



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Multimodal Transportation Facilities TITLE-SERIES: 220-02
RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Aviation Grant Process
CITE STATUTORY AUTHORITY: §17-16F-5(b)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

November 1, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stephen R Connolly -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 220
PROCEDURAL RULE
MULTIMODAL TRANSPORTATION FACILITIES DIVISION

SERIES 2
AVIATION GRANT PROCESS

§220-2-1. General.

1.1. Scope. — This procedural rule governs the process for application, eligibility, and awarding of Direct Grants and Matching Funds Grants for Airports of West Virginia.

1.2. Authority. — W.Va. Code §17-16F-5(b).

1.3. Filing Date. — September 29, 2023

1.4. Effective Date. — November 1, 2023

§220-2-2. Definitions.

2.1. "Airport" means a transportation facility used for the takeoff and landing of aircraft, which are included in the Federal Aviation Administration (FAA) National Plan of Integrated Airport Systems (NPIAS).

2.2. "Annual Cycle" means the fiscal year that the state government follows, running from July 1 of the preceding calendar year to June 30.

2.3. "Applicant" means an Airport, ARFF, CAP, or other entity authorized by law to be a recipient of Direct Grants, Matching Funds Grants, or Special Grants.

2.4. "Approved" means acceptable to the Commissioner.

2.5. "ARFF" means the Aircraft Rescue and Firefighting simulator(s) operated by the West Virginia University Fire Service Extension agency, or its successor.

2.6. "CAP" means the West Virginia Civil Air Patrol operating as a state branch of the congressionally chartered, federally supported non-profit corporation that serves as the civilian auxiliary of the United States Air Force (USAF).

2.7. "Commissioner" means the Commissioner of the Division of Multimodal Transportation Facilities.

2.8. "DMTF" means the Division of Multimodal Transportation Facilities, a state agency created, authorized and empowered by W. Va. Code §17-16F-1 *et seq.*

2.9. "DMTF Airport Advisory Committee" means a panel composed of five (5) members being the Secretary of the West Virginia Department of Transportation, the Commissioner of the DMTF, the President of the West Virginia Airport Managers Association, and two (2) at-large members as appointed by the Secretary.

2.10. "FAA" means the United States Federal Aviation Administration.

2.11. "Record" means any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

2.12. "Secretary" means the Cabinet Secretary, or Deputy Secretary acting at the direction of the Secretary, for the West Virginia Department of Transportation.

2.13. "State Legislature" means the West Virginia State Legislature organized and empowered by the West Virginia State Constitution.

§220-2-3. Application.

3.1. Applicants shall provide an application for grant funding with an Application Letter (Appendix A) with all required documentation. The Application shall be complete and submitted within the required timeframes.

3.2. Applicants must provide all required forms, records and documentation to the satisfaction of this rule and the Commissioner of the DMTF.

3.2.1. Applicants are encouraged, but not required, to annually provide the DMTF with their Capital Improvement Program and Airport Layout Plan to provide the Commissioner with an understanding of how grant applications comport to the stated goals and objectives for improving Airport facilities.

§220-2-4. Direct Grant Process.

4.1. The Direct Grant Process provides financial assistance to Applicants from funds directly appropriated by the State Legislature. These *do not* include funds derived from the aviation fuel tax or other sources received by the DMTF.

4.2. Eligibility –

4.2.1. Eligible Airport applicants – Grants issued under this program may generally be used by Airports for any reasonable and necessary business purpose.

4.2.1.a. In addition to Airports, the ARFF and CAP may also apply for an award of the available funds administered under this Section.

4.2.2. Funding levels – Depending on availability of funds allocated by the State Legislature, and subject to approval by the DMTF, each Airport will receive a *pro rata* share of those general revenue funds appropriated to the DMTF in State Fund 0582.

4.2.2.a. An Airport approved for a Direct Grant shall receive not less than \$12,500 each annual cycle.

4.2.2.b. An Airport approved for a Direct Grant shall use the funds consistent with their stated purpose(s) as outlined in their application for such funds.

4.3. The applicant shall detail in their application how the funds will be used during the annual cycle. Funds may be used in the following manner:

4.3.1. To be spent by the Airport in the annual cycle for identified reasonable and necessary business purpose(s); or

4.3.2. To be held by the Airport during the annual cycle and aggregated with future year(s) Direct Grants for identified reasonable and necessary business purpose(s), including, but not limited to, a local match for future federal or state grant(s).

