

**TITLE 18       TRANSPORTATION AND HIGHWAYS**  
**CHAPTER 11   AIRPORTS**  
**PART 10       RURAL AIR SERVICE ENHANCEMENT GRANT PROGRAM**

**18.11.10.1       ISSUING AGENCY:** Aviation Division of the New Mexico Department of Transportation, 3501 Access Road C, Albuquerque, New Mexico 87106.  
[18.11.10.1 NMAC - N, \_\_/\_\_/2021]

**18.11.10.2       SCOPE:** Municipalities and counties located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision.  
[18.11.10.2 NMAC - N, \_\_/\_\_/2021]

**18.11.10.3       STATUTORY AUTHORITY:** Adoption of this regulation is pursuant to authority granted to the aviation division of department of transportation under Section 64-1-13, Sections 67-3-11, 67-3-28 NMSA 1978 and SB 133, Laws 2021, Chapter 47.  
[18.11.10.3 NMAC - N, \_\_/\_\_/2021]

**18.11.10.4       DURATION:** Permanent.  
[18.11.10.4 NMAC - N, \_\_/\_\_/2021]

**18.11.10.5       EFFECTIVE DATE:** XX/XX, 2021, unless a later date is cited at the end of a section or paragraph.  
[18.11.10.5 NMAC - N, \_\_/\_\_/2021]

**18.11.10.6       OBJECTIVE:** The objective of 18.11.3 NMAC is to establish eligibility requirements, including the maximum amount a recipient may receive, under the Rural Air Service Enhancement Act. The purpose of this regulation is to describe the eligibility requirements of an eligible recipient, and the process for the application, evaluation, awarding of grants under the Rural Air Service Enhancement Act.  
[18.11.10.6 NMAC - N, \_\_/\_\_/2021]

**A.11.10.7   DEFINITIONS:**

- A.**     **"Aircraft"** means airplane.
- B.**     **"Air carrier"** has the same meaning as defined in 49 U.S.C §40102 (a) (2).
- C.**     **"Department"** has the same meaning as defined in Section 64-1-12.D NMSA 1978 (2020).
- D.**     **"Director"** has the same meaning as defined in Section 64-1-12.F NMSA 1978 (2020).
- E.**     **"Division"** has the same meaning as defined in Section 64-1-12.E NMSA 1978 (2020).
- F.**     **"Eligible recipient"** means a municipality or county located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision and have a minimum population of twenty thousand persons residing within a fifty-mile radius of the airport.
- G.**     **"Enhancement Grant"** means an award of financial assistance of rural air service enhancement funds to an eligible entity. Individual grants shall not exceed one million two hundred fifty thousand dollars (\$1,250,000) per year for municipalities or counties with existing scheduled air service; or exceed one million seven hundred fifty thousand dollars (\$1,750,000) per year for municipalities or counties not served by existing scheduled air service.
- H.**     **"Grant" or "grant award"** means an award of financial assistance though the rural air service enhancement program.
- I.**     **"Grant Agreement"** means a legal instrument of financial assistance between the division and an eligible recipient. "Grant agreement" and "agreement" are used interchangeably.
- J.**     **"Grantee" or "grant recipient"** means the direct recipient of a grant award. The grantee is legally accountable to the department for the use of grant funds and is bound by the provisions and terms and conditions of the grant agreement. The grantee is responsible for ensuring that the selected air carrier carrying out activities under the award comply with the provisions and terms and conditions of the grant agreement.

**K. "Grant term"** means the timeframe for the use of the grant award as set forth in the grant award agreement. Grant awards shall cover a timeframe of at least two years.

**L. "In-kind contribution"** means any non-monetary contribution. Goods or services offered free or at less than the usual charge are considered in an in-kind contribution. Similarly, when a person or entity pays for services on the committee's behalf, the payment is an in-kind contribution.

**M. "Minimum level of airline service"** means:

- (1) service for one or more New Mexico municipalities or counties to one or more airports by a reliable airline;
- (2) flights that are at reasonable times considering the needs of passengers and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places; and
- (3) operated by pilots that meet the minimum requirements of the federal aviation administration based on the type of service provided.

**N. "Licensed by the state"** for purposes of the Rural Air Service Enhancement Act means a common carrier who has obtained from the United States department of transportation economic authority from the office of the secretary of transportation in the form of a certificate for interstate or foreign passenger and a safety authority in the form of an air carrier certificate and operations specifications from the federal aviation administration.

