

## DEPARTMENT OF TRANSPORTATION

### Division of Transportation Development

## RULES CONCERNING THE IMPLEMENTATION OF THE SAFE ROUTES TO SCHOOL PROGRAM

### 2 CCR 601-19

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

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#### I. PURPOSE

- A. The purpose of these Rules is to prescribe procedures for application and disbursement of federal or state moneys to political subdivisions of the State, for projects to improve safety for pedestrians and bicyclists in School Areas, as authorized by § 43-1-1601 et seq., C.R.S.
- B. The Department promulgated these Rules in order to carry out the purposes of § 43-1-1601 et seq., concerning the "Safe Routes to School" program. The Rules were adopted for the following reasons: (1) to comply with § 43-1-1604 C.R.S.; (2) to establish the procedures to review and award grants; (3) to define essential terms; (3) to determine additional criteria and procedures under which the program will be managed.

#### II. STATEMENT OF BASIS AND SPECIFIC STATUTORY AUTHORITY

##### A. Statement of Basis

Sections 43-1-1601 et seq. C.R.S. was enacted in June 2004. Section 43-1-1604 C.R.S. directs the Department to promulgate Rules for the implementation of a grant based program awarding federal funds to political subdivisions of Colorado to improve safety for pedestrians and bicyclists in School Areas.

The Department promulgated the Rules in May 2005. The Department initiated the rulemaking process to amend the existing Rules in June 2007. The first amendment was needed to revise the contact person to be in compliance with job duties and responsibilities within the Department of Transportation, and Section 1404 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy of Users Act of 2005. The second amendment was necessary to attain continuity of services and leadership on the Advisory Committee.

The Department amended the Rules in 2012 as part of a Department-wide initiative to update Rules where warranted, eliminate unnecessary language and lessen restrictions on local government when possible. This initiative was in keeping with the Governor's Executive Order D2011-005 and Executive Order 2012-002.

The Department amended the Rules in 2014 as a result of HB14-1301. This bill made state general funds available for FY15 for the Safe Routes to Schools Program, and specified that all of the grants awarded using the funds resulting from HB14-1301 must be for non-infrastructure projects. The bill also provides that if the Safe Routes to Schools Program received federal dollars in FY15, general funds appropriated for the program will be reduced by the amount of the federal moneys received. Finally, the bill eliminated the need to distribute projects by geographic distribution of the student population. Instead, the bill requires that the Department consider schools having greater than fifty percent of the students eligible for free or reduced-priced lunch as one of the criteria for awarding grants.

The Department amended the Rules in 2017 as a result of changes enacted in HB14-1301 which were only in effect for one year. The state general funds available in FY15 for Safe Routes to School are no longer available for the grant program. All other aspects of Safe Routes to School Program required by the bill remain in effect.

**B. Specific Statutory Authority**

These Rules are promulgated by the Department pursuant to the specific statutory authority of §§43-1-110 (2) and 43-1-1604 C.R.S. and conform to the requirements of PL 114-94 (“Fixing America’s Surface Transportation Act” or “FAST Act”) signed into law on December 4, 2015, 23 U.S.C. 101 (29)(B); 23 U.S.C. 213(b)(3) and 23 U.S.C. 403 and its implementing regulations; “SAFETEA-LU” 23 U.S.C. 402, and its implementing regulations; “National Goals and Performance Management Measures” 23 U.S.C. § 150; the National School Lunch Act, 42 U.S.C. § 1751 et seq. and its implementing regulations, 7 CFR 245. Pursuant to § 24-4-105(11), C.R.S., the Department may entertain petitions for declaratory orders.