4.4. For each Annual Cycle, the announcement date is April 1st of each year, and applications for Direct Grants must be received by July 1st of each year. Applications must include the following:

4.4.1. A DMTF application for Direct Grant;

4.4.2. A description of need and project(s);

4.4.3. Cost estimate(s);

4.4.4. An executed copy of a resolution from the applicant's governing body authorizing the submission of the application (if not available by the deadline, please explain in the cover letter that the resolution will be submitted when available);

4.4.5. A Project Schedule (if applicable);

4.4.6. A copy of their most recent Audit Report, which shall be dated no more than two (2) years prior to the time of the Application. If the Audit Report is publicly available online, the web address for its location.

4.5. DMTF will review and grant/deny the application based on availability of Direct Grant program funds.

4.6. DMTF will notify the applicants of the selection process results on or before July 30th of each year. Projects not selected for funding may be re-submitted the following year during the application process. Project re-submittals shall be updated to provide current data and will be evaluated as a new project submittal.

4.6.1. An application which is not awarded a grant under this Section may file a request for reconsideration to the Commissioner of the DMTF pursuant to the provisions of Section XX of this rule.

4.7. Special projects outside of the normal Direct Grant criteria may be awarded at the discretion of the Commissioner of DMTF and availability of program funds.

4.8. Deadline

4.8.1. The application for a Direct Grant must be received by DMTF no later than July 1st, and absent good cause, the requirement for an application shall not be waived. Remember to include the name, phone number and email address for the primary point of contact for the application, as well as

any consultant involved in its preparation. The Commissioner of DMTF shall reject any application that is not submitted by the deadline absent good cause.

4.9. DMTF Review and Action

4.9.1. Upon review of the Application, DMTF will advise the Applicant by email if and when additional information is required. DMTF will take no action on the Application until the Applicant has submitted all required information and the application has been validated. DMTF will complete its review of validated applications and notify the Applicant of its action.

4.9.2. Applicants with acceptable projects will receive an Agreement in July of the applicable annual cycle. Once the Agreement is executed and funds have been disbursed by DMTF, neither the project scope of work nor the dollar amount awarded can be increased without written approval from DMTF.

4.10. Application performance

4.10.1. The Applicant receiving Direct Grant funding shall perform the project(s) in accordance with their application.

4.10.2. The Applicant shall:

4.10.2.a. Maintain all records and documentation related to performance of the stated purposes as outlined in their application;

4.10.2.b. Provide to the DMTF on or before their next Direct Grant application copies of all invoices, demonstration of payment and evidence of their performance of the stated purposes for which the granted funds were expended.

4.10.2.c. Invoices should be in sufficient detail to include the cost of each task or line item in the project.

4.11. Grant Administration

4.11.1. Upon DMTF's approval of a Direct Grant, the Applicant will receive one (1) unexecuted copy of an Agreement specifying the amount of the grant and the Eligible Project(s). The Applicant shall execute and return one copy with original signatures, within thirty (30) working days of receipt, to the Commissioner of DMTF.

4.11.2. All grant Agreement(s) must be executed no later than August 31st of the award year. The Applicant risks losing grant funds if Contracts are not executed by the deadline date.

4.12. Special projects outside of the normal grant criteria set forth under this Rule may be awarded at the discretion of the Commissioner of DMTF and availability of program funds.

§220-2-5. Matching Grant Process.

5.1. The Matching Grant program may pay up to one half (½) of the non-federal share of all FAA funded projects at Airports in this State. The application process is tied to the FAA grant process.

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5.1.1. Matching Grant Funds are derived from the aviation fuel tax deposited in State Fund 8275, as well as other available sources as directed by the State Legislature.

5.2. Eligible projects – Eligible projects are maintenance projects related to the rehabilitation and improvement of existing Airport infrastructure, including but not limited to:

5.2.1. Obstruction removal/mitigation and reporting;

5.2.2. Runway and Taxiway markings;

5.2.3. Airport Lighting rehabilitation including: Runway and Taxiway lighting systems, Airport guidance signage and Pilot Controlled Lighting systems;

5.2.4. Airport Navigational Aids including: Airport Beacons, Runway End Identifier Lighting, Visual Glide Slope Indicators PAPI's or VASI's, Approach Lighting Systems and Automated Weather Observing Systems (AWOS);

5.2.5. Pavement resurfacing/rehabilitation of Runways, Taxiways and Aprons Projects other than those mentioned above may be considered on a case-by-case basis.

5.3. The Airport applicant will be responsible for 100 percent of non-eligible construction costs, as well as all costs associated with any preliminary engineering, grant application, environmental studies, permits and documents, right of way and utilities for non-eligible projects.

5.4. The local match for construction is required to be cash. In-kind contributions may be accepted as part of the local share and are considered on a case by case basis.

