Looks like you're you're all
good. OK. Thank you, Mike. So

again, welcome everybody.

To our build America Buy America
Act. We're gonna. I'm gonna

acronym that and call it Baba.

This is our updates.

My PowerPoint just went away.
This is our update on

implementation webinar on behalf
of the Fish and Wildlife Service

and the Whisper program. My name
is Ryan Oster with me is my

fantastic training partner in
crime Mike Sawyers and we're

gonna guide you through this
webinar today and and we hope

that you find value in it.

OK. What we're gonna cover
today, many of you may have been

on our previous build, America
by America acts webinar. So you

might see a little bit of of a
repeat of some of this language.

But we are also aware that there
may be people who weren't part

of that original webinar
present. So we're gonna give you

an overview of of the
legislative history of how we

got to today, March 22. We're
gonna show you the

implementation timeline for the
build America by America Act.

Under the Fish and Wildlife
Service Financial Assistance

Awards, we're gonna define
infrastructure for financial

assistance awards. Very
important because that's what

Bob applies to are those
financial assistance awards that

involve infrastructure.

Then we're gonna speak to. What
are these domestic procurement

requirements? And specifically,
we're gonna talk about iron

Steel manufactured products and
construction materials. And then

perhaps most importantly, I
think why many of you are here

is you're gonna see that we are
going to go over an overview of

the approved waivers that
Department of Interior has

recently gotten approved to new
waivers. And then we hope to

have an open Q&amp;A session and
we're planning for about a 30 to

35 minute session for open
Q&amp;A.

And we'll do our best to answer
any of those questions that you

may have. So that's kind of what
we're going to cover today.

Alright, so let's go back. I I'm
a big believer in in order to

know how we got to where we're
at today, we have to rewind the

clock and know where we've been
in the past. And. And we're

gonna rewind the clock almost a
year and a half. It's hard to

believe we're time has gone, but
all this basically generated way

back on November 15th, 2021 when
the infrastructure and

Investment JOBS Act was signed
into law that that law is also

commonly referred to as the
bipartisan infrastructure law or

B.

Well, you may be more familiar
with that terminology and

specifically included within the
BIL was a passage of the build

America by America Act, and
specifically the language in

that Baba Act requires that by
no later than May 14th, 2022,

roughly 180 days, it says that
each federal agency shall ensure

that none of the federal funds
made available for its federal

financial assistance programs.

In which infrastructure is being
funded? None of that money may

be obligated for a project
unless all of the iron, steel

manufactured products.

And construction materials are
produced within the United

States, so that is the the the
domestic procurement

requirements that we're all
talking about.

And many people might be asking,
you know, why? What was the

purpose of the Baba Act? And and
we can see clearly that that

Baba basically affirms and is
consistent with at least one if

not more, executive orders
passed by the administration and

and this executive order that it
that it is consistent with 14005

is basically to just show
document and prioritize the use

of federal Financial assistance
awards to maximize the use of

what I like to call domestic
procured.

A good products and materials
and and in essence what we're

really talking about here the
the whole purpose of Baba is

basically to help America
increase its domestic supply

chains, make them more resilient
to, to events happening

throughout the world and provide
demand for these domestic

producers and support their
operations within the United

States. That's basically what
we're talking about here. We're

talking about increasing,
improving and enhancing.

Domestic production and
manufacturing opportunities.

Additionally, the the Boba Act
also created a statutory

authority for OMB to create what
they call the Made in America

Office, and it's this office
that is in charged with

maximizing and enforcing the
compliance with these bobber

requirements under financial
assistance awards that involved

infrastructure. So, so the OMB
often made in America Office is

is very important. They're
they're heavily involved in

answering questions about
implementation.

As well as they're heavily
involved with determining

whether waivers will be approved
or whether they they may not be

approved.

And what does Boba apply to?
Again, we we wanna make certain

everybody understands it applies
to all financial assistance

awards that involve
infrastructure. Baba doesn't

apply necessarily broadly to an
entire federal ward. It just

applies to that particular part
of your federal award that

involves infrastructure, which
depending how you write your

grant applications, your grant
could could be 100%

infrastructure or your grants
could be a large grants and

maybe only small parts or
discrete chunks of that award.

Our infrastructure. So again,
baby applies to infrastructure

projects funded under financial
assistance and we wanna make

certain that everyone's clear is
that Baba applies to the entire

infrastructure project, not just
the part that is being funded

with federal funds. If there is
matching funds associated to it,

like our wildlife and sport,
fish restoration programs

require a mandatory 25% non
federal match. The domestic

procurement requirement applies
to both the the part that's

federally funded.

