



## Request Written Comments on Proposed Rule Changes to Emerging Small Business Program

1 message

Wed, Nov 11, 2020 at 8:29 PM

to: "dot\_rules@state.co.us" <dot\_rules@state.co.us>

I like the new rules that you are proposing look great. I would also like to see more contracts come available for this certification.

Thank you for trusting us with your business ~

With appreciation,

DBE, SBE, MWBE, EBE, ESB & RTD

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**RE: Request Written Comments on Proposed Rule Changes to Emerging Small Business Program**

1 message

Mon, Nov 16, 2020 at 11:34 AM

To: CDOT Rules &lt;dot\_rules@state.co.us&gt;, Natalie Lutz - CDOT &lt;natalie.lutz@state.co.us&gt;

Cc: Marie Nakagawa - CDOT &lt;marie.nakagawa@state.co.us&gt;, Jun Arcilla - CDOT &lt;jun.arcilla@state.co.us&gt;, Emily Crespin - CDOT &lt;emily.crespin@state.co.us&gt;

No comments. Just a thanks for including us.

[REDACTED]

[REDACTED]

**HAYWARD LLC**  
Public Involvement | Strategic Communications

[REDACTED]

**From:** CDOT Rules <dot\_rules@state.co.us>**Sent:** Tuesday, November 10, 2020 2:06 PM**To:** Natalie Lutz - CDOT <natalie.lutz@state.co.us>**Cc:** Marie Nakagawa - CDOT <marie.nakagawa@state.co.us>; Jun Arcilla - CDOT <jun.arcilla@state.co.us>; Emily Crespin - CDOT <emily.crespin@state.co.us>**Subject:** Request Written Comments on Proposed Rule Changes to Emerging Small Business Program

Dear Certified Emerging Small Business:

As a current certified Emerging Small Business ("ESB") with the Colorado Department of Transportation ("CDOT"), you have been identified as a stakeholder with interests and experience relevant to the ESB Program in Colorado. CDOT desires to modify the rules governing the ESB Program in Colorado, 2 CCR 604-1 ("Emerging Small Business Program").

In this rulemaking, CDOT proposes to increase the size standards for the ESB Program by adopting the Small Business Administration's ("SBA") size standards for small businesses in a given industry and the current overall cap of the Disadvantaged Business Enterprise Program ("DBE Program"). The existing rule sets the size standard at half of the SBA's small business size threshold for a given industry and half of the overall cap of the DBE Program. The proposed changes in Rule 3.2.E better align with the DBE Program and will increase participation in CDOT's ESB Program.

Other proposed changes are primarily to bring the rules up to date, reformat the numbering of the rules for easier use, and these additional key changes:

- Rule 3.1.F. adds a one-year reapplication waiting period for denied applicants;
- Rule 3.2.A. clarifies the Applicant's Burden of Proof for certification;
- Rule 3.2.D. clarifies eligibility of vendors providing goods and services for ESB certification;
- Rule 3.2.D.1. adds Primary Industry designation to ESB certification; and
- Rule 3.2.J. requires lawful presence in the United States for participation in the ESB Program.

CDOT invites you to comment on the proposed changes to the ESB Program rules. CDOT requests written comments to the attached proposed rule changes by **November 25, 2020**. Please submit all written comments to [dot\\_rules@state.co.us](mailto:dot_rules@state.co.us). A redline version of the proposed rule modifications along with CDOT's rationale of the proposed changes is attached for your review.

All comments received from stakeholders between November 10 - 25, 2020, will be posted on CDOT's rulemaking page, <https://www.codot.gov/business/rules/stakeholder-engagement-protocol-workshops> and will be available for review during the public comment period.

Together, we can create meaningful and effective regulations. Please feel free to contact the CDOT rules team at [dot\\_rules@state.co.us](mailto:dot_rules@state.co.us) if you have any questions or would like to be removed from our stakeholder list.

Thank you for your participation in the rulemaking process and for providing feedback on the proposed rule changes.

