

## DEPARTMENT OF TRANSPORTATION

### Clean Transit Enterprise

## RULES GOVERNING CLEAN TRANSIT ENTERPRISE PROCESSES AND FEES

### 2 CCR 607-1

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#### 1.00 Statement of Basis and Purpose and Authority

The Clean Transit Enterprise is authorized by C.R.S. § 43-4-1203(6)(g) to promulgate rules setting the amount of the Clean Transit Retail Delivery Fee at or below maximum levels contained in C.R.S. § 43-4-1203(7) and to govern the process by which the Enterprise accepts applications for, awards, and oversees grants, loans, and rebates pursuant to C.R.S. § 43-4-1203(8).

SB21-260 Sustainability of the Transportation System created new sources of dedicated funding and new state enterprises intended to preserve, improve, and expand existing transportation infrastructure, develop the modernized infrastructure needed to support the widespread adoption of Electric Motor Vehicles, and mitigate environmental and health impacts of transportation system use. To accomplish these goals, the legislation established a Clean Transit Enterprise (CTE), an enterprise and government owned business within the Colorado Department of Transportation (CDOT) for the purpose of collecting fee revenue to reduce or mitigate the adverse impacts of air pollution and greenhouse gas emissions produced by gas and diesel-powered motor vehicles used for Retail Deliveries. CTE will support the adoption of Electric Motor Vehicles for Transit. The Enterprise is a Type 1 transfer agency and as such the Legislature specifically vested the Enterprise with the authority to promulgate rules to set the amount of the required Clean Transit Retail Delivery Fee and to govern the process by which the Enterprise accepts applications for, awards, and oversees grants, loans, and rebates. Per statute, the Enterprise can set a maximum fee of \$0.03 per Retail Delivery. The fee delineated in the rule mirrors the fee amount set in C.R.S. § 43-4-1203.

The Enterprise shall notify the Department of Revenue (DOR) of the amount of the Clean Transit Retail Delivery Fee to be collected for Retail Deliveries of Tangible Personal Property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins. CDOT will work with DOR to determine the maximum fee amount that may be imposed, which shall be the maximum amount for the prior state fiscal year adjusted for inflation.

#### 2.00 Definitions

- 2.1 “Colorado Department of Transportation Division of Transit and Rail” or “CDOT Division of Transit and Rail” means the division within the Colorado Department of Transportation responsible for planning, developing, operating, and integrating Transit and rail into the statewide transportation system.
- 2.2 “Compressed Natural Gas Motor Vehicle” means a vehicle that is powered by an engine fueled by methane that has been compressed and stored onboard at a pressure up to 3,000 pounds per square inch, also known as compressed natural gas.
- 2.3 “Disproportionately Impacted Community” means a community that is in a census block group, as determined in accordance with the most recent United States decennial census, where the proportion of households that are low income is greater than forty percent, the proportion of households that identify as minority is greater than forty percent, or the proportion of households that are housing cost-burdened is greater than forty percent, as defined in C.R.S. § 43-4-1202(5).

- 2.4 “Electric Motor Vehicle” means a vehicle that uses a battery to store energy that powers the motor, including:
- 2.4.1 A Battery Electric Motor Vehicle powered exclusively by a rechargeable battery pack that can be recharged by being plugged into an external source of electricity and that has no secondary source of propulsion.
  - 2.4.2 A Hydrogen Fuel Cell Motor Vehicle powered by electricity produced from a fuel cell that uses hydrogen gas as fuel.
  - 2.4.3 A Plug-in Hybrid Electric Motor Vehicle powered by both a rechargeable battery pack that can be charged by being plugged into an external source of electricity and a secondary source of propulsion such as an internal combustion engine.
- 2.5 “Recovered Methane” means any of the following if the Air Pollution Control Division determines them to provide a net reduction in greenhouse gas emissions:
- 2.5.1 Biomethane;
  - 2.5.2 Methane derived from municipal solid waste, biomass pyrolysis or enzymatic biomass, or wastewater treatment; and
  - 2.5.3 Coal mine methane, as defined in C.R.S. § 40-2-124(1)(a)(II).
- 2.6 “Retail Delivery” means a retail sale of Tangible Personal Property by a retailer for delivery by a motor vehicle owned or operated by the retailer or any other person to the purchaser at a location in the state, which sale includes at least one item of Tangible Personal Property that is subject to taxation under Article 26 of Title 39. Each such retail sale is a single Retail Delivery regardless of the number of shipments necessary to deliver the items of Tangible Personal Property purchased.
- 2.7 “Tangible Personal Property” means all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except newspapers excluded by law. Tangible property does not include:
- 2.7.1 Real property, such as land or buildings, nor Tangible Personal Property that loses its identity when it becomes an integral and inseparable part of the realty, and is removable only with substantial damage to the premises. Property severed from real estate becomes Tangible Personal Property.
  - 2.7.2 Intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or memberships, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes.
  - 2.7.3 Water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.
  - 2.7.4 Computer software that does not meet the criteria enumerated in C.R.S. § 39-26-102(15)(c).
  - 2.7.5 An advertising supplement included in a newspaper.