5.5. In addition to eligible construction costs, DMTF grants may reimburse eligible engineering Design, Bid and Construction phase service fees following the notice of project approval.

5.6. For each Annual Cycle, the announcement date is April 1st of each year, and applications for direct grant awards must be received by July 1st of each year. Applications must include the following:

5.6.1. A DMTF application for Matching Funds Grant;

5.6.2. A description of need;

5.6.3. Detailed cost estimates;

5.6.4. A certified copy of a resolution from the applicant's governing body authorizing the submission of the application (if not available by the deadline, please explain in the cover letter that the resolution will be submitted when available);

5.6.5. A Project Schedule;

5.6.6. A detailed drawing of the work to be completed;

5.6.7. A copy of their most recent Audit Report which shall be no more than two (2) years old at the time of the Application. If the Audit Report is publicly available online, the web address for its location.

5.7. DMTF will review and rank the proposed projects based on merit and availability of Matching Grant program funds. It should be emphasized that the ranking process does not require that projects are funded in order of their ranking. The ranking is a means to help DMTF to generally prioritize projects. Other factors DMTF determines to be relevant may be taken into consideration, such as safety considerations, the applicant's past project performance, geographic distribution of recent projects, and the economic impact of the proposed project.

5.8. The Commissioner of DMTF will notify the applicants of the selection process results on or about July 30th of each year. Projects not selected for funding may be re-submitted the following year during the application process. Project re-submittals shall be updated to provide current data and will be evaluated and ranked as a new project submittal.

5.8.1. An application which is not awarded a matching or special grant under this process may file a request for reconsideration to the Commissioner of the DMTF pursuant to the provisions of Section 6 of this rule.

5.9. Grant Amount - State Share

5.9.1. The DMTF Matching Grant share shall not exceed 5% of the eligible scope of the eligible project.

5.10. Grant Amount - Airport Sponsor Share

5.10.1. The Local Match share shall be no less than two and one half (2.5%) of the eligible costs. Local Match share may be comprised of funds held by the Airport or other eligible sources (*e.g.*, city, county or other funds). The Commissioner may elect to reduce the applicant's share in special cases, including projects in economically distressed areas.

5.11. Grant Amount – Project Cap

5.11.1. In an effort to extend DMTF grant funding to as many Airports as possible, DMTF places a Matching Funds Grant cap of \$500,000.00 per Application. An Airport seeking funds for projects with costs that exceed the project cap are encouraged to apply for the entire project with the expectation that they could be asked to phase the project over multiple grant cycles.

5.11.2. Applicants desirous of a grant which exceeds this cap are encouraged to seek a special appropriation or designated direction of funds in the State Budget Bill through the State Legislature.

5.12. Material to be Submitted with the Application:

5.12.1. If the Airport is asking for multiple projects, the different project types must be split and ranked according to the applicant's priority.

5.12.2. The Application shall be in letter form and shall contain a detailed Description of Need, detailed Cost Estimates.

5.12.3. Contingencies are not an eligible cost and shall not be included in the funded grant amount.

5.12.4. Project cost estimates should not include contingency or any other non-eligible items.

5.12.5. The Application must include a detailed project drawing of the Airport showing where the work is to be done.

5.12.6. A copy of a Resolution from the Applicant's governing body authorizing the submission of the Application must be included (if not available by the deadline, explain in the cover letter that the resolution will be submitted when available).

5.12.7. Project Schedule

5.12.8. Requests for grant payments must include copies of the invoices from the consultant(s) and/or contractor(s).

5.13. Deadline

5.13.1. The application for a Direct Grant must be received by DMTF no later than July 1st, and absent good cause, the requirement for an application shall not be waived. Remember to include the name, phone number and email address for the primary point of contact for the application, as well as any consultant involved in its preparation. The Commissioner of DMTF shall reject any application that is not submitted by the deadline absent good cause.

5.14. DMTF Review and Action

5.14.1. Upon review of the Application, DMTF will advise the Applicant by email if and when additional information is required. DMTF will take no action on the Application until the Applicant has submitted all required information and the application has been validated. DMTF will complete its review of validated applications and notify the Applicant of its action.

5.14.2. Applicants with acceptable projects will receive a non-binding Notice of Project Approval (NPA), which could lead to Grant Funds and contract execution, in July of the applicable grant fiscal year. Once the NPA has been issued by DMTF, neither the project scope of work nor the dollar amount awarded can be increased without written approval from DMTF.

