

DEPARTMENT OF TRANSPORTATION

Division of Transportation Development

IMPLEMENTATION OF THE SECTION 5310 PROGRAM OF THE FEDERAL TRANSIT LAWS, 49 U.S.C. SECTION 5300 ET SEQ.

2 CCR 603-2

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

I. PURPOSE

The purpose of the Rules is to prescribe procedures for application to the Department for federal assistance for transportation projects designed to meet the special needs of elderly and disabled persons as authorized by Section 5310 of the Federal Transit Laws, 49 U.S.C. Section 5301 et seq.

Section 5310 offers federal assistance to private nonprofit organizations and certain public bodies for the purchase of capital equipment for the purpose of providing transportation services to elderly and disabled persons by way of a grant program. The Section 5310 program is administered by the State pursuant to the U.S. Department of Transportation's Federal Transit Administration (FTA) Circular 9070.1E, October 1, 1998, (FTA C 9070.1E) entitled "The Elderly and Persons With Disabilities Program Guidance and Application Instructions."

II. AUTHORITY

The Rules are promulgated by the Department pursuant to the specific statutory authority of Sections 43 1 601 and 602 C.R.S. (1984).

- A. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the January, 1990 revision to the Rules is hereby incorporated by reference.
- B. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the February, 1992 revision to the Rules is hereby incorporated by reference.
- C. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the May, 1996 revision to the Rules is hereby incorporated by reference.
- D. The Statement of Basis, Specific Statutory Authority, and Purpose for the Rules for the December 2004 revision to the Rules is hereby incorporated by reference.

Copies of the Statements of Basis, Specific Statutory Authority, and Purpose described above shall be available for copying or public inspection during regular business hours from the Transit Unit Manager, Colorado Department of Transportation.

III. DEFINITIONS

The following definitions shall apply to the Rules.

- A. "Capital expense" means facilities or equipment with a unit cost over \$500.00 and a useful life of more than one year, including buses and other vehicles, and related equipment needed to support the provision of transportation services.

- B. "Department" means the Colorado Department of Transportation.
- C. "Disabled" means persons having physical or mental impairments which prevent such persons from driving automobiles or using conventional mass transit.
- D. "Elderly" means all persons age 60 or older.
- E. "Interagency Advisory Committee" (IAC) means the committee which evaluates and scores applications for FTA funding. The committee shall consist of representatives of State of Colorado agencies, including but not limited to, the Department of Local Affairs, the Department of Transportation, the Department of Human Services, and the Public Utilities Commission.
- F. "Metropolitan Planning Organization" (MPO) means an organization within the State of Colorado designated by agreement among the units of general local government and the Governor, charged to develop the transportation plans and programs in a metropolitan area pursuant to 23 U.S.C. 134, as further described in 23 C.F.R. 450.104(b)(3).
- G. "Multi-year application" means a grant application which covers a two or three year period.
- H. "Program of Projects" means the annual summary of projects for transportation services to elderly and disabled persons recommended by the Department for receipt of federal Section 5310 funds and submitted by the Department to FTA for approval.
- I. "Private nonprofit organization" means a private organization incorporated in the State of Colorado as a not for profit corporation, and which can demonstrate that it is recognized by the U.S. Internal Revenue Service as a private not for profit corporation.
- J. "Project" means transportation services which an applicant proposes to provide within a given area, and has described in its application.
- K. "Regional Transportation Plan" means a technically based, twenty-year plan designed to meet the future mobility needs for a Transportation Planning Region including, but not limited to, anticipated funding, priorities, and implementation plans, pursuant to, but not limited to, 43-1-1103(1) and (2) C.R.S.(1991), as further described in 43-1-1102(6) C.R.S.(1991).
- L. "State Management Plan" (SMP) means the current document that is developed by the Department and submitted to FTA on a periodic basis and that describes those details of the Department's policies and procedures for administering the Section 5310 program which are not included in the Rules.
- M. "Statewide Transportation Plan" means the twenty-year comprehensive, intermodal state transportation plan adopted by the Transportation Commission pursuant to the provisions of 43-1-1103(5), C.R.S.(1991), as further described in 43-1-1102(8) C.R.S.
- N. "Transit Element" (TE) means the document adopted by duly authorized public officials within an identified geographical area for a specific time period and accepted by the Department which identifies: general and specialized transit needs and coordination of transit services within the service area; existing transit services and proposed additional services; capital and operating costs of the proposed services; and, existing and proposed sources of funding.
- O. "Transportation Improvement Program" (TIP) means a staged multi year program of transportation improvements including an annual or biennial element.