- 2.7.6 The method of delivery does not impact the definition of Tangible Personal Property as defined in C.R.S. § 39-26-102(15).
- 2.8 “Transit” means a coordinated system of Transit modes providing transportation use by the general public, as defined in C.R.S. § 43-1-102(4).
- 2.9 “Transit Agency” means an organization that provides Transit services to the general public or a segment of the public defined by age, disability, or low income.
- 3.00 Fees**
- 3.1 Effective July 1, 2022, the Enterprise shall impose a Clean Transit Retail Delivery Fee of three cents per Retail Delivery of Tangible Personal Property.
- 3.2 Starting in 2023, CDOT will work with the Department of Revenue (DOR) to determine the maximum fee amount that may be imposed, which shall be the maximum amount for the prior state fiscal year adjusted for inflation.
- 3.3 Starting in 2023, the Enterprise shall notify DOR of the amount of the Clean Transit Retail Delivery Fee to be collected for Retail Deliveries of Tangible Personal Property purchased during each state fiscal year no later than March 15 of the calendar year in which the state fiscal year begins.
- 4.00 Process for Awarding and Overseeing Enterprise Grants, Loans, and Rebates**
- 4.1 The selection of grant, loan, and rebate recipients will be on a competitive basis as a part of regular calls for Transit grant applications and will be based on criteria established by the Enterprise and posted on its website no fewer than 60 days in advance of any deadlines for the submission of applications for grants, loans, and rebates.
- 4.1.1 CDOT Division of Transit and Rail (DTR) staff will consult with the Clean Transit Enterprise Board to determine the overall available funding amount, project selection criteria, required match levels, and other programmatic details in advance of any notice of funding availability.
- 4.1.2 A notice of funding availability for grants, loans, and rebates will be posted no fewer than 60 days prior to the application deadline.
- 4.1.3 Eligible applicants will be any organization considered to be a Transit Agency as defined in these Rules.
- 4.1.4 Applications will be assessed for eligibility and scored based on their support for the business purpose of the Clean Transit Enterprise by a review panel. Additional consideration will be given in the evaluation process to those Transit Agencies located within or providing service to Disproportionately Impacted Communities.
- 4.1.5 The applicant must include evidence that the proposed project(s) will support the business purpose of the Clean Transit Enterprise and will be used for one or more of the following purposes by:
- 4.1.5.1 Supporting the replacement of existing gasoline and diesel transit vehicles with Electric Motor Vehicles, including motor vehicles that originally were powered exclusively by internal combustion engines but have been converted into Electric Motor Vehicles. If Electric Motor Vehicles are not practically available, they may be replaced by Compressed Natural Gas Motor Vehicles, if at least ninety

percent of the fuel for the Compressed Natural Gas Motor Vehicles will be Recovered Methane;

4.1.5.2 Providing the associated charging infrastructure for Electric Motor Vehicles in the Transit fleet;

4.1.5.3 Supporting facility modifications that allow for the safe operation and maintenance of Electric Motor Vehicles; or

4.1.5.4 Funding planning studies that enable Transit Agencies to plan for Transit vehicle electrification.

4.2 CDOT staff will present a list of applications recommended for funding to the Clean Transit Enterprise Board for final approval.

4.3 Applicants will be notified of the results of their project proposal(s) within 90 days of the application deadline.

4.4 The CDOT Division of Transit & Rail Transit Programming Unit will be the responsible entity for overseeing any grants, loans, and rebates provided by the Enterprise.

#### **5.00 Declaratory Orders**

The Enterprise board may, at its discretion, entertain petitions for declaratory orders pursuant to C.R.S. § 24-4-105(11).