

CHAPTER 52
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

261—52.1(15) Definitions.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Certification*” means the process which identifies small businesses as targeted and eligible for technical assistance.

“*Contractor*” means the person who contracts to perform work for the state.

“*Cottage industry*” means a business where the principal place of business is the owner’s residence.

“*Disability*” means as defined in Iowa Code section 15.102(10)“b.”

“*Family*” means a group of related people as follows: father, mother, son, daughter, brother, sister, husband, wife, grandmother, grandfather, grandchild, stepfather, stepmother, stepdaughter, stepson, stepbrother, stepsister, half-sister, or half-brother.

“*Family-owned business*” means a business owned by more than one member of one family. Characteristics of a family-owned business include, but are not limited to:

1. Ownership is shared by family members;
2. Profits are disbursed among family members;
3. A business tax return is filed in the name of the company with the family members listed as officers.

“*Gross income*” means the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

“*Intention*” means an attempt has been made to perform the work.

“*Lending institution*” means any bank, savings and loan, or credit union.

“*Minority person*” means an individual who is a Black, Latino, Asian, Pacific Islander, American Indian or Alaskan Native American.

“*Owner’s residence*” means the owner’s legal residence.

“*Person*” means individual, corporation, government or governmental subdivision or agency, estate, trust, partnership or association, or any other legal entity.

“*Program*” means the targeted small business certification program described in this chapter.

“*Service-disabled veteran*” means the same as defined in 15 U.S.C. Section 632.

“*Single management*” means a business which is not a subsidiary of any other business.

“*Targeted group person (TGP)*” means a person who is a minority, woman, person with a disability, or service-disabled veteran.

“*Targeted small business (TSB)*” means a small business which is 51 percent or more owned, operated, and actively managed by one or more targeted group persons provided the business meets all of the following requirements:

1. Is located in this state;
2. Is operated for profit;
3. Has an annual gross income of less than \$4 million, computed as an average of the three preceding fiscal years.

“*Targeted small business owner*” means one or more women, minorities, persons with disabilities, service-disabled veterans, or a combination thereof, owning at least 51 percent of a business.

“*Uniform small business vendor application*” means the application developed by the Iowa economic development authority which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses. The application contains information which can be used to determine certification as a targeted small business for participation in the Iowa targeted small business procurement program.

“*Woman*” means any female 18 years of age or older.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.2(15) Certification. The authority is responsible for ascertaining that a small business is owned, operated, and actively managed by a targeted group person.

52.2(1) Regular certification. Before a small business can participate in the Iowa targeted small business program, it must be certified by the authority.

a. The authority shall review applications from small businesses to determine whether they are eligible to participate in the program.

b. Certification means the authority has determined that the business meets eligibility standards.

c. Applications for the targeted small business certification are available by contacting the authority or by visiting the authority's website:

Iowa Economic Development Authority

200 East Grand Avenue

Des Moines, Iowa 50309

(515)725-3000

www.iowaeconomicdevelopment.com

d. Applicants shall receive written notification of the authority's decision.

52.2(2) Recertification. Certified businesses shall submit verification of continued eligibility to the authority at least every two years.

a. The application for recertification will be provided by the authority.

b. Other documents will be requested to verify the continuing eligibility of the business.

52.2(3) Information required in application. Various and specific documentation may be required by the authority during the certification or recertification process. Each business shall provide relevant information upon the authority's request in order to be considered for certification or recertification. Applications shall be signed by an authorized representative of the business. An authorization to release information is part of each application and shall be signed by the applicant. This signature shall be notarized.

52.2(4) A business may reapply upon proof of compliance with TSB certification standards. Any company that is denied certification or decertified for any reason bears the burden of proving that all deficiencies previously cited have been corrected. Corrections shall be in accordance with requirements governing the targeted small business program. The burden of proof to recertify a business is the responsibility of the owner of that business.

52.2(5) The business shall notify the authority within 30 days following a change in ownership or control of a certified business. A new application shall be filed showing the change and must be accompanied by sufficient documentation to determine whether the business continues to be eligible to participate in the TSB program.

52.2(6) An applicant for certification as an Iowa targeted small business may indicate in writing that a similar application is pending with an agency other than the authority. When the authority considers another certification process equal to or more stringent than the process described in these rules, an applicant may submit the information required for the other process. The authority may certify a business as a TSB based on copies of the information provided to another agency. The Iowa application for certification as a TSB may still be required. Certification as a targeted small business in Iowa is granted only by the authority. Certification by any other entity does not ensure certification as a targeted small business in Iowa.