As well as the match that comes
along with the with that

infrastructure project.

As I mentioned, the the language
in the Statute says that no

later than 180 days after
passage. These requirements are

meant to kick in by federal
awarding agencies. So we saw

that the bill was passed in
November 15th, 2021. If you do

the math, go 180 days out, the
build America by America Act

requirements kicked in on
financial assistance awards

beginning on May 14th, 2022. So
all new awards.

Beginning on or after May 14th,
2022 that had infrastructure,

these Baba requirements kicked
into those. Additionally, the

Baba requirements also kicked in
on any prior existing awards. If

you amended those awards to add
new funding or you amended those

awards to increase the scope of
the project, then those Bob

terms and conditions may have
come into play.

And then lastly, we also wanna
point out you know, there's been

a lot of questions we've
received about what is an

infrastructure project you can
see on the screen here that a

project means any activity
related to the construction,

alteration, maintenance or
repair of infrastructure in the

US so that is what a project is
is defined as under the

legislation and again we'll,
we'll get into what

infrastructure is here in, in a
couple extra slides.

Early on in the implementation
this this was a pretty

significant change for many of
us in financial assistance. So

we do appreciate the Department
of Interior. They they went and

requested and received approval
for what was called a general

applicability waiver. That
general applicability waiver

basically sat on top of the
domestic procurement

requirements and and was in
effect from July 13, 2022

through January 12th, 2023.

And what that period was
basically meant to provide was

an opportunity for recipients to
continue to do their work, to

continue to fund their
infrastructure projects and be

allowed to deviate from the
domestic procurement

requirements. But what it
basically was was was to give

everybody A6 month window of
time for you to update your

procurement policies and learn
how to adapt so that moving

forward you, you, your
organization can become totally

compliance.

With these domestic procurement
requirements, so training branch

in our previous webinar we
taught you may have heard to say

don't consider this six month
waiver period of time to just

continue to deviate from the
domestic procurement

requirements. This was this was
actually meant to afford you

time to get with your
procurement staff, train your

staff and inform them that hey
going forward and they're not so

very distant future. These
domestic procurement

requirements are are gonna
become a requirement a term and

condition.

And an expectation under federal
awards. So we hope everybody was

able to take as full advantage
of that six month window as we

can. Obviously the the general
applicability waiver has has

long since expired. So there is
no longer this general

applicability waiver in play
under your awards.

Just real quick, I wanna show
you a visual representation. I'm

anybody who's been to a training
knows I'm a visual learner, so

I'd like to just visually show
everybody what I just talked

through real quick. Maybe that
works a little bit better for

you. It does for me. So again,
on this timeline, you'll see

November 15th. That was when the
FBI was passed, which included

the Baba requirements.

I told you the legislation
mandated no later than 180 days

after federal awarding agencies
have to begin implementing it

for Fish and Wildlife. We we
followed the 180 day rule and

therefore May 14th, 2022. That's
when the Baba requirements

became applicable to all new
awards involving infrastructure.

And as I mentioned, any
amendments to add funds,

increase the OR change the scope
and increase infrastructure

projects. So any award.

May 14th or later. That's a very
important date. You're you're

gonna know that if there's
infrastructure under that award,

the Baba requirements become
applicable to you.

June 6th, another very important
day it it took Fish and Wildlife

service a little bit of time to
develop terms and conditions

that we wanted to add to awards.
We finally got all those terms

and conditions developed and and
incorporated into grant

solutions by about June 6th. So
that's definitely the time at

which any new award June 6th and
thereafter you definitely should

have seen the boba terms and
conditions added to those

awards. Any award between May
14th and June 6.

It's kind of up to the service
programs. We encouraged service

programs to go back and and
administratively amend those

awards to add the Boba terms and
conditions. But it is important

to note that that even if those
terms and conditions weren't

included on your award, they
they are applicable to the award

and and we think we did a pretty
good job of of amending those

awards and adding the terms and
conditions so.

Umm, on this timeline now you'll
see that red bar, but between

the period of July 13th through
January 12th, that's when that

DOI general applicability
waivers sat on top of the Baba

requirements and allowed
recipients a window of

opportunity six months to
deviate even though Baba was

applicable to the award, you had
the ability to deviate from

those terms and conditions. You
could procure nondomestic items

during that six month window
that was just.

There again to to buy your
agency more time to become fully

applicable to the award. We're
now well past January 12th. And

so now we clearly see that the
boba terms and conditions are

applicable and the general
applicability waiver no longer

applies to any of those awards.

Alright, uh, let's talk about
what infrastructure is and and

more specifically, we don't
really have a very tight

definition of what
infrastructure is. We go back to

the statute that implemented
this and if we don't see a

really rock solid definition,
what we actually see is

Congress.