**O. "Passenger"** has the same meaning as defined in Section 64-1-12.C NMSA 1978 (2020).

**P. "Pilot"** means any person including a co-pilot participating in the operation of an aircraft while it is in flight.

**Q. "Scheduled air service or "scheduled operation"** means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or its representatives offers in advance the departure location, departure time, and arrival location.

[18.11.10.7 NMAC - N, \_\_/\_\_/2021]

**18.11.10.8 ELIGIBILITY FOR ASSISTANCE:** Applicants shall meet the following minimum criteria to be eligible for a grant:

- (1) the municipality or county shall have a minimum population of 20,000 persons residing within a 50 mile radius of the airport unless the municipality or county has existing scheduled air service;
- (2) the aircraft to be used to service proposed new air routes served by the rural air service enhancement grant program shall have a passenger capacity of not more than nine persons;
- (3) the route or routes to be served by the program shall be a new air route or routes that were not served at the time the grant was made; and
- (4) the selected air carrier must be licensed by the state.

[18.11.10.8 NMAC - N, \_\_/\_\_/2021]

**18.11.10.9 AIR CARRIER PROCUREMENT REQUIREMENTS:**

**A.** In selecting an air carrier, an eligible recipient must comply with:

- (1) the requirements of the New Mexico Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978, as amended, or
- (2) if exempted from complying with the Procurement Code pursuant to Section 13-1-98K, their own purchasing ordinances. Such an eligible recipient must provide a copy of those ordinances to the division.
- (3) Applicants will be required to provide proof of compliance with the New Mexico Procurement Code or its own purchasing ordinances if exempted from complying with the Procurement Code.
- (4) An eligible entity must award a contract only to an air carrier who is licensed by the state.

**B.** The division may make available to eligible recipients upon request suggested forms and documents for use in the procurement of the airline services.

**C.** At a minimum an eligible entity should consider including the following in its solicitation:

- (1) a description of the airport or airports that will serve the proposed new scheduled air service;
- (2) an estimate of the demand for the proposed new scheduled air service routes;
- (3) a description of any existing air service, including the carrier(s) providing the service, service frequency, direct and connecting destinations offered, available fares, and equipment types;
- (4) a description of the requested service options for proposed air service routes;
- (5) a justification for the new proposed scheduled air service routes;

- (6) a commitment from the selected air carrier that if a grant is awarded to the municipality or county the air carrier will enter into a written operating agreement with the eligible recipient to provide the air service described;
- (7) a draft operating agreement;
- (8) a requirement that the air carrier discuss its requested revenue guarantee as well as supporting data for the request, such as traffic assumptions, revenue forecasts, estimated operating costs and potential route profitability.
- (9) a requirement that the air carrier provide a description of the aircraft to be used on the new scheduled air service route(s);
- (10) a description by the air carrier of its demonstrated reliability in providing scheduled air service;
- (11) disclosure on the part of the air carrier of the existence of interline agreements that the air service provider has made with larger carriers to allow passengers and cargo of the air service provider at the hub airport to be transported by the larger carrier(s) through one reservation, ticket, and baggage check in.

18.11.10.9 - N, \_\_\_/\_\_\_/2021

**18.11.10.10 AIR CARRIER CONTRACT REQUIREMENTS:**

**A.** The following provisions shall be required in the contract between grant recipient and the air carrier:

- (1) Payment to the air carrier shall be made in arrears on a per-flight-completed basis.
- (2) The air carrier should submit an invoice at the beginning of each month for the prior month based on the number of flights that it actually completed in conformance with the contract.
- (3) Submitted invoices should request an amount in accordance with the allowances stipulated by the parties' contract, detailing the service actually completed, including date of service, aircraft type, routing, and frequency of service, and any actual variations from the service contemplated by the contract.
- (4) If a carrier is forced by operational exigencies to make ad hoc service adjustments to its service, such as aircraft type or routing, the carrier should report those deviations on its invoice with the appropriate adjustments. For instance, if the carrier substituted a smaller, less expensive aircraft type than agreed to, due to mechanical or other problems involving the larger aircraft, the subsidy rate should be reduced accordingly.
- (5) Flights that did not conform to the terms and stipulations of the contract between the grant recipient and the air carrier will not be compensable unless approved in advance by the grant recipient.
- (6) Only completed flights are considered eligible for payment unless otherwise excused under the terms of the contract between the grant recipient and the air carrier. For example, weather conditions may require the aircraft to return to its airport of origin before reaching its scheduled destination.
- (7) Flights that never take-off because of weather, mechanical problems, air traffic control issues, crew shortages/flight and duty time issues, are not compensable.
- (8) All flights that can be safely operated must be completed to be compensable; flights that overfly points for lack of traffic will not be compensated.