Thanks and Stay Well,

Natalie

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Natalie Lutz

Rules, Policies, and Procedures Administrator



**COLORADO**  
**Department of Transportation**  
Office of Policy and Government Relations

P: 303.757.9441

2829 W. Howard Place, Denver, CO 80204

[dot\\_rules@state.co.us](mailto:dot_rules@state.co.us) | [www.codot.gov](http://www.codot.gov) | [www.cotrip.org](http://www.cotrip.org)



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**Re: Questions**

1 message

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**Lutz - CDOT, Natalie** <natalie.lutz@state.co.us>  
To: DOT\_ Rules - CDOT <dot\_rules@state.co.us>

Tue, Nov 17, 2020 at 9:44 AM

----- Forwarded message -----

From: [REDACTED]  
Date: Wed, Nov 11, 2020 at 10:14 AM  
Subject: Questions  
To: Crespin - CDOT, Emily <emily.crespin@state.co.us>

I hope things are going well and you and your family are staying safe.

I had a few questions about the proposed rule changes for the ESB program.

- Size standards moving to full DBE size. Is that an attempt to get more companies into the program? Changing the size standards will allow an already DBE certified company to participate. Those companies are already familiar with working with CDOT. That familiarity could adversely affect the opportunities to participate for smaller companies.
- Making the "legal presence in the US" a standard does coincide with the current requirements.

As mentioned at lunch I believe because there is a separate application for ESB it discourages the applicant to sign up. Combing the DBE and ESB applications somehow will increase the participation.

Overall I believe the issues have been address and it's a very thorough explanation.

[REDACTED]



STATE OF COLORADO

Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

**Request for extension to make comments on the ESB changes**

Tue, Nov 24, 2020 at 9:29 AM

To: Emily Crespin - CDOT <emily.crespin@state.co.us>  
Cc: Greg Diehl <Greg.Diehl@state.co.us>, Natalie Lutz - CDOT <natalie.lutz@state.co.us>

Emily

I left you a voice message requesting that the comment period be extended to Friday, Dec. 4.

We realized yesterday that the graphic that you have been distributing at your presentations doesn't match the document of the ESB rule changes we received on Nov. 10. There is confusion with the different size standards that are being used in this change for engineers – the DBE size limit and the SBA size standard for engineers has proved very confusing.

I'm trying to talk with the very small firms who are not ACEC Colorado members to get their opinion of the changes. Some are unaware of the document because they have been so busy with their businesses they haven't had time to look at it.

With the holiday and people taking off, it has also been challenging to reach these small firms to discuss the actual document and not just the powerpoint/graphics that have been distributed.

We appreciate your consideration of our request.

Best regards,

[Redacted signature]

**American Council of Engineering Companies of Colorado**

[Redacted contact information]

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Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

## Request for extension to make comments on the ESB changes

Tue, Nov 24, 2020 at 11:21 AM

To: "Crespin - CDOT, Emily" <emily.crespin@state.co.us>  
Cc: Greg Diehl <Greg.Diehl@state.co.us>, Natalie Lutz - CDOT <natalie.lutz@state.co.us>, Jun Arcilla <jun.arcilla@state.co.us>

Emily,

Section 3.2 E in the rules discusses the size limits overall and for the different levels. It's a mixture of SBA and DBE references. The graphics only identify DBE references and are not consistent with the rules.

One of the things that is confusing is that the DBE size standards have two different references. 49CFR 26.65 (a) reference the SBA standards and 49CFR 26.65 (b) is the \$24M. The graphics don't clarify which we're talking about. The SBA size standard for engineering is about \$16.5 million.

Can you please share the data of the number of DBE firms in the directory that fit level one and level two currently, and the data you used for the new levels that you are proposing?

If you have any questions, please let me know.

Best regards,

[Redacted signature]

**American Council of Engineering Companies of Colorado**

[Redacted contact information]

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[Quoted text hidden]

### 2 attachments

**CDOT ESB Program\_Proposed Changes\_Fall 2020.pdf**  
135K

**2 CCR 604-1 ESB rules \_Master Draft 11.9.2020 (002).doc**  
111K

**RE: Extended Comment Period on Proposed Rule Changes to Emerging Small Business Program**

1 message

Fri, Dec 4, 2020 at 6:44 AM

To: CDOT Rules &lt;cdot\_rules@state.co.us&gt;, Natalie Lutz - CDOT &lt;natalie.lutz@state.co.us&gt;

Cc: Marie Nakagawa - CDOT &lt;marie.nakagawa@state.co.us&gt;, Jun Arcilla - CDOT &lt;jun.arcilla@state.co.us&gt;, Emily Crespin - CDOT &lt;emily.crespin@state.co.us&gt;

Thank you for the opportunity to review and provide feedback.

