

EDGE Rule Summary Sheet: Final Proposed Rules

EDGE Rule Review: Process and Background

State agencies are required to review their administrative rules to ensure that they are consistent with the Ohio Revised Code and accurately reflect the agencies' policies and practice. As a part of this review, agencies request and consider public input.

Accordingly, the Equal Opportunity Division (EOD) of the Ohio Department of Administrative Services (DAS) has reviewed and revised the rules for the Encouraging Diversity, Growth, and Equity (EDGE) program, which are found at Chapter 123:2-16 of the Ohio Administrative Code. EOD requested and considered public input from stakeholders, including numerous EDGE-certified business owners, and many of the revisions in the final proposed rules were made in response to this input.

Below is (1) a list that includes stakeholders who were invited to or did submit comments to the proposed rules for EOD's consideration, and (2) a timeline of the public comment process.

Stakeholders who participated in EDGE rule-review process

- 889 Global Solutions
- Gillam & Associates
- African American Chamber
- AKA Construction Management Team, Inc.
- Al Washington
- American Shipping And Packing Company
- Ann and Bob Gross LLC dba Summit Painting
- Audacity of H.O.P.E. Foundation;
Windbagger Consolidated Holding LLC
- Bascom & Adams Business Solutions, LLC
- Bob Ross Buick, Inc.
- BSH Inc.
- Cannell Graphics
- Central Ohio Minority Business Association (COMBA)
- City of Columbus, Dept. of Public Utilities
- Cleveland State University
- Cluster Software Inc.
- Cognitians
- Coleman Spohn Corp
- Consortium of African American Organizations
- Custom Carpentry & Remodeling
- Dale Taylor
- Davis Digital
- Dayton Area Chamber of Commerce
- Diversified Services
- Diversified Systems Inc.
- DNK Architects
- DNO, Inc.
- E & H Taylor Construction, Inc.
- Ebony Construction
- Echo 24, Inc.
- EE Ward Moving & Storage LLC
- Emerald Supply
- EXCEL Management Systems, Inc.
- Foundation Steel, LLC
- G&E Contractors
- Ginger Cunningham & Associates LLC
- Glen Stephens Inc.
- GoldTech
- The Grant Writer, LLC
- Greater Cleveland Regional Transit Authority
- Harkness Services
- Hemphill & Associates
- Herron Office Products, Inc.
- Hightowers Petroleum Company, Inc.
- Hi-Mark Construction Group
- Hire CIO, Inc.
- HKI Associates, Inc.
- HLH Sanitary Maintenance
- HLH Systems

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- IntelliTech Systems, Inc.
- J.M. Verostko Inc.
- Kero International, Incorporated
- Ladlas Prince LLC
- MBE Construction Solutions
- McDaniel's Construction Corp., Inc.
- McGuinness Unlimited, Inc.
- ME Consultants
- Moody Environmental and Consulting, LLC
- Moses Law Office
- National Source Solutions
- NRT & Associates, Inc.
- Ohio Department of Commerce
- Ohio Department of Mental Health and Addiction Services
- Ohio Department of Public Safety
- Ohio Inspector General
- Ohio State Highway Patrol
- Opportunities for Ohioans with Disabilities
- Ozanne Construction
- R Engineering Team, LLC. / Ohio Association of Minority Architects and Engineers (OAMAE)
- R.E. Saffold Associates, Inc.
- RAR Contracting Co.
- Renovation Station
- Robert P Madison International, Inc.
- Rosemary's Queenstep Carpet
- Sammons Safety Services, LLC
- Shawnee State University
- SpeakLife On Purpose, LLC
- Successful Classroom Management LLC
- Tatum Landscaping
- Three Leaf Productions
- Tinsley and Associates, Ltd.
- TMH Solutions, LLC
- University of Cincinnati, Central Purchasing
- The Voice of Your Customer
- Watt Electrical Systems
- Wise Construction
- WT Enterprises

Timeline of public comment process

- Jan. 24, 2014 – Cincinnati Stakeholder Outreach Meeting (American Red Cross Conference Center)
- Jan. 23, 2014 – Cleveland Stakeholder Outreach Meeting (Midtown Innovations Center)
- Jan. 29, 2014 – Columbus Stakeholder Outreach Meeting (ODOT Auditorium)
- Jan. 29, 2014 – Stakeholder Outreach Webinar on Proposed Rule Changes
- Mar. 17, 2014 – Focus Group Meeting on Proposed Rule Changes
- Mar. 26, 2014 – Focus Group Meeting on Proposed Rule Changes

Highlights of the revisions on their effect EDGE program

As a result of the public comment process, the EDGE program’s rules were revised generally to improve certification into and administration of the EDGE program. By more clearly defining the following key terms and concepts, the revised proposed rules ensure a simpler, clearer certification process, as well as administration of the program that is more in line with the spirit in which it was created.

“In business”	Defined to help to ensure that the business is functioning. Evidenced by the following: performance of contracts; revenue; expenses; purchase orders; invoices; distributorship/supplier agreements; pertinent permits and authorities; licenses; technical expertise; lines of credit; and equipment necessary to perform scope of work.
Size limits	In addition to the net worth of the 51-percent owner, the rules require that applicant meet business size limits that are based on the federal Small Business Administration size standards (23 C.F.R. Part 121). This

requirement sets size limits for either gross sales or number of employees.

