



U.S. Small Business
Administration



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SBA's Small Business The Nonmanufacturer Rule (NMR)

Not intended for public distribution

Hosts

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Welcome to “SBA Virtual Learning 2023”

1. Questions answered during the final 10 minutes.
2. Technical problems: Contact your IT admin who manages Teams settings for your organization.
3. Captioning available for this presentation.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website <https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APEX/APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programming at this link: <http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”: <http://www.aptac-us.org/federal-partners/>
- Find your nearest APEX Accelerators/Procurement Technical Assistance Center at <http://www.aptac-us.org>

Small Business Administration YouTube Page

SBA YouTube page posts past “First Wednesday” programming at links below.

- October 5, 2022 – 8(a) Business Development Program Updates: <https://youtu.be/Yl5Sp0dP1aE>
- November 2, 2022 – Surety Bond Guarantee Program: <https://youtu.be/QIZJiMLcc5o>
- December 7, 2022 – Subcontracting Program: <https://youtu.be/gMaaeGl8CBs>
- January 4, 2023 – Surveillance Review Program: <https://youtu.be/euUX4Jv6kRI>
- February 1, 2023 – HUBZone Program: <https://youtu.be/YGnS8e6idCc>
- March 1, 2023 – The Mentor Protégé Program: <https://youtu.be/A9KbCm4FP1c>
- April 5, 2023 – Non-Manufacture Rule (NMR):
- May 3, 2023 – Size Program:
- Jun 7, 2023 – Legislature and Regulatory Updates:
- July 5, 2023 – Market Research:
- August 2, 2023 – Service-Disabled Veteran Owned Program (SDVOSB):

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2023 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2023	Date	Topic
1	October 5, 2022	8(a) Business Development Program Updates
2	November 2, 2022	Surety Bond Guarantee Program
3	December 7, 2022	Subcontracting Program
4	January 4, 2023	Surveillance Review Program
5	February 1, 2023	HUBZone Program
6	March 1, 2023	The Mentor Protégé Program
7	April 5, 2023	Non-Manufacture Rule (NMR)
8	May 3, 2023	Size Program
9	June 7, 2023	Legislature and Regulatory Updates
10	July 5, 2023	Market Research
11	August 2, 2023	Service-Disabled Veteran Owned Program (SDVOSB)

The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service process for one CLP of credit: Many of you want to receive credit for today's training. You will be glad to know that today's training is worth one CLP. The slide presentation will include the training certificate on Slide 9. Fill, download the training certificate, copy and submit it through regular channels.
- If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2023”

This Certificate is awarded to

Insert Your Name Here

For completion of

The Nonmanufacturer Rule

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01. Recommendation of One CLP.



Pamela J. Beavers

Director, Area IV
SBA Office of Government Contracting

3/01/2023

DATE

Today's Speaker(s)

Valerie Coleman

**National Prime Contracts and CoC Program Manager
Office of Government Contracting
U.S. Small Business Administration**



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Understanding the Nonmanufacturer Rule

Overview

- The Nonmanufacturer Rule (NMR)
- Applicability of the NMR
- NMR Individual Waivers
- NMR Class Waivers

Supplying a Product as a Manufacturer or NonManufacturer

13 CFR 121.406(a)

General. In order to qualify as a small business concern for a small business set-aside, a socioeconomic set-aside, a partial set-aside, or a set aside of an order against a multiple award contract to provide manufactured products or other supply items, an offeror must either:

- (1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States)
 - So must comply with the Limitations on Subcontracting requirement)

or

- (2) If not the manufacturer, must comply with the Nonmanufacturer Rule (NMR)
 - Even applies to kit assemblers or acquisitions under Simplified Acquisition Procedures.

The Nonmanufacturing Rule

The Nonmanufacturer Rule (NMR) allows an otherwise responsible business concern to be awarded a procurement contract to supply a product or supply – even though it is not the manufacturer or processor of the product

13 CFR § 121.1203 – Provides guidance as to when SBA will grant an NMR waiver

13 CFR § 121.1204 - Identifies the procedures for requesting and granting waivers

Nonmanufacturing Requirements

13 CFR 121.406(b)(1)

To qualify as a small nonmanufacturer, a firm:

- Cannot exceed 500 employees;
- Must be primarily engaged in retail or wholesale and normally sells type of product being supplied;
- Must take ownership or possession of the item(s) in a manner consistent with industry practice; **and**
- Must supply the end product of a small business, 8(a), WOSB, EDWOSB, HUBZone, or SDVOSB manufacturer or processor made in U.S. **or obtains a waiver (class or individual)**

(Even if a waiver is granted, the nonmanufacturer must still comply with the top three requirements)

Applicability of the NMR

13 CFR 121.406(a) and (d)

The NMR applies to:

- Small business set-asides above the simplified acquisition threshold (SAT)
- Socioeconomic set-asides above the micro-purchase threshold(MPT):
 - 8(a)
 - SDVOSB
 - WOSB/EDWOSB
 - HUBZone
- Manufacturing or supply contract (not services)
- NMR does not apply to:
 - Subcontracts
 - Full-and-open contracts
 - Service Contracts
 - Small Business set asides under the SAT
 - Socioeconomic set asides under the MPT

NMR Applicable NAICS Codes

The NMR only applies to manufacturing and supply acquisitions with certain assigned NAICS codes:

- 31XXXX-33XXXX
- 511210 (software but does not include subscription or remote software)
- 541519 footnote 18 (Information Technology Value Added Reseller – ITVAR that meets the 150-employee limit)



Individual Waivers

Standard for Individual NMR Waivers

13 CFR § 121.406(b)(5)(i)

- Individual waivers apply only to a single solicitation (one-time waiver) and the **specific item(s)** identified in the waiver request
- SBA will grant an individual waiver to the NMR after determining that “no small business manufacturer or processor can reasonably be expected to supply the product meeting the specifications of the solicitation”
 - Does not necessarily mean that there are no SB manufacturers of that item. It could merely relate to the lack of availability of SB manufacturers for the specific contract at issue due to timing (e.g., small business manufacturers are currently tied up with other commitments) or capacity (e.g., there are small business manufacturers, but those manufacturers cannot provide the item in the quantity that is required).

