

**PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY,
THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL
PROTECTION,
THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT, AND
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
REGARDING EECBG, SEP AND WAP UNDERTAKINGS**

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance programs: *the Energy Efficiency and Conservation Block Grant Program* under the Energy Independence and Securities Act of 2007 (EECBG); *the State Energy Plan* under the Energy Policy and Conservation Act of 1975 and the State Energy Efficiency Programs Improvement Act of 1990 (SEP); and *the Weatherization Assistance Program* (WAP) for Low Income Persons under Title IV of the Energy Conservation and Production Act, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and the American Recovery and Reinvestment Act of 2009 (ARRA); collectively referred to as the “Programs”;

WHEREAS, the unprecedented levels of funding available to the Programs, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies;

WHEREAS, the Bureau for Historic Preservation is part of the Pennsylvania Historical and Museum Commission and serves as the State Historic Preservation Office (SHPO) and is currently experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Programs;

WHEREAS, the Pennsylvania Department of Environmental Protection (DEP) and the Department of Community and Economic Development (DCED) (collectively referred to as the “Recipient”) are receiving financial assistance from DOE to carry out the Programs;

WHEREAS, the projects funded by the Programs are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, renewables, and weatherization (undertakings);

WHEREAS, DOE has determined that these undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act (NHPA);

WHEREAS, in accordance with 36 CFR 800.14(b)(4), the Advisory Council on Historic Preservation (the ACHP) has designated this Agreement as a Prototype Programmatic Agreement (PA), which does not require the participation or signature of the ACHP;

WHEREAS, DCED and SHPO have fully executed a Memorandum of Understanding (MOU) before February 19, 2010. The MOU will be incorporated into this PA under Attachment B. The provisions within the MOU will only be applicable to DCED.

WHEREAS, DOE, the ACHP, and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects;

WHEREAS, by memorandum dated August 28, 2009 (attached as Appendix C), DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and sub-grantees of funding from the Programs (Recipients);

WHEREAS, according to the August 28, 2009 memorandum, the Recipients are authorized, to initiate Section 106 compliance in accordance with 36 CFR 800.2 (c)(4);

WHEREAS, the undertakings covered under this PA are not located on Tribal lands and are primarily smaller scale activities and routine projects, without the potential for adversely affecting historic properties, rather than complex undertakings with a greater potential to adversely affect historic properties, which would require completion of the typical Section 106 review process;

WHEREAS, DOE and the ACHP were guided by the principles set forth in the ACHP's Affordable Housing Policy statement, adopted on November 9, 2006, in negotiating this Programmatic Agreement upon which this PA is based;

NOW, THEREFORE, DOE, DEP, DCED and SHPO agree that the Programs shall be administered in accordance with the following stipulations to satisfy DOE's Section 106 responsibilities for all individual undertakings of the Programs:

STIPULATIONS

DOE, the Recipient, and the SHPO shall ensure that the following stipulations are carried out:

I. Roles and Responsibilities

- A. DOE shall be responsible for providing oversight of the PA, executing PAs with SHPOs, participating in the resolution of disputes between the SHPO and the Recipient, and providing technical assistance and guidance as needed. DOE shall be responsible for government-to-government consultation with Indian tribes, unless the Indian tribe agrees to the delegation of this responsibility to a Recipient.
- B. The Recipient shall be responsible for consulting with consulting parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on undertakings. Undertakings that involve properties greater than fifty (50) years old and are not listed on either Appendices A or B shall be submitted to the SHPO for review in accordance with this agreement.
- C. Recipient shall ensure that the provisions of this PA apply to its sub-awards.
- D. The Recipient is encouraged to use qualified professionals in conducting their Section 106 requirements.
- E. The SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
- F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

II. Tribal Review

- A. Execution of this PA presumes that DOE will conduct its government-to-government responsibilities with federal recognized Indian tribes or its Section 106 consultation requirements with Native Hawaiian Organizations (NHO) consistent with Federal laws and regulations. The Recipient shall not substitute for DOE in matters related to potential effects on historic properties of cultural and religious significance to Indian tribes, except with the concurrence of the Indian tribe or NHO.
- B. DOE acknowledges that Indian tribes possess special expertise in assessing the National Register eligibility of properties with tribal religious and cultural significance, and requires the Recipient to consult with them, as appropriate, in identifying historic properties listed in or eligible for listing in the Area of Potential Effect (APE) of program areas.
- C. If the Recipient notifies DOE that an undertaking may result in an adverse effect on cultural resources with tribal religious and cultural significance, DOE shall notify Indian tribes of individual undertakings that may result in an adverse effect on cultural resources with tribal religious and cultural significance and invite them to participate in consultations. Indian tribes and the Recipient may develop a bi-party agreement that outlines their review procedures for undertakings covered in a PA. Such agreements

will be submitted to DOE for review and approval, and a copy sent to the ACHP for its records.