IV. APPLICATION PROCEDURE

The purpose of this section is to describe the procedures concerning applications for FTA funds.

Whether annual or multi-year applications are to be submitted, the Department will notify all known transit operators in Colorado of the availability of FTA funds, requirements for requesting an application package, and the deadline to submit an application to the Department for FTA funds.

The application package will contain instructions and guidelines for completion of the application, as more fully described in the SMP. The SMP and the application package will be available upon request 45 days in advance of the application deadline, from the Department Transit Unit Manager. It is the responsibility of an interested party to request an application package and a SMP from the Department.

An application must be submitted by the deadline. The application must be completed as described in the application package. If an application is received by the Department after the deadline or is incomplete it shall be rejected and not considered for funding.

V. THRESHOLD CRITERIA FOR APPLICANT ELIGIBILITY

The purpose of this section is to describe the threshold criteria the Department will use to determine if an applicant will be eligible for funding. The threshold criteria are more fully described in the SMP.

An applicant must comply with all the following threshold criteria:

A. Applicants for Section 5310 funds must be one of the following:

1. Private nonprofit organization.
2. Public body that meets at least one of the following qualifications:
 - a. The public body must be approved by the Department to coordinate services for elderly persons and persons with disabilities.

In order for the Department to approve a public body to coordinate services, the public body must demonstrate the following:

 - 1.) that it has established a formal working relationship with those with whom it will coordinate;
 - 2.) that its coordination plan will integrate both ADA and non ADA eligible services; and,
 - 3.) that its coordination plan will not only utilize proposed capital equipment purchases in an effective manner, but also will utilize capital equipment purchased with FTA funds awarded in the past.
 - b. The public body must certify to the Department that no nonprofit corporations or associations are readily available to provide the services described in the Project.

In order for a public body to certify that no nonprofit corporations or associations are readily available to provide this Project service, the public body must notify all such known organizations in its service area by letter and by means of a legal notice in a newspaper of general circulation. Any nonprofit organization which indicates an interest in applying must prove it can readily provide the services described in the local TE. If the Project cannot be completed by a private nonprofit organization, the public body may be the applicant.

- B. An applicant must ensure that a current Transit Element (TE) or a Regional Transportation Plan (RTP) which contains the elements of a, Transit Element (TE) is on file with the Transit Unit Manager, at the Colorado Department of Transportation, by the application deadline. To be current, the TE shall cover a specific time period, including the year for which funds are being requested, unless otherwise approved by the Department. The Project services for which an applicant requests Section 5310 funding must have been described in and consistent with the TE or a RTP which contains the elements of a TE, in order to be eligible.
- C. An applicant providing services in an urbanized area must comply with the following:
1. An applicant must certify that the applicant will take all actions necessary to present the Project to the Metropolitan Planning Organization (MPO) and ensure that the MPO will include the Project(s) in the Transportation Improvement Program (TIP) for that urbanized area.
 2. An applicant will take all actions necessary to demonstrate that there are no FTA Section 5307 and/or 5336 or Section 5308 and/or 5338 funds available for the Project(s).
- D. An applicant must demonstrate in the application the fiscal and managerial capability to manage the funds being requested. To determine compliance with this criterion, the Department will consider the following factors:
1. Experience managing public funds.
 2. Ability to maintain an accounting system that is consistent with generally accepted accounting principles, and that segregates funds.
 3. Ability to establish reasonable safety and risk management procedures.
 4. Demonstrated ability to comply with regulations and contractual requirements.
 5. Any other relevant factors.
- When considering such factors, the Department may also consider, in its discretion, the guidelines described in the SMP.
- E. An applicant must ensure that all forms, assurances, certifications, signature pages, and resolutions required by the application are signed by the appropriate officer or individual with authority to legally bind the applicant.
- F. An applicant requesting funding for vehicles must demonstrate in the application the ability to maintain such vehicles. To determine compliance with this criterion, the Department will consider the following factors:
1. Ability to follow the vehicle manufacturers' minimum maintenance requirements.
 2. Ability to provide regularly scheduled preventive maintenance.
 3. Ability to provide unscheduled maintenance.
 4. Ability to maintain records of all maintenance.
 5. Any other relevant factors.

