

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 7 WASTEWATER AND WATER SUPPLY FACILITIES**  
**PART 2 RURAL WATER SUPPLY, WASTEWATER AND SOLID WASTE INFRASTRUCTURE**

**20.7.2.1 ISSUING AGENCY:** Department of Environment.  
[20.7.2.1 NMAC - Rp, 20 NMAC 7.2.100, 10/31/2001]

**20.7.2.2 SCOPE:** All persons applying for financial assistance under the Rural Infrastructure Act, Chapter 75, Article 1 NMSA 1978.  
[20.7.2.2 NMAC - Rp, 20 NMAC 7.2.101, 10/31/2001]

**20.7.2.3 STATUTORY AUTHORITY:** NMSA 1978, Section 75-1-3, and NMSA 1978, Section 9-7A-6D.  
[20.7.2.3 NMAC - Rp, 20 NMAC 7.2.102, 10/31/2001]

**20.7.2.4 DURATION:** Permanent.  
[20.7.2.4 NMAC - Rp, 20 NMAC 7.2.103, 10/31/2001]

**20.7.2.5 EFFECTIVE DATE.** October 31, 2001. Unless a later date is cited at the end of a section.  
[20.7.2.5 NMAC - Rp, 20 NMAC 7.2.104, 10/31/2001]

**20.7.2.6 OBJECTIVES:**

- A. To provide financial assistance to local authorities for the construction or modification of water supply, wastewater, and solid waste facilities.
  - B. To provide guidelines for the department's ranking of water supply, wastewater and solid waste facility construction projects submitted pursuant to the RIA, for highest priority based on public health needs.
- [20.7.2.6 NMAC - Rp, 20 NMAC 7.2.105, 10/31/2001; A, 10/29/2007]

**20.7.2.7 DEFINITIONS:**

- A. "Administrative account" means a separate account established within the fund to carry out the administrative functions of the Rural Infrastructure Act.
- B. "Average residential user cost reduction grant" means a grant for the purpose of reducing the average residential user cost to a reasonable level as determined by the department for an eligible financially needy loan recipient whose water supply facility serves a population of less than three thousand.
- C. "Base interest rate" means the annual interest rate for loans to local authorities that do not qualify for average user cost reduction grants or zero percent loans.
- D. "Fund" means the rural infrastructure revolving loan fund.
- E. "Local authority" means a mutual domestic association, or water and sanitation district that supplies water, wastewater or solid waste services to, or a municipality that has a population of less than twenty thousand or a county with a population less than two hundred thousand.
- F. "Operate and maintain" means to conduct all necessary activities, including but not limited to replacement of equipment or appurtenances, to assure the dependable and economical function of a water supply or wastewater facility in accordance with its intended purpose.
- G. "Priority ranking system" means the system for ranking water supply, wastewater, and solid waste facility construction projects for which loan applications have been received pursuant to the Rural Infrastructure Act.
- H. "Priority list" means a list of water supply, wastewater and solid waste facility construction projects ranked according to the priority ranking system.
- I. "RIA" means the Rural Infrastructure Act, Chapter 75, Article 1 NMSA 1978.
- J. "Secretary" means the secretary of the environment department.
- K. "Solid waste facility" includes transfer and convenience facilities, landfills or other equipment or systems used for processing, transformation, recycling or disposal of solid waste.
- L. "Water supply facility" includes the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works, and distribution systems.
- M. "Wastewater facility" includes collection lines, pumping equipment, treatment works, and disposal piping or process units.

