

DEPARTMENT OF TRANSPORTATION

Division of Transportation Development

IMPLEMENTATION OF THE SECTION 5311 PROGRAM OF THE FEDERAL TRANSIT LAWS, 49 U.S.C. SECTION 5300 ET SEQ.

2 CCR 603-1

[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 Colorado Department of Transportation for federal assistance for public transportation projects in areas other than urbanized as authorized by Section 5311 of the Federal Transit Laws, 49 U.S.C. Section 5301 et seq.

Section 5311 offers federal assistance for public transportation projects in areas other than urbanized by way of a formula grant program. The Section 5311 program is administered by the Department pursuant to the U.S. Department of Transportation's Federal Transit Administration (FTA) Circular 9040.1E, October 1, 1998 (FTA C 9040.1E), entitled "Nonurbanized Area Formula Program Guidance and Grant Application Instructions."

II. AUTHORITY

The Rules are promulgated by the Department pursuant to the specific statutory authority of Sections 43-1-701 and 702 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 August 2001 revision to the Rules is hereby incorporated by reference.
- E. 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. "Administrative expenses" means the expenses incurred in administering the Project, as specified in FTA C 9040.1E.

- B. "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.
- C. "Department" means the Colorado Department of Transportation.
- D. "Intercity Bus Service" as defined in FTA C 9040.1E, shall refer to regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, which has the capacity for transporting baggage carried by passengers, and which makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.
- E. "Interagency Advisory Committee" (IAC) means the committee which evaluates and scores applications for 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. "Multi-year application" means a grant application which covers a two- or three-year period.
- G. "Net Operating Deficit" means expenses incurred in operating the Project less fares, donations, and advertising revenue, as specified in FTA C 9040.1C E.
- H. "Operating expenses" means those costs incurred in operating the Project, as specified in FTA C 9040.1C
- I. "Program of Projects" means the annual summary of projects for public transportation in areas other than urbanized, recommended by the Department for receipt of federal Section 5311 funds and submitted by the Department to FTA for approval.
- J. "Project" means public transportation services which an applicant proposes to provide within a given area, and has described in its application.
- K. "Public transportation" means transportation by bus, rail, or other conveyance, either publicly or privately operated, which provides to the public general or special service on a regular and continuing basis, but not including school bus, charter or sight-seeing service.
- L. "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.
- M. "Section 5311(f)" shall refer to that portion of 5311 which sets aside funds for Intercity Bus Service.
- N. "Service Area Population" means the population in the geographical areas where the Project is actually provided. Service Area Population will be determined using appropriate data from the most recent census as published by the U.S. Department of Commerce.
- O. "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 5311 program which are not included in the Rules.
- P. "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.

Q. "Transit Element" (TE) means a 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.

R. "Urbanized area" means an area within the boundary of a metropolitan area having a population of fifty thousand or more as determined by the United States Bureau of the Census in its latest census, and as included on the urbanized area map approved by the Department.

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, instructions 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 completing the application, as more fully described in the State Management Plan (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 a project will be considered for available funding. The threshold criteria are more fully described in the SMP.

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 certain evaluation criteria described in Section VI of the Rules.

An applicant must comply with all the following threshold criteria.

A. Applicants for Section 5311 funds shall be limited to the following: State or local government agencies, political subdivisions as defined in 29-1-202, C.R.S., Indian tribes, and nonprofit organizations, that provide public transportation services in a geographical area other than an urbanized area. Applicants for Section 5311(f) Intercity Bus funds shall include the above listed organizations as well as private, commercial, for-profit organizations.

Provided, however, that where a mass transportation agency has been created by statute to provide transportation services in a particular geographical area, such agency shall be the only eligible applicant in that area unless such agency specifically requests in writing that this eligibility requirement be waived. Such a waiver request must be received by the Department not less than thirty days before the application deadline in the year it is to become effective and shall remain in effect until withdrawn by the mass transportation agency in writing.

B. An applicant must ensure that a current Transit Element (TE) is on file with the Transit Unit Manager, Colorado Department of Transportation, by the application deadline. To be current, the TE shall

cover a specific time period, including the year for which the funds are being requested, unless otherwise approved by the Department. The Project services for which an applicant requests Section 5311 funding must have been described in and be consistent with the TE or a RTP which contains the elements of a TE, in order to be eligible.

- C. 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 factor.

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

- D. 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.
- E. 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 factor.

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

- F. An applicant must demonstrate that the local match will be available when required.
- G. 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.
- H. An applicant must demonstrate that the Project will provide regular and continuing general public transit service in an area other than an urbanized area.

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 funding, based upon:
 - 1. The costs to operate and administer the Project (excluding capital costs).
 - 2. The amount of revenue available to the applicant, including contract revenue and earmarked funds.
 - 3. The maintenance of existing local funding commitments.
 - 4. The proportion of Project costs covered by local funds (Local Support).
 - 5. The concerted, good faith effort to obtain funds for the Project from other sources.
 - 6. The economic condition of the area described in the Project.
 - 7. 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 general public transportation alternatives as demonstrated in the local TE.
 - 2. The transit dependency of the population in the geographical area of the Project including, but not limited to elderly, disabled, low income, and other transit dependent persons.
 - 3. Whether the Project is provided by the applicant on behalf of other organizations.
 - 4. The type(s) and total number(s) of transit riders served and trips provided.
 - 5. Other relevant factors.
- C. Coordination of Services, i.e. 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 applicants based upon an evaluation of applicants' responses to the criteria described in Section VI A., B., 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., C., for each application, based upon the judgment of the IAC members of whether and the extent to which each application meets and satisfies such criterion. In making such judgments, 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 will assign a quantitative score of 0, .5, 1, 1.5, 2, 2.5, or 3 for service performance as described in Section VI D.
 - 1. Three measures of performance will be used in the calculation of the service performance score. The three measures are described in the SMP. 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 three performances measures.