52.2(7) Disability determinations.

a. Person with a disability. In order to be considered a person with a disability for the purpose of the TSB program, the person must qualify and receive certification as having a disability from a licensed medical physician or must have been found eligible for vocational rehabilitation services by the department of education, division of vocational rehabilitation services, or by the department for the blind.

b. Service-disabled veteran. In order to be considered a service-disabled veteran for the purpose of the TSB program, the person must provide written verification from the Veterans Administration or the U.S. Department of Defense of a service-connected disability, as defined in 38 U.S.C. Section 101(16).

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.3(15) Description of application. The TSB application requires information about the people who own, control, and manage the applicant business.

52.3(1) Names, current addresses, verification of targeted group status and the employer's federal identification number, if applicable, are required. The proportion of ownership of the business and the names of stockholders or owners must be included. Documents which establish financial responsibility may be required.

52.3(2) The authority may require the applicant to provide any information reasonably required to assess the applicant's eligibility for the program pursuant to this chapter, including but not limited to information regarding the applicant's contracts, income, inventory, loans, personnel, payroll, taxes, and volume of business.

52.3(3) The information contained in the application may be reviewed by the applicant upon request to the Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; (515)725-3000. Material to be added to a file may be sent to the authority.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.4(15) Eligibility standards. Pursuant to the authority of Iowa Code section 15.108(7), the authority has established standards to certify targeted small businesses. These standards are intended to indicate whether a business is owned, operated and actively managed by targeted group persons.

52.4(1) The applicant shall be an independent business. The following list describes elements of a business which indicate independent status.

a. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and shall share in the risks commensurate with the owner's ownership interest. Independence of ownership shall be demonstrated by the substance rather than the form of the arrangements. Title and authority shall be commensurate with ownership and control.

b. The business shall be owned and operated by the same targeted group persons, a single management.

c. A board of directors and stockholders shall each have a membership comprised of at least 51 percent targeted group persons.

d. The applicant business shall be compensated for facilities, inventory, equipment, labor, or other items which it owns and shares with any other business. Compensation shall not vary from common industry practice.

e. The targeted group person owner(s) shall have independent authority and ability to incur liability and to decide financial and policy questions. The business arrangements of owners, directors, officers or key employees with businesses which are not minority-, woman-, person with disability-, or service-disabled veteran-owned shall not vary from common industry practice. Each industry has practices which differ from other industries.

f. Independent authority and ability to hire and to fire all personnel shall be vested in the targeted group person owner(s).

g. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient for certification as a targeted small business.

52.4(2) The targeted group person owner(s) shall make the business decisions for the business without any restrictions, either formal or informal. This includes, but is not limited to, bylaw provisions, partnership agreements, charter requirements for cumulative voting rights, or employment agreements.

52.4(3) The targeted group person owner(s) shall direct or cause the direction of the business. The owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. The authority will consider particular positions to determine who has major responsibility in a company. These people include, but are not limited to, those who:

a. Hold any applicable license;

b. Devote substantial time to the business;

c. Supervise or direct the supervision of management and field operations;

d. Manage financial affairs;

e. Prepare or approve bids or estimates;

- f.* Participate in price and bidding negotiations;
- g.* Make final decisions about staff and personnel;
- h.* Sign contracts and checks or authorize action on behalf of the business.

52.4(4) Any relationship between a TSB and a business which is not a TSB, but which has an interest in the TSB, shall be carefully reviewed to determine if the interest of the non-TSB conflicts with the ownership and control requirements of this rule.

52.4(5) The contributions of capital and expertise by the targeted group person owner(s) to acquire interest in the business shall be real and substantial.

a. The following list includes acceptable elements of ownership.

(1) Company documents, such as stock certificates, articles of incorporation, minutes of board meetings, partnership agreements, or income tax returns reflect targeted group person ownership;

(2) Independent contributions of capital are made by the targeted group person owner(s). Proof of this independent contribution of capital made by the targeted group person owner(s) to acquire interest in the business must accompany the certification application;

(3) Independent contributions of expertise are made by the targeted group person owner(s). The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the firm is engaged and in the firm's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business;

(4) Independent risk of loss and share of profit by the targeted group person owner(s) is commensurate with the owner's proportion of ownership.

b. Fifty-one percent or more of securities which constitute ownership or control of a corporation for purposes of establishing it as a TSB shall be held directly by targeted group persons.

c. An inherited business may be eligible for targeted small business status. Capital contribution, expertise and experience in the inherited business are not required. All other standards apply.

d. Documentation may be required to prove compliance with all standards.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.5(15) Special consideration. In addition to the above standards, the authority may consider other circumstances to determine eligibility. Consideration of other circumstances is intended to ensure that only bona fide targeted group person-owned businesses are certified.

52.5(1) A previous or continuing employer-employee relationship between present owners will be carefully reviewed to ensure that the employee-owner has substantial management and decision-making responsibilities.

52.5(2) At the discretion of the authority, on-site audits may be conducted to determine eligibility.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.6(15) Family-owned business. Businesses which are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business does in fact set policy and make day-to-day and long-term decisions for the operation and management of the business.