When I started IronStride, I was told by both a financial auditor (for CDOT ICRs) and by business mentors that 3-10 staff members is an awkward phase where financially and logistically it is difficult to move through and grow. When I heard that, I figured that was the reason for the Level 1 ESB. From my perspective, the previous guidelines for a Level 1 ESB (combined with the scoring criteria) encouraged larger firms to establish relationships with the truly "emerging" business with a size of less than 8 people (using a general rule of thumb of 6-7 staff per \$1M in revenue).

The Level 2 ESB was previously set at 50% of DBE limits (\$24M) per the fact sheet that was sent out, which equates to a company of approximately 80 staff.

It appears that two goals are being achieved by the proposed changes to the rules...

1. If the goal is to better capture the number of small businesses doing work with CDOT, then it makes sense to have an ESB level that follows the SBA guidelines...if for nothing else for tracking. According to the proposed rules, the size limit would be the SBA limit of \$16.5 for engineering companies, or a company of approximately 100 staff.

The "Overall Cap" and the "Receipts" sections of the markups still indicate references to the DBE program though? This is confusing since there are different limits than described in the size standards section later, but I understand that this might be to account for firms where their primary NAICS code puts them at a higher SBA cap than the DBE program. It just seems odd to reference anything from the DBE program for the ESB program since the SBA governs small business size.

2. The goal to increase ESB priming opportunities will obviously be more easily met if the size standards increase. Although it just seems like it will change the statistics, not the actual effectiveness of getting truly emerging small businesses the ability to prime work.

I believe that the biggest negative to these proposed changes will be the negative impact to the goal of promoting and assisting truly emerging ESBs by increasing the Level 1 size from a firm of less than 8 staff (\$1M) to a firm of less than 55 staff (\$8.25M). In the short term, it may not be as apparent, but what incentive would a large firm have to reach out to or accept a truly emerging ESB on their team if they get the same credit for a much larger firm up to 55 staff that is well established and no longer emerging. If one of the goals is truly to help emerging businesses enter the market, \$8.25M is a huge jump from \$1M and will likely have the opposite of the intended effect.

My number one suggestion would be to reach out to the audit group at CDOT and to pull actual data (without company names) about the firms that currently do business with CDOT (staff, revenue, contracts, prime contracts), then to make the decisions for the levels based on actual data that could even be published publicly to explain why the changes are being made. If you look at the actual data on size of firms that are able to prime contracts, and for example you find that it typically begins to happen in the 15-25 staff member range (\$2.5-\$4M revenue) and solidifies in the 50-75 staff range (\$8-\$12M)...then you could set the ranges based on the data.

Anecdotally looking around the industry and knowing the firms that I have worked with, I would say that within the professional services arena three tiers would make sense. Something to help establish truly emerging businesses in the \$1M-\$3M range, something at around \$10M (seems to line up close enough with the 50% SBA limit) to encourage more priming by capable ESB's, and then a third tier at the full ESB limit to achieve the goal of more accurately tracking the SBA statistics and making the larger firms happy by having a bigger ESB pool. That suggestion being made, the actual data about the firms should be used to choose the limits.

Please feel free to reach out if you would like more feedback or clarification on any of this information, and thanks again for the opportunity to comment!

Regards,

IronStride Solutions



**From:** CDOT Rules <[cdot\\_rules@state.co.us](mailto:cdot_rules@state.co.us)>  
**Sent:** Wednesday, November 25, 2020 12:08 PM  
**To:** Natalie Lutz - CDOT <[natalie.lutz@state.co.us](mailto:natalie.lutz@state.co.us)>  
**Cc:** Marie Nakagawa - CDOT <[marie.nakagawa@state.co.us](mailto:marie.nakagawa@state.co.us)>; Jun Arcilla - CDOT <[jun.arcilla@state.co.us](mailto:jun.arcilla@state.co.us)>; Emily Crespin - CDOT <[emily.crespin@state.co.us](mailto:emily.crespin@state.co.us)>  
**Subject:** Extended Comment Period on Proposed Rule Changes to Emerging Small Business Program

Dear Certified Emerging Small Business:

We have extended the comment period on the proposed rule revisions to the Colorado Department of Transportation's Emerging Small Business Program. Since your feedback is important to us, we want to ensure that you have sufficient time to provide your input on the proposed rule changes. Please submit written comments by Friday, December 4, 2020.

Have a wonderful and safe Thanksgiving!