Individual NMR Waiver Request Checklist

13 CFR § 121.406(b)(1)

- ✓ Proposed solicitation number or other ID
- ✓ Estimated total dollar amount of the contract
- ✓ Assigned manufacturing or supply NAICS code(s) for the solicitation
- ✓ Brief statement of the procurement history
- ✓ For contracts over \$500,000, the Statement of Work (or equivalent such as Product Description)
- ✓ A definitive statement of the item(s) to be waived and justification for why they should be waived
- ✓ Market research and supporting documentation demonstrating that there is no small business manufacturer or processor that can reasonably be expected to supply the product meeting the solicitation's specifications
- ✓ Request signed by the contracting officer

SBA should not need to conduct further market research or data exploration. The evidence and explanation provided by the agency should adequately demonstrate that there are no SB manufacturers/processors that can reasonably be expected to supply a compliant product.

Notice of Waivers

13 CFR § 121.1206

- Waiver must be published with the solicitation so that potential offerors are aware of the waiver and the specific product(s) covered.
- After the solicitation is permissible only if potential offerors are afforded additional time to respond

Waiver Coverage & Multi-Item Procurements

13 CFR § 125.6(a)(2)(ii)(B)

- NMR waivers are applied on an item-by-item basis. Thus, contracting officers must provide distinct justification and market research for each item for which a waiver is requested
- Potential offerors should be notified of which items are covered by the waiver
- In a multi-item procurement, a NMR waiver is not necessary for every item manufactured by a large business as long as 50% of the total contract value is manufactured by small businesses.

Application of Individual NMR Waivers

- Does not apply to modifications to the scope of the contract or other procurement actions. Modifications determined by the contracting officer to be within the scope of the contract will require an additional waiver. 13 C.F.R. § 121.1203(b).
- Does not waive other legal requirements applicable to Government procurements, such as the Buy American Act and the Trade Agreements Act.
- CO should inform SBA of the date a contract is entered and provide the contract number and the actual dollar value of the contract.

Proposed Rule affecting Individual NMR Waivers

- Federal Register (87 FR 55642)
- Proposed rule posted 9/9/2022; Comments closed 11/8/2022
- Waiver expires one year after SBA grants the waiver. Where a contract is not awarded within one year, the procuring agency must come back to SBA with revised market research requesting that the waiver be extended
- Waiver is good for the duration of the contract provided that it does not exceed five years. At the end of the fifth year, whether the contract is in the base period or an option period, the agency must submit and receive a new waiver before entering into the contract's sixth year.
- For Multiple Item Set Asides:
 - At least 50 percent of the value of the contract must come from either small business manufacturers or from any businesses for items which have been granted a waiver to the nonmanufacturer rule (or small business manufacturers plus waiver must equal at least 50 percent)
 - A contracting officer must specifically identify each item for which a waiver is sought
 - SBA's waiver applies only to the specific item(s) identified, not to the entire contract



Class Waivers

Standard for Class NMR Waivers

13 CFR § 121.406(b)(5)(ii)

A class waiver is justified when **no** small business manufacturers are

- **available to participate**
- in the **federal market**
- for a **class of products**

“Class of Products”

- “Class of products” refers to an individual subdivision within a NAICS Industry Number (6 digit NAICS)
- SBA uses a combination of NAICS code **and** a description to identify the “class of products” for a class waiver to the NMR
 - PSC is no longer used

NAICS CODE	NAICS DESCRIPTOR	DATE POSTED IN FEDERAL REGISTER	FEDERAL REGISTER NOTICE
332420	Bulk Storage Tanks, Heavy Gauge Metal, Manufacturing	4/27/2006	71 Fed. Reg. 24889
332420	Gas Storage Tanks, Heavy Gauge Metal Manufacturing	4/27/2006	71 Fed. Reg. 24889
332420	Cylinders, Pressure, Heavy Gauge Metal, Manufacturing	4/27/2006	71 Fed. Reg. 24889

“Available to Participate”

- “Available to participate” means that small business contractors have performed, been awarded, or submitted an offer on a federal government contract/solicitation for the class of products within last 24 months
 - **13 C.F.R. § 121.1202(c)**
- If just **one** small business manufacturer has been awarded or submitted a bid for a solicitation concerning the class of products in question over the previous 2 years, the class waiver request must be denied

Procedures for Requesting and Establishing a Class Waiver

13 CFR § 121.1204(a)(1-3)

- Any government agency (including the SBA), business association, or interested party may request an NMR waiver for a class of products
- The class waiver request must include
 - A statement of the class of products to be waived (NAICS code and detailed description)
 - **Detailed** information on efforts to identify domestic small business manufacturers for the class of products

Procedures for Reviewing and Terminating Class Waivers

13 CFR § 121.1204(a)(7)

- A class waiver to the NMR has no time limitation
- Discovery of just **one** small business manufacturer will trigger termination of the class waiver
 - Federal Register intent to terminate a class waiver, public comment period, and final FR notice
- Existing NMR class waivers can be found at the following link:

<https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/class-waivers>

Questions?

**Thank you for
participating in this
training!**