When considering such factors, the Department may also consider, in its discretion, the guidelines described in the application package.

- G. An applicant must demonstrate that the local match will be available when required.
- H. An applicant must submit a completed application to the Department no later than 5:00 p.m. on the deadline date specified in the application package.
- I. An applicant must provide transportation to elderly persons and persons with disabilities.

Compliance by an applicant with all threshold eligibility criteria does not obligate the Department to award funds, but only allows the applicant to be evaluated by the Department for consideration for available funding based upon the evaluation criteria described in Section VI. of the Rules.

VI. EVALUATION CRITERIA

The purpose of this section is to describe the evaluation criteria which will be used by the Department to determine whether an eligible applicant will be funded and to assist in determining the level of funding to be awarded. Guidelines, instructions, and details concerning such evaluation criteria are described in the application package.

The Department will use the following criteria to evaluate eligible applicants.

- A. Financial Justification, i.e. the extent to which the applicant demonstrates justification for capital funds, based upon:
 - 1. The lack of funding resources available to an applicant.
 - 2. The concerted, good faith effort to obtain funds for the Project from other sources.
 - 3. The economic condition of the area described in the Project.
 - 4. Other relevant factors.
- B. Service Justification, i.e. the extent to which the applicant demonstrates justification for the Project, based upon:
 - 1. Lack of appropriate transportation alternatives as demonstrated in the TE.
 - 2. The transit dependency of the population in the geographical area of the Project.
 - 3. Whether the Project service: is offered to a cross section of the elderly population and to both the elderly and non elderly disabled population; serves the needs of both those covered and those not covered by the Americans with Disabilities Act (ADA); is offered for a variety of trip purposes; and, is provided over a wide geographic area.
 - 4. Whether the Project is provided by the applicant on behalf of other organizations.
 - 5. The type(s) and total number(s) of transit riders served and trips provided.
 - 6. Other relevant factors. .
- C. Coordination of Services, the extent to which the applicant demonstrates coordination of services, based upon:

1. Coordination of Project services with other public and private transit providers, social services agencies, and community organizations.
 2. Reduction of the total amount of miles traveled, operating expenses incurred, number of vehicles used, and lead time for passenger scheduling in administering and operating the Project, as a result of such coordination. This criterion applies only to a Project which primarily offers curb to curb, demand responsive services.
 3. The absence of duplication or overlap of the Project and transit services provided by others.
 4. Other relevant factors.
- D. Service Performance: applicants will be placed within peer comparison groups based on the size of their annual operating budget or other characteristics as described in the State Management Plan (SMP) and evaluated within their respective group by measures of performance established in the SMP.

VII. SCORING PROCEDURES

The purpose of this section is to describe the general procedures to score annual and multi-year applications. In using such procedures, the Department and the IAC members may consider the guidelines described in the SMP.

- A. The Interagency Advisory Committee (IAC) members will assign quantitative scores to the applicant based upon the evaluation of an applicant's response to the criteria described in Section VI A., B., and C., of the Rules.
1. The following scoring procedures will be used. Scores of 0, .5, 1, 1.5, 2, 2.5 or 3 will be assigned by the IAC members to each criterion described in Section VI A., B., and C., for each application, based upon the judgement of the IAC members of whether and the extent to which each application meets and satisfies such criterion. In making such judgements, the IAC members may, at their discretion, consider the guidelines described in the SMP concerning such criteria. The scores assigned by IAC members will be averaged to arrive at a final score. An applicant must receive a final score of 1.45 out of a maximum score of 3 to be considered by the Department for funding.

