

amended to comply with State law and recommendations by the Office of General Counsel. It may also be amended to eliminate references to loans and/or grants if no loan and/or grant is involved. The State Program Official is responsible for:

(1) Ensuring that all provisions of the Agreement are understood.

(2) Determining that the applicant has the ability to make and service loans and/or grants in the manner outlined in the Agreement.

(c) Agency funds remaining after providing individual loans and/or grants will be returned to the Agency. The funds should be disbursed to individuals within 1 year from the date water and/or waste disposal service is available to the individuals. The State Program Official can make an exception to this 1 year requirement if written justification is provided by the applicant.

**§ 1777.42 Delegation of authority.**

The State Program Official is responsible for the overall implementation of the authorities contained in this part and may redelegate any such authority to appropriate Agency employees.

**§ 1777.43 Bulletins.**

RUS Bulletin 1780-12 referenced in part 1780 of this chapter and RUS Bulletin 1777-1, 1777-2 and 1777-3 are for use in administering loans and/or grants made under this part. Bulletins, instructions and forms are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250-1500.

**§§ 1777.44-1777.99 [Reserved]**

**§ 1777.100 OMB control number.**

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and assigned OMB control number 0570-0001. Public reporting burden for this collection of information is estimated to vary from 5 to 30 hours per response with an average of 17.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the col-

lection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS**

Sec.

- 1778.1 General.
- 1778.2 [Reserved]
- 1778.3 Objective.
- 1778.4 Definitions.
- 1778.5 [Reserved]
- 1778.6 Eligibility.
- 1778.7 Project priority.
- 1778.8 [Reserved]
- 1778.9 Uses.
- 1778.10 Restrictions.
- 1778.11 Maximum grants.
- 1778.12 [Reserved]
- 1778.13 Set-aside.
- 1778.14 Other considerations.
- 1778.15-1778.20 [Reserved]
- 1778.21 Application processing.
- 1778.22 Planning development and procurement.
- 1778.23 Grant closing and disbursement of funds.
- 1778.24-1778.30 [Reserved]
- 1778.31 Performing development.
- 1778.32-1778.33 [Reserved]
- 1778.34 Grant servicing.
- 1778.35 Subsequent grants.
- 1778.36 [Reserved]
- 1778.37 Forms, Instructions and Bulletins.
- 1778.38-1778.99 [Reserved]
- 1778.100 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

SOURCE: 68 FR 46078, Aug. 5, 2003, unless otherwise noted.

**§ 1778.1 General.**

(a) This part outlines policies and procedures for making Emergency Community Water Assistance Grants (ECWAG) authorized under Section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended. Any processing or servicing activity conducted pursuant

to this part involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

(b) Agency officials will maintain liaison with officials of other Federal, State, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) Agency officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this part are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity along with other rural residents to participate in the benefits of this program. This includes equal application of outreach activities of Field Offices.

(e) Federal statutes provide for extending the Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

**§ 1778.2 [Reserved]**

**§ 1778.3 Objective.**

The objective of the ECWAG Program is to assist the residents of rural areas that have experienced a significant decline in quantity or quality of water, or in which such a decline is considered imminent, to obtain or maintain adequate quantities of water that meets the standards set by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) (SDWA).

**§ 1778.4 Definitions.**

*Acute shortage.* An acute shortage is a situation in which the system either cannot deliver water at all through its distribution system or can only deliver water on a sporadic basis.

*Emergency.* Occurrence of an incident such as, but not limited to, a drought; earthquake; flood; tornado; hurricane; disease outbreak; or chemical spill, leakage, or seepage.

*Rural areas.* Includes any area not in a city or town with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States, located in any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

*Significant decline in quality.* A significant decline in quality of potable water occurs when the present community source or delivery system does not meet, as a result of an emergency, the current SDWA requirements. For a private source or delivery system a significant decline in quality occurs when the water is no longer potable as a result of an emergency. As used in this Subpart, the term significant decline in quality may also include a situation where a significant decline is likely to occur within one year from the date of the filing of an application.