<p>“Principle office”</p>	<p>Identifies where principle office must be located. Defines “principle office” as the single location with of the greatest number of employees, which employees constitute at least 35 percent of the businesses’ total employees. Further, employees must having their primary residence within the qualified census tract of the principle office for at least 180 days.</p>
<p>Net worth</p>	<p>Clarifies what personal assets are included and if assets are sold, moved, or placed into trust accounts. Further limits the ability of the 51-percent owner to understate net worth.</p>
<p>Transfer of assets and ownership limitations</p>	<p>Clarifies net worth to include all asset transfers within a two-year period to members of the person’s immediate family, to the economically disadvantaged business or other businesses, trust accounts, and the person’s interest in any other business.</p>
<p>“Independent”</p>	<p>Requires the business to be free from the undue control, influence, or support of another individual or business. The applicant business’s viability must not depend on its relationship with another individual, business or businesses.</p>
<p>“Owned and controlled”</p>	<p>Clarifies that ownership and control must be "real and substantial, "going beyond pro forma ownership, and derived from individually and independently owned resources. Further requires that the 51 percent owner demonstrate real expertise in the business.</p>
<p>Reasons for decertification</p>	<p>More clearly defines actions or circumstances that may result in decertification.</p>
<p>What is and is not a commercially useful function</p>	<p>Clarifies that business must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The business’s role must not be a superfluous step added in an attempt to obtain EDGE credit towards the goal. The business’s role must be real and required to complete the transaction.</p>
<p>Strengthens requirements for prime contractors when requesting waivers from contract goals</p>	<p>Requires that prime contractor must submit documented evidence that demonstrates adequate good faith effort justifying the granting of a waiver. The contractor must submit complete documentation of it efforts as it relates to the following: utilized reasonable and available means to solicit all EDGE businesses that have the capability to perform the work of the contract; selected portions of the contracted work to increase the likelihood of participation; provided all appropriate EDGE business with adequate information about the plans, specifications, and requirements of the contract and in a sufficient time; negotiated in good faith; properly rejected an interested EDGE business as being unqualified for the work</p>

of the contract; utilized the services of one or more organizations that provide contractor assistance; and utilized the list of EDGE businesses provided by the Equal Opportunity Division.

Rule-by-Rule Overview

Below is a rule-by-rule overview of the revisions.

Section and Title	Summary of Changes*
123:2-16-01 – Definitions	Provides for clearer definitions for rule terms such as the following: In business, Economically Disadvantaged Business, principal office, net worth, owned and controlled, independent, owner, resident, state agency, one-year, and others. Typographical, punctuation, and minor word change corrections.
123:2-16-02 – Certification criteria	Clarifies ownership and control requirements. Identifies that control is comprised of operational control, managerial control, and independence. Defines that ownership cannot be de facto. Removes requirement to have application notarized. Typographical, punctuation, and minor word change corrections.
123:2-16-03 – Certification of business structure	Defines control as it relates to a business structure. Clarifies tasks an owner required do for the business to be considered in control. Provides process for reentry into the EDGE program if removed for non-disciplinary reasons or graduated, if it meets all other eligibility requirements. Provides examples for undue influence. Typographical, punctuation, and minor word change corrections.
123:2-16-04 – Expedited certification	Updates same or similar program for inclusion into the program. Clarifies that the EEO Coordinator can request new documents be submitted at recertification time. Typographical, punctuation, and minor word change corrections.
123:2-16-05 – Recertification	Clarifies language used to recertify a business into the program. Provides for grace period for recertification. Adds reasons for not being granted recertification. Typographical, punctuation, and minor word change corrections.
123:2-16-06 – Decertification	Defines removal for cause i.e. owners no longer United States citizens or full-time residence of Ohio. Typographical, punctuation, and minor word change corrections.
123:2-16-07 – Adjudication Hearings	No changes.
123:2-16-08 – EDGE Participation Goals	Typographical, punctuation, and minor word change corrections.

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123:2-16-09 – Demonstration of good faith effort to include EDGE business participation	Places additional requirements on the prime contractor to ensure that good faith efforts are obtained. Identifies items that must be submitted to establish a good faith effort. Typographical, punctuation, and minor word change corrections.
123:2-16-10 – Annual expenditure projection report.	No changes.
123:2-16-11 – Quarterly expenditure report.	Typographical, punctuation, and minor word change corrections.
123:2-16-12 – Proposals	Typographical, punctuation, and minor word change corrections.
123:2-16-13 – EDGE data collection	Adds “project” as a requirement of tracking for state agencies. Removes requirement to track construction contracts by National Industrial Classification code but rather by North American Industry Classification System codes. Typographical, punctuation, and minor word change corrections.
123:2-16-14 – Joint venture	Adds “contract” as possible joint venture. Typographical, punctuation, and minor word changes corrections.
123:2-16-15 – Commercially useful function	Identifies when a business does not perform a commercially useful function, such as if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of EDGE participation. Typographical, punctuation, and minor word changes corrections.
123:2-16-16 – Monitoring waiver compliance	Typographical, punctuation, and minor word change corrections.