N. “Zero percent loan” means a loan which carries no interest for the purpose of reducing the average residential user cost to a reasonable level as determined by the department for an eligible financially needy loan recipient whose water supply, wastewater, or solid waste facility serves a population of less than 3,000.  
[20.7.2.7 NMAC - Rp, 20 NMAC 7.2.106, 10/31/2001; A, 10/29/2007]

**20.7.2.8 - 20.7.2.199 [RESERVED]**

[20.7.2.8 - 20.7.2.199 NMAC - Rp, 20 NMAC 7.2.107 - 199, 10/31/2001]

**20.7.2.200 ELIGIBILITY:**

- A. Grants and loans shall be made only to local authorities that:
- (1) agree to operate and maintain the water supply, wastewater, or solid waste facilities so that the facilities will function properly over their structural and material design life, which shall not be less than twenty years;
  - (2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;
  - (3) provide a written assurance, signed by an attorney, that the local authority has proper title, easements, and rights-of-way to the property upon or through which the water supply, wastewater, or solid waste facility proposed for funding is to be constructed or extended;
  - (4) meet the requirements for financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;
  - (5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose;
  - (6) agree to properly maintain financial records and to conduct an audit of the project’s financial records;
  - (7) are included on the RIA priority list;
  - (8) have a treasurer, clerk, secretary-treasurer, or other individual responsible for the financial aspects of the project who is bonded;
  - (9) employ a registered professional engineer licensed in the state of New Mexico to provide and be responsible for all engineering services on a project; and
  - (10) provide a written notice to the department of completion and start of operation of the water supply, wastewater, or solid waste facility.

B. Loans and grants made pursuant to the RIA shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act, Sections 47-5-1 to 47-5-8 NMSA 1978, or the New Mexico Subdivision Act, Sections 47-6-1 to 47-6-29, and 47-5-9 NMSA 1978.

C. Plans and specifications for a water supply, wastewater, or solid waste facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority.

D. A local authority which receives RIA funds shall comply with all applicable federal, state, and local laws and regulations, including those related to procurement practices, construction wage rates, and these regulations.

[20.7.2.200 NMAC - Rp, 20 NMAC 7.2.200, 10/31/2001; A, 10/29/2007]

**20.7.2.201 ELIGIBLE AND NONELIGIBLE ITEMS:**

A. Eligible items include the costs of engineering feasibility reports, contracted engineering services, archeological surveys, and contracted construction.

B. The following items are eligible for loan funds only: water rights, land, system acquisition, easements, rights-of-way, legal costs, fiscal agents’ fees, and refinancing of program loans.

C. Administrative costs of the local authority are ineligible.

[20.7.2.201 NMAC - Rp, 20 NMAC 7.2.201, 10/31/2001; A, 10/29/2007]

**20.7.2.202 RESPONSIBILITIES OF THE DEPARTMENT; APPLICATION PROCEDURES:**

A. The department shall administer the RIA Program. Money in the fund is appropriated to the department to carry out the provisions of the Rural Infrastructure Act. The department may allocate up to two percent of the total balance in the fund to pay for administrative expenses necessary to carry out the provisions of the Rural Infrastructure Act. Money allocated for administrative expenses shall be placed in a separate

administrative account in the fund to be used solely for administrative expenses, and the department shall at the beginning of the fiscal year determine the projected administrative costs for the year and deposit in the account the appropriate amount; provided that the amount to be deposited does not exceed two percent of the total balance fund. Money in the account shall remain in the account at the end of a fiscal year.

B. Applications are to be submitted on standard forms provided by the department.

C. All applications for assistance under the RIA are due on the date(s) specified by the department.

D. The department shall review the application for eligibility, technical merits, and financial capability, and rate the applications based on the priority ranking system described in Section 20.7.2.300 NMAC.

E. The department shall make loans and, if applicable, average user cost reduction grants and/or zero percent loans to local authorities in order of priority on the current fiscal year priority list and considering the following:

(1) willingness of a local authority to accept a loan;

(2) financial capability of the local authority to repay the loan, to properly operate and maintain the water supply, wastewater or solid waste facility, to maintain a replacement fund and a debt service reserve fund; and

(3) readiness to proceed with the project.

F. The department shall establish procedures to determine when the principal and interest portion of an average residential user cost is a reasonable cost.