They give us a definition but,
but to me they're definition is

actually more descriptive of
what infrastructure examples are

as to opposed to more
definitively what infrastructure

is. And so we see that
infrastructure means at a

minimum the structures,
facilities and equipment for in

the United States, all these
different things that you see on

the screen here and within the
world of whisper that we

typically fund.

You might look at a lot of these
and say we don't typically do

things like that and and I would
generally agree with you, I I'm

not familiar with too many state
Fish and Game agencies or or

conservation agencies that do
broadband infrastructure or

energy distribution or stuff
like that. But where I do think

we get wrapped up into the build
America by America Act is those

that last check marks, if you
will, buildings and real

property.

That particularly provide a
public purpose and are for the

public. That's where I think the
Whisper program is getting

wrapped into the build America
by America Act. Requirements for

domestic procurements. And so
again, Congress didn't really

give us a type definition when
Owen B started coming out with

implementation guidance. They
helped us out a little bit here

in their implementation guidance
M22-11.

They came out and they said,
hey, federal awarding agencies

as you're struggling to
interpret what this definition

of infrastructure is. They said
think of what Congress talks

about in the statute, think of
it more broadly and think of

what they gave you more
illustratively. And they gave us

some criteria to help take some
of the subjectivity out of this

and some of the criteria that
OMB offers to us is to to ask

yourself several questions
you'll see on the screen here.

Ask yourself.

Is.

Is the project.

Is it serving a public function?
Does it have a public benefit?

Ask yourself, is the project
publicly owned and operated?

Or sometimes is it privately
owned, but it's operated on

behalf of the public? And is it
a place of public accommodation?

If your project falls into some
of these criterion, OMB is

saying these are generally
greater indicators of what the

federal government does indeed
consider infrastructure OK,

conversely, OB said on on the
flip side, if your project is

privately owned and is not
really for the public.

Those are what OMB says. These
are what we call lesser

indicators of what an
infrastructure project is. So

again, if you find yourself in
that greater indicator, you have

a higher likelihood and
tendency. This is what

infrastructure is meant to be
under under the law by Congress.

Conversely, if if you're talking
about a project that's privately

owned or is not open to the
public that that is not really

what is meant to be meeting the
term of infrastructure.

Let's try and take a little bit
more subjectivity, even further

out of the equation and in our
opinion, looking at the world of

what whisper predominantly funds
with, with many of our

conservation grant programs,
this is what we generally think

of when when we think of
infrastructure. So again, I

would say this list, while not
meant to be all inclusive, is

clearly meant to articulate lots
of things on here that I see are

things that that public state
agencies, state Fish and

Wildlife agencies state.

Conservation agencies, they
generally fund a lot of these

type of activities. They're
meant to provide a public

purpose, their owned by a public
entity and they are actually

there to help provide an
opportunity for the public. So

we're talking about things like
state wildlife management areas

or state game areas. However,
your agency calls them public

voting access facilities, boat
ramps, docks. To me, these are

all places of public
accommodation and they're

providing a public purpose.

You you may be building a dams
to create a water bodies for

recreational fishing, boating,
maybe waterfowl hunting places

like that. Again designed to
create a public purpose floating

restrooms, public restrooms,
parking areas. These are all

examples of of what the whisper
program would consider forms of

infrastructure. If you're
funding these under your federal

Financial Assistance awards,
either construction, maintenance

or repair, these would generally
trigger in my opinion.

We need more details, but would
generally trigger what meets the

definition of infrastructure. So
as I look at that picture on the

screen there I I see a doc and
this was from my previous life

when I used to work for a state
Fish and Game agency. This was

actually one of our public
recreational fishing Piers we

built at one of our state owned
lakes. And so as I was beginning

to understand Baba, I would run
this project through the filter

of what Owen B gives us. And I
would say is this is this public

fishing pier serving a public
purpose.

Is it publicly owned and and
operated, and is it a public

place of accommodation? In my
past life, knowing this project

like I do, I would say
absolutely this is this is a

public fishing pier meant to
provide recreational fishing

opportunities for the public. It
was owned by the state agency

that I used to work for and so I
would say yes, to me this this

meets the definition of
infrastructure and as I look at

that project, I I see throughout
that I see examples of

manufactured project or products
use me. I I see the.

The black foams.

Ah, that that's providing the
flotation for the doc. I also

see composite decking there.
That would be an example of a

manufactured product and also
see Construction materials,

nails, screws, bolts, stuff like
that. While I see a lot of that

as as aluminum, I I also know
that there is some some iron in

that structure as well. So
ultimately that project would

have had to have been in
compliance with the Baba

domestic procurement
requirements.

