



COLORADO

Department of Transportation

2829 W. Howard Place
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Statement of Basis, Authority, and Purpose

The rules governing the development and administration of the Colorado Department of Transportation's ("the Department" or "CDOT") Emerging Small Business Program are found at 2 CCR 604-1.

The specific authority for the Transportation Commission of Colorado ("the Transportation Commission") to establish these Rules is set forth in §§ 43-1-106(8)(j), (k), and (p), C.R.S.

The general purpose of these Rules is to implement § 43-1-106 (8)(p), C.R.S., which authorizes the creation of CDOT's Emerging Small Business ("ESB") Program. CDOT will use the ESB Program to provide assistance to and increase opportunities for certified small businesses, including minority-owned, women-owned and Disadvantaged Business Enterprises. The assistance and opportunities provided by the ESB Program will aim to enable ESBs to gain the knowledge, experience, and resources needed to participate in the competitive process for CDOT Contracts, thereby aiding in the development of Colorado's small business community, increasing competition for CDOT Contract awards, and lowering the cost to the public for transportation-related work.

In this proposed permanent rulemaking, the Transportation Commission proposes to repeal and re-enact the rules in order to re-format the numbering of the administrative rules for easier use. Additionally, the Transportation Commission proposes to make rule changes for the purposes of streamlining the ESB Program's certification and administrative requirements; better aligning the ESB Program with the administration of CDOT's Disadvantaged Business Enterprise ("DBE") Program; and enhancing program participation within Colorado's small business community. Three distinct size levels for certified ESBs will be established based on the Small Business Administration's size standards for small businesses in a given industry and the current overall cap of the DBE Program, which will expand program participation and allows CDOT to better tailor program incentives towards certified ESBs. To achieve the above purposes, the Transportation Commission proposes the following changes:

- Add, modify, or delete key defined terms as set forth in Chapter 2 of these Rules in order to aid in the interpretation and implementation of these Rules.
- Add or modify the certification procedures as set forth in Rule 3.1. such as requests for information, the notice of certification determination, and the reapplication process. Also, delete the procedures relating to the North American Industry Classification System ("NAICS") codes and areas of work to avoid limiting the scope of certification to specific areas of work.
- Clarify the minimum certification requirements as set forth in Rule 3.2. such as the Applicant's burden of proof, registration with the Colorado Secretary of State, the determination of the primary industry designation, the size standards, lawful presence, and requests for additional information.
- Add requirements for the Annual Update of ESB Certification as set forth in Rule 3.3. such as the submission, additional investigation, and extensions.
- Modify the graduation requirements as set forth in Rule 3.4.A. by directly linking the requirements with the overall cap and primary industry designation. Also modify the requirements regarding graduation timing, notice of graduation, and the effect of graduation on previous contracts or bids.



- Clarify the revocation requirements as set forth in Rule 3.4.B. such as the grounds for revocation, notice of revocation, the effect of revocation on previous contracts or bids.
- Clarify the reapplication requirements for certification upon graduation or revocation of an ESB as set forth in Rule 3.4.C.
- Add a bid preference and bond assistance as additional means to increase contracting opportunities for ESBs as set forth in Rule 4.4.A.
- Clarify outreach efforts regarding program changes, support services, project opportunities, and other information related to ESB Program participation as set forth in Rule 5.3. Also, delete the ESB Program Guidelines from these Rules since they are not necessary and any requirements have been codified into these Rules.
- Add a new chapter regarding the incorporation by references as set forth in Chapter 7 of these Rules.
- Add a new chapter regarding petitions for a declaratory order as set forth in Chapter 8 of these Rules for transparency and in compliance with the Colorado Administrative Procedure Act.
- Finally, other minor technical or grammatical changes are proposed throughout these Rules.

