, the Secretary was authorized to establish three Older Kansans Employment programs.

In addition to the state mandates, the Department also operates under several federal mandates (P.L. 98-459). To be eligible for receiving Older Americans Act funding the state must designate a state agency to:

- (a) Develop and administer a state plan.
- (b) Be responsible for coordinating all state activities of the Act.
- (c) Serve as an effective and visible advocate for the elderly.

- (d) Provide technical assistance to any agency, organization, association or individual representing the needs of the elderly.
- (e) Divide the state into planning and service areas (PSA's) based on geographic, demographic and service related considerations. Each plan shall provide for supportive services, nutrition services; the establishment, maintenance or construction of multipurpose senior centers; and for determining the need, evaluating and contracting for such services.

In addition to the above the state agency shall:

- (a) Designate in each PSA an Area Agency on Aging that can develop and carry out an area plan.
- (b) Assure that views of recipients of services be considered in the development and administration of the plan.
- (c) Develop a formula for distribution of funds.
- (d) Provide assurances that preference in service delivery will be given to older individuals with greatest economic and social needs, with particular attention to low-income minority individuals.

The State Agency submits a State Plan to the Administration on Aging Commissioner. Specifications for the plan are detailed as a part of the act. Specifications speak to the need for services, assurances that rural residents are being served, hearings on the plan, providing for information and referral services, long term care ombudsman, nutrition services, legal assistance and training for agency personnel. Other portions of the act provide for requirements relative to disaster relief, transportation services, housing, and other training, research, and discretionary projects and programs.

DEPARTMENTAL ORGANIZATION

In order to carry out the mission of the Department and both the state and federal mandates, the Department is organized into three divisions:

- (a) Administrative Services Division

This Division has three distinct functions for the Department: Accounting and Fiscal Management/Grants Management/Statistical Analysis. The main purpose of this Division is to ensure maximum level of fiscal accountability and effective use of funds available to the Department for services to the elderly.

(b) Program Operations Division

The purpose of this Division is to insure development of comprehensive and coordinated service delivery systems which provides social, nutrition, and employment services for older persons in the state. The Division reviews and recommends action on two-year plans and revisions submitted by area agencies on aging. As the Department's major liaison with the area agencies, the Division clarifies federal and state requirements, and monitors and conducts annual assessments of each of the 11 area agencies. It provides technical assistance and training to the area agencies and other service providers and local groups. This Division also has major responsibility for development and approval processing of rules and regulations, promulgated by the Department.

(c) Planning/Policy Analysis/Advocacy Division

This Division sets the departmental objectives for internal management, analyzes policy issues for executive and legislative decisions, and advocates directly and indirectly for Older Kansans.

The Division also coordinates development of the state plan on aging. All state and federal regulatory legislative issues related to aging are monitored by the Division. Issue papers are prepared annually during the budget process for the Governor's legislative program. Finally the division fulfills the legislative mandate for advocacy prescribed by the Older Americans Act through various training programs, publications and dissemination of other information. The Long Term Care Ombudsman is also a part of this Division.

THE AGING NETWORK

There are 11 planning and service areas in Kansas; and in each there is an Area Agency on Aging. Three of the area agencies are units of county government; the other eight are not-for-profit agencies. Each AAA is headed by a director and each also has an appropriately structured advisory board. (You will each receive a brochure that identifies the AAA's.) As noted earlier the establishment of area agencies is mandated by the Older Americans Act, if the state wishes to participate in its funding programs. Every year KDOA awards Older Americans Act and state funds to AAAs based on plans submitted by the AAA's and approved by KDOA. In turn AAA's contract with local providers to deliver needed services within a planning and service area. In addition to the AAA's, there are other organizations in this network that provide services to Older Kansans. There are 380 senior centers and 293 meal sites in Kansas. There are only 9 counties in Kansas that do not have a meal site.

In addition to the area agencies, senior centers, and meal sites, there are many other organizations that provide services to the elderly, like American Red Cross, Visiting Nurses, and other State agencies. There also are numerous advocacy groups that are a part of the network, e.g., Kansas Coalition on Aging, Kansans for the Improvement of Nursing Homes, Kansas Citizens Council on Aging, American Association of Retired Persons, and many others. Approximately twenty-eight of these organizations are members of the Kansas Coalition on Aging.

BUDGET

The total FY-86 legislative appropriation for the Department was \$12,039,735. The Governor's revision provides a total of \$11,756,629, or a reduction of over \$200,000. Of these \$11 million, \$10,046,229 are Federal funds (primarily meals and social services) and \$1,719,000 are State funds (primarily meals and nutrition transportation). While not a part of the Department's budget, 66 counties had mill levies for aging services that produced an estimated total of \$4.89 million (as of January, 1985).