G. The department shall establish procedures for the allocation and approval of average residential user cost reduction grants and zero percent loans which:

(1) shall reduce only the principal and interest portion of the average residential user cost for a recipient whose water supply, wastewater or solid waste facility serves a population of less than 3,000; and

(2) shall be for financially needy local authorities receiving RIA loan funds and which comply with the conditions outlined in the RIA:

(a) the construction project is designed using the most cost-effective and dependable option;

(b) the system is designed with adequate built-in expansion capacity;

(c) other sources of grant funds have been sought and are not available in a timely manner;

(d) the project cannot feasibly be reduced in scope or phased, so as to bring it within available loan funds and within reasonable user cost; and

(e) the local authority's median household income (MHI) is less than ninety percent of the statewide non-metropolitan MHI based on the most current decennial census.

H. Loan agreements will be prepared by the department and executed for those projects which can be financed with available funds.

I. The department may:

(1) conduct periodic reviews of the operation of a local authority that has received funding from the department;

(2) require the local authority to submit information relevant to the loan to the department;

(3) require the submission of financial reports relevant to the ability of the local authority to repay the loan; and

(4) review and require changes to the rate-setting analysis that supports the loan payments.

[ 20.7.2.202 NMAC - Rp, 20 NMAC 7.2.202, 10/31/2001; A, 10/29/2007]

#### **20.7.2.203 LOAN AND GRANT DISBURSEMENT REQUIREMENTS:**

A. Interim loan disbursements to pay for contracted engineering services and other professional services may be made prior to approval of the plans and specifications by the department.

B. Interim and final loan and grant disbursements may be made by the department on a monthly basis as work is progressing.

C. The above loan and grant disbursements shall be made provided the local authority receiving RIA funds has complied with the requirements of these regulations and the department's administrative procedures.

[20.7.2.203 NMAC - Rp, 20 NMAC 7.2.203, 10/31/2001]

#### **20.7.2.204 LOAN AND GRANT LIMITATIONS:**

A. The base interest rate shall be an annual interest rate set by the secretary that is at or below market interest rate.

B. No loan recipient eligible to receive a grant under the RIA shall receive a grant in any one year totaling more than \$500,000.

C. A zero percent interest loan, in any one year, may not exceed \$500,000.

- D. The total of all loans in any one year for any single local authority may not exceed \$2,000,000.
- E. The maximum assistance, including both loans and grants, which a local authority may receive in any one year under the RIA is \$2,000,000.
- F. A loan under RIA shall be for a period of time not to exceed twenty years.
- G. The repayment of a loan shall be in annual, quarterly, or monthly installments as approved by the department beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.
- H. Existing loans under the Rural Infrastructure Act may be refinanced when the annual interest rate set by the department is at least one percentage point less than the annual interest rate on the existing loan. The request for refinance of an existing loan must be submitted in writing to the department.  
[20.7.2.204 NMAC - Rp, 20 NMAC 7.2.204, 10/31/2001; A, 10/29/2007]

**20.7.2.205 RATE-SETTING AUTHORITY:** In the event a local authority fails to make the prescribed loan repayment, the department is authorized to set water, wastewater, or solid waste user rates in the area of the local authority's jurisdiction in order to provide sufficient money for repayment of the loan and proper operation and maintenance of the water supply, wastewater, or solid waste facility.  
[20.7.2.205 NMAC - Rp, 20 NMAC 7.2.205, 10/31/2001; A, 10/29/2007]