What's up? What types of costs
have to meet the domestic

procurement requirements, where
we're basically talking about 3

broad categories here? We're
talking about iron and steel,

including the manufacturing
process thereof, which basically

means all the way from the
melting stage to the final stage

of application of final
coatings. All of that, all of

the finished product, the iron
and steel has to be manufactured

within the United States.

When we go to the second
category, it manufactured

products. What we're talking
about here are those products.

They must be, they must be
manufactured in the US and the

cost of all the components have
to be at least 55% or greater of

the total cost of all the
components that that 55% greater

has to be sourced from the US
compared to the total costs that

go into the manufactured
product. So that's one of the

little bit tricky to understand
sometimes.

You might have to ask a vendor
for some type of certification

as to whether they're
manufactured products meets the

box for that 55% or greater
total cost of all the components

coming from within the United
States.

And then lastly, that third
bucket refers to construction

materials. These are things like
I like to call screws, nails,

bolts, lock washer, stuff like
that. We just have to ensure

that they are manufactured
within the United States. So so

those are the types of costs
that are subject to the build

America by America provisions.
What costs aren't subject to

Baba. We've seen a lot of
confusion around this early on

in the implementation of of Boba
and and we think we've done a

pretty good job.

Educating folks we we used to
hear people say well, the

equipment equipment doesn't have
to be boba compliant. That's

that's not necessarily the case.

What does it have to be Bob
compliant? Are you see on the

screen tools and equipments and
supplies that are brought to the

construction site used for the
construction of the

infrastructure, the repair, the
maintenance of the

infrastructure and then removed
from the infrastructure site at

the once the projects completed,
those do not have to be bombed

compliant. However, if there's a
piece of equipment that is part

of of the project, let's say
perhaps a public shooting range

and.

You're actually gonna leave the
equipment. The equipment is

gonna become a necessary and a
critical part of the actual

infrastructure project. Then
that would have to be boba

compliance.

We also see here clear mentioned
that equipment and furnishings

use that the sign of a complete
and infrastructure project which

are not an integral part of the
structure or permanently affixed

to it. They are not Bob a
compliance so, so just important

to remember as you think about
your project as to what costs

are and maybe what costs aren't
applicable to Bob.

Alright, let's move on to I I
think why most people are here.

Let's talk about the waivers
within the the, the BOBA

legislation. Congress did run in
opportunities for waivers to to

be established if they are
necessary and they created 3

broad categories for these
waivers and these three broad

categories are you could request
a waiver and and if it's in the

public's interest, you could
request a waiver for what they

call non availability. If if you
just can't find the product or

it doesn't exist in adequate
sources.

And then the last criterion for
a waiver is what they call an

unreasonable cost waiver. And
this is where by using domestic

products, it will basically
increase the cost of the project

in excess of 25%. So these are
the three broad categories that

that federal agencies and
recipients have the ability to

potentially request a waiver
doesn't necessarily mean you're

going to get approval on it, but
this is what you have to if you

want to submit a waiver request.
This is what you have to fit

your waiver request.

Into one of these three broad
buckets in terms of eligibility

for the federal awarding agency
to consider Department of

Interior to consider, and then
ultimately up the chain to the

Office of Management and Budget
made in America Office for their

final consideration.

The two new waivers that
Department of Interior recently

just received a do fall under
what they're classifying as a

public interest waiver. We're
going to talk about those next

and and these being what is
called a small grants waiver.

And what is called a de minimis
grants waiver. So, so that's

that's the bucket that they fell
into. So let's let's talk about

these new DOI waivers, if you
will. Just wanna let everybody

know it. It took a lot of time
and energy and we do appreciate

all the hard work everybody who
was involved in getting these

waivers approved. There was
staff within Fish and Wildlife

Service that worked with
Department of Interior on this

to to help craft the language.

Umm I I think we'd messaged out
to everybody that both waivers

went out for a public comment
period back in December of 2022

that went out for a 15 day
public comment period which

closed January 6th and then
Department of Interior worked

with the Made in America Office
of OMB to to answer and resolve

and consider all the public
comment requests that they

received during that period and
and again great news folks, if

you haven't heard both of these.

Waivers were indeed approved and
are effective February 21st,

2023, and they currently have a
5 year duration associated to

them, so they will expire in
February 20th, 2028.

We do wanna message out to
everybody within each waiver.

It's clear doesn't necessarily
mean that these waivers are here

for five years. It it just says
that Department of Interior may

revisit these sooner. But in the
event that they don't revisit

them sooner, they do have a 5
year lifespan. And I think it's

really important for folks to
understand. We've, we've

received, I don't want to say
explicit guidance but but based

on what I will show you these
waivers are, it is apparent to

me.

