



Billing Code: 8026-03

## **SMALL BUSINESS ADMINISTRATION**

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

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

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for commercially available off-the-shelf laptop and tablet computers under NAICS code 334111/PSC 7435.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for commercially available off-the-shelf laptop and tablet computers under North American Industry Classification System (NAICS) code 334111 and Product Service Code (PSC 7435). This U.S. industry comprises establishments primarily engaged in manufacturing commercially available off-the-shelf laptop and tablet computers. According to the request, no small business manufacturers supply this product to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item(s), regardless of the business size of the manufacturer, on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), historically underutilized business zones (HUBZone), or participants in the SBA's 8(a) Business Development (BD) program.

**DATES:** Comments and source information must be submitted by **[INSERT DATE 30 DAYS AFTER DATE OF 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, Program Analyst, 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, Program Analyst, by telephone at 202-205-6347; or by email at [Carol-Ann.Hulme@sba.gov](mailto: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 require that recipients of Federal supply contracts (except those valued between \$3,500 and \$250,000) set aside for small business, SDVOSB, WOSB, EDWOSB, HUBZone, or BD program participants, provide the product of a small business manufacturer or processor if the recipient 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). 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.

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.

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.

The SBA is currently processing a request to waive the NMR for commercially available off-the-shelf laptop and tablet computers under NAICS code 334111 and PSC 7435. Table 1 below identifies manufacturers of these products that SBA is aware of:

Table 1

Manufacturer	Product
Acer America Corp	Laptops
American Sunrex Corp.	Laptops
Apple, Inc.	Laptops
Asus USA	Laptops
Clevo	Laptops
Compal Electronics	Laptops
Dell Technologies Inc.	Laptops
Elitegroup Computer Systems	Laptops
Eurocom Corporation	Laptops
Flextronics Corporation d/b/a Flex	Laptops
Fujitsu America Inc.	Laptops
Gigabyte Technology	Laptops
Google, LLC	Laptops

Hasee Computer Co., Ltd.	Laptops
Hewlett-Packard Enterprise Co.	Laptops
Hon Hai Precision Industry Co., Ltd. d/b/a Foxconn Technology Group	Laptops
International Business Machines d/b/a IBM	Laptops
Inventec Corp	Laptops
Lenovo Group Ltd.	Laptops
LG Electronics, Inc.	Laptops
Microsoft Corp.	Laptops
NEC Corporation of America	Laptops
Panasonic Corp.	Laptops
Pegatron Corp.	Laptops
Positivo Tecnologia SA fka Positivo Informatica SA	Laptops
Quantra Computer Inc.	Laptops
Samsung Electronics Co. Ltd.	Laptops
Shenzhen Daystar Connect Technology Co. Ltd.	Laptops
Sony Corp.	Laptops
Toshiba International Corporation	Laptops
TriGem Computer Inc.	Laptops
Wistron Corp.	Laptops

Apple Inc.	Tablets
Asus USA	Tablets
Dell Technologies Inc.	Tablets
Fujitsu America Inc.	Tablets
Google LLC.	Tablets
Hewlett-Packard Enterprise Co.	Tablets
HTC Corp.	Tablets
Huawei Investment & Holding Co. Ltd.	Tablets
Lenovo Group Ltd.	Tablets
LG Electronics Inc.	Tablets
Microsoft Corp.	Tablets
Motorola Solutions Inc.	Tablets
Micro-Star International Co. Ltd.	Tablets
NEC Corporation of America	Tablets
Nokia Oyj	Tablets
Nvidia Corporation	Tablets
Panasonic Corporation	Tablets
Pegatron Corp.	Tablets
Quanta Computer Inc.	Tablets
Samsung Electronics Co. Ltd	Tablets
Sony Corp.	Tablets
Toshiba International Corp.	Tablets
Trimble, Inc.	Tablets

Xiaomi United States	Tablets
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The SBA invites the public to comment on this pending request to waive the NMR for commercially available off-the-shelf laptop and tablet computers under NAICS code 334111 and PSC 7435. For purposes of this waiver SBA will be using the Federal Acquisition Regulation definition for COTS. (FAR) 2.101 (48 U.S.C. 2.101). SBA has already adopted the FAR definition for COTS for purposes of the government contracting programs. 13. C.F.R. § 125.1. The FAR definition for COTS states the following:

(1) Means any item or supply (including construction material) that is— (i) A commercial item (as defined in paragraph (1) of the definition in this section); (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Under the proposed language of this waiver SBA would be granting a class waiver only for laptops and computers procured by the government that meet that definition.

Specialty laptops and computers that are modified to meet demands of the Federal Government would not be included in the waiver. SBA is requesting comment on the specific nature of this waiver, specifically the SBA's use of the COTS language in a class waiver and whether the proposed language of the waiver is appropriate given the commercial and Government markets for computers and laptops. 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.*

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