

PART 735--GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

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Authority: Secs. 201, 501, and Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201) unless otherwise noted.

Sec. 735.1 Scope.

FEDERAL REGISTER CITE: 47 FR 38486 (38491)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

This part sets forth policies and procedures for grants to States to--

(a) Develop State programs for the regulation and control of surface coal mining and reclamation operations;

(b) Administer and enforce State programs for the regulation and control of surface coal mining and reclamation operations; and

(c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

(d) Fund the Small Operator Assistance Program established under Section 507(c) of the Act and described in Part 795 of this Chapter.

Sec. 735.2 Objectives. [formerly Sec. 740.2]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

The objectives of assistance under this part are--

- (a) To assist the States in meeting the costs of administering reclamation and enforcement programs consistent with the Act;
- (b) To encourage the States to build strong reclamation and enforcement programs; and
- (c) To encourage the States to assume jurisdiction over the regulation of surface coal mining and reclamation operations.

Sec. 735.3 Authority. [formerly Sec. 740.3]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

Section 705 of the Act authorizes the Secretary to make grants to States for developing, administering, and enforcing State regulatory programs.

Sec. 735.4 Responsibility.

FEDERAL REGISTER CITE: 47 FR 38486 (38491)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

- (a) The Director shall administer the State grant program for the development, administration, and enforcement of State programs under this part.
- (b) The Director or his authorized designee shall receive, review, and approve grant applications under this Part.

Sec. 735.5 Definitions. [formerly 740.5]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

As used in this part, **agency** means the State agency designated by the Governor to receive and administer grants under this part.

Sec. 735.10 Information collection.

FEDERAL REGISTER CITE: 47 FR 38486 (38491)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

(a) The information collection and retention requirements in Sections 735.13 (a) and (b), 735.16(e), 735.18, 735.26, and 735.27 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers for Sections 735.13 (a) and (b); SF 424, 1029-0016; OSM 50-A, 1029-0079; OSM 50-B, 1029-0078; OSM-47, 1029-0064; OSM-48, 1029-0070; OSM-51, 1029-0072; OSM-51A, 1029-0074; OSM-51B, 1029-0075; OSM-51C, 1029-0069; for Sections 735.16(e) and 735.18; SF 269, 1029-0017; OSM-51, 1029-0072; SF 271, 1029-0073; OSM-51A, 1029-0074; OSM-51B, 1029-0075; OSM-51C, 1029-0069; OSM-60, 1029-0076; OSM-62, 1029-0077; and OSM-63, 1029-0068; for Section 735.26; and Section 735.27 which was included in the above clearance numbers.

(b) The information required by Part 735 will be used by OSM's Headquarters and State offices in administering, evaluating and auditing its State reimbursement grants for program development and administration and enforcement to insure that the requirements of OMB Circular A-102 and the Surface Control and Reclamation Act are met. The information required by Part 735 is mandatory.

Sec. 735.11 Eligibility for program development grants. [formerly Sec. 740.11]

FEDERAL REGISTER CITE: 45 FR 2804 (2804)

PUBLISHED DATE: 01/14/80

EFFECTIVE DATE: 01/14/80

(a) Designation of State agency. In order to receive a program development grant the Governor of a State shall designate in writing to the Director one agency to submit the grant applications and to receive and administer the grants.

(b) Periods covered by program development grants. (1) An agency may apply for a program development grant for any period for which it does not have an approved State program. This is limited to periods during--

(i) The initial development of a State program;

(ii) The revision of a State program from which has been disapproved by the Secretary; and

(iii) The revision of a State program from which the Secretary has withdrawn his approval.

(2) The Director shall limit grants for Paragraphs (b)(1)(ii) and (iii) of this Section to the costs of making revisions necessary to secure approval of the State programs.

(3) The Director shall not approve grants for costs incurred prior to August 3, 1977.

Sec. 735.12 Eligibility for administration and enforcement grants. [formerly Sec. 740.12]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

(a) Approved program required. In order to receive a grant to administer and enforce a State program, the State must have an approved State regulatory program.

(b) Designation of a State agency. In order to receive a grant to administer and enforce a State program, the Governor must designate a single agency to receive and administer administration and enforcement grants, including cooperative agreement grants described in Section 735.16.

(c) Nondiscrimination. The agency shall monitor the compliance activity of its subrecipients with respect to the nondiscrimination provisions in Section 735.21(a)(4).

Sec. 735.13 Submission of estimated annual budgets and allocation of funds.

