



Billing Code: 8026-03

## **SMALL BUSINESS ADMINISTRATION**

[Docket No. SBA-2020-0014]

### **Class Waiver of the Nonmanufacturer Rule**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for diabetic test strips.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for diabetic test stripes under North American Industry Classification (NAICS) code 325413 and Product Service Code (PSC) 6515. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item on certain small business contracts, regardless of the business size of the manufacturer.

**DATES:** Comments and source information must be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Carol Hulme, Attorney Advisor, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8<sup>th</sup> Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

**FOR FURTHER INFORMATION CONTACT:** Carol Hulme, Attorney Advisor, by telephone at 202-205-6347; or by email at Carol-Ann.Hulme@sba.gov.

**SUPPLEMENTARY INFORMATION:** Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts provide the product of a small business manufacturer or processor if the recipient of the set-aside contract is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). The NMR applies to a contract issued as a small business set-aside (except as stated below); a service-disabled veteran-owned small business (SDVOSB) set-aside or sole-source contract; a Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract; a women-owned small business (WOSB) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract; or 8(a) set-aside or sole source contract; a partial set-aside; or a set-aside of an order against a multiple award contract. The NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market. The SBA defines "class of products" based on a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products. A waiver would not have any effect on the requirements in 13 CFR 121.406(b)(1)(i) through (iii) or on requirements external

to the Act that involve domestic sources of supply, such as the Buy American Act, 41 U.S.C. 8301-8305, or the Trade Agreements Act, 19 USC 2501 *et. seq.*

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

SBA has received a request for a class waiver for diabetic testing strips. The applicable NAICS Code is 325413 and the PSC is 6515 as there are no small businesses that manufacturer this product. A search of the Federal marketplace revealed there are no small business manufacturers that can manufacture and supply this product to the Federal government.

SBA invites the public to comment on this pending request to waive the NMR for diabetic testing strips. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the *Federal Register*.

More information on the NMR and class waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

**David Loines,**  
*Director, Office of Government Contracting.*

[FR Doc. 2020-08304 Filed: 4/17/2020 8:45 am; Publication Date: 4/20/2020]