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

- C. The Department, in consultation with the IAC members, will consider the following factors to determine whether to grant a Capital Expense Award to a particular applicant and the amount of the grant. Capital Expense Awards shall be considered separately from Service Area Population, Merit, and Performance Awards.
 - 1. The Department's determination of the extent to which FTA funds may be better utilized for Service Area Population, Merit, and Performance Awards.
 - 2. The lack of suitable alternatives to obtain or rehabilitate capital Expense equipment, including the availability and appropriateness of Section 5310 funds to make a Capital Expense Award.
- D. The Department, in consultation with the IAC, shall assign scores of 0, .5, 1, 1.5, 2, 2.5, or 3 for each capital expense request 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 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.
3. Other relevant factors.

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

- E. The Department will develop a ranked list of capital expense awards based upon the combined evaluation scores described in Section VII A., B., and D. The weighting of the scores for each capital expense is set forth in the State Management Plan.

VIII. FUNDING PROCEDURE

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 will also 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 Department shall allocate funds into the six general categories described below.
1. State Administration: Funds used by the Department to administer the Section 5311 program and to provide technical assistance.
 2. Capital Expense Awards: Funds awarded only for the purchase of capital equipment.
 3. Intercity Bus Service Awards: Funds awarded for the provision of intercity bus services. These funds may be used for operating, administrative, capital. The Department may make available certain funds for Intercity Bus Services to carry out a program for the development and support of intercity bus transportation, pursuant to federal requirements.
 4. Service Area Population Awards: Funds awarded based upon applicants' Service Area Population. These funds may be used for operating or administrative expenses, but shall not be used for capital expenses.
 5. Performance Awards: Funds will be awarded based on relative scores assigned by the Department for the selected performance measures. These funds may be used for operation or administration expenses, but shall not be used for capital expenses.
 6. Merit Awards: Funds awarded based upon the relative quantitative scores assigned by Department and the IAC members to applicants based on the evaluation criteria, as described in Section VI of the Rules. These funds may be used for operating or administration expenses, but shall not be used for capital expenses.
- D. The Department will use the following procedures to allocate funds into the six general categories.
1. The Department shall first deduct from the total FTA funds the amount needed for State Administration, which shall not exceed the maximum allowed by FTA Circular 9040.1E..
 2. The Department will then deduct from the remaining FTA funds an amount for Capital Expense Awards, in its discretion.
 3. The Department will then deduct from the remaining FTA funds an amount for Intercity Bus Service Awards, in its discretion.
 4. The Department will then use the remaining FTA funds for Service Area Population Awards, Merit Awards, and Performance Awards.
- E. The Department will recommend awards from the above categories based upon the following procedures.
1. The Department will consider certain factors to determine:
 - a. Whether to make either Capital, Intercity Bus Service, Service Area Population, Merit Awards, or Performance Awards to a particular eligible applicant.
 - b. The amount of such award(s).
 - c. Whether to allocate funds to any of the six general categories.
 2. Such factors are:

- a. The total amounts of FTA funds available for the respective categories of awards in a given year;
 - b. The total amounts requested by eligible applicants from the respective categories, and the total number of eligible applicants in that year; and,
 - c. The need to provide for a fair and equitable distribution of available FTA funds within the State.
3. The federal share payable for Capital Expense and Administrative Awards shall not exceed the maximum allowed by FTA Circular 9040.1E for eligible capital and administrative expenses. The federal share payable for operating expenses shall not exceed shall not exceed the maximum allowed by FTA Circular 9040.1E of the net operating deficit. A minimum, as set forth in the State Management Plan, of the local share for capital, administrative, and operating expenses must be provided by the applicant from sources other than federal funds or revenues from the operation of the project. The local share for capital expenses must be provided by the applicant in cash from sources other than federal funds.
- F. The Department will allocate the required percentage of total available FTA Section 5311 funds for Intercity Bus Services pursuant to applicable requirements. In implementing such requirements, the Department may consider, in its discretion, the guidelines described in the SMP.
- G. The Department will distribute the remaining FTA funds by Service Area Population Awards, Merit Awards, and Performance Awards in the percentages set forth in the State Management Plan.
- H. The Department will grant Service Area Population Awards to applicants that have received at least the passing score, based upon each applicant's prorated share of the total Service Area Population of all applicants receiving a passing score.
- I. The Service Area Population for each applicant shall consist of the population of non-urbanized areas which receive regular and continuing public transportation services described as part of the Project. The Service Area Population shall further be limited to:
1. incorporated areas;
 2. areas defined by the Department as urban by using the most recent U.S. Census data; and,
 3. unincorporated areas of population concentration identified as Census Designated Places.
- J. The Department will grant Merit Awards to applicants that have received at least the passing score, based upon the rank of each applicant's evaluation score relative to the evaluation scores of all eligible applicants, and based upon the Department's assessment of the relative needs of each applicant.
- K. The Department will grant Performance Awards to applicants that have received at least the passing score, based upon the rank of each applicant's performance score relative to the performance scores of all eligible applicants.

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