That OMB the made in America
office, they are really

scrutinizing to a degree any
waiver requests and and any

waivers that are approved,
you're gonna see that they are

clearly not broad in their
scope. They are narrowly

defined. Additionally, the time
associated to them is not broad.

They are very narrow time
window. So you can see that the

domestic procurement
requirements are meant to be a

priority of the administration
and they're really trying to

minimize to the maximum extent
possible.

Any deviations from having to
follow this there there is a

strong commitment to develop
domestic production and domestic

supply chains that are strong
and resilient.

Let's talk about the small
grants waiver. We'll we'll do

this one first and we'll show
you a couple of examples. This

is the one I I want folks to
really pay particular attention

to because this one changed
compared to what went out for

public comment versus what the
final approved waiver was. So

this small grants waiver, you'll
see this permits the use of non

domestic iron steel manufactured
products, construction materials

for small financial assistance
awards.

That meet the following
standard, and there's two

criterion. First criterion is
the total award amount does not

exceed the simplified
acquisition threshold and the

simplified acquisition threshold
is currently $250,000 and it's

set by by the financial or to
set by the far. So we wanna make

sure everybody understands that
$250,000. Second criterion is

that the award amount is not
anticipated to exceed.

$250,000 for the life of the
award. Now, you'll notice that

I've got small FFA awards and
total awards amount underlined,

and I do that for a reason
because I want to draw your

attention to that the the
initial version of the small

grants waiver that went out was
initially proposed that this

small grants waiver would apply
for those awards where the

federal share of the project
does not exceed $250,000.

So that was one of the big
changes we saw come back in the

approved waiver. OMB did not,
apparently like that too much.

They felt that that was too over
the broad would have would have

raised the sideboards. So now
the criterion is the total award

amount does not exceed $250,000.
It's not just the federal share,

it's the total award amount,
which in the case of wildlife

and sport fish restoration is
the federal share plus the non

federal matching component. So
we we wanna make certain

everybody draws their attention
to that.

That this waiver is only
applicable to those awards

$250,000 or less. OK.

Again, you'll see a 5 year
duration currently attached to

this waiver, and the
justification for this waiver

was that Department of Interior
looked at all the financial

assistance that that it issues
under its various bureaus and

and found that there are many,
many financial assistance awards

that often go out to to small.
They use the word disadvantaged.

I don't like to use that word
disadvantage. I I often say

maybe they don't have the same
capacity as as larger.

Recipients. But many of these
awards often went out to smaller

entities who who don't often
have the the same capacities of

a larger organization. And it is
more of a challenge for them to

go through their procurements
and make certain that they align

with federal regulations. So, so
again, this small grants waiver

was really meant to help benefit
and speak to those entities that

often receive smaller value
awards and and the domestic

procurement requirement would
create and perhaps an undo

administrative burden for them
to have to source these

domestically.

That this was meant to be an
option for them.

So let's go through a couple
examples here that the training

team put together in knowing the
audience that we have with us

today to to try and put some of
these into perspective and see

if the small grants waiver is in
play or not. So the first

scenario, I'll I'll throw up
there and and again we're we're

giving you a couple sentences,
folks. So to understand we're

being brief here, there could be
caveats to this. We understand

that. But in essence, let's
let's say we've got a recipient

wanting to build a canoe kayak
access site.

Maybe on a small river in the
state, so they receive a

financial assistance award,
build that and they plan to take

that entire award and they're
gonna contract it out to a

company construction company who
has the skills, the capacity and

the knowledge to build a canoe
and kayak access site. And let's

pretend this is a small dollar
award. Total award is 125,000

and it's a 7525. So you'll see
the federal share 75%.

Matt, share 25%, we would ask,
does this award qualify for the

small grants wave?

Being that we have over 100 some
people on I, I won't actually

ask you to raise your hand and
answer that question. I'll just

I'll give you the answer to this
one. This one is is yes, because

the total award does not exceed
the simplified acquisition

threshold 250,000 the recipient
in this case could go forward

under the small grants waiver
and could choose to bid this out

and and not have to source the
materials iron, steel

manufactured construction
materials could deviate from the

domestic procurement
requirements.

Let's go to scenario two. Let's
say let's say that same

recipient receives a an award
from the Whisper program,

perhaps under the Boating Access
program, and they plan to build

a boat ramp. And again, they
plan to contract the entire boat

ramp out to include both the
materials at the time and and

everything. And let's pretend
this total award is half a

million dollars. 7525. Does this
award qualify for the small

grants waiver?