III. State Interagency Agreements

The Recipient may review an undertaking in accordance with the terms of an interagency agreement, in lieu of the other terms of this PA, if:

- 1) The interagency agreement was in negotiations by the Recipient and SHPO on or before February 5, 2010, and will be executed no later than February 19, 2010;
- 2) The Recipient and SHPO both agree through execution of this PA that the interagency agreement applies to the undertaking and provides a historic preservation review process that is similar to that provided by the other terms of this PA; and
- 3) DOE does not object to the use of the interagency agreement to fulfill the requirements of Section 106 of the NHPA for the undertakings.

IV. Exemptions from Section 106 review

- A. The Recipient shall not submit to the SHPO undertakings in accordance with Appendices A or B as they do not have the potential to cause effects on historic properties even when historic properties may be present. The Recipient and the SHPO may agree to modify Appendix A and/or Appendix B, with advance notification of such modifications to the ACHP and DOE. Recipient will maintain file records with verification that undertakings were determined to be exemptions for a period of three (3) years from project completion and make them available for review if requested by DOE or the ACHP.
- B. If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the Recipient made its application for DOE financial assistance, then no further review is required under this PA.
- C. Recipients of any of the Programs may utilize either Appendix A or Appendix B in identifying exempt undertakings, regardless of whether the Exhibit on which the undertaking relates to another federally funded program.

V Review Procedures for Non-exempt Undertakings

- A. ***For undertakings not exempted under Stipulation III or IV, if the Recipient has an executed Section 106 Agreement per 36 CFR part 800 for Community Development Block Grants (CDBG) with the SHPO that 1) is***

still in effect; 2) covers the same undertakings as the DOE grant programs; and 3) is up to date with reporting to the SHPO, **no separate Section 106 review is needed.**

- B. Otherwise, the Recipient shall review the undertaking in accordance with Stipulations VI through X below, or consistent with SHPO approved historic preservation protocols.

VI. Identification and Evaluation

- A. The Recipient shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.
- B. The Recipient shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the Recipient and SHPO may use or develop protocols that are consistent with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.
- C. The Recipient shall consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys or related Section 106 reviews, as appropriate.
- D. Archaeology surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.
- E. In order to avoid potential delays, prior to initiating undertakings the SHPO may review the Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of this PA.
- F. The Recipient shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(c)(2).

VII. Treatment of Historic Properties

- A. When the Recipient and the SHPO concur that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal*

Register) (Standards), that undertaking will not be subject to further Section 106 review.

- B. The Recipient and SHPO will make best efforts to expedite reviews through a finding of “No Adverse Effect with conditions” when the Recipient and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient will proceed in accordance with Stipulation VIII.

VIII. Resolution of Adverse Effects

- A. The Recipient shall consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.
- B. The Recipient may use standard stipulations included in Attachment A of this PA, or as negotiated as part of this PA between the SHPO and the Recipient, or if the project warrants, use of an alternate PA due to the complexity of the project activity.
- C. Consultation shall be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.
- D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

IX. Emergency Situation Undertakings

- A. When an emergency undertaking is required for historic properties associated with the undertakings, the Recipient shall allow SHPO five (5) business days to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.
 - 1. The Recipient shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the

address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.

2. The Recipient shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

X. Public and Consulting Party Involvement

- A. The Recipient shall maintain a list of undertakings and shall make the documentation available to the public. The Recipient shall notify the SHPO if its notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.
- B. The Recipient, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulations VI, VII, and VIII.

XI. Administrative Coordination

- A. The Recipient, in consultation with the SHPO, may develop procedures allowing for the use of local reviews conducted by Certified Local Governments (CLG) when such procedures avoid the duplication of efforts.
- B. The Recipient, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PA is required.
- C. The SHPO shall provide comments to the Recipient within thirty (30) days, unless otherwise agreed upon by the SHPO and the Recipient, for reviews required under the terms of this PA with the exception of emergency undertakings. In the event that the SHPO fails to comment within the established period, the Recipient can assume the SHPO has concurred, and proceed.
- D. The Recipient shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be compromised when project undertakings are initiated prematurely.
- E. The SHPO and the Recipient shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the Recipient intends to utilize the services of qualified professionals.

- F. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the Recipient and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.

XII. Discoveries

If historic properties are discovered or unanticipated effects on historic properties located within a project's APE after the undertaking has been initiated, the Recipient will implement the following procedures:

- A. The Recipient shall immediately cease all operations for the portion of the undertaking with the potential to affect an historic property;
- B. The subgrantee shall advise the Recipient of the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics and an explanation of whether the SHPO or
- C. Indian tribes and NHOs concur with proposed avoidance, treatment plan or mitigation plan;
- D. The Recipient or DOE shall notify Indian tribes or NHOs of any discoveries that have the potential to adversely affect sites or buildings of religious or cultural significance to them. After reviewing such discoveries, the Indian tribes or NHOs can request further consultation on the project by notifying DOE, ACHP, and the SHPO in writing.
- E. The Recipient or subgrantee shall implement the avoidance, treatment or mitigation plan and advise the Recipient and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete may resume the activities that were halted to address the discovery situation.