**20.7.2.206 - 20.7.2.299 [RESERVED]**  
[20.7.2.206 - 20.7.2.299 NMAC - Rp, 20 NMAC 7.2.206 - 299, 10/31/2001]

**20.7.2.300 ELEMENTS OF RANKING CRITERIA:**

- A. The department's ranking procedures for water supply construction projects submitted pursuant to the RIA shall include evaluation of:
  - (1) microbiological, turbidity, inorganic, organic, radiological, secondary parameters, and any other water quality parameters determined by the department to be pertinent to the overall quality of the water provided by the water supply facility;
  - (2) components of the water supply facility, including but not limited to:
    - (a) treatment;
    - (b) disinfection;
    - (c) storage;
    - (d) distribution capacity;
    - (e) reliability of the system;
    - (f) potential for emergency assistance;
    - (g) need for expansion;
    - (h) age of the system; and
    - (i) overall condition of the system; and
  - (3) the number of individuals served by the local authority's water supply facility, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.
- B. The department's ranking procedures for wastewater facility construction projects submitted pursuant to the RIA shall include evaluation of:
  - (1) stream standards, groundwater quality, quality of wastewater discharge, and any other water quality parameters determined by the department to be pertinent to the quality of surface or ground waters of the state.
  - (2) components of the wastewater facility, including but not limited to:
    - (a) collection;
    - (b) pumping;
    - (c) treatment;
    - (d) disposal;
    - (e) reliability of the system;
    - (f) potential for emergency assistance;
    - (g) need for expansion;
    - (h) age of the system;
    - (i) overall condition of the system; and

(3) the number of individuals served by the local authority's wastewater facility, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.

C. The department's ranking procedures for solid waste facility construction projects submitted pursuant to the RIA shall include evaluation of:

(1) current solid waste standards within the state, any potential impact of current solid waste systems to groundwater and/or surface water quality, closure or upgrades to facilities that do not meet current state standards for liner and/or cover systems, regionalization of substandard facilities, solid waste collection, recycling, re-use or disposal facilities that do not meet current state regulation(s) and/or have an administrative order for compliance in force at the time of application, and any other solid waste practice standard determined by the department to be pertinent to the overall quality of solid waste collection, recycling, reuse, or disposal provided by the solid waste facility.

(2) components of the solid waste facility, including:

- (a) collection;
- (b) transportation;
- (c) disposal;
- (d) storage;
- (e) source separation;
- (f) recycling;
- (g) reuse;
- (h) capacity;
- (i) reliability of the system;
- (j) age of the system;
- (k) overall condition of the system; and

(3) the number of individuals served by the authority's solid waste system, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.

D. New systems shall be rated by evaluating only those applicable elements of the ranking criteria listed in Subsection A, B or C of this section.

[20.7.2.300 NMAC - Rp, 20 NMAC 7.2.300, 10/31/2001; A, 10/29/2007]

#### **20.7.2.301 - 20.7.2.399 [RESERVED]**

[20.7.2.301 - 20.7.2.399 NMAC - Rp, 20 NMAC 7.2.301 - 399, 10/31/2001]

**20.7.2.400 SEVERABILITY:** If any provision or application of this Part is held invalid, the remainder or its application to other situations of persons shall not be affected.

[20.7.2.400 NMAC - Rp, 20 NMAC 7.2.400, 10/31/2001]

**20.7.2.401 CONSTRUCTION:** This Part shall be construed so as to effectuate the purpose of the RIA.

[20.7.2.401 NMAC - Rp, 20 NMAC 7.2.401, 10/31/2001]

**20.7.2.402 SAVINGS CLAUSE:** Repeal of 20 NMAC 7.2 shall not affect any action pending under those provisions on the effective date of this Part.

[20.7.2.403 NMAC - Rp, 20 NMAC 7.2.403, 10/31/2001]

#### **HISTORY OF 20.7.2 NMAC:**

**Pre-NMAC History:** Material in this part was derived from that previously filed with the commission of public records- state records center and archives as:

Environmental Improvement Board rules: EIB 77-1, Regulations Governing Water Supplies, filed 12-12-77;

EIB/WSR 1, Regulations Governing Water Supplies, filed 3-11-12-85;

EIB/WSR 2, Regulations Governing Water Supplies, filed 9-12-12-88;

EIB/WSR 3, Water Supply Regulations, filed 4-16-91.

#### **History of Repealed Material:**

20 NMAC 7.2, Waste Water and Water Supply Facilities-Rural Water Supply Infrastructure, 12-01-94.