

# SDVMPG



Service Disabled Veteran  
Medical Products Group

The Non-Manufacturer Rule Waiver (NMR)  
52.219.33  
The Impact to SDVOSBs and Other Small Businesses



## The NMR

Under the NMR, contractors supplying goods to the government must perform supply the product of a domestic small business concern on contracts awarded for a single item, or at least 50% of the value of all items under a multiple item acquisition must come from small business concerns:

Manufacturers meet this requirement easily

Most distributors do not meet this requirement

Most SDVOSBs (and other small businesses) in the healthcare field, are distributors, rather than manufacturers

## Why the NMR is Important to SDVOSBs

To qualify as a small business concern for set-aside or sole-source supply contracts, the small business must either:

- Manufacture the product itself
- Supply a product manufactured by another domestic small business, if it is a nonmanufacturer, or, on procurements for multiple items, at least 50% of the value of all items must be manufactured by domestic small businesses.
- Supply the product of any sized manufacturer if SBA has granted a waiver to the nonmanufacturer rule
- This includes contracts for small businesses certified as service-disabled veteran-owned, women-owned, economically disadvantaged women-owned, HUBZone, and 8(a)

## Why is this an issue for SDVOSB's?

The NMR allows a firm to supply products it did not manufacture—  
as long as the products come from a domestic small business

- Most of the medical products required by the government (including the VA), are not manufactured by small business
- The NMR Waiver, granted by the SBA, allows SDVOSBs and other small businesses to distribute products manufactured by Large Business
  - This means that the products may come from a large business, if SBA issues a waiver.
  - There are two types of waivers – Class Waivers and Individual Waivers

## No Waiver. So What?

Even if there are two or more SDVOSBs (or other small businesses) that are distributors of a product manufactured by a large business:

- Without the NMR, SDVOSBs do not qualify to provide the product to the government because they do not meet the domestic small business sourcing requirements.
- The requirement cannot be set aside because there may be no small business manufacturers of the product or an insufficient number of small business manufacturers on multiple item buys.
- Even if there is a small business manufacturer of the product, does the product meet the specification? Will the government accept the product?
- Will large business manufacturers allow SDVOSBs to distribute the product if there is no set-aside?

## Class Waiver – Anyone Can Request

- SBA may issue a class waiver when no small business manufacturer has submitted, performed, or been awarded an offer on a solicitation for a class of products within the previous two years. **Anyone can request a class waiver.**
- The request should include the relevant NAICS code and other identifying information about the product. It should also include market research and detailed information on the efforts made (market research) to identify small business manufacturers for the class of products. This could include a search of [beta.SAM.gov](https://beta.SAM.gov), SBA's [Dynamic Small Business Search](#), and other internet sites, in addition to posting Requests for Information, Sources Sought notices, reviewing previous similar procurements, seeking PCR assistance, and discussions with industry members.
- Class waivers remain in place until SBA determines small business manufacturers or processors have become available to participate in the federal market or receives evidence that a small business manufacturer exists in the federal market for a waived class of products. See the list of [approved class waivers](#).
- Submit a class waiver request by emailing [nmrwaivers@sba.gov](mailto:nmrwaivers@sba.gov). The request should include your name and contact information

## Individual Waiver – Contracting Officer Only

SBA may issue an individual waiver for a specific acquisition when there is no small business manufacturer that can meet the requirements (including delivery schedule) of a specific acquisition..