Budget cuts are of major concern to the Department. There is a clear possibility that thousands of meals will not be served under the Governor's revised FY-86 budget, since these programs represent complex matching funds. For example, the planned cost for one meal in FY-86 included \$0.183 from State General Fund, \$0.744 in average participant contributions, \$0.198 local resources including mill levy, \$1.169 Older Americans Act, and \$0.48 USDA. This year the Department has already experienced a cutback in USDA reimbursement of over \$212,000. Under Gramm-Rudman's 4.3% cut, the nutrition program experienced another \$172,629 cut above the USDA cut of \$212,530 and the state cut of over \$200,000. Other Department federal funds for social services have been cut by \$124,731 under Gramm-Rudman.

PROGRAMS

Trying to describe the Department's programs, and especially those individuals served by them, is much like being asked to describe the whole of an iceberg. Probably only the smaller portion is easily describable. Our most visible and most significant programs are the nutrition programs. In FY-85, 58,096 Older Kansans were served by the congregate, home-delivered and in-home meals programs through a total of 3,776,711 meals. The in-home nutrition program served 1,188 persons, 63% of whom were age 75 or over, 81% were at or below 125% of poverty, and 14% were minority members. This 1,188 is an increase from 984 in 1983. The 1985 cost per meal was \$2.12, down from \$2.29 in 1983. There were 2,415,008 congregate meals purchased to serve 46,207 Older Kansans. Additionally there were 1,167,029 home delivered meals that served 10,701 Older Kansans.

The Older Workers JTPA Program enrolled 387 participants, placing 220 in private sector employment. Last year the state-funded OKEP program enrolled 436 participants and placed 433 in unsubsidized private-sector employment. Two of the employment programs received national recognition. The Senior Employment Program in Wichita received the "Project Independence Award" from the Administration on Aging for exemplary programming to enhance Older Kansans' independence. The Older Kansan Employment Program in Manhattan was accorded the "Distinguished Performance Award" from the National Alliance of Business, Washington, D.C. It was cited as an outstanding example of planning, training, and placement in cooperation with the private sector.

The Department is responsible for administering the Long Term Care Ombudsman (LTCO) program. This office which includes the three ombudsman positions, one in Wichita, one in Kansas City, and one in Topeka, receives and investigates complaints from residents of nursing homes. The LTCO also provides training to Kansas citizens, health care professionals, and other agency personnel on nursing issues. Over 800 citizen contacts were received by this Office in 1985.

Several other programs sponsored by the Department last year were cooperative efforts with either the private sector or other private or public agencies or organizations. Efforts such as these allow the Department to use relatively few Department funds to achieve significant levels of service to Older Kansans. For example, KDOA worked with Southwestern Bell and the Area Agencies to offer a series of forums across the state to increase Older Kansans understanding of the outcomes of divestiture. Over 5,000 persons attended these sessions. While the program required some KDOA staff time, most of the funding was from Southwestern Bell and cost just over \$1.00 per person served.

The Department cooperated with the State Advisory Council, the Kansas Coalition on Aging, and the American Association of Retired Persons (AARP) to sponsor training sessions to assist Older Kansans to better understand the process of government and how to participate more effectively in that process. These advocacy forums started with the training of 55 trainers, using a manual developed by the Department. Subsequently, Older Kansans acting as trainers have trained 1600 Older Kansans since September. Each year the Department cooperates with one of the State's universities and other organizations to offer the Governor's Conference on Aging that provides current aging related information by researchers and others to over 1,000 Older Kansans. For the past several years the Department has cooperated with the Kansas Medical Society to offer a series of forums. Last year the forums were designed to assist Older Kansans to use health care more effectively and thus reduce health care costs. The Department also helped Older Kansans locate physicians who agree to take Medicare assignment. This telephone information program served hundreds of older persons and/or their families. The Department operates a toll-free information hot line that also serves hundreds of Older Kansans

each year. The Department's semiannual training programs, its community services conference, minority workshop and food service workers training assisted over another 1,000 persons to deliver services more knowledgeably and efficiently to Older Kansans.

The Department's newsletter, The Advocate, has a circulation of over 5,000. During the Legislative session, the Legislative Newsletter serves to update Older Kansans on progress of legislation that directly impacts on the elderly. Throughout the year the Department issues news releases, information memoranda, and information alerts in an effort to keep the public, aging network, and agencies updated on significant new information. Just recently the Alzheimers Task Force staff developed and distributed 249 information packets that will be of assistance to health care professionals and victims' families in coping more effectively with this devastating disease. Thus you can see that the Department has numerous programs to carry out its information dissemination function.

I would like to simply note several other Department programs -- work with the Silver Haired Legislature, State Fair participation, Winter Watch, Dental Discount Program, and hyper-hypothermia program to note some that I've not described in detail.

