

Red Tape Review Rule Report (Due: September 1, 2025)

Department Name:	IEDA	Date:	4/19/24	Total Rule Count:	10
IAC #:	261	Chapter/ SubChapter/ Rule(s):	Chapter 52	Iowa Code Section Authorizing Rule:	12.44; 15.108(6); chapter 73, subchapter III
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What is the intended benefit of the rule?

The intended benefit of chapter 52 is to describe the policies and procedures by which IEDA certifies targeted small businesses (TSBs). Certified TSBs are eligible for assistance from IEDA. Certified TSBs are also entitled to early access to contracting opportunities and are utilized by various entities subject to the Target Small Business Procurement Act (Iowa Code chapter 73, subchapter III) to meet TSB procurement goals.

Is the benefit being achieved? Please provide evidence.

Yes. IEDA is able to efficiently certify businesses.

What are the costs incurred by the public to comply with the rule?

Entities interested in applying for certification may require staff time to complete an application for certification or recertification. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

What are the costs to the agency or any other agency to implement/enforce the rule?

IEDA staff time is required to review applications for certification and recertification and to provide technical assistance to TSBs.

Do the costs justify the benefits achieved? Please explain.

Yes. Only entities that will potentially benefit from the program incur any costs. The costs to the state to administer the program are proportional to the benefits of supporting TSBs.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

The application and administrative requirements of the rules are no more than necessary to implement the purposes of the program.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

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Yes.

Rule 52.1 should be updated to eliminate unnecessary definitions and to be more concise.

Rule 52.2 should be updated for clarity. Subrule 52.2(6) addressing similar certifications should be eliminated. IEDA needs to collect complete information from applicants to ensure eligibility and to accurately reflect business information in the TSB directory compiled by IEDA. The requirements in subrule 52.2(7) should be moved to a later rule in the chapter regarding eligibility.

Rule 52.3 should be eliminated. Relevant concepts can be added to rule 52.2.

Rule 52.4 should be updated to be clearer and more concise and to more accurately reflect the current process for determining whether a business is eligible for certification. Portions of other rules that address eligibility should be consolidated with this rule.

Rule 52.5 should be eliminated. Relevant concepts can be added to rule 52.4 regarding eligibility.

Rule 52.6 should be eliminated. Relevant concepts can be added to rule 52.4 regarding eligibility.

Rule 52.7 should be eliminated. Relevant concepts can be added to rule 52.4 regarding eligibility.

Rule 52.8 should be updated to be clearer and more concise. The rule can be combined with rule 52.10 regarding fraudulent practices that may result in decertification.

Rule 52.9 should be updated to be more concise and eliminate statutory language.

Rule 52.10 should be eliminated. Relevant concepts can be added to rule 52.8.

A new rule 52.6 should be created to address IEDA's oversight role regarding the Targeted Small Business Procurement Act. This will result in the elimination of 261—Chapter 54.

Due to elimination of some rules within the chapter, most rules will be renumbered.

RULES PROPOSED FOR REPEAL (list rule number[s]):

52.3

52.5
52.6
52.7
52.10

***RULES PROPOSED FOR RE-PROMULGATION* (list rule number[s] or include text if available):**

CHAPTER 52
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

261—52.1(15) Definitions.

“*Authority*” means the same as defined in Iowa Code section 15.102(1).

“*Act*” means the Iowa Targeted Small Business Procurement Act codified in Iowa Code chapter 73, subchapter III.

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

“*Disability*” means the same as defined in Iowa Code section 15.102.

“*Minority person*” means the same as defined in Iowa Code section 15.102.

“*Program*” means the targeted small business certification program described in this chapter and 261 Iowa Administrative Code Chapter 54.

“*Service-disabled veteran*” means a veteran that provides written verification from the Veterans Administration or the U.S. Department of Defense of a disability that was incurred or aggravated in the line of duty in active military, naval, air, or space service.

“*Targeted group person*” means a minority person, woman, person with a disability, or service-disabled veteran who is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

“*Targeted small business (TSB)*” means the same as defined in Iowa Code section 15.102.

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

261—52.2(15) Certification.

52.2(1) A business must be certified as a targeted small business by the authority to participate in the program. Businesses seeking certification shall submit an application to the authority in the form and content required by the authority. The application will include information to establish whether a business meets the eligibility criteria of the program. An authorized representative of the business shall sign the application and an authorization to release information. Applications may be requested by contacting the authority or by visiting the authority’s website.

52.2(2) The authority reviews applications to determine whether a business is eligible to participate in the program pursuant to this chapter as in effect as of the date of application for certification. The authority will notify applicants in writing of its decision.

52.2(3) Certified businesses shall submit verification of continued eligibility to the authority at least every two years. The application for recertification will be provided by the authority. The authority will determine whether a certified business is eligible for recertification pursuant to this chapter as in effect as of the date of application for recertification.

52.2(4) A business that fails to provide any supplemental information requested by the authority may be denied certification or recertification.

52.2(5) Any business that is denied certification or decertified may reapply. The business bears the burden of demonstrating eligibility.

52.2(6) A certified business shall notify the authority within 30 days following a change in ownership or control of a certified business or if the targeted group person no longer actively manages the business. The notice must be accompanied by sufficient documentation to determine whether the business continues to be eligible for certification. The authority may require a business to submit a new application following a change in ownership, control, or management.

261—52.3(15) Eligibility. The authority will consider the following to determine whether a business is a targeted small

business pursuant to Iowa Code section 15.102(12) and eligible for certification. Documentation may be required to prove each eligibility requirement. The authority may conduct on-site audits to evaluate eligibility.