5.15. Project performance

5.15.1. Upon Grantee's receipt of the Notice of Project Approval the Grantee shall:

5.15.1.a. Within two weeks, submit a written acceptance to DMTF that the project will be performed as requested in the Application and as specified in the Notice of Project Approval;

5.15.1.b. Submit a revised Project Schedule with the above verification of the project;

5.15.1.c. Submit all bid documentation and engineer's cost estimate to DMTF for review and approval prior to release to prospective bidders;

5.15.1.d. Execute the Grant Agreement within 30 working days of receipt;

5.15.1.e. Grantee will comply with all applicable National Environmental Policy Act, West Virginia Department of Environmental Protection and U.S. Army Corps of Engineers regulations concerning wetlands and water quality, and with all provisions of the Endangered Species Act.

5.16. Grant Administration

5.16.1. Upon DMTF's approval of the grant funding, the Applicant will receive one (1) unexecuted copy of a Grant Contract specifying the amount of the grant and the Eligible Project(s). The Applicant shall execute and return one copy with original signatures, within thirty (30) working days of receipt, to the Commissioner of DMTF.

5.16.2. All Grant Contracts must be executed no later than August 31st of the award year. The Applicant risks losing grant funds if Contracts are not executed by the deadline date.

5.17. Standard Assurances

5.17.1. Upon execution of the Grant Agreement, the Standard Assurances are incorporated by this Rule and are considered part of the Grant Agreement even if not specifically referenced within the document.

5.18. Payment of Matching Grant Funds

5.18.1. Project costs are payable to the extent that such project costs are:

5.18.1.a. Incurred for work performed consistent with the Grant Agreement;

5.18.1.b. Made in conformance with the Application, the Criteria and the Grant Agreement;

5.18.1.c. Necessary in order to accomplish the project;

5.18.1.d. Reasonable in amount for the goods or services purchased;

5.18.1.e. Actual net costs to the Grantee (*i.e.* the price paid minus any refunds, rebates, or other items of value received by the Grantee that might reduce the costs actually incurred).

§220-2-6. Request for Reconsideration to the DMTF Airport Advisory Committee.

6.1. Any Applicant who is aggrieved by a denial of Grant(s) pursuant to this Rule may request reconsideration by the DMTF Advisory Committee.

6.2. Within two (2) weeks of receiving a Request for Reconsideration, the DMTF Airport Advisory Committee shall hold a meeting, notify the Applicant of the date, place and time of the meeting, hear from the aggrieved Applicant on the reasons the Application should be granted, and make a decision upholding the denial of the application, modifying the decision of the Commissioner, or granting the Application as presented.

§220-2-7. Severability.

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7.1. These rules are considered to be severable. In the event this rule is inconsistent with or contrary to any applicable statute, the provisions of the statute shall be applied.

7.2. This rule, including any timeframe imposed upon the DMTF, are intended to serve as guidelines for procedural functions of the DMTF. Nothing herein is intended to vest any right, substantive or otherwise, which is greater than otherwise existing in law.

APPENDIX A

Application Letter Format on Official Letterhead

DATE

Commissioner of the DMTF
West Virginia Department of Transportation
Bldg. 5, State Capitol Complex
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Commissioner:

The (NAME OF APPLICANT) hereby submits an Application for (\$##,#### THE AMOUNT BEING APPLIED FOR) in SFY (YEAR) Grant Funds under the Matching Funds Grant program for use at the (NAME OF APPLICANT). The Grant Funds will be used [FOR Direct Grant: DESCRIBE PROPOSED SPENDING AND SKIP TO INCLUDED DOCUMENTS SECTION BELOW / FOR MATCHING GRANT CONTINUE] in conjunction with (FAA / AIP or BIL Grant ##-####-YYYY-###) for (DESCRIBE IN DETAIL THE PROPOSED PROJECT(S)). The amount requested from DMTF represents (2.5 / 5%) of the total eligible project cost. The Applicant will be responsible for 100% of any or all non-eligible items. The final eligible project breakout would be (90% FAA, 5% local share and 5% DMTF OR 95% FAA, 2.5% local share and 2.5% DMTF) subject to the program:

Total project value: \$ _____
Total eligible project value: \$ _____
FAA share (90 OR 95%): \$ _____
Applicants share (2.5 or 5%): \$ _____
DMTF share (2.5 or 5%): \$ _____

The following documents have been included:

- A copy of a resolution from (GOVERNING BODY) authorizing the submission of this application.
- Signed copy of the Grant Application
- Copy of the executed FAA Grant. • A copy of the most recent Audit Report for Applicant

Should you have any questions or need further information, please contact (LOCAL CONTACT PERSON, ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER).

Respectfully,

SIGNATURE

NAME/TITLE