XIII. Dispute Resolution

- A. Should the SHPO object within the time frames outlined in this PA to any project undertakings, the Recipient shall consult further with the SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the Recipient shall refer the matter to DOE. The Recipient shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.
- B. The ACHP will provide its recommendations, if any, within 21 days following receipt of relevant documentation. DOE will take into account the ACHP's

recommendations or formal comments in reaching a final decision regarding the dispute.

XIV. Reporting and Monitoring

- A. DOE, the ACHP, and the SHPO may monitor any undertakings carried out pursuant to this PA. The ACHP may review undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.
- B. The Recipient shall adhere to DOE's established protocols for ARRA reporting program undertakings.
- C. DOE will submit annual reports to ACHP and NCSHPO commencing October 15, 2010 summarizing the Programs' undertakings, to include data on number of undertakings, the number of exempt undertakings, and reviews conducted under this PA.

XV. Amendments

DOE, the SHPO, or the Recipient may request that this PA be amended, whereupon DOE and the SHPO, and the ACHP, if involved, will consult to consider such an amendment. Any such amendments shall be developed and executed among DOE, the Recipient, and the SHPO in the same manner as the original PA, and pertain only to this State PA.

XVI. Duration of Agreement

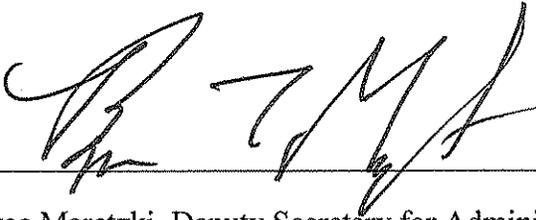
This PA will be valid for three (3) years from the date of execution, as verified with DOE filing the PA with the ACHP.

XVII. Termination of Agreement

DOE, the SHPO, or the Recipient may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination.

Signatories:

Daniel Griffiths, Deputy Secretary, Office of Energy & Tech. Deployment Date
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION



10.27.10

Bryce Maretzki, Deputy Secretary for Administration Date
PENNSYLVANIA DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

Jean H. Cutler, Deputy SHPO Date
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

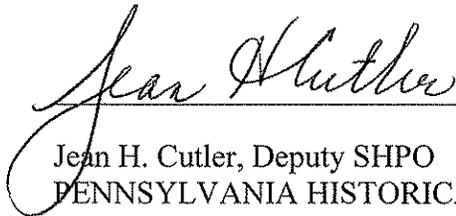


10/29/2010

LeAnn Oliver, Program Manager Date
UNITED STATES DEPARTMENT OF ENERGY
OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY
OFFICE OF WEATHERIZATION AND INTERGOVERNMENTAL PROGRAMS

PROGRAMMATIC AGREEMENT
AMONG
THE UNITED STATES DEPARTMENT OF ENERGY,
THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, AND
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
REGARDING EECBG, SEP AND WAP UNDERTAKINGS

Signatory:

 10/28/2010
Date

Jean H. Cutler, Deputy SHPO
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

APPENDIX A—WAP UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

All undertakings will be done in accordance with applicable local building codes or the International Building Code, where applicable. The No Effect Activities List in the MOU, Attachment B, is also incorporated into this Appendix. In accordance with 36 CFR 800.3(a)(1), the following undertakings have been determined to have no potential to cause effects on historic properties:

A. Exterior Work

- 1) Air sealing of the building shell, including caulking, weather-stripping, and other air infiltration control measures on windows and doors, and installing thresholds in a manner that does not harm or obscure historic windows or trim.
- 2) Thermal insulation, such as non-toxic fiberglass and foil wrapped, in walls, floors, ceilings, attics, and foundations in a manner that does not harm or damage historic fabric.
- 3) Blown in wall insulation where no holes are drilled through exterior siding, or where holes have no permanent visible alteration to the structure
- 4) Removable film on windows (if the film is transparent), solar screens, or window louvers, in a manner that does not harm or obscure historic windows or trim.
- 5) Reflective roof coating in a manner that closely resembles the historic materials and form, or with materials that restore the original feature based on historic evidence, and in a manner that does not alter the roofline, or where not on a primary roof elevation or visible from the public right-of-way.
- 6) Storm windows or doors, and wood screen doors in a manner that does not harm or obscure historic windows or trim.
- 7) In-kind replacement or repair of primary windows, doors and door frames
- 8) Repair of minor roof and wall leaks prior to insulating attics or walls, provided repairs closely resemble existing surface composite