The foregoing has provided an overview of many of the Department's fairly direct services, the top of the iceberg. The description of the many other Older Kansans served less directly by the Department is more difficult to describe. As noted earlier, the Area Agencies receive funds not only from the Department, but also through the local mill levies and from project income. I will mention a partial list of programs and the numbers of persons served. Please note that some persons receive more than one of the following services:

Transportation	12,999
Outreach	27,927
Information and Referral	21,343
Legal Services	2,555
Newsletters/Newspapers	135,818

This data is from the FY-85 Title III-B Program Performance Reports. A complete list is included in information that will be distributed.

As you can see the Department is the lead agency of a network that provides many vital services to Older Kansans, and to their families, friends, neighbors and others who care for them. These services assist other Kansans to live more independently and therefore require less assistance from the public sector.

Kansas can be proud of the work done by the Department and the Aging Network. Results of a recent assessment by the Federal Regional Office of the Administration on Aging substantiates this fact.

UNIQUE FEATURES OF THE DEPARTMENT

The Department is unique among those in state government in that it was formed as the State's response to the requests of large numbers of elderly for a free-standing Department that could represent their needs at the level of the Governor and to the Legislature. This responsiveness by the Legislature and the Governor to the elderly of Kansas has assisted in establishing a greater worth for the State's older citizens, a new set of values in a society that perhaps too long has focused on youth. Older Kansans wanted a Department that did not carry with it the stigma sometimes associated with welfare programs. Indeed the Department's programs are not means-tested, which assists in allowing Older Kansans to retain their dignity and yet receive services that assist them to remain more independent.

Unlike other departments that are more "regulatory" in nature the Department is charged with advocating for Older Kansans, a function that would be difficult to carry out if combined with programs for all of the life span. This uniqueness is critical for several reasons. The older population is growing rapidly and will continue to do so. Never in the history of man has any society been faced with the problems and challenges of so many elderly. There are no tested models, no real precedents. Thus the Department needs to be free to be innovative and to adjust rapidly to ongoing change. Demographers predict that by 2080 there will be 75.9 million persons in the United States over age 65; nearly one-fourth of those will be over 85, and 56% will be over age 75. As the number of the old old increases, programming to meet their needs must be developed. These programs must be cost effective, since it is this group (the old-old) that has the greatest need and uses the largest number of health and social service resources. Having a Department that focuses only on aging related issues, allows the needed flexibility that would be lost in a polygenerational and highly regulatory bureaucratic structure.

Also it is clear that different areas of the State vary greatly with regard to their needs. The aging network structure allows local needs to be addressed through the area agencies' advisory board structure. Additionally the current structure allows local areas to establish tax mill levies to pay for many of the critically needed services. The Area Agencies, working with the Department on Aging, provide a framework for coordination of services. Added efforts in the years ahead will be made to fill gaps in services and avoid duplication. The network and the Department are cost conscious as can be seen by reference to the price of meals over the years. In spite of inflation, costs per meal have continued to decline. The KDOA functions of coordination and facilitation are keys to good working relationships with the mostly independent area agency organization structure. It would be difficult to amalgamate a structure like this with one that was rigidly structured and operated in a typical, top down, lock-step organizational control mode.

A free-standing Department on Aging has allowed use of state and other funds as seed money to work with the private sector and other organizations and agencies to expand and provide service to Older Kansans. As noted earlier, this approach has helped deliver a significant number of services to Older Kansans e.g., telephone forums with Southwestern Bell, Cost Containment Forums with the Kansas Medical Society, and others.

Having a cabinet-level Department on Aging to represent the Older Kansans and advocate for them continues to send the strong message that Kansas values its elderly.

FUTURE GOALS

One can read much these days about how many more elderly are well off. This can lead to incorrect conclusions. Since there are many more elderly today than ever before, there are more who have more resources. However, there are also more who don't. Additionally, there are, and will continue to be, more old old who cannot survive without assistance. There has been a tendency for government to suggest that friends, relatives, neighbors, and others should do more to meet the Elderly's needs. Already between 80-90% of all in-home care is provided by family and friends. A recent study would suggest that any significant reserve within these groups to meet increasing needs may not be so readily available. A research project on a random sample of employees of Travelers Corp. indicated that 28% of its employees over age 30 spend an average of 10.2 hours per week providing care for elderly relatives and friends. Eight percent devoted 35 hours per week to such care (almost the equivalent of a second full-time job).

As we look to the future and consider how we will meet the anticipated needs, I believe the Department should have additional resources. It should be the single point of entry for all nursing home and other long term care complaints. The Department should spearhead an effort to develop a long term care plan for the State. Such a plan should contain sections on long term care insurance, a common complaint mechanism and a nursing home rating system, among others. The Department should continue and expand its efforts in the area of health promotion and wellness programs. Such efforts should lead to a better quality of life for Older Kansans, and also assist in containing health care costs. If current trends continue, hunger and homelessness among the aged will continue to increase.