[18.11.10.10 NMAC - N, \_\_\_/\_\_\_/2021]

**18.11.10.11 APPLICATION FOR GRANT:**

**A.** In any fiscal year in which funds will be available for distribution from the rural service enhancement fund the director will request applications from eligible recipients interested in receiving a rural air service enhancement grant.

**B.** Two or more communities may enter into a shared or common services arrangements, memorandum of understanding, intergovernmental agreement, joint powers agreements, or other similar agreement to provide air service over a linear route, e.g., community A to community B. The applicant shall submit a fully executed letter of intent together with its application defining the respective responsibilities of the communities in implementing the project and to define the requirements, terms, conditions, type of funds, and considerations attendant upon each party to the agreement. If awarded a grant, prior to the disbursement of any funds by the division, the communities shall execute the agreement in a manner provided by law for entering into binding contractual agreements. Two or more communities entering into such an agreement need to make their own determination of the legality of such a relationship and the form and the content of the agreement.

**C.** Eligible recipients shall submit a single application to the division in a format provided by the division. An applicant shall comply with deadlines and guidelines published by the director. The director shall

reject any application that is not submitted by the deadline. Each applicant is solely responsible for soliciting, reviewing and selecting an air carrier for inclusion in the application.  
[18.11.10.11 NMAC - N, \_\_/\_\_/2021]

**18.11.10.12 ELIGIBLE INFRASTRUCTURE IMPROVEMENTS:** To be eligible for grant funding for infrastructure improvements, the improvements must be an integral part of, or necessary for the development, or the provision of scheduled air service. Infrastructure grants will be processed in accordance with 18.11.9 NMAC Governing the Approval of Grants.  
[18.11.10.12 NMAC - N, \_\_/\_\_/2021]

**18.11.10.13 CRITERIA FOR EVALUATING GRANT APPLICATIONS:**

**A.** The division shall give priority for the award of grants based on the division's determination that the application meets the following criteria and subject to the availability of funds. It should be emphasized that the ranking process does not require that the director fund projects in order of their ranking. The ranking is a means to help the director generally prioritize projects.

**B.** The minimum criteria is as follows:

- (1) the demand for service on the proposed air routes;
- (2) the economic impact on the eligible recipient of the proposed new air routes; and
- (3) the feasibility of a common carrier licensed by the state servicing the proposed new air routes.
- (4) the amount of the requested enhancement grant and the corresponding matching funds above the minimum requirement to be provided by the applicant; and
- (5) the existence of a plan by the municipality or county to market the service to the community.

**C.** The division will carefully review each application and the staff may contact applicants and discuss their applications if clarification or more information is needed.

**D.** Applicants may amend their applications at any time prior to the division's decision, and those amendments will be considered.

**E.** Applications should be fully thought out and are designed to meet the individualized needs of a community. The division will notify the applicants of the selection results in a timely manner. Projects not selected for funding may be re-submitted in subsequent funding cycles.

**G.** The division retains the discretion to reject outright all unreasonable or unrealistic proposals and solicit a new round of applications. The director's decision will be final.  
[18.11.10.13 NMAC - N, \_\_/\_\_/2021]

**18.11.10.14 APPROVAL OF GRANT:**

**A.** If the division approves an application for a grant, the recipient of the grant must enter into an agreement with the division. The agreement must specify:

- (1) The amount of the grant;
- (2) The amount of the matching funds from the eligible recipient. Minimum matching funds shall not be less than:
  - (a) ten percent if the eligible recipient has no existing scheduled air service at the time of application; and
  - (b) fifty percent if the eligible recipient has existing scheduled air service at the time of application. In-kind contributions may not be used in satisfying the required minimum matching funds.
- (3) the proper use of the money obtained from the grant;
- (4) the date on which the division approved the grant;
- (5) the specific indicators of performance by which the division and the recipient of the grant will measure the progress of the project;
- (6) the projected estimates of costs;
- (7) a requirement that the recipient of the grant report to the division on an annual basis.

