



U.S. Small Business
Administration



Understanding the Nonmanufacturer Rule

Hosts

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Welcome to “SBA Virtual Learning 2022”

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 (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programing 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 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 6, 2021 – 8(a) Program Updates: <https://youtu.be/yNQ4u-Ha9Go>
- November 3, 2021 – The Nonmanufacturer Rule (NMR):
- December 1, 2021 – Releasing Requirements from the 8(a) Program:
- January 5, 2022 – Category Management Part 1:
- February 2, 2022 – Category Management Part 2:
- March 2, 2022 – Market Research:
- April 6, 2022 – All Small Mentor Protégé Program:
- May 4, 2022 – ESRS System:
- Jun 1, 2022 – Legislature and Regulatory Updates:
- July 6, 2022 – Women Owned Small Business Program:
- August 3, 2022 – HUBZone Program:

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

FY 2022 SCHEDULE

1:00 to 2:00 PM Central Time

FY 2022	Date	Topic
1	October 6, 2021	8(a) Business Development Program Updates
2	November 3, 2021	The Nonmanufacturer Rule (NMR)
3	December 1, 2021	Releasing Requirements from 8(a) Business Development Program
4	January 5, 2022	Part I: Category Management: Policy Considerations and Flexibilities and Small Business Utilization
5	February 2, 2022	Part 2: Category Management: Increasing Small Business Participation Through Subcontracting and Legal Obligations
6	March 2, 2022	Market Research
7	April 6, 2022	All Small Mentor Protégé Program
8	May 4, 2022	Electronic Subcontracting Reporting System (ESRS)
9	June 1, 2022	Legislature and Regulatory Updates
10	July 6, 2022	Women-Owned Small Business Program
11	August 3, 2022	HUBZone Program

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

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- 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 2022”

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

11/03/2021

DATE

Today's Speaker(s)

Christopher Clarke
Attorney Advisor (Procurement Law)
Office of General Counsel
U.S. Small Business Administration

Overview

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

Purpose

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

Requirements

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** (if this fourth requirement is not met)
- Obtains a **waiver** to the NMR

13 C.F.R. § 121.406(b)(1)

Applicability of the NMR

- *Small business* set-asides above the simplified acquisition threshold
- Set-asides under the following *socioeconomic categories* above the micropurchase threshold:
 - 8(a)
 - SDVOSB
 - WOSB
 - EDWOSB
 - HUBZone
- Against a manufacturing or supply contract (not services)
- NMR does not apply to subcontracts or full-and-open contracts

13 C.F.R. §§ 121.406(a) & (d)

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 to the NMR

Standard for Individual NMR Waivers

- 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”

13 C.F.R. §121.406(b)(5)(i)

Individual NMR Waiver Request Checklist

- ✓ 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 provide a Statement of Work (or equivalent such as Product Description)
- ✓ A definitive statement of the item(s) to be waived and justification for why they are required
- ✓ A narrative describing market research and supporting documentation
- ✓ Request signed by the contracting officer

13 C.F.R. § 121.1204(b)(1)

Notice of Waivers

- Potential offerors must be notified of class or individual waivers at the time of solicitation
- Notification of offerors after the solicitation is permissible only if potential offerors are afforded additional time to respond

13 C.F.R. §121.1206(a)

Multi-Item Procurements

- 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
- However, an NMR waiver is not necessary for every item manufactured by a large business in a multi-item procurement as long as 50% of the total contract value is provided by small businesses.

Class Waivers to the NMR

Standard for Class NMR Waivers

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

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

13 C.F.R. §121.406(b)(5)(ii)

“Class of Products”

- “Class of products” refers to an individual subdivision within a NAICS Industry Number
- For practical purposes, SBA uses a combination of NAICS code **and** a description to identify the “class of products” for a class waiver to the NMR
 - E.g., NAICS 333333, description

“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

- Any government agency (including the SBA), business association, or interested party may request a 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

13 C.F.R. § 121.1204(a)(1-3)

Procedures for Reviewing and Terminating Class Waivers

- A class waiver to the NMR has no time limitation
- Discovery of just **one** small business manufacturer will trigger termination of the class waiver
 - Notice in the Federal Register of intent to terminate class waiver, public comment period, final FR notice

13 C.F.R. § 121.1204(a)(7)

- Existing NMR class waivers can be found at the following link:

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

Questions??