Thanks,  
Natalie

----- Forwarded message -----

**From:** CDOT Rules <[cdot\\_rules@state.co.us](mailto:cdot_rules@state.co.us)>  
**Date:** Tue, Nov 10, 2020 at 2:06 PM  
**Subject:** Request Written Comments on Proposed Rule Changes to Emerging Small Business Program  
**To:** Natalie Lutz - CDOT <[natalie.lutz@state.co.us](mailto:natalie.lutz@state.co.us)>  
**Cc:** Marie Nakagawa - CDOT <[marie.nakagawa@state.co.us](mailto:marie.nakagawa@state.co.us)>, Jun Arcilla - CDOT <[jun.arcilla@state.co.us](mailto:jun.arcilla@state.co.us)>, Emily Crespin - CDOT <[emily.crespin@state.co.us](mailto:emily.crespin@state.co.us)>

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Thank you for your participation in the rulemaking process and for providing feedback on the proposed rule changes.

Thanks and Stay Well,  
Natalie

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Natalie Lutz

Rules, Policies, and Procedures Administrator



**COLORADO**  
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Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

**Re: Request for Extension to make comments on the ESB changes**

Thu, Dec 10, 2020 at 9:04 PM

To: "Lutz - CDOT, Natalie" <natalie.lutz@state.co.us>  
Cc: "Arcilla - CDOT, Jun" <jun.arcilla@state.co.us>, Marie Nakagawa - CDOT <marie.nakagawa@state.co.us>, Emily Crespin - CDOT <emily.crespin@state.co.us>, Greg Diehl - CDOT <greg.diehl@state.co.us>, [REDACTED]

Good evening, All,

I apologize for not getting this to you yesterday. We appreciate the opportunity to have these continued conversations regarding your proposed changes to the ESB program.

I have attached ACEC Colorado's comments on the proposed rules.

We understand the need to address the firms who are nearing or exceeding the current size limits. However, it is still unclear to us on how these changes will help small firms develop and grow to be the new firms that fill the pipeline. Those in the 3-10 FTE space are particularly concerned that these changes will have a negative impact on them – the truly emerging small businesses to have opportunities to do business with CDOT. As I have mentioned before, the current SBA size standard of \$16.5 million is 90+ FTE size firm; the DBE size standard of \$24 million is about 140 FTE. These are not small firms. The changes will benefit a small segment of the engineering community especially the geotechs who are typically much larger firms because of the work they do. We appreciate the position they are in, but more consideration should be given to the smaller firms and those who provide the majority of the other engineering services. ACEC Colorado is also a supporter of having more design professional firms become primes, but should getting 1-2 more primes be the main reason for these significant changes?

The size of construction firms is much larger than consulting engineering firms and increasing their size might be more appropriate. If the program is currently working for design professionals, why is this drastic increase warranted? Could we see the data for consultants that demonstrates the need for this increase?

ACEC Colorado would like to continue the conversation with you on this issue to consider other options including scoring, and maybe another level.

As discussed at our sub-committee meeting on Tuesday, I am asking my counterparts from around the country about their MWBE/ESB programs. I have been doing some additional research to better understand the impacts these changes may have on the consultant community – of all sizes, and the SBA size standard. I didn't realize that the size standard for engineers includes groups such as manufacturing companies which are much larger than our typical consulting engineering firms. The size standard uses gross revenue which includes the pass through amounts of subs. Next Wednesday, I'm expecting a report from ACEC national that will give me a profile of the A/E community, and it should also have specific information about Colorado.

I look forward to our continued discussions.

Best regards,

[REDACTED]

**American Council of Engineering Companies of Colorado**

[REDACTED]

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**From:** Lutz - CDOT, Natalie <natalie.lutz@state.co.us>  
**Sent:** Monday, December 7, 2020 8:39 AM  
**To:** [REDACTED]  
**Cc:** Arcilla - CDOT, Jun <jun.arcilla@state.co.us>; Marie Nakagawa - CDOT <marie.nakagawa@state.co.us>; Emily Crespin - CDOT <emily.crespin@state.co.us>; Greg Diehl - CDOT <greg.diehl@state.co.us>  
**Subject:** Re: Request for Extension to make comments on the ESB changes

Sure, no problem, [REDACTED]. Does it sound reasonable to have any follow up comments submitted by COB Wednesday, December 9th? Thanks, Natalie

**Natalie Lutz**  
**Rules, Policies, and Procedures Administrator**

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**2 CCR 604-1 ESB rules \_Master Draft 11.9.2020 ACEC Colorado comments.doc**

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