B. Interior Work

Special Note: Undertakings to interior spaces where the work will not be visible from the public right of way; no structural alterations are made; no demolition of walls, ceilings or floors occurs; no drop ceilings are added; or no walls are leveled with furring or moved, should be automatically excluded from SHPO review. This work includes:

1. Energy efficiency work within the building shell:

- a. Thermal insulation in walls, floors, ceilings, attics, crawl spaces, ducts and foundations

- b. Blown in wall insulation where no decorative plaster is damaged.
- c. Plumbing, work, including installation of water heaters
- d. Electrical work, including improving lamp efficiency
- e. Sealing air leaks using weather stripping, door sweeps, and caulk and sealing major air leaks associated with bypasses, ducts, air conditioning units, etc.
- f. Repair or replace water heaters
- g. Adding adjustable speed drives such as fans on air handling units, cooling tower *fans*, and pumps
- h. Install insulation on water heater tanks and water heating pipes
- i. Install solar water heating systems, provided the structure is not visible from the public right of way
- j. Install waste heat recovery devices, including desuperheater water heaters, condensing heat exchangers, heat pump and water heating heat recovery systems, and other energy recovery equipment
- k. Repair or replace electric motors and motor controls like variable speed drives
- l Incorporate other lighting technologies such as dimmable ballasts, day lighting controls, and occupant controlled dimming

2. Work on heating and cooling systems:

- a. Clean, tune, repair or replace heating systems, including furnaces, oilers, heat pumps, vented space heaters, and wood stoves
- b. Clean, tune repair or replace cooling systems, including central air conditioners, window air conditioners, heat pumps, and evaporative coolers
- c. Install insulation on ducts and heating pipes
- d. Conduct other efficiency improvements on heating and cooling systems, including replacing standing pilot lights with electronic ignition devices and installing vent dampers
- e. Modify duct and pipe systems so heating and cooling systems operate efficiently and effectively, including adding return ducts, replace diffusers and registers, replace air filters, install thermostatic radiator controls on steam and hot water heating systems
- f. Install programmable thermostats, outdoor reset controls, UL listed energy management systems or building automation systems and other HVAC control systems

3. Energy efficiency work affecting the electric base load of the property:

- a. Convert incandescent lighting to fluorescent
- b. Add reflectors, LED exit signs, efficient HID fixtures, and occupancy (motion) sensors
- c. Replace refrigerators and other appliances

4. Health and safety measures:

- a. Installing fire, smoke or carbon monoxide detectors / alarms
- b. Repair or replace vent systems on fossil-fuel-fired heating systems and water heaters to ensure that combustion gases draft safely to outside
- c. Install mechanical ventilation, in a manner not visible from the public right of way, to ensure adequate indoor air quality if house is air-sealed to building tightness limit

APPENDIX B SEP AND EECBG UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 - No Consultation Required

In addition to the undertakings provided in *Exhibit A (WAP Undertakings exempt from Section 106 Review)*, DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. General efficiency measures not affecting the exterior of the building:

- a. Energy audits and feasibility studies
- b. Weatherization of mobile homes and trailers
- c. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
- d. Water conservation measures - like low flow faucets, toilets, shower heads, urinals - and distribution device controls
- e. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
- f. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
- g. Ventilating crawl spaces
- h. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way
- i. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired)
- j. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements
- k. Adding variable speed drive motors
 1. Insulation of water heater tanks and pipes
- m. Furnace or hot water tank replacement that does not require a visible new supply or venting

2. Insulation measures not affecting the exterior of the building:

- a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation)
- b. Duct sealing, insulation, repair or replacement in unoccupied areas

- c. Attic insulation with proper ventilation; if under an effective R8 .add additional R- 19 up to R-38 (fiberglass bat only)
- d. Band joist insulation .R-II to R19 as applicable
- e. Water heater tank and pipe insulation

3. Electric base load measures not affecting the exterior of the building:

- a. Appliance replacement (upgrade to EnergyStar appliances)
- b. Compact fluorescent light bulbs
- c. Energy efficient light fixtures, including ballasts (Replacement)
- d. LED light fixtures and exit signs (Replacement)
- e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way

B. Category 2 - No Consultation Required if SOI Standards are Adhered to and Verified by Qualified Staff, if available

1. Efficiency and repair measures:

- a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
- b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property
- c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building
- d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building.
- e. Integrated shingle-style or thin film solar systems on the rear roof of the structure, behind the parapet or not visible from the public right of way.
- f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
- g. Wind system additions to existing wind power facilities that will not require ground disturbance and if building mounted will not require building reinforcement.
- h. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37
- i. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10
- j. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief # 2
- k. New lighting controls including photo-sensors and shading elements if not visible from the public right of way

1. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way
- m. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building,

2. Installation or repair of roofing, siding, and ventilation:

- a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way
- b. Rainwater catches and/or gray water systems not viewable from the public right of way
- c. Repair or replacement in kind of existing exterior siding provided
- d. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground
- e. Roof repair or replacement with materials that closely resemble the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline
- f. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way
- g. Installing foundation vents, if painted or finished to match the existing foundation material.