FEDERAL REGISTER CITE: 47 FR 38486 (38491)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

(a) Budget summaries for Federal budget. For each fiscal year, the agency shall submit to the Director or his authorized designee 18 months prior to the Federal fiscal year for which the grant will be requested, a projection of its program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other), including the costs of administering State-Federal cooperative agreements pursuant to Section 211.75 of this title, and any aircraft which the agency proposed to acquire. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(b) Updated budget summary. For each fiscal year, the agency shall submit to the Director or his authorized designee a current program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other) 3 months prior to the beginning of the Federal fiscal year for which a grant will be requested.

(c) Allocation of funds. (1) The Director shall allocate to the agencies the full amount requested and approved in the States' revised or actual budgets provided that the amount available in the Federal budget is sufficient.

(2) If the funds available for grants are insufficient to cover the total grant needs, including cooperative agreement grants, the Director shall allocate the funds available according to the proportion of each requested and approved agency's budget to the total of all agencies' requested and approved budgets.

(3) Allocation of a specific amount of funds to an agency does not assure that grants for that amount will be approved. Each agency must apply for and secure approval of grants in accordance with the requirements of this part.

(4) The Director shall reallocate any funds which are not requested by agencies as of June 1 of that year. Such funds shall be allocated primarily to those agencies which have received less than the allowable percentage of their eligible costs.

(5) Agencies which are allocated such additional funds may submit new or revised grant applications for the additional amounts on or before August 15 of that year.

Sec. 735.14 Coverage of grants. [formerly 740.14]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

(a) Program development grants. An agency may use grant money under this part to cover the costs of developing--

- (1) New or revised State laws, regulations, and procedures;
- (2) Revised or expanded inspection systems;
- (3) Training programs or inspectors and other personnel;
- (4) New or revised organizational structures;
- (5) Information and communications systems, including data processing systems;
- (6) A planning process including a data base and information system to receive and act upon petitions to designate lands unsuitable for mining;
- (7) An application for the initial administration and enforcement grant to the extent not covered by indirect costs or other cost items;
- (8) Other components necessary to obtain an approved State program, as mutually agreed upon by the Director or his authorized designee and the agency receiving a grant.

(b) Administration and enforcement grants. An agency may use grant money under this part to cover the costs of--

- (1) Administering an approved State regulatory program;
- (2) Providing supporting and administrative services required by the State regulatory program;
- (3) Providing equipment required for the regulatory program and its support, either through use charges or direct purchase. Equipment charges and purchases will be allowed in accordance with Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments"(34 CFR Part 255) and Office of Management and Budget Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828).

Sec. 735.15 Amount of grants. [formerly Sec. 740.15]

FEDERAL REGISTER CITE: 45 FR 2804 (2804)

PUBLISHED DATE: 01/14/80

EFFECTIVE DATE: 01/14/80

(a) Amount of program development grants. (1) For the first year of a program development grant the Director or his authorized designee shall approve grants for not more than 80 percent of the total of agreed upon costs pursuant to Section 735.14(a).

(2) For the second year of a program development grant the Director or his authorized designee shall approve grants for not more than 60 percent of the total agreed upon costs pursuant to Section 735.14(a).

(3) For the third year and each following year of a program development grant the Director or his authorized designee shall approve grants for not more than 50 percent of the total agreed-upon costs pursuant to Section 735.14(a).

(b) Amount of administration and enforcement grants. (1) If no program development grant has been awarded, the Director or his authorized designee may approve the first administration and enforcement grant for not more than 80 percent of the agreed-upon costs for administration and enforcement of the program.

(2) If a program development grant has been awarded for only 1 year, the Director or his authorized designee may approve an administration and enforcement grant for 60 percent of the agreed-upon costs for administration and enforcement of the program.

(3) If a program development grant has been awarded for more than 1 year but less than 2 years, the Director or his authorized designee may approve the first administration and enforcement grant for 60 percent for that proportion remaining in the second year and for 50 percent for that proportion allocated to the third year.

(4) For the third and following years, the Director or his authorized designee may approve administration and enforcement grants for 50 percent of the agreed-upon costs for administration and enforcement of the program.

Sec. 735.16 Special provisions for States with cooperative agreements.