*Significant decline in quantity.* A significant decline in the quantity is caused by a disruption of the potable water supply by an emergency. The disruption in quantity of water prevents the present source or delivery system from supplying potable water needs to rural residents. This would not include a decline in excess water capacity. As used in this Subpart, the term significant decline in quantity may also include a situation where a significant decline is likely to occur within one year from the date of the filing of an application.

*Statewide Nonmetropolitan Median Household Income (SNMHI).* Median household income of the State's non-metropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

[68 FR 46078, Aug. 5, 2003, as amended at 69 FR 65519, Nov. 15, 2004]

**§ 1778.5 [Reserved]****§ 1778.6 Eligibility.**

(a) Grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include counties, cities, townships, incorporated towns and villages, boroughs, authorities, districts, and other political subdivisions of a State. Public bodies also include Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

(b) In the case of grants made to alleviate a significant decline in quantity or quality of water available from the water supplies of rural residents, the applicant must demonstrate that the decline occurred within two years of the date the application was filed with the Agency. This would not apply to grants made for repairs, partial replacement, or significant maintenance on an established water system. In situations involving imminent decline, evidence must be presented to demonstrate that the decline is likely to occur within one year of the date the application is filed with the Agency.

**§ 1778.7 Project priority.**

Paragraph (d) of this section indicates items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met.

(a) *Applications.* The application and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(b) *State Office review.* All applications will be reviewed and scored for funding priority using RUS Bulletin 1778-1. Eligible applicants that cannot be funded should be advised that funds are not available.

(c) *National Office review.* Each year all funding requests will be reviewed by the National Office beginning 30 days after funds from the annual appropriation are made available to the Agency. Reviews will continue throughout the fiscal year as long as funds are avail-

able. Projects selected for funding will be considered based on the priority criteria and available funds. Projects must compete on a national basis for available funds, and the National Office will allocate funds to State offices on a project by project basis.

(d) *Selection priorities.* The priorities described below will be used by the State Program Official to rate applications and by the Assistant Administrator of Water and Environmental Programs to select projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(5) of this section and will be considered in selecting projects for funding. A copy of RUS Bulletins 1778-1 and 1778-2 used to rate applications, should be placed in the case file for future reference.

(1) *Population.* The proposed project will serve an area with a rural population:

- (i) Not in excess of 1,500—30 points.
- (ii) More than 1,500 and not in excess of 3,000—20 points.
- (iii) More than 3,000 and not in excess of 5,000—15 points.
- (iv) Over 5,000—0 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

- (i) Not in excess of 70% of the statewide nonmetropolitan median household income—30 points.
- (ii) More than 70% and not in excess of 80% of the statewide nonmetropolitan median household income—20 points.
- (iii) More than 80% and not in excess of 90% of the statewide nonmetropolitan median household income—10 points.
- (iv) Over 90% of the statewide nonmetropolitan median household income—0 points.

(3) *Significant decline.* Points will be assigned for only one of the following paragraphs when the primary purpose of the proposed project is to correct a significant decline that has occurred in the:

- (i) Quantity of water available from private individually owned wells or other individual sources of water—30 points; or

§ 1778.8

(ii) Quantity of water available from an established system's source of water—20 points; or

(iii) Quality of water available from private individually owned wells or other individual sources of water—30 points; or

(iv) Quality of water available from an established system's source of water—20 points.

(4) *Imminent decline.* The proposed project will attempt to avert an imminent decline expected to occur during the one-year period following the filing of an application—10 points.

(NOTE: If points were assigned above for a significant decline, no points will be awarded for imminent decline.)

(5) *Acute shortage.* Grants made in accordance with §1778.11(b) of this part to assist an established water system remedy an acute shortage of quality water or correct a significant decline in the quantity or quality of water that is available—10 points.

(6) *Discretionary.* In certain cases the Administrator may assign up to 30 points for items such as geographic distribution of funds, rural residents hauling water, severe contamination levels, etc.

§ 1778.8 [Reserved]

§ 1778.9 Uses.