3. Windows and doors:

- a. Installing storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim
- b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
- c. Window glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure

APPENDIX C - AUGUST 28, 2009 DELEGATION MEMORANDUM
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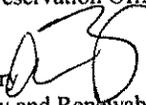


Department of Energy
Washington, DC 20585

August 28, 2009

MEMORANDUM

TO: State Historic Preservation Officers
Tribal Historic Preservation Officers

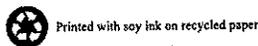
FROM: Catherine R. Zoi 
Assistant Secretary
Energy Efficiency and Renewable Energy

SUBJECT: Memorandum from EERE Regarding Delegation of Authority for Section 106 Review of Undertakings, Assisted by the U. S. Department of Energy, Office of Energy Efficiency and Renewable Energy

The Department of Energy (DOE), through the Office of Energy Efficiency and Renewable Energy (EERE), provides financial assistance to states, U.S. territories, units of local government, and Indian Tribes through the Energy Efficiency and Conservation Block Grant (EECBG) Program, Weatherization Assistance Program (Weatherization), and State Energy Program (SEP). Attached hereto is a one-page summary of the three programs. Additional program information is available at the following links: <http://www.eecbg.energy.gov/>; <http://apps1.eere.energy.gov/wip/weatherization.cfm>; http://apps1.eere.energy.gov/state_energy_program/.

Through this memorandum, DOE intends to formalize the role of the States and DOE's award recipients (Applicants) to assist DOE in carrying out its Section 106 compliance responsibilities. In order to streamline DOE's compliance with Section 106 and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), EERE is authorizing its Applicants under the EECBG, Weatherization, and SEP programs to initiate consultation pursuant to 36 CFR § 800.2(c) (4). Effective immediately, EERE Applicants and their authorized representatives may consult with the State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs) to initiate the review process established under 36 CFR Part 800 and to carry out some of its steps. Specifically, EERE Applicants are authorized to gather information to identify and evaluate historic properties, and to work with consulting parties to assess effects. EERE retains responsibility to document its findings and determinations in order to appropriately conclude Section 106 review.

EERE also remains responsible for initiating government-to-government consultation with federally recognized Indian Tribes. EERE's responsibility to consult on a government-to-government basis with Indian Tribes as sovereign nations is established through specific authorities and is explicitly recognized in 36 CFR Part 800. Accordingly, EERE may not delegate this responsibility to a non-federal party without



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the agreement of the Tribe to do so. Where no such agreement exists, EERE will initiate tribal consultation.

Authorized Applicants must notify EERE whenever:

- Either the EERE Applicant or the SHPO/THPO believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by EERE;
- There is a disagreement between an Applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;
- There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or
- There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR § 800.9(b) and 36 CFR § 800.9(c), respectively.

EERE will participate in the consultation when such circumstances arise.

EERE expects its Applicants that are so authorized, to involve consulting parties in Section 106 findings and determinations and to carry out the exchange of documentation and information in a respectful, consistent and predictable manner. Technical assistance is available to Applicants from EERE regarding the coordination of Section 106 reviews, if needed.

If you have any questions, please contact Dr. F. G. (Skip) Gosling, DOE Federal Preservation Officer/Chief Historian, Office of History and Heritage Resources, (202) 586-5241 or skip.gosling@hq.doe.gov or Steven P. Blazek, NEPA Compliance Officer, (303) 275-4723 or steve.blazek@go.doe.gov.

ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The Recipient and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on listed or eligible historic resources. The ACHP will not be a party to these Agreements. However, the Recipient must submit a copy of each signed Agreement to the SHPO, and the ACHP within 30 days after it is signed by the Recipient and the SHPO.

1. Recordation

The Recipient shall ensure that the historic property is recorded prior to its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the Recipient shall be responsible for submitting required documentation to identified archive locations. The Recipient and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of a similar historic resources has been previously recorded.

2. Architectural Salvage

The Recipient, in consultation with the SHPO, shall identify significant architectural features for salvage, and appropriate parties to receive the salvaged features. The Recipient shall ensure that any architectural features identified for salvage are salvaged prior to initiation of undertakings and properly stored and curated. When feasible, and determined appropriate in consultation with SHPO, salvaged architectural features shall be reused in other preservation projects.

3. Rehabilitation

The Recipient shall ensure that the treatment of historic properties which the SHPO has determined does not meet the *Standard*, or SHPO approved design guidelines, is carried out in accordance with treatments agreed upon by the Recipient and the SHPO and are incorporated in the final plans and specifications. The final plans and specifications shall be approved by the SHPO prior to initiating the undertaking.