Training branch interpretation
based on the limited information

we would give is is no why does
the small grants waiver not

apply to this award? Because the
total award amount is in excess

of $250,000. So for this
particular ward, the small

grants waiver would not be in
play. The Dominus waiver, which

I'll show you next, would be
applicable to this and we'll

show you how that one comes into
play. But in essence you would.

The recipient would wanna bid
this out and include.

In its solicitation forbids a
requirements. That's the

domestic procurement
requirements under Bobby would

apply, and that's the the
contractor would have to comply

with those requirements.

Go on to scenario 3.

A very common example of an
award that happens in in

virtually all of our state Fish
and Game agencies. To my

knowledge, many state agencies
have a statewide O&amp;M grant

operation and maintain
maintenance grant for their

WMA's.

These are often very large,
costly awards because you know,

states own lots of land and and
it is costly to maintain that

land and all the resources and
capacities that come with that

under this large award, the
state has multiple smaller quote

infrastructure projects under
that award. And let's pick one

of them. For example, let's say
the state wants to do a $10,000

maintenance to to one of its
WMA's existing fences, a portion

of it for $10,000.

So this is but this is a large
award 4,000,000 dollars 7525.

But within that we have one
particular infrastructure

project that is only $10,000,
OK. So the question we would ask

is does the fencing qualify for
the small grants waiver?

Remember, small grants waiver
$250,000. So I'll pause there

for a second, maybe let that
soak in a little bit.

Answer No, this does not qualify
because remember the small

branch waiver is applicable only
to those awards where the total

award amount not not only
looking at the infrastructure,

the total award amount is
$250,000 or less in this case

this award is is well easily
over $250,000. It's a $4 million

grant and therefore the small
grants waiver does not apply.

Our last scenario for a small
branch waiver, then we'll move

on to de minimis. This is a
complex scenario. So let me let

me see if I can explain this
one, because I think this will

be applicable to a lot of states
out there. Let's pretend we've

got a public target range
expansion project happening.

State submits a grant
application and receives an

approved grant back and and
anticipates the total expansion

projects going to cost $220,000.

Once they receive the award
back, the state then goes out to

bid for the project, so they're
gonna contract this out. The

state may not have the capacity
to do this internally. So they

they put out a bid and the
solicitations come back and and

let's say the state has to
follow a low bid process, let's

say the lowest bid is $260,000.
So they have a grant for 220.

They put out the bid for 260.
That's the bid they accept and

they say, OK, well, now we've
got a recommend this grants.

Because we've gotta raise the
cost $40,000 to accommodate for

this. So we now have a $260,000
reward and let's pretend this is

a 9010. This is one of those
tarmar grants. Does this qualify

for the small grants waiver?

Fish and Wildlife Service inform
implementation response would be

no, because indeed while the
initial reward was $220,000,

once the solicitation comes back
for 260.

And the recipient goes into
amend that award and increase

the cost to above $250,000. Now
that small grants waiver no

longer is applicable and the
recipient would be required to

be 100% compliant with the
domestic procurement

requirement. So I think that's
an example out there that that a

lot of folks may may find
themselves into. So we just want

you to be aware of how that one
would play out. We've got a

couple of best management
practices we wanna provide to

you at at the end of this
presentation.

Alright, let's switch gears here
and about another 5 minutes. So

left. Let's talk about the
Dominus waiver. This is an

interesting one. I I I kind of
really like it. I think it's

rather than genius, but I don't
think it's gonna be the home run

that a lot of people maybe were
thinking it would be. But

basically this is a waiver that
allows a recipients or a sub

recipient in that case to
deviate from the domestic

procurement requirements,
deviate up to 5%.

Of the total applicable project
costs and that 5% deviation can

be capped, it cannot exceed
$1,000,000. If you have a very

large high value infrastructure
project. So before I go on any

further, let me just let's just
pause here and let's let that

one soak in because we've got
differences between the small

grants waiver. Remember, I said
the small grants waiver, the

criterion was at the total award
11 total award level.

Which depending on you ride,
your grants, could include both

infrastructure costs and non
infrastructure project costs

that the minimus waiver now is
only looking at that part of the

award that is applicable, the
costs, the infrastructure

project costs that are subject
to the domestic procurement

requirements of Baba. So again,
only looking at that part of the

award that is associated with
iron Steel manufactured

products.

And construction materials. OK.
And the rationale for this

waiver was, was that Department
of Interior basically recognizes

that often in construction,
maintenance and repair

infrastructure projects, they're
there are often these small or

costs that may be more difficult
to procure than the more

numerous more abundant
materials.