Grant funds may be used for the following purposes:

(a) Waterline extensions from existing systems.

(b) Construction of new waterlines.

(c) Repairs to an existing system.

(d) Significant maintenance to an existing system.

(e) Construction of new wells, reservoirs, transmission lines, treatment plants, and other sources of water.

(f) Equipment replacement.

(g) Connection and/or tap fees.

(h) Pay costs that were incurred within six months of the date an application was filed with the Agency to correct an emergency situation that would have been eligible for funding under this part.

(i) Any other appropriate purpose such as legal fees, engineering fees, recording costs, environmental impact analyses, archaeological surveys, possible salvage or other mitigation meas-

ures, planning, establishing or acquiring rights associated with developing sources of, treating, storing, or distributing water.

(j) Assist rural water systems to comply with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) (FWPCA) or the SDWA when such failure to comply is directly related to a recent decline in quality of potable water. This would not apply to changes in the requirements of FWPCA or SDWA.

(k) Provide potable water to communities through means other than those covered above for not to exceed 120 days when a more permanent solution is not feasible in a shorter time frame.

§ 1778.10 Restrictions.

(a) Grant funds may not be used to:

(1) Assist any city or town with a population in excess of 10,000 inhabitants according to the most recent decennial census of the United States. Facilities financed by RUS may be located in non-rural areas. However, loan and grant funds may be used to finance only that portion of the facility serving rural areas, regardless of facility location.

(2) Assist a rural area that has a median household income in excess of the statewide nonmetropolitan median household income according to the most recent decennial census of the United States.

(3) Finance facilities which are not modest in size, design, cost, and are not directly related to correcting the potable water quantity or quality problem.

(4) Pay loan or grant finder's fees.

(5) Pay any annual recurring costs that are considered to be operational expenses.

(6) Pay rental for the use of equipment or machinery owned by the rural community.

(7) Purchase existing systems.

(8) Refinance existing indebtedness, except for short-term debt incurred in accordance with §1778.9(h).

(9) Make reimbursement for projects developed with other grant funds.

(10) Finance facilities that are not for public use.

(b) Nothing in paragraph (a)(1) of this section shall preclude rural areas from

submitting joint proposals for assistance under this part. Each entity applying for financial assistance under this part to fund their share of a joint project will be considered individually.

**§ 1778.11 Maximum grants.**

(a) Grants not to exceed \$500,000 may be made to alleviate a significant decline in quantity or quality of water available to a rural area that occurred within two years of filing an application with the Agency, or to attempt to avoid a significant decline that is expected to occur during the twelve month period following the filing of an application.

(b) Grants made for repairs, partial replacement, or significant maintenance on an established system to remedy an acute shortage or significant decline in the quality or quantity of potable water, or an anticipated acute shortage or significant decline, cannot exceed \$150,000.

(c) Grants under this part, subject to paragraphs (a) and (b) of this section, shall be made for 100 percent of eligible project costs.

**§ 1778.12 [Reserved]**

**§ 1778.13 Set-aside.**

(a) At least 70 percent of all grants made under this grant program shall be for projects funded in accordance with § 1778.11(a).

(b) At least 50 percent of the funds appropriated for this grant program shall be allocated to rural areas with populations not in excess of 3,000 inhabitants according to the most recent decennial census of the United States.

**§ 1778.14 Other considerations.**

(a) *Civil rights compliance requirements.* All grants made under this part are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) as outlined in subpart E of part 1901 of this title.

(b) *Environmental requirements.* All projects must have appropriate environmental reviews in accordance with RUS requirements.

(c) *Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*).* All projects must comply

with the requirements set forth in 7 CFR Part 21.

(d) *Flood and mudslide hazard area precautions.* If the project is located in a flood or mudslide area, then flood or mudslide insurance must be provided as required in subpart A of part 1806 of this title (RD Instruction 426.2).

(e) *Governmentwide debarment and suspension* (nonprocurement) and requirements for drug-free work place. All projects must comply with the requirements set forth in the U.S. Department of Agriculture regulations 7 CFR part 3017 and RD Instruction 1940-M.