4. New Construction

The Recipient shall ensure that the design of new buildings, or additions, which the SHPO has determined does not meet the *Standards*, or SHPO approved design guidelines, is carried out in accordance with the final plans and specifications reviewed and approved by the SHPO prior to initiating the undertaking.

5. Archaeology

In cases where the undertaking will cause unavoidable adverse effects to National Register eligible archaeological properties, the Recipient shall consult with the SHPO to determine whether data recovery or some other treatment measure is in the public interest. If data recovery is the agreed upon treatment measure, the Recipient shall consult further with the SHPO to develop and implement a data recovery plan for those portions of the historic property that will be adversely affected. The data recovery plan shall:

- be based on firm background data, sound planning, and accepted archaeological methods;
- be consistent with applicable State laws and regulations;
- be accomplished in a thorough, efficient manner, using the most cost effective techniques practicable;
- provide for appropriate curation of archeological materials and records, and
- provide for reporting and interpretation of what has been learned in a format understandable and accessible to the public;
- be consistent with the National Park Service's *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (at: http://www.nps.gov/history/local-law/arch_stnds_7.htm), and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), ACHP Section 106 Archaeology Guidance (at: <http://www.achp.gov/archguide/>), and any archaeological guidance issued by the SHPO.

ATTACHMENT B: MEMORANDUM OF UNDERSTANDING BETWEEN THE
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION AND THE
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
AND THE
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

This Memorandum of Understanding is entered into by and between the PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION ("PHMC") and the DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT ("DCED").

BACKGROUND:

Section 501 (71 P.S. Section 181) and 502 (71 P.S. Section 182) of the Administrative Code of 1929 require Commonwealth departments and agencies to coordinate their work and activities with other Commonwealth departments and agencies.

DCED administers, through a grant from the Department of Energy, a statewide Weatherization program using designated subgrantees, which grant activities may trigger compliance with Section 106 of the National Historic Preservation Act of 1966.

The Bureau for Historic Preservation is part of the Pennsylvania Historical and Museum Commission and serves as the State Historic Preservation Office ("SHPO") which administers the state's historic preservation program as authorized by the Pennsylvania History Code and the National Historic Preservation Act of 1966.

DCED and PHMC desire to work together to establish a process to ensure compliance by DCED and Weatherization program subgrantees with Section 106 of the National Historic Preservation Act of 1966, as amended in 1980 and 1992 and the regulations (36 CFR Part 800) of the Advisory Council on Historic Preservation as revised in 1999 for the federally funded Pennsylvania Weatherization Program.

NOW THEREFORE, the parties to this Memorandum set forth the following as the terms and conditions of their understanding:

1. DCED will provide direction to all Weatherization subgrantees on the steps necessary to achieve compliance with the National Historic Preservation Act of 1966, as amended, by providing a copy of Weatherization Directive 2009-07 regarding Compliance with the National

Historic Preservation Act, which directive is attached to and made part of this MOU. Weatherization Directive 2009-07 identifies which activities require individual SHPO consultation and which activities are included on a No Effect Activities List requiring no individual consultation. Required forms and procedures for individual SHPO consultation, when necessary, are included in Weatherization Directive 2009-07.

2. In order to remain compliant with Section 106 of the National Historic Preservation Act of 1966, DCED will provide to the SHPO a yearly report on all Weatherization projects undertaken in the prior year demonstrating that the practices outlined in Weatherization Directive 2009-07 have been followed by all subgrantees.

3. SHPO shall concur that required consultation under Section 106 of the National Historic Preservation Act as amended is complete and that DCED has met its responsibilities under the Act, provided the procedures outlined in Weatherization Directive 2009-07 are carried out and the yearly report is satisfactorily completed.

4. The contact person for DCED for purposes of this Memorandum of Understanding shall be the Executive Directive, Office of Energy Conservation and Weatherization, DCED, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120.

5. The contact person for PHMC for purposes of this Memorandum of Understanding shall be the Executive Director, PHMC, State Museum Building, 300 North Street, Harrisburg, PA 17120.

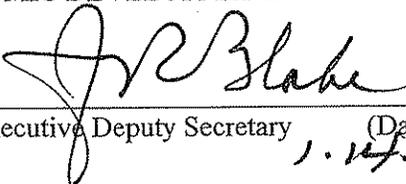
6. This Memorandum of Understanding shall take effect as of July 1, 2009 and shall terminate on June 30, 2012, but may be extended by mutual agreement of the parties. By mutual consent, the Secretaries of both agencies may, by letter, increase the funding available under this Memorandum and/or extend the duration of this Memorandum.

7. This memorandum is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or any other parties.

8. Any dispute arising hereunder shall be submitted to the Office of General Counsel for final resolution.

IN WITNESS WHEREOF, the parties to this Memorandum of Understanding have executed it through their respective duly authorized officers, as of the date first written above.