And other type costs. So they
recognize that as a form of

efficiency and reduced
administrative burden. Let's

allow recipients the ability to
to, when they have to deviate

for those few smaller low value
costs, but still keep the larger

overall project compliant with
with the Boba requirements,

right. Again note that this one
has a 5 year duration associated

to it and let's walk through
some examples for you to

understand this to minimus
waiver.

Scenario one public target
shooting range expansion

project. So let's say a
recipient receives an award and

plans to sub award it to a
subrecipient to expand the

Subrecipients existing target
range, all to increase public

access and opportunity. $250,000
of the total award are what we

would call the applicable
project costs that are subject

to the biomerica preference. So
this total award is perhaps half

$1,000,000.

But only 250,000 of that, half a
million, is the iron steel.

Construction materials and
manufactured products the the

rest of this award could be
salaries, could be supplies,

could could be other things
unrelated to the domestic

procurement requirement. So so
again we've got a half

$1,000,000 award to 9010 example
does the de minimis waiver apply

in this case, yes, it does. And
what we would do is we would

take 5% times the total
applicable project costs, the

250,000 in this example.

And you'll see it's not a whole
lot in the grand scheme of a

half $1,000,000 project, the the
recipient and SUBRECIPIENT would

be allowed to deviate and
purchase non domestic items up

to the tune of of only $12,500.
Again, 5% of the total

applicable costs subject to Boba
is what the recipient and

SUBRECIPIENT could deviate from
in this example.

Let's go on to scenario two.
State receives a a big Tier 2

under the Boating Infrastructure
grant program to construct a

transient boat dock facility
that's comprised of docks,

Piers, gangways, utilities.
Restrooms could be a variety of

other things. Eligible
activities of the total $4

million word, the total
applicable project cost is 2.5

million.

And again, does the de minimis
waiver apply? Yes, we would take

that 2.5 million, multiply it by
5% and in this case the the

entity, the recipient or sub
recipient would be able to

deviate and and obtain
nondomestic materials to the

tune of up to $125,000. Again
not a lot compared to the total

federal award amount of $4
million.

We give you an example 3 and it
extreme case but I but I think

definitely relevant out there.
Definitely in my past state

receives a grant to construct a
new fish hatchery. I'd love to

hear that. Let's say this is a
huge project. This is a $27

million project and of the 27
million, 23 million of the total

project costs are subject to the
biomerica preferences. So we

have a total award of 27 million
federal share of 75%, twenty

million change and then the
match requirement.

Just a hair under 7,000,000 does
the de minimis apply? Yes, it

does. We would take the 23
million, the total applicable

cost part, multiply it by 5%.
However, in this case you'll see

that that 5% amount exceeds the
$1,000,000 pack that I said this

to minimis waiver is capped at.
So in that case we we cannot

allow the recipient to deviate
up to 1.15 in in non domestic,

the recipient would actually be
capped at that only $1,000,000

in those costs.

That they could deviate from the
domestic procurement

requirements.

Last example, folks, I'll admit
this ones a little bit tricky

and and I think training branch
we're gonna give you the our

conservative answer for how we
recommend you best stay safe

under this one. Let's take that
statewide O&amp;M grant that a

lot of Fish and Game agencies
have total cost of this grant is

$6 million.

And under that $6 million and
and got salaries, we've got

travel, we've got other things
in there. But of that six

million we see that there's
$160,000 comprised of three

small infrastructure project
costs and let's pretend project

one is a storage shed for
$40,000, Project 2 is public

restrooms for 50,000, Project 3
is $70,000 for for several ADA

hunting structures to
accommodate the public.

All of that buried within this
larger $6 million award. Does

the Dominus waiver apply? Yes,
it does.

And the safest approach we feel
to implementation on this is we

feel that the recipient would
want to monitor these costs and

within project one you you would
want to, you would be able to

deviate up to 5% of the 40,000
which is 2000 dollars, 5%

project two costs 50,025 hundred
and then the last project 70,000

dollars, 5% would be $3500 is
what you would be able to

deviate from on that.

Get lots of nuances could come
along with this one. We're happy

to talk with you more after the
fact about how this would apply

under your unique grant based on
how it's written. But at a high

level, we just did want to
provide this information to you

on on this one.

Just wrapping up a couple more
slides and then we'll jump

through our open Q&amp;A session
here folks. So, so again, we

just want to remind folks that
that there is a this

administration does support the
domestic procurement

requirements. This this is
something that's here to stay.

We all know you may have
received messaging the two CFR

200 is getting ready to be
revised. They're actually

creating a new title to
Regulation 2 CFR 184. That's

gonna put into regulation all of
these bobber requirements and

and that will be part of terms
and conditions of future awards,

so.