Only a contracting officer can request an individual waiver. The contracting officer's request must include:

- A definitive statement identifying the specific product for which you're requesting the waiver
- An explanation addressing why the specific item is required
- The solicitation number for the procurement, the NAICS code, estimated dollar amount of the procurement, and a brief statement of the procurement history
- A determination that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications of the solicitation
- A summary of market research detailing efforts to locate a small business manufacturer (not reseller) and provide supporting documentation including:
  - The results of your search from [SBA's Dynamic Small Business Search](#)
  - The results of your discussions with small business representatives to find manufacturers
  - Other market surveys or research conducted
- A copy of the Statement of Work if contracts are expected to exceed \$500,000

Individual waivers are contract-specific, must be utilized within one year of issuance, and expire at the end of the contract. You may request an individual waiver for more than one product on a contract. You must include the required information for each product. Submit your request for an individual waiver of the nonmanufacturer rule to [nmrwaivers@sba.gov](mailto:nmrwaivers@sba.gov). Or mail your request to:

Attn: Director for Government Contracting  
U.S. Small Business Administration  
409 Third Street SW  
Mail Code 6700, 8th Floor  
Washington, DC 20416

## The Federal Register

In accordance with the SBA's regulations at [13 CFR 121.1204\(a\)\(7\)](#), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, SBA will announce its intent to terminate the NMR waiver for a class of products. [13 CFR 121.1204\(a\)\(7\)\(ii\)](#). Unless public comment reveals no small business exists for the class of products in question, SBA will publish a Final Notice of Termination in the Federal Register.



## What's the Risk?

- Systematic erosion of NMR Class Waivers - Eliminates the possibility of SDVOSB Sole Source and Set-Asides.
- Contracting Officers, using discretion may or may not decide to pursue Individual Waivers – Eliminate SDVOSB and Sole Source Set-Asides.
- Uncontested NMR Waivers published in the Federal Register - there is an advertised, 30-day public comment period to contest the Waiver Termination – Intent to Terminate Waivers often receive no public comment.

## Micro Purchase and Small Acquisition Thresholds

- Purchases “above the micro-purchase threshold (\$10,000), but not over the simplified acquisition threshold (\$250,000), shall be set aside for small businesses” if there are two or more small business offerors expected to compete [FAR 19.502-2](#)
- The nonmanufacturer rule applies to socioeconomic categories for contracts valued above the micro-purchase threshold of \$10,000. It applies to both socioeconomic categories and small businesses above the simplified acquisition threshold (\$250,000).

# NMR Waivers Terminated 2017-2022

DATE POSTED IN FEDERAL REGISTER NOTICE FEDERAL REGISTER	NAICS	Description	Status
6/8/2022	339113	Furniture, Laboratory- Type (E.G., Benches, Cabinets, Stools, Tables), Manufacturing	Terminated 6/8/2022. 87 Fed Reg 34921
5/8/2017	339113	Gloves, rubber (e.g. electrician's, exam, household-type, surgeon's) manufacturing	Terminated 5/8/2017. 82 Fed. Reg 18805
6/8/2022	339113	Furniture, Hospital, Specialized (E. G., Hospital Beds, Operating Room Furniture), manufacturing	Terminated 6/8/2022. 87 Fed Reg 34921
5/13/2022	334517	Irradiation Apparatus Manufacturing, Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment Manufacturing	Terminated 5/13/2022 87 Fed. Reg. 29424
5/13/2022	337127	Furniture, Factory-Type (E.G. Cabinets, Stools, Tool Stands, Work Benches) Manufacturing	Terminated 5/13/2022 87 Fed. Reg. 29424

# CALL to Action!

Please support the effort to solicit new class waivers from SBA. The current BPAs are capped at 5 years and may start expiring as soon as 2024.

Why is it important to support this effort?

Without new class waivers, many of the products on the BPAs may no longer be subject to individual NMR waivers, which will end the SDVOSB set-asides, although we can still argue they are eligible for SB set-asides based on the argument that all orders under the BPA are valued at less than \$250K and must be reserved for small business

## Other Agency Presentations on the NMR

[https://www.sba.gov/sites/default/files/2018-02/nmr\\_workbook\\_1.pdf](https://www.sba.gov/sites/default/files/2018-02/nmr_workbook_1.pdf)

<https://www.sba.gov/partners/contracting-officials/small-business-procurement/nonmanufacturer-rule>

<https://www.aptac-us.org/media/1-SBA-1st-Wed-2018-NMR.slides-to-post.pdf>