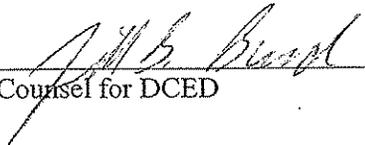
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT

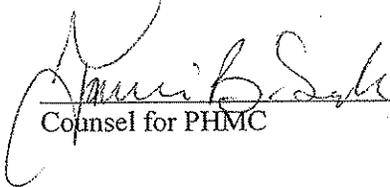
By: 
Executive Deputy Secretary (Date) 1.14.10

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HISTORICAL AND
MUSEUM COMMISSION

By:  2-9-10
Executive Director (Date)

APPROVED FOR FORM AND LEGALITY:

 1/14/09
Counsel for DCED (Date)

 2.1.10
Counsel for PHMC (Date)

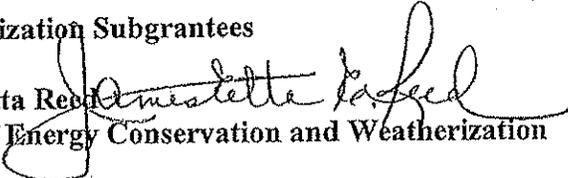
Approved:

 2.1.10
Deputy General Counsel (Date)

Commonwealth of Pennsylvania
Department of Community and Economic Development
December 14, 2009

SUBJECT: Weatherization Assistance Program
ARRA Weatherization Directive 2009-05
Compliance with the National Historic Preservation Act

TO: Weatherization Subgrantees

FROM: James Etta Reed 
Office of Energy Conservation and Weatherization

Purpose:

To ensure that all weatherization agencies adhere to Section 106 of the National Historic Preservation Act of 1966, as amended, which requires entities receiving federal funds to take into account the effect of projects on historic or archaeological resources.

Background:

All projects receiving federal funds or permits are subject to federally mandated environmental laws including Section 106 of the National Historic Preservation Act of 1966, as amended, which requires federal agencies to take into account the effect of projects on historic or archaeological resources. In Pennsylvania the Pennsylvania Historical and Museum Commission's (PHMC) Bureau for Historic Preservation serves as the State Historic Preservation Office (SHPO) and has the responsibility to review federal projects in accordance with Section 106.

All entities receiving federal funds, such as the weatherization agencies, are required to submit all project details to the SHPO office for review. However, a simplified process has been created specifically for the Weatherization Program to ensure compliance with this federal law. In most instances weatherization efforts are limited to a narrow list of project activities which have little or no potential to adversely affect historic or archaeological resources. **Consequently, a list of NO EFFECT ACTIVITIES has been created which, when followed, will not require individual consultation for weatherization projects.**

Policy:

The Pennsylvania SHPO has determined that the Weatherization Program as administered by DCED will have no effect on historic resources if the activities are limited to those included on the Weatherization No Effect Activities list. **Therefore, consultation for weatherization activities is not required when weatherization providers are doing work included on the No Effect Activities list.** When weatherization activities go beyond the scope of the No Effect Activities list, information must be submitted to the SHPO office for individual review of the project and property. Specific Weatherization Program SHPO Consultation forms have been developed for in order to facilitate the review process. If individual review is required, this will not result in exclusion of these properties from the weatherization program. Regardless of whether consultation with the SHPO is necessary, DCED is required to maintain an accurate and complete record of all weatherized homes which will be submitted to the SHPO annually.

NO EFFECT ACTIVITIES LIST: Activities NOT Requiring SHPO Individual Consultation

The following list of activities includes those property types and activities that have been deemed to have 'no effect' on historical significance and therefore do not require individual SHPO consultation.

A. Individual consultation with the SHPO is not required when Weatherization projects involve:

- (a) Properties that are less than fifty (50) years old
- (b) Mobile Homes

B. Standard weatherization NO EFFECT ACTIVITIES include (regardless of the age of the home):

1. Blower door tests
2. Caulking and sealing
3. Repairs or replacement of furnaces or heating systems
4. Repairs to or replacement of household appliances
5. Insulation of attics or floors
6. Insulation of walls, as long as the exterior appearance of the building is unchanged and the installation is done according to BPI standards to prevent moisture and water vapor infiltration.
7. Improvements to electrical, plumbing, or mechanical systems
8. Repair of windows and doors
9. Replacement of vinyl or other non-original windows and doors*

** This applies to window/door replacement on homes that are more than 50 years old. Replacement of original wood windows/doors on the primary façade of properties requires individual SHPO consultation and is not a No Effect Activity.*