Umm, so this is a serious
commitment on behalf of the

administration and I and I think
you're gonna see future waivers

submitted be heavily scrutinized
because they they wanna go all

in and help support this
domestic procurement

requirement.

Regards to the small grants
waiver, I I would like to

encourage folks to think about
when you use this one and when

you don't.

I I from from my personal
experience my background you'll

see on the slide there to me
this this waiver has utility for

projects that are say perhaps
around the $200,000 maybe up to

$210,000 mark.

But in my past career there,
there was always change orders

that came in with a lot of these
projects that that always seemed

to add costs after the fact. And
in particular we're we're

dealing with an environment
right now where we still have

strong inflation happening on a
month to month basis. So costs

are going up by the time you
budget and submit for a project,

an infrastructure project by the
time you get that award back by

the time you might go out for
bid and actually start working

on it, it could be six months.

In, in a quick environment, it
could be a year later and

everything you budgeted the the
costs might have went up

immensely about that moment in
time. So. So my recommendation

to you is.

This small branch waiver has
utility. You could bid this out

and you could include in there
the ability to non to to obtain

non domestic items, but I would
get real nervous about putting

that language in a bid for any
project above $210,000 just

because once if if these change
orders comes in and you go above

$250,000 to the small grants
waiver immediately comes off the

table and now we have issues
where you might have entered

into a legally binding agreement
with somebody.

And now certain items may be
waived from domestic

requirements. Other items may
not. This could get messy in a

hurry. You might have to amend
your legally you're legal

agreement, and now you've got
perhaps some materials that have

to be domestically sourced and
others that are. It just could

create a lot of administrative
burden out there and we don't,

we don't wanna have that happen
to anybody. So again, my my

recommendation, a small grants
waiver has utility for projects

around the 200 to $200,000 mark.

Because I'm I'm building in
there, in my experience a rough

15% waiver for costs to go up
and to keep you safe so that

you're still under that total
$250,000.

I I do think it is fair to say
that that auditors and reviewers

will be looking at the boba
requirements and recipients

compliance with this in future
audits. We probably got about

another year before those those
grants will be hitting the audit

universe and we we have had
conversations with the

Department of Interior and and I
think it is fair to say folks

that that people may be looking
for.

Entities not saying it's any of
you on this call, but but they

will be looking to scrutinize
our people looking to circumvent

the domestic procurement
requirements by perhaps peace

mealing a project out there. So
we just wanna give folks fair

warning, we'll work with you as
much as we can. We want to get

to yes as much as we can, but we
also have to ensure that that we

follow the compliance of this
and it never behooves any of us.

I say this in training all the
time. It doesn't believe any of

us to have a audit findings out
there.

Where we have reviewers or
perhaps auditors OG saying that

the Whisper programmer, perhaps
it's recipients are, are perhaps

trying to circumvent these
requirements by peace mealing

their projects in order to stay
within approved waiver dollar

thresholds. So so again think
about that small grants waiver.

As far as the de minimus waiver,
in my opinion folks, it's it's

not the home run we were hoping
for it. It really only buys you

5% ability to deviate from
domestic sources, right? So

again, my opinion is the small
grants waiver is not in play.

You're total infrastructure
projects or your total award is

over $250,000. My advice to you
is that in your bids, in your

procurements, in your
solicitations, you really should

be bidding, soliciting and
procuring items.

To the maximum extent domestic
requirements sources and boba

compliant materials.

What did the minimus waiver if
if you can follow the logic on

it, the the minimus waiver is
really meant to be for those

handful or or fewer number of
items that have vendor that a

procurement bid or says hey we
can we can the bulk of this

project. Yes we can obtain the
materials domestically but there

is just these few items that we
can't that's where the de

minimis waiver comes into play
is is to give you freedom and

flexibility to continue moving
forward and fast tracking a

project.

And allow a vendor a bidder to
move forward with with procuring

a few small low value items non
domestically and that it does

that doesn't hold up the entire
project. But I really think it

would be messy to see folks come
out with procurement

solicitations or bid requests
where they're actually

incorporating the de minimis
language into the bid, saying

that that we're soliciting bids
for a project and.

Uh, hey, you can deviate up to
5%. I think that would be a

messy bid and if it were me, I
would rather save and reserve

those five percents when you
need them.

As as opposed to doing that on
the front end but but that's

that's just Ryan speaking here
as a best management practice.

So again, de minimis waivers
meant to provide that

flexibility when the bulk of the
project can comply with Bob. But

you just have a couple sources
where you just cannot find those

those items domestically or in
compliance with the manufacturer

within the US.