52.3(1) Ownership. The authority will evaluate the following factors that indicate independent ownership by a targeted group person.

a. The business shall not be a subsidiary of any other business. If another business which is not a TSB has an interest in a TSB applying for certification, the authority will scrutinize the relationship between the businesses to determine the independence of the TSB. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient to demonstrate independence.

b. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and share in the risks commensurate with the owner's ownership interest. The authority will consider the substance rather than the form of the arrangements. Business arrangements that deviate from common industry practice may indicate an owner other than the targeted group person owns, operates, and actively manages a business.

c. At least 51 percent of the members of the business' board of directors must be targeted group persons.

d. At least 51 percent of the shares or other units of ownership of the business must be owned by one or more targeted group persons.

e. The business should 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. If an applicant business is operated from the owner's residence, the residence and any adjacent outbuildings used by the applicant business may be owned jointly with other family members.

52.3(2) Decision making authority and expertise. The targeted group person owner(s) shall have authority to incur liability and to decide financial and policy questions without any restrictions, either formal or informal.

a. The authority may review documents including, but not limited to, minutes of board or owners meetings, bylaw provisions, operating agreements, certificates of organization, partnership agreements, charter requirements for cumulative voting rights, or employment agreements to determine the targeted group person's authority.

b. The targeted group person owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. Authority to hire and to fire all personnel shall be vested in the targeted group person owner(s).

c. 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:

- (1) Hold any applicable license;
- (2) Devote substantial time to the business;
- (3) Supervise or direct the supervision of management and field operations;
- (4) Manage financial affairs;
- (5) Prepare or approve bids or estimates;
- (6) Participate in price and bidding negotiations;
- (7) Make final decisions about staff and personnel;
- (8) Sign contracts and checks or authorize action on behalf of the business.

d. 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 business is engaged and in the business'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.

52.3(3) Capital contributions. Capital contributions by the targeted group person owner(s) to acquire interest in the business shall be real and substantial, and reflected in documents such as stock certificates, articles of incorporation, minutes of board or owners meetings, partnership agreements, or income tax returns.

52.3(4) Capital contribution, expertise and experience in an inherited business are not required. All other requirements apply.

52.3(5) 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 sets policy and makes day-to-day and long-term decisions for the operation and management of the business.

52.3(6) A previous or continuing employer-employee relationship between present owners will be closely scrutinized to ensure that the employee-owner has substantial management and decision-making responsibilities.

52.3(7) A disabled targeted group person must provide certification of the disability from a licensed medical physician, physician assistant, or nurse practitioner with relevant expertise or must have been found eligible for vocational rehabilitation services by the department of workforce development, division of vocational rehabilitation services, or by

the department for the blind.

52.3(8) The authority will calculate an applicant's gross income as follows: the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

261—52.4(15) Decertification.

52.4(1) If the authority determines there is reasonable cause to believe a business does not comply with the requirements of the program, the authority shall provide written notice of the intent to revoke certification to the business. Notice shall be sent at least 20 days before decertification is effective.

52.4(2) The authority shall revoke certification of a TSB if it determines that a fraudulent practice related to the program has occurred. The authority or its representative may investigate allegations or complaints of fraudulent practices. A person is considered to have engaged in a fraudulent practice related to the program, if the person does any of the following:

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 afforded only to TSBs 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 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 afforded only to TSBs.

52.4(3) A TSB may be decertified 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.

52.4(4) Eligibility to participate in the program continues until the authority issues a final decision regarding decertification of a TSB.

261—52.5(15) Waivers. A targeted small business may seek a satisfaction, performance, surety, or bid bond waiver from a state agency pursuant to Iowa Code section 12.44. A TSB must provide a sworn statement and documentation from surety companies verifying that the TSB is entitled to a waiver pursuant to section 12.44.

52.5(1) The authority reviews all requests for waivers. The authority may request information to assist the review process from the state agency requiring a bond. An applicant for a waiver pursuant to this rule and the agency requiring a bond will be notified of the decision in writing.

52.5(2) Waivers will be reviewed and renewed at the time of TSB recertification.

261—52.6(15) TSB procurement.

52.6(1) *TSB directory and purchases.* The authority compiles and regularly updates a TSB directory that contains a listing of targeted small businesses that have been certified by authority. Entities required to make purchases from TSBs pursuant to the act utilize the directory to identify TSBs for purchases. By certifying a business, the authority does not represent that the business can perform any contract entered into by the business.

52.6(2) *Authority administration.* The authority may conduct a review of entities subject to the act where there is evidence of little or no progress toward reaching its established TSB goal. The purpose of the review will be to identify the barriers encountered, evaluate the efforts taken to reach the goal, and provide available assistance.

52.6(3) *Reporting requirements.* The director of each state agency or department shall submit quarterly reports of TSB purchases to the authority in the format and by the due date specified by the authority. Reports provided to the department of education by community colleges, area education agencies, and school districts pursuant to Iowa Code section 73.17(2) shall be forwarded to the authority. Pursuant to Iowa Code section 73.17, the authority may require modifications from the agencies and departments based on the information reported pursuant to that section and this rule.

52.6(3) *Maintenance of records.* Entities subject to the act shall develop a record-keeping system that identifies and assesses TSB contract awards and progress in achieving a TSB goal. Records should demonstrate procedures adopted to comply with Iowa code chapter 73 and this chapter and awards to TSBs. Records shall be available upon the request of the authority or the state auditor.

These rules are intended to implement Iowa Code sections 12.44 and 15.108(6) and chapter 73, subchapter III.

***For rules being re-promulgated with changes, you may attach a document with suggested changes.**

METRICS

Total number of rules repealed:	4
Proposed word count reduction after repeal and/or re-promulgation	1238
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	38

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

Yes. IEDA's role is unclear regarding TSB procurement by other entities as required by Iowa Code chapter 73, subchapter III.