**1.00 DEFINITIONS**

- 1.01 “Advisory Committee” means the committee appointed by the Executive Director as established in § 43-1-1601(4) C.R.S. and Section 2.00 of these Rules.
- 1.02 “Applicant” means a political subdivision of the State of Colorado that applies for an award under these Rules.
- 1.03 “Commission” means the Colorado Department of Transportation Commission established pursuant to § 43-1-106 C.R.S.
- 1.04 “Department” means the Colorado Department of Transportation established pursuant to § 43-1-101 C.R.S.
- 1.05 “Executive Director” means the Executive Director of the Colorado Department of Transportation pursuant to § 43-1-103 C.R.S.
- 1.06 “Free or Reduced-Priced Lunch” means a lunch served to a child from a household eligible for such benefits as provided by 7 CFR 245, and the National School Lunch Act, 42 U.S.C. § 1751 et seq.
- 1.07 “MPO” means a Metropolitan Planning Organization located in urban areas with a population over 50,000. An MPO is a federally-designated entity established by agreement between the Governor and the units of local government responsible for transportation planning processes.
- 1.08 “Non-System Road or Trail” means a road or trail that is not part of the State highway system.
- 1.09 “On-System Road or Trail” means a road that is part of the State highway system.
- 1.10 “Rural Area” for purposes of these Rules means an area outside an MPO boundary.
- 1.11 “School Areas” means the area within a two mile radius of a school.
- 1.12 “STAC” means Statewide Transportation Advisory Committee as created in § 43-1-1104, C.R.S.
- 1.13 “STIP” means the Statewide Transportation Improvement Program that is the federally required, four-year program of planned transportation projects. The STIP is developed in coordination with planning partners throughout the state through the Project Priority Programming Process. The STIP incorporates the Transportation Improvement Programs (TIPs) from each MPO.

- 1.14 “TIP” means the Transportation Improvement Programs (TIPs) that identify all current federally funded transportation projects to be completed in a Metropolitan Planning Organization (MPO) region over a four-year period.
- 1.15 “TPR” means a Transportation Planning Region. TPRs are geographically designated areas of the state with similar transportation needs and commonalities, pursuant to the provisions of § 43-1-1102 and 1103 C.R.S.

## **2.00 ADVISORY COMMITTEE**

- 2.01 The Executive Director shall appoint an Advisory Committee in conformance with § 43-1-1601(4) C.R.S.
- 2.02 In addition, the Advisory Committee shall include representatives of the STAC, who shall serve a two year term. The STAC shall choose their designees, with the approval of the Executive Director. STAC representatives to the Advisory Committee shall consist of:
- 2.02.1 Two STAC representatives of Metropolitan Planning Organizations or their designee;
- 2.02.2 Two STAC representatives of rural Transportation Planning Regions or their designee.

## **3.00 APPLICATION INFORMATION**

- 3.01 The Department will notify city and county governments, schools, and school districts of the potential availability of Safe Routes to School funds, requirements for requesting an application package, and the deadline to submit an application to the Department for Safe Routes to School funds.
- 3.02 The application package, to be developed and periodically updated by the Advisory Committee, will contain instructions and guidelines for completion of the application, as determined by the Advisory Committee and the Department. Instructions and guidelines may not be in conflict with § 43-1-1601 et seq., C.R.S.

## **4.00 THRESHOLD CRITERIA FOR APPLICANT ELIGIBILITY**

- 4.01 The purpose of this section is to describe the threshold criteria the Department and Advisory Committee will use to determine if an Applicant will be eligible for funding. An Applicant must comply with all threshold criteria.
- 4.01.1 Applicants must be political subdivisions of the state.
- 4.01.2 A political subdivision of the state that receives money under this Part 16 of Article 1 of Title 43, may not use such moneys as a substitute for funds currently being used to support similar activities.
- 4.01.3 In order for a political subdivision of the state to be eligible for the funds, the political subdivision must show that it has established an agreement with the school in the area where the project will occur. Such agreement of the improvement project must be documented and signed by an official of the school.
- 4.01.4 An Applicant must submit the application to the Advisory Committee through CDOT’s Safe Routes to School Program Manager.

