



COLORADO
Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

**DEPARTMENT OF TRANSPORTATION
TRANSPORTATION COMMISSION OF COLORADO**

EMERGING SMALL BUSINESS PROGRAM

2 CCR 604-1

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
March 5, 2021 at 1:00 PM MST**

**Department of Transportation Headquarters
2829 W. Howard Place
Denver, CO 80204**

VIRTUAL RULEMAKING HEARING REGISTRATION LINK:

<https://attendee.gotowebinar.com/register/5361863423329607183>

Pursuant to and in compliance with Title 43, Article 1 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the state of Colorado and to all persons who have requested to be advised of the intention of the Transportation Commission of Colorado (“Transportation Commission”) to promulgate, amend, repeal, or repeal and re-enact rules relating to the Emerging Small Business Program (“the ESB Program”), 2 CCR 604-1.

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

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 the Colorado Department of Transportation’s (“CDOT”) Disadvantaged Business Enterprise Program (“DBE Program”); and enhancing program participation within Colorado’s small business community. Three distinct size levels for certified Emerging Small Businesses 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 Emerging Small Businesses. A summary of the specific proposed changes can be found on the attached Statement of Basis, Authority, and Purpose.

Due to the State’s COVID-19 response, this proposed permanent rule-making hearing will only be conducted in a virtual setting. All interested parties are urged to attend this public hearing by registering for the hearing through the link above, and to submit written comments concerning the proposed rules



in advance if possible for consideration. The webinar registration link is also available on CDOT's website at <https://www.codot.gov/business/rules/proposed-rules.html>.

In order to facilitate the review of comments by the Hearing Officer, all interested parties are strongly encouraged to submit their written comments to Natalie Lutz via email at dot_rules@state.co.us, **on or before 5:00 p.m. on February 25, 2021**. Any written comments not received by February 25, 2021, can be submitted at the hearing on March 05, 2021.

If you need special accommodation, please contact Natalie Lutz at 303.757.9441 or dot_rules@state.co.us at least one week prior to the hearing.

The proposed rules, notice of hearing, and the proposed statement of basis and purpose will be available for review by interested parties on or before close of business January 22, 2021, at CDOT's website at <https://www.codot.gov/business/rules/proposed-rules.html>. Please be advised that the proposed rules being considered are subject to further changes and modifications after public comment and the formal hearing.





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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.