**B.** If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed.  
[18.11.10.14 NMAC - N, \_\_/\_\_/2021]

**18.11.10.15 REPORTING:** Each grant recipient must submit annual reports on the progress made during the previous period in implementing its grant no later than 90 days after the end of the each 12 month period. These reports must include:

- (1) a description of the air service, including the frequency of flight operations from the applicant's airport to regional airport hubs, its consistency of service, on-time performance, reliability, and the number of enplanements;
- (2) a description of the economic benefit, or any new business opportunities or an expansion of existing business resulting from the availability of the air service; and
- (3) a description of the benefits to the community, the convenient travel times for both business and leisure travelers data and quantitative information about the project's impact.

[18.11.10.15 NMAC - N, \_\_/\_\_/2021]

**18.11.10.16 FUNDING RESTRICTIONS:** Each eligible recipient awarded a grant will be expected to execute a grant agreement with the division before it begins spending funds under a grant award. Applicants should therefore not assume they have received grants, nor obligate or spend local funds, prior to receiving and fully executing grant agreements. Funding from the grant may not be used to pay for expenditures made prior to the execution of the grant agreements. The division may not disburse any money from a grant until approval and execution by all required parties and the division has received a request to draw money from the grant from the recipient of the grant.

[18.11.10.16 NMAC - N, \_\_/\_\_/2021]

**18.11.10.17 GRANT REIMBURSEMENTS:**

**A.** The recipient of a grant must make a request to draw money from the grant on a form prescribed by the director. The division shall reimburse the grantee in accordance with the terms of agreement. Claims for reimbursement shall be completed on form A-1159, Request for Reimbursement. Each request for reimbursement shall contain proof of payment for valid expenditures for services rendered by a third party or items of tangible property received by the grantee for the implementation of the grant. The division reserves the right to withhold reimbursement on requests that are incorrect and/or incomplete. The Final reimbursement request must be received no later than 30 days after the expiration of the grant. The grantee shall not be reimbursed for any costs incurred prior to the full execution of the grant, after the expiration of the grant or in excess of the maximum dollar amount of the grant unless the maximum dollar amount is duly amended prior to incurring the service or deliverable. Any unexpended portion of funds subject to this grant shall revert to the state aviation fund.

**B.** The director shall review and approve or deny a request to draw money from a grant within 10 working days after the date on which the director receives the request. If the director approves a request to draw money from a grant, the director shall cause a check to be issued to the recipient of the grant in the amount requested by the recipient. If the director denies a request to draw money from a grant, the director shall provide the recipient who made the request with a written statement:

- (1) stating the reason for the denial of the request; and
- (2) describing any actions the recipient must take to receive approval of the request from the director.

**C.** If the director awards a grant to a recipient and, after the recipient receives a disbursement of the grant pursuant to this section, the director determines that the recipient no longer needs the grant or any portion of the grant, the director may:

- (1) cease making any further disbursements of the grant to the recipient of the grant; or
- (2) require the recipient of the grant to repay any unused portion of the grant.

[18.11.10.17 NMAC - N, \_\_/\_\_/2021]

**18.11.10.18 PROJECT DOCUMENTATION:** The eligible entity shall maintain a complete set of project files for a period of not less than six years following the completion of the grant term. The project files shall contain all documents that are specified as required by the grant agreement.

[18.11.10.18 NMAC - N, \_\_/\_\_/2021]

**18.11.10.19 NON-COMPLIANT GRANTEES:**

**A.** The division shall, at its discretion, investigate noncompliant grantees and pursue all appropriate legal means including termination of any grant agreement and any or all items and shall seek remediation for monies expended by the division and received by non-compliant grantee.

**B.** If the division finds that the recipient of a grant is not using money from the grant in accordance with the provisions of the grant agreement, the division will immediately cease providing the recipient with money from the grant and may determine that the agreement is void.

**C.** If the division finds that money from the grant is not used in accordance with the agreement, the division may require the repayment of the grant or any portion of the grant.

**D.** The division reserves the right to audit any rural air service enhancement grant. The eligible entity must make records available for review or audit upon request by the department. The division is entitled to recover amounts based on the results of an audit.

**E.** The department reserves the right to request the eligible entity to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the eligible entity to comply in full with all such requests and to submit the requested documentation in a timely manner.

[18.11.10.19 NMAC - N, \_\_/\_\_/2021]

**HISTORY OF 18.11.10 NMAC:**