C. Other common house repair NO EFFECT ACTIVITIES include:

1. Repairs or in-kind (matching material) replacement of roofs
2. Repair or replacement of gutters and downspouts
3. Installation of smoke and carbon monoxide detectors
4. Installation of ventilation systems
5. Repair or in-kind replacement and/or repainting of existing siding or trim
6. Repair and/or in-kind replacement of foundations
7. Installation or repair of storm windows and/or screens, as follows:
 - Glass and screen replacement in existing storm windows units
 - Installation of new wood/baked-enamel-finished metal storm windows on the exterior (provided they completely fill original window openings with glazed window units and they match the meeting rail or other division pattern of the primary window and do not protrude beyond the face of the building)
8. Finishing of unfinished basement or attics
9. Repair of existing interior walls
10. Application of new drywall (unless it covers plaster surfaces with interior trim and architectural features)
11. Repair and refinishing of interior floors or installation of floor coverings
12. Upgrading, replacement, and repair of existing utility service lines when the work is confined to existing and disturbed rights-of-way

WEATHERIZATION ACTIVITIES REQUIRING INDIVIDUAL SHPO CONSULTATION

Most weatherization projects will have little or no chance to adversely affect historic or archaeological resources and will NOT require individual review by the SHPO office. However, certain weatherization activities trigger the need to submit project information to the SHPO office.

The following activities, when performed on homes over 50 years old, require consultation:

1. **Changes to the exterior appearance of a building**
Such as closing in of windows or doors or porches, removal or covering of decorative trim, covering of wall surfaces with new and different materials, and altering or removal of chimneys. Anytime the completed building will look different from its appearance prior to weatherization treatments, consultation is required.
2. **Replacement of original, non-replacement windows/doors on facades visible from the street with new modern material (vinyl or aluminum) windows or metal doors.**
3. **Replacement of any window or door with a new window or door of a different size, shape or placement from the original***

*Except for ground level basement or cellar windows

HOW TO INITIATE SHPO INDIVIDUAL CONSULTATION PROCESS

When it has been determined that the identified property is older than 50 years old AND

- (a) Weatherization techniques to be used are identified above as requiring consultation OR
- (b) Weatherization techniques to be used DO NOT appear on the "No Effect" Activities List

the weatherization agency, or subcontractor (whoever will perform the work) is required to abide by the following procedures to remain compliant with Section 106 of the National Historic Preservation Act.

Submit the completed SHPO Weatherization Consultation Form along with a USGS or city map with the location of the building clearly marked and exterior photographs (front, side, and rear of property, as well as a streetscape view showing neighboring buildings) to the SHPO office for evaluation for eligibility for the National Register of Historic Places. Historic or potentially historic buildings may require special consideration in developing an appropriate scope of work for Weatherization. USGS quad maps are available on the Cultural Resource Geographic Information System (CRGIS) at <http://crgis.state.pa.us> which also provides information about historic resources across the state of Pennsylvania. Though it is not an exhaustive list of historic resources, it includes all currently collected information on potential historic sites and districts. Access to CRGIS is free, and users will need to log in as a 'public user' with the user name and password "Public".

The Weatherization SHPO Consultation Form should be used for all submissions to expedite review and response; however by law the SHPO has 30 days from receipt of complete project information to return the signed SHPO Weatherization Program Consultation Form. This form should be retained as it serves as proof of Section 106 compliance for projects warranting individual review.

(a) If the SHPO office determines that the property is eligible for the National Register, the Weatherization Individual Property Information Form must be completed and submitted. A description of the proposed Weatherization treatments must be included so the effects of the project on National Register eligible buildings can be properly assessed. If the effect of the project is adverse, the

agency will consult with the Bureau for Historic Preservation to discuss ways to avoid, lessen or mitigate the adverse effect. A Memorandum of Agreement (MOA) with notification of the Advisory Council on Historic Preservation is necessary to resolve adverse effects. Any approved project work must be carried out in accordance with the Secretary of the Interior's Standards; however the *Affordable Housing Rehabilitation Guidelines* permitting a more relaxed interpretation of the Standards for vernacular style houses in historic districts may be applicable for some projects. Consultation with the Bureau for Historic Preservation is necessary to determine when the less stringent *Guidelines* are appropriate

(b) *If the SHPO office determines that the property is NOT eligible* for the National Register or that the nature of the work will have no adverse effect on National Register eligible buildings, the Section 106 consultation requirements are considered satisfied and the project may proceed. However, the agency must retain appropriate documentation, including photographs and the comments of the State Historic Preservation Office, to evidence compliance pursuant to 36 CFR Part 800.6 (e), should they be required to submit project documentation.

Documentation/Reporting:

If properties less than 50 years old are identified for weatherization work, they need not be submitted for review. However, the agency must document the date of construction and maintain this information. It must then be provided to DCED who will be responsible for the yearly submission to the SHPO.

Resources:

Forms and information on this process are available at www.phmc.state.pa.us/bhp. Questions regarding SHPO compliance should be directed to Ann Safley at 717.787.9121 rsafley@state.pa.us or Pamela Reilly at 717.720.1441 at preilly@state.pa.us.

This directive is effective immediately.

JR/lh

Attachments:

Weatherization SHPO Consultation Form

Weatherization Individual Property Information Form

cc: Craig Heim
Regional Offices
Weatherization Staff