- 4.01.5 An Applicant must ensure that all forms, assurances, and resolutions required by the application are signed by the appropriate officer or individual with authority to legally bind the Applicant.
- 4.01.6 If the project is not located on CDOT right of way, maintenance shall be the responsibility of the Applicant. If the project is located on CDOT right of way, maintenance agreements shall be in place prior to construction.
- 4.01.7 If required by the program, a local match must be demonstrated.
- 4.01.8 On-System projects must not conflict with the State and Regional Transportation Plans available on the Department website found at <https://www.codot.gov/programs/colorado-transportation-matters>
- 4.01.9 Applicant eligibility is contingent upon compliance with all state and federal laws and regulations. Applicants that fail to comply with all applicable federal and state laws, regulations and requirements will not be considered eligible under these Rules. Compliance by an Applicant with all threshold eligibility criteria does not obligate the Commission to award funds, but only allows the Applicant to be evaluated by the Department and Advisory Committee for consideration for available funding based upon the evaluation criteria described in Section 5.00. of the Rules.

## **5.00 EVALUATION CRITERIA**

- 5.01 The purpose of this section is to describe the basic evaluation criteria 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 shall be described fully in the application package.
- 5.02 The Advisory Committee shall create a scoring procedure utilizing the criteria described in this section.
- 5.03 The Department and Advisory Committee will include the following criteria to evaluate eligible Applicants:
  - 5.03.1. The demonstrated need of the Applicant;
  - 5.03.2. The potential of the proposed project to reduce injuries and fatalities among children;
  - 5.03.3. The potential of the proposed project to encourage walking and bicycling to school;
  - 5.03.4. The extent to which the application identifies existing safety hazards;
  - 5.03.5. The extent to which the application identifies existing and potential walking and bicycling routes and the extent to which the proposed project would improve or connect them;
  - 5.03.6. Support for the proposed project from local school-based associations, traffic engineers, elected officials, law enforcement agencies, and school officials;
  - 5.03.7. Consideration for implementation of Safe Routes to Schools in communities with schools having greater than fifty percent of the students eligible for Free or Reduced-Priced Lunch; and
  - 5.03.8. Other criteria allowed or required by applicable federal laws or regulations.

5.04 If the project request is located in an MPO boundary, the application must be certified by the MPO. The certification shall demonstrate that all actions necessary to include the project(s) in the Transportation Improvement Program (TIP) for that MPO will be taken before the application may be approved.

**6.00 FUNDING**

6.01 The Department shall allocate to the Safe Routes to School Program any funds received from the federal or state government that designates funds for such program.

6.02 Applicants applying for funds through the Safe Routes to School program may also be eligible for other federal funds, but must compete for those funds using the criteria established under that program.

6.03 Costs of the Project exceeding the amount of the grant shall be borne by the Applicant.

6.04 Project funds that have not been encumbered within 2 years will be considered inactive and the remaining unencumbered funds may be revoked and returned to the program.

**7.00 INCORPORATION BY REFERENCE**

The Rules are intended to be consistent with and not be a replacement for the federal requirements contained in the National School Lunch Act, 42 U.S.C. § 1751 et seq. November 10, 1989, and its implementing regulations, 7 CFR 245, December 13, 2007, which are hereby incorporated into the Rules by this reference, and do not include any later amendments. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 2829 W. Howard Pl., Denver, Colorado 80204, or by contacting staff at <https://www.codot.gov/business/rules>. Copies of the referenced United States Code may be obtained from the following address: Office of the Law Revision Counsel, U.S. House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515, or by phone at (202) 226-2411. Copies of the referenced Code of Federal Regulations may be obtained from the following address: U.S. Government Publishing Office, 732 North Capitol Street, N.W., Washington, DC 20401, or by phone at (202) 512-1800.

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**Editor's Notes**

**History**

Entire rule recodified from 2 CCR 602-4 eff. 06/30/2012.

Entire rule emer. rule eff. 09/04/2014; expired 01/02/2015.

Entire rule eff. 01/30/2015.

Rules II, 1.13-1.15, 4.01.8, 5.04, 7.00 eff. 04/16/2018.