A major concern of the Department will be in working with Kansans through various conferences, working groups, news media, and others to redefine "old age" in this new age of aging. Take just one dimension of old age as an example, i.e., retirement. Our current concept of retirement is probably no longer valid. Work (part or full time) does at least two things. It allows one to have a sense of satisfaction and accomplishment, and it allows one to stay in the economic mainstream. Older Kansans want to be in the mainstream. They do not want to be dependent on anyone--

relatives, friends, and especially the state and local governments. A redefinition would allow for and encourage new strategies and new or revised policies related to retirement. We need to rethink and revise other policies also. It makes no sense to require Older Kansans to spend down to poverty before they are provided with some critically needed assistance that would allow them to continue living relatively independently. Policies like these are not acceptable to young or old alike. They represent a bankrupt social policy that leads to a bankrupt fiscal support system. The Department wants to take aggressive leadership in establishing a sound policy base that will be a sound investment for the new age of aging, a good investment for young and old alike.

RLH:bms

3-28-86

SUBCOMMITTEE REPORT

February 14, 1986

TO: House Governmental Organization Committee
FROM: Subcommittee 1
RE: Kansas Department on Aging

The Subcommittee makes the following recommendations pursuant to its Sunset review of House Bill No. 2699:

1. With respect to the Older Americans Act (OAA) Nutrition program, which is financed in part from the State General Fund, the Subcommittee recommends that the Legislature make an effort to supplant with State General Funds federal funds lost through the enactment of Gramm, Rudman and Hollings. As a result of this act, the Kansas Department on Aging anticipates a reduction of \$172,692 in federal funds for the OAA Nutrition program in FY 1986.
2. The Subcommittee notes the distinction between the state-funded Older Kansans Employment Program (OKEP) and the federally-funded Older Workers Job Training Partnership Act (JTPA) program. Both programs attempt to place older workers 55 years of age and older in jobs and train them in job-seeking skills. In addition, both programs assist employers in hiring older workers. Moreover, funds appropriated to the Kansas Department on Aging for these senior employment programs are not used to pay for the salaries of older workers. The JTPA program differs from OKEP in that to be eligible for JTPA, older workers must meet income guidelines. There is also an extensive training program and job placement is targeted to the private sector. No income guidelines govern the eligibility of participants in the Older Kansans Employment Program and placement efforts involve part-time and full-time positions in both the public and private sectors. The Subcommittee understands that the coordinated efforts of both programs, despite their different focuses, assist a maximum number of elderly Kansans. The Subcommittee therefore recommends continued support of both programs.
3. The Subcommittee commends the Kansas Department on Aging for curbing its administrative costs at 8.3 percent of its total operating budget in FY 1985.
4. The Subcommittee also notes that administrative expenses of area agencies are curbed due to a provision in the Older Americans Act (OAA) requiring area agencies on aging to establish advisory councils responsible for advising them on matters relating to the development and administration of the area agency plan and the operations conducted under the plan.

5. The Subcommittee notes the vast array of social services provided by area agencies on aging in FFY 1985. These included advocacy, Alzheimers support services, counseling, education and training, escort services, housekeeping, hospice, legal assistance, nutrition services, ombudsman, outreach, personal care, repairs, and many others. Many elderly are not informed about the various services offered by area agencies on aging. Therefore, it is recommended that the area agencies enhance their efforts through the use of newsletters and mailings to notify as many elderly as possible about the services offered.
6. The Subcommittee recognizes the efforts made by area agencies to remain informed about the services provided in each planning and service area and encourages the continuation of such efforts.
7. The Subcommittee notes that local communities can apply to the Kansas Department of Transportation for federal funds to purchase vehicles to transport the elderly. These federal funds are available to communities on a matching basis, and federal funds from the Older Americans Act can be used to finance a portion of the required matching support. The Subcommittee supports continued funding for such services.
8. The Subcommittee appreciates the cooperation and assistance provided by the Secretary of Aging and the agency staff. Their expertise and understanding of agency operations proved invaluable to the Subcommittee in compiling its recommendations.
9. The Kansas Department on Aging appears to be discharging its responsibilities efficiently and cost-effectively. In addition, the population of elderly (60 years and older), when compared to the total population of Kansas, was 17.4 percent in 1980 and will continue to increase in future years. In light of changing demographics and the agency's proven competence in addressing the needs of the elderly, the Subcommittee recommends that the Office of the Secretary of Aging and the Department be continued in existence until July 1, 1994.

Rep. Elaine Hassler
Representative Elaine Hassler
Subcommittee Chairperson

Representative Clyde Graeber

Alfred Ramirez
Representative Alfred Ramirez

L. V. (Sam) Roper
Representative L. V. Roper

Kathryn Sughrue
Representative Kathryn Sughrue

B86-11.039