

This is an amendment to 18.11.10 NMAC, Section 7, 8, 9, 11, 14, effective 2/14/2023.

18.11.10.7 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 through 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.]~~

**A. Definitions beginning with "A":**

- ~~\_\_\_\_\_ (1) "Aircraft" means airplane.~~
- ~~\_\_\_\_\_ (2) "Air carrier" has the same meaning as defined in 49 U.S.C §40102 (a) (2).~~
- ~~\_\_\_\_\_ (3) "Air route" means any scheduled operation or public charter.~~

- B. Definitions beginning with “B”:** **[RESERVED]**
- C. Definitions beginning with “C”:** **“Charter flight”** means a flight operated under the terms of a charter contract between a direct air carrier and the carrier’s customer.
- D. Definitions beginning with “D”:**
- (1) **“Department”** has the same meaning as defined in Subsection D of Section 64-1-12 NMSA 1978 (2020).
- (2) **“Director”** has the same meaning as defined in Subsection F of Section 64-1-12 NMSA 1978 (2020).
- (3) **“Division”** has the same meaning as defined in Subsection E of Section 64-1-12 NMSA 1978 (2020).
- E. Definitions beginning with “E”:**
- (1) **“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.
- (2) **“Enhancement grant”** means an award of financial assistance of rural air service enhancement funds to an eligible entity. Individual grants shall not exceed two million two hundred fifty thousand dollars (\$2,250,000) per year for municipalities or counties with existing scheduled air service; or exceed two million seven hundred fifty thousand dollars (\$2,750,000) per year for municipalities or counties not served by existing scheduled air service.
- (3) **“Expanded air route”** means an air route served by the rural air service enhancement grant program that expands passenger capacity or the number of scheduled operations or public charter flights from what was served at the time a grant was made.
- F. Definitions beginning with “F”:** **[RESERVED]**
- G. Definitions beginning with “G”:**
- (1) **“Grant” or “grant award”** means an award of financial assistance through the rural air service enhancement program.
- (2) **“Grant Agreement”** means a legal instrument of financial assistance between the division and an eligible recipient. “Grant agreement” and “agreement” are used interchangeably.
- (3) **“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.
- (4) **“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.
- H. Definitions beginning with “H”:** **[RESERVED]**
- I. Definitions beginning with “I”:** **“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.
- J. Definitions beginning with “J”:** **[RESERVED]**
- K. Definitions beginning with “K”:** **[RESERVED]**
- L. Definitions beginning with “L”:** **“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.
- M. Definitions beginning with “M”:**
- (1) **“Minimum level of airline service”** means:
- (a) service for one or more New Mexico municipalities or counties to one or more airports by a reliable airline;
- (b) 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
- (c) operated by pilots that meet the minimum requirements of the federal aviation administration based on the type of service provided.

**(2) “Minimum revenue guarantee”** means the amount of money guaranteed by a municipality or county to be earned by an airline providing scheduled air services to and from that municipality or county, which is the difference between the minimum flight charge revenue specified in the contract between the municipality or county and the airline and the amount of actual flight charge revenue received by the airline that is less than the contractual amount.

**N. Definitions beginning with “N”:** “New air route” means an air route to be served by the rural air service enhancement grant program that was not served prior to January 1, 2021.

**O. Definitions beginning with “O”:** [RESERVED]

**P. Definitions beginning with “P”:**

**(1) “Passenger”** has the same meaning as defined in Subsection C of Section 64-1-12 NMSA 1978 (2020).

**(2) “Pilot”** means any person including a co-pilot participating in the operation of an aircraft while it is in flight.

**(3) “Public charter”** means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

**Q. Definitions beginning with “Q”:** [RESERVED]

**R. Definitions beginning with “R”:** [RESERVED]

**S. Definitions beginning with “S”:** 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.

**T. Definitions beginning with “T”:** [RESERVED]

**U. Definitions beginning with “U”:** [RESERVED]

**V. Definitions beginning with “V”:** [RESERVED]

**W. Definitions beginning with “W”:** [RESERVED]

**X. Definitions beginning with “X”:** [RESERVED]

**Y. Definitions beginning with “Y”:** [RESERVED]

**Z. Definitions beginning with “Z”:** [RESERVED]

[18.11.10.7 NMAC - N, 10/26/2021, A, 2/14/2023]

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

**A.** 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;

**B.** 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~~ 30 persons;

**C.** 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

**D.** The selected air carrier must be licensed by the state.

[18.11.10.8 NMAC - N, 10/26/2021, A, 2/14/2023]

**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 NMSA 1978, 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 or expanded air route;

**(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 or a description of the proposed new air routes or expanded air routes to serve the applicant;
  - (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, 10/26/2021 A, 2/14/2023]

**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.
  - D. A grant application shall include the items listed in Section 64-6-4 NMSA 1978.
- [18.11.10.11 NMAC - N, 10/26/2021 A, 2/14/2023]

**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~~ twenty 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, 10/26/2021 A, 2/14/2023]