FEDERAL REGISTER CITE: 47 FR 38486 (38491)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

(a) Eligibility. The Director may approve additional grants to States which have cooperative agreements pursuant to Section 211.75 of this title for State regulation of surface coal mining and reclamation operations on Federal lands. This includes--

(1) States which had cooperative agreements on August 3, 1977, which have been modified to comply with the initial regulatory program; and

(2) States which enter into cooperative agreements following approval of the State's regulatory program.

(b) Coverage of grants. An agency may use cooperative agreements grants to carry out the functions assigned to the State under the agreement.

(c) Amount of grants. The Director or his authorized designee may approve grants for the approximate amount which he determines the Federal Government would have expended for regulation of coal mining on the Federal lands being regulated by the State, except that no grant may exceed the actual costs to the State.

(d) Grant periods. The Director or his authorized designee shall normally approve a grant for a period of 1 year or less. Consecutive grants shall be awarded to fund approved programs.

(e) Application procedures. (1) States with cooperative agreements in effect on August 3, 1977, may apply for cooperative agreement grants using the procedures set forth in Section 735.18(a), (b), and (d).

(2) States with cooperative agreements established in conjunction with approved State regulatory programs may apply for cooperative agreement grants by including a supplement to an annual administration and enforcement grant application submitted according to Section 735.18. The State shall include in the supplemental Section:

(i) A separate budget summary for the costs of the cooperative agreement in the format specified by OSM; and

(ii) A separate narrative, in the format specified by OSM, describing the specific activities required by the cooperative agreement for the period for which the grant is requested.

(f) Other requirements. The procedures and requirements set forth in Sections 735.17-735.26 of this Chapter are applicable to cooperative agreement grants.

Sec. 735.17 Grant periods.

FEDERAL REGISTER CITE: 47 FR 38486 (38491)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

The Director or his authorized designee shall normally approve a grant for a period of 1 year or less. Consecutive grants shall be awarded to fund approved programs.

Sec. 735.18 Grant application procedures.

FEDERAL REGISTER CITE: 47 FR 38486 (38492)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

(a) The agency shall submit its application (3 copies) to the Director or his authorized designee at least 60 days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures specified by OSM in accordance with Office of Management and Budget Circular No. A-102. No preapplication is required.

Each application must include the following:

(1) Part I, Application Form Cover sheet, SF 424.

(2) Part II, Project Approval Information.

(i) For nonconstruction grants use Form OSM-50A, Project Approval Information--Section A.

(ii) For construction grants use Form OSM-50A, Project Approval Information--Section A, and Form OSM-50B, Project Approval Information--Section B.

(3) Part III, Budget Information.

(i) For nonconstruction grants use Form OSM-47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM-48, Budget Information--Construction, with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM-51, providing the narrative for the goals to be achieved for both construction and nonconstruction grants.

(i) Form OSM-51 is supplemented by completion of Column 5A of Forms OSM-51A and OSM-51B which reports the quantitative Program Management information of the Administration and Enforcement grants.

(ii) Form OSM-51 is supplemented by completion of Column 5A of Form OSM-51C which reports the quantitative Program Management information of the Small Operator Assistance Program Administration and Operational grant.

(5) Part V, The standard assurances for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A-102, Attachment M.

(c) For program development grant applications, agencies shall include:

(1) An analysis and evaluation of the current State laws and changes required therein to conform to the Act, unless previously submitted under Part 725;

(2) A description of the changes expected to be required in State regulations, organization, staffing, training, and other policies and operations in order to develop a State program which can be approved; and

(3) A program to develop the legislation, regulations, procedures, organization, staffing, training materials, and other program elements necessary to obtain program approval.

(d) For administration and enforcement grants and cooperative agreement grants, agencies shall include:

(1) A description of the specific operations in the approved program which will be implemented during the period for which the grant is requested.

(2) A description and justification of any major equipment (equipment with a unit acquisition cost of \$500 or more and having a life of more than 2 years) which the agency proposes to acquire with the grant.

(e) The Director or his authorized designee shall notify the agency within 30 days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application. The Director or his authorized designee shall process the revised application as an original application.

(f) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns.

Sec. 735.19 Grant agreement. [formerly Sec. 740.19]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

(a) If the Director or his authorized designee approves an agency's grant application, the Director or his authorized designee shall prepare a grant agreement which includes--

(1) The approved scope of the program to be covered by the grant:

(2) The approved budget, including the Federal share;

(3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period; and

(4) Permissible transfers of fund to other State agencies.

(b) The Director or his authorized designee may permit an agency to assign functions and funds to other State agencies. The Director or his authorized designee shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds, accomplishment of functions, and reporting.