52.6(1) If any of the circumstances below prevail, the business shall be considered a family-owned business. Nontargeted group person family-owned businesses are not eligible for certification as targeted small businesses in Iowa. Any characteristic listed below may be cause to deny targeted small business status. This list is not to be construed as complete.

a. If a nontargeted group person family member:

- (1) Is chief executive officer or president;
- (2) Provides the expertise to conduct the business;
- (3) Transfers ownership to the targeted group person owner for less than fair market value;
- (4) Receives compensation equal to or greater than the targeted group person owner, not commensurate with their ownership;
- (5) Provides occupational services for the business for less than fair market value;

(6) Possesses powers equal to or greater than the targeted group person owner to direct management and operations.

b. If the targeted group person owner:

(1) Is represented to those outside the business as not possessing the final authority to direct the operations and management of the business;

(2) Cannot document the date upon which the nontargeted group person family member was hired.

c. A recent transfer of ownership by a nontargeted group person family member to a targeted group person will be reviewed to determine if the previous owner is still the principal decision maker on policy or actually manages the existing business. Transfers in the past two years are considered recent, and these businesses shall not be certified, unless evidence substantiating the transfer is received and approved.

52.6(2) If a lending institution requires a signature other than the TSB owner's, another person may sign. When this happens, the owner must have the experience and expertise to own and operate the business. If a nontargeted group person family member has the expertise and has cosigned for business loans, the business is not eligible.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.7(15) Cottage industry. A cottage industry business may be eligible for certification as a TSB.

52.7(1) Characteristics of these businesses include, but are not limited to:

a. At least 51 percent of business equipment shall be owned by targeted group persons.

b. Business risks and profits shall be borne by the targeted group person owner(s) proportionate to the owner's ownership.

52.7(2) The intent of targeting some small businesses is to identify those businesses which have been traditionally excluded from economic growth. Therefore, for a cottage industry business, the residence and any adjacent outbuildings used by the cottage industry may be owned jointly with other family members.

52.7(3) All other TSB eligibility standards apply to the cottage industry.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.8(15) Decertification. A business shall be decertified by the authority if it is determined the business no longer complies with the requirements of the TSB program or its owners cannot be located by the authority.

52.8(1) Written notice of the intent to revoke certification shall be provided when the authority determines there is reasonable cause to believe a business does not comply. Notice shall be sent by U.S. mail at least 20 days before decertification is effective.

52.8(2) If the authority sends a letter by first-class mail to the last-known address provided to the authority by the TSB and it is returned as undeliverable, this is considered to be grounds for decertification.

52.8(3) Decertification procedures may be initiated by the authority or after the investigation of a complaint filed by the general public. A request for an investigation from the public must be written and shall specify the reason(s) why the certified targeted small business no longer complies with these rules. Supporting documentation may be attached to the request.

52.8(4) Eligibility to participate in the TSB program continues until the final decision is issued by the authority.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.9(15) Request for bond waiver. A targeted small business seeking a performance, surety, or bid bond waiver shall submit a sworn statement that it is unable to secure a performance, surety, or bid bond because of lack of experience, lack of net worth, or lack of capital. Documentation will be requested from surety companies that the TSB is unable to obtain performance, surety, or bid bonding because of the lack of experience, lack of net worth, or lack of capital.

52.9(1) A waiver shall be applied only to a prime contract where the project or individual transaction does not exceed \$50,000, notwithstanding Iowa Code section 573.2.

52.9(2) Granting a waiver shall not relieve any business from its contractual obligations. The state agency or department may pursue any remedy under law upon default or breach of contract.

52.9(3) The authority reviews all bond waiver documents. Information to assist the review process may be requested from the state department or agency involved. An applicant for a performance, surety, or bid bond waiver and the department or agency involved will be notified of the decision by U.S. mail.

52.9(4) Bond waivers will be reviewed and renewed at the time of TSB recertification.
[ARC 3582C, IAB 1/17/18, effective 2/21/18]

261—52.10(15) Fraudulent practices in connection with targeted small business programs.

A violation under this rule is grounds for decertification of the TSB connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this chapter.

52.10(1) A person is considered to be guilty of a fraudulent practice if the person:

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a targeted group person primarily for the purpose of obtaining benefits under TSB programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a TSB for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifies information on an application for the purpose of obtaining benefits under TSB programs.

52.10(2) The authority may investigate allegations or complaints of fraudulent practices and will take action to decertify a TSB upon concluding that a violation has occurred. A decertification by this action may be appealed.

[ARC 3582C, IAB 1/17/18, effective 2/21/18]

These rules are intended to implement Iowa Code section 15.108(7).

[Filed ARC 3582C (Notice ARC 3378C, IAB 10/11/17), IAB 1/17/18, effective 2/21/18]