The value of these criteria is set forth in the State Management Plan.

- B. The Department, in consultation with the IAC, shall assign quantitative scores of 0, .5, 1, 1.5, 2, 2.5 or 3 for each capital expense request in each application, based upon the following equipment need criteria:
1. The demonstrated need to replace or rehabilitate equipment, based upon the age, condition, and odometer reading of the respective equipment. If expansion equipment is requested, the demonstrated need for expansion equipment, based upon a review of ridership estimates and patterns.
 2. The lack of suitable alternatives to obtain or rehabilitate capital equipment.
 3. The relative operating effectiveness of the equipment to be obtained or rehabilitated, based upon hours per day in operation, days per week in operation, and passengers per mile, per hour, and per capita.
 4. Other relevant factors.

The value of this criterion is set forth in the State Management Plan.

C. The Department shall assign a quantitative score of 0, .5, 1, 1.5, 2, 2.5, or 3 for service performance as described in Section VI D., of the Rules

1. Three measures of performance will be used in the calculation of the service performance score. The three measures are described in the State Management Plan. Each measure will be given a score of 0, .5, 1, 1.5, 2, 2.5, or 3. The performance score will be an average of the score assigned for each of the performances measures.

The value of this criterion is set forth in the State Management Plan.

D. The Department will develop a ranked list of capital expense awards based upon the combined scores described in A., B., and C. above. The weighting of the scores for each capital expense request is established in the State Management Plan.

VIII. FUNDING PROCEDURES

The purpose of this section is to identify the procedures that the Department, in consultation with the IAC, will use for an annual or multi-year application to recommend awards of available FTA funds. These procedures may be further described in the SMP.

A. Annual Application

When the Department uses an annual application, it shall list proposed awards in its Program of Projects based on the amount of funding actually available for that year. Awards for the projects described in that program will be made subject to FTA approval.

B. Multi-year Application

1. When the Department uses a multi-year application the following steps will be taken.

- a. For the first year, the Department will list proposed awards for that year, based on the amount of funding actually available for that year, as described in A. above.
- b. For the succeeding year(s), the Department will list the projects it anticipates funding in any succeeding year(s) of that application, based on the amount of funding estimated by the Department to be available for those years. Such list shall not be a commitment to provide funds in those years.

2. In any succeeding year(s) of that application, the Department also will do the following.

- a. Require applicants for funding in those years to provide an update of certain information contained in their original application.
- b. Determine whether each of the projects listed in year one are still eligible in those succeeding years.
- c. Consider (based on their ranking) capital expenses applied for in year one but not funded in year one, concurrently with capital expenses applied for in year one for a succeeding year. In that ranking, an applicant's evaluation score will be used for all years, but a separate capital expense score will be assigned each year.

- d. Adjust the listed projects based on the then current need, or on compliance with conditions established by the Department, or on the appropriation and budgeting and availability of funds therefor.
 - e. Develop a Program of Projects in each of those years to identify the projects to be actually funded in that year.
- C. The federal share payable for Capital Expense Awards shall not exceed the maximum allowed by FTA Circular 9070.1E for eligible capital expenses. The local share for capital expenses must be provided by the applicant in cash from sources other than federal funds.

IX. APPEAL PROCEDURE

The Department shall notify all applicants of its annual program of projects. If an application is denied, the grounds therefore shall be given to the applicant. The notice shall be deemed received by the applicant three days after the date of mailing of the notice. An applicant that is aggrieved by a Department determination under the Rules may request a hearing pursuant to the provisions of Section 24 4 104, C.R.S., as amended, of the State of Colorado Administrative Procedures Act. If a hearing is requested, it will be conducted in accordance with 24 4 105 C.R.S., as amended. The request for a hearing must be made within 60 calendar days after an applicant is notified of the Department's decision.

Editor's Notes

History