(c) Pre-agreement costs for program development grants shall be allowed only as specified in the grant agreement.

(d) The Director or his authorized designee shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Director or his authorized designee.

(e) The Director or his authorized designee shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Director or his authorized designee signs the agreement.

(f) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns.

Sec. 735.20 Grant amendments.

FEDERAL REGISTER CITE: 47 FR 38486 (38492)

PUBLISHED DATE: 08/31/82

EFFECTIVE DATE: 09/30/82

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget, or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Director or his authorized designee, or by mutual action of the agency and the Director or his authorized designee.

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which may require a grant amendment, such as--

(1) Rebudgeting;

(2) Changes which may effect the approved scope or objective of a program; or

(3) Changes which increase or substantially decrease the total cost of a program.

(c) The Director or his authorized designee shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment, then the amendment applies to the entire grant period.

Sec. 735.21 Grant reduction and termination. [formerly 740.21]

FEDERAL REGISTER CITE: 58 FR 41936 (41938)

PUBLISHED DATE: 08/05/93

EFFECTIVE DATE: 09/07/93

(a) Conditions for reduction or termination. (1) If an agency violates the terms of a grant agreement, the Director or his authorized designee may reduce or terminate the grant.

(2) If an agency fails to implement, enforce, or maintain an approved program, or cooperative agreement, the Director or his authorized designee shall terminate the administration and enforcement grant or cooperative agreement grant.

(3) If an agency fails to implement, enforce or maintain only a part of the program, the Director or his authorized designee shall reduce the grant to the amount of the program being operated by the agency.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Director or his authorized designee shall terminate the grant--

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of part 705 of this Chapter the Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or part 705 of this chapter the Director shall reduce or terminate the grant.

(b) Grant reduction and terminations procedures. (1) The Director or his authorized designee shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director or his authorized designee shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director or his authorized designee shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director or his authorized designee shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Director or his authorized designee the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the agency shall not make any new commitments without the approval of the Director or his authorized designee.

(7) The Director or his authorized designee may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) Appeals. (1) An agency may appeal the Director or his authorized designee's decision to reduce or terminate a grant to the Director within 30 days of the Director or his authorized designee's decision.

(2) An agency shall include in an appeal--

(i) The decision being appealed, and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Director shall act upon appeals within 30 days of their receipt, or as soon thereafter as possible.

Sec. 735.22 Audit.

FEDERAL REGISTER CITE: 47 FR 38486 (38492)

PUBLISHED DATE: 08/31/82
EFFECTIVE DATE: 09/30/82

The agency shall arrange for an independent audit no less frequently than once every 2 years, pursuant to the requirements of Office of Management and Budget Circular No. A-102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

Sec. 735.24 Allowable costs.

FEDERAL REGISTER CITE: 47 FR 38486 (38492)
PUBLISHED DATE: 08/31/82
EFFECTIVE DATE: 09/30/82

The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A-87.

Sec. 735.25 Financial management. [formerly Sec. 740.25]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)
PUBLISHED DATE: 03/13/79
EFFECTIVE DATE: 04/12/79

(a) The agency shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall support accounting records by source documentation.

(f) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

Sec. 735.26 Reports.

FEDERAL REGISTER CITE: 47 FR 38486 (38492)
PUBLISHED DATE: 08/31/82
EFFECTIVE DATE: 09/30/82

(a) The agency shall, for each grant made under this Part, submit semiannually to the Director or his authorized designee a Financial Status Report, Form 269, for non-construction grant activities in accordance with Office of Management and Budget Circular No. A-102, Attachment H, and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM-51, comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A-102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, Form 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant-funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM-51A and OSM-51B or OSM-51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A-102, the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and Budget Circular No. A-102. This may be accomplished by the submission of the Report of Government Property, Form OSM-60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

Sec. 735.27 Records. [formerly Sec. 740.27]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102. This includes books, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly--

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its subgrantees and contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor or any authorized representative.

(d) For completed or terminated grants the agency, subgrantees, and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller

General of the United States, Department of Labor, or any authorized representative pursuant to OMB Circular No. A-102.

Sec. 735.28 Disclosure of information. [formerly Sec. 740.28]

FEDERAL REGISTER CITE: 44 FR 14902 (15312)

PUBLISHED DATE: 03/13/79

EFFECTIVE DATE: 04/12/79

All grant applications received by the Director or his authorized designee constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).