(f) *Intergovernmental review.* All projects funded under this part are subject to Executive Order 12372 (3 CFR, 1983 Comp., p. 197), which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, Subpart V, and RD Instruction 1940-J.

**§§ 1778.15-1778.20 [Reserved]**

**§ 1778.21 Application processing.**

(a) The material submitted with the application should include the Preliminary Engineering Report, population and median household income of the area to be served, description of project, and nature of emergency that caused the problem(s) being addressed by the project. The documentation must clearly show that the applicant has had a significant decline in the quantity or quality of potable water or an acute shortage of potable water, or that such a decline or shortage is imminent, and that the proposed project will eliminate or alleviate the problem. For projects to be funded in accordance with § 1778.11 (a), evidence must be furnished that a significant decline in quantity or quality occurred within two years before filing the application with the Agency, or is expected to occur within one year after filing the application.

(b) When favorable action will not be taken on an application, the applicant will be notified in writing by the State Program Official of the reasons why the request was not favorably considered. Notification to the applicant will state that a review of this decision by

the Agency may be requested by the applicant in accordance with 7 CFR part 11.

**§ 1778.22 Planning development and procurement.**

Planning development and procurement for grants made under this part will be in accordance with subpart C of Part 1780 of this chapter. A certification should be obtained from the State agency or the Environmental Protection Agency if the State does not have primacy, stating that the proposed improvements will be in compliance with requirements of the SDWA.

**§ 1778.23 Grant closing and disbursement of funds.**

(a) Grants will be closed in accordance with § 1780.45 of part 1780 of this chapter.

(b) RUS Bulletin 1780-12, “Water or Waste Grant Agreement,” will be executed by all applicants.

(c) The Agency’s policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Grant funds will be disbursed by using multiple advances.

**§§ 1778.24–1778.30 [Reserved]**

**§ 1778.31 Performing development.**

(a) Applicable provisions of subpart C of part 1780 of this chapter will be followed in performing development for grants made under this part.

(b) After filing an application in accordance with § 1778.21 and when immediate action is necessary, the State Program Official may concur in an applicant’s request to proceed with construction before funds are obligated provided the RUS environmental requirements are complied with. The applicant must be advised in writing that:

(1) Any authorization to proceed or any concurrence in bid awards, contract concurrence, or other project development activity, is not a commitment by the Agency to provide grant funds under this part.

(2) The Agency is not liable for any debt incurred by the applicant in the event that funds are not provided under this part.

**§ 1778.32–1778.33 [Reserved]**

**§ 1778.34 Grant servicing.**

(a) Grants will be serviced in accordance with § 1951.215 of subpart E of part 1951 of this title and subpart O of part 1951 of this title.

(b) The grantee will provide an audit report in accordance with § 1780.47 of part 1780 of this chapter.

**§ 1778.35 Subsequent grants.**

Subsequent grants will be processed in accordance with the requirements set forth in this part. The initial and subsequent grants made to complete a previously approved project must comply with the maximum grant requirements set forth in § 1778.11.

**§ 1778.36 [Reserved]**

**§ 1778.37 Forms, Instructions and Bulletins.**

Bulletins, instructions and forms referenced are for use in administering grants made under this part and are available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250-1500.

**§§ 1778.38–1778.99 [Reserved]**

**§ 1778.100 OMB control number.**

The information collection requirements contained in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572-0110.

**PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS**

- Sec.
- 1779.1 General.
- 1779.2 Definitions.
- 1779.3 Full faith and credit.
- 1779.4 Conditions of guarantee.
- 1779.5–1779.7 [Reserved]
- 1779.8 Access to lender’s records.
- 1779.9 Environmental requirements.
- 1779.10–1779.11 [Reserved]
- 1779.12 Inspections.
- 1779.13 Appeals.
- 1779.14–1779.16 [Reserved]
- 1779.17 Exception authority.
- 1779.18–1779.19 [Reserved]
- 1779.20 Eligibility.
- 1779.21–1779.23 [Reserved]