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Helen: Ladies and gentlemen, welcome. Thank you for joining today's live SBA web conference. Before we begin, please ensure that you're in the WebEx event and that you've opened the chat panel by using the associated icon located at the bottom of your screen. You're welcome to submit written questions during the presentation, and these will be addressed during Q&A. To submit a question, please select "all panelists" from the dropdown menu in the chat panel, enter your question in the message box provided and press send. Please note that all audio connections will be muted for the duration of the call. If you require technical assistance, please send a chat to the event producer. With that, I turn the conference over to Valerie Coleman. Valerie, please go ahead.

Valerie: Thank you, Helen. Well, happy November everyone and welcome to our webinar on understanding the non-manufacturer rule or NMR. Normally, you would be listening to **[0:00:53 Chris Ison]**, excuse me, and Chris, unfortunately, had a conflict and couldn't be with us today, but I'm very happy to be in his place. As the program manager for the prime contracts program, I have oversight over the first Wednesday webinar, and it's one of our premier webinars that we do with SBA.

Also, on the phone is Gwen Davis who is the procurement center representative out of Minneapolis and Gwen's going to be handling all of your questions at the end of our webinar.

We're going to be doing questions during the final ten minutes, and I wanted to give you, as you can see on the slide, if you have any problems, you can call the moderator or the AT&T support desk at area code 301-250-7202. We know some of you are not able to see the webinar, but you do have hard copies of the slides and we will be announcing the page numbers as we go along.

We do have some SBA quick references at the end of the webinar. If we have time, we'll be able to get to those. If not, you do have those that you can use if you're needing references to any small business issues. Also, at the SBA learning center at sba.gov, we have additional training that you may be wanting to take, and we've listed the address on this slide at number five.

The Association of Procurement Technical Centers or APTAC have very generously kept an archive of all of our First Wednesdays. If you miss this one, you can go to the website that's listed, and you can listen in and so you'll be able to get your **[0:02:45 CLP]**. We also have their general web address for how they work with you as

federal agencies and how you can find your local APTAC or PTAC office.

This is our calendar; it's on the next slide. We're on slide number six. We're doing the understanding the non-manufacturer rule, and next month, we'll be subcontracting plans and that is pre-award just so that you will know. Then you can see the rest of our classes or webinars, all the way through August. We do not have anything in September.

Our next slide is seven. This is how you're going to get your 1 CLP, and I'm going to go to the next slide, and you will see the certificate there. We do not get copies of the certificate. You do not need to send it in to us. All you need to do is insert your name where it says, "Insert your name here," and download the certificate, and then file it with whatever database your organization uses so that you can get credit for your CLP.

Today's speakers are Chris Clark and Carol [0:03:59 Hume], both with the small business administration at headquarters. Before we get started, I do want to make one notification that November 4th through the 8th is National Veterans Small Business Week. This is its sixth year, and the National Veterans Small Business Week raises awareness of veteran business ownership and encourages communities to support their veteran-owned businesses. With Veterans Day right around the corner, I'm also encouraging you to take time this week to thank the many federal employees and friends, family members, who are veterans for their selfless and dedicated service to our country. I come from a family of veterans, so I am especially appreciative of all those family members who served. With that, I'm going to turn it over to Chris and Carol for them to talk to you about the non-manufacturer rule.

Carol:

Hello. My name is Carol Hume. I'm the program analyst in charge of the NMR procedures, and I work closely with Chris Clark who is from OGC. Today, he will be talking about the requirements for the NMRs, how they interrelate with other provisions, and as well, he'll be available to answer any other questions. After that, I will address [0:05:36 inaudible] application procedure and any questions you have concerning that. With that, I will turn it over to Chris Clark.

Christopher:

Yes, so hi. This is Christopher Clark. I'm an attorney with the Small Business Administration. I give guidance to the program offices on a lot of different areas, and one of the areas is related to the non-manufacturing rule.

We can go to the next slide, and so we are on slide ten now. What we're going to be covering is basically what the non-manufacturing rule is, the applicability of the non-manufacturing rule, and then the second components of the non-manufacturing rule which are waivers to the rule. I will be covering both individual and class waivers.

I will generally begin an overview of like the regulations, how they interplay and everything else, and then Carol will walk through, at the end, kind of the procedures of how... the waiver procedure and how the waiver process works at SBA from those individual waivers and class waivers.

We can go my next slide and then the next slide. We're currently on slide 12. The non-manufacturer rule is statutory; it's in the small business act. Basically what the non-manufacturing rule does is capture an issue that's just basically relevant and contracting generally, which is what you do when you're buying an item and you want to promote buying stuff to Small Business Administration from small businesses, and the small business... and you have a small business manufacturer and a small business non-manufacturer. It's just a recognition of the market that, when we buy thing, both the government and as regular people, we don't always buy things directly from the manufacturer. For example, you can buy a computer, you can but it directly from the computer maker or you can go to BestBuy.

The whole point of the non-manufacturing rule is if you're going to be buying an item and you're going to be going through a process where you're not going directly to small business manufacturer, you should not be using a small business non-manufacturer to buy something from a large business. Both parties should be a small business. That's kind of a complicated way of saying it's a way to ensure that the entire chain and tier of the contract when you're buying products support small businesses.

Next slide. We are currently on slide 13. What the non-manufacturer rule does is it creates kind of this unique category which we... for government contracting which we have like a non-manufacturer. If you're aware, you can't use... basically, for government contracting, you don't use wholesale, and retail, and mixed goods. I was telling people on the phone before the reason for this is there's lots of different reasons why we record all the data and contracts. For mixed goods, one of the primary reasons that we record data is the government's trying to determine what they are buying and track that over time, not who they are buying it from.

I'll give another example that involves BestBuy: if the government buys \$40,000 of washing machines five years ago, someone that's looking at that data now would like to know that they're buying washing machines, not that they spent \$50,000 at BestBuy and have no idea what the government bought. The primary purpose of it is kind of just to have a decent enough idea of what we're actually buying and less concerned about who we are buying it from, so that's kind of why that little idiosyncratic nature of mixed goods kind of pops up there.

What we ended up doing is we have mixed good for non-manufacturers like, obviously, it's high standards for retail; but for government contracting purposes, what SBA did is we basically have an alternative size standard. If we're dealing with... if you're buying a supply and the prime contractor isn't the maker of the supply, we basically created a made-up size standard. The size standard, if you look at the slide, it's 500 employees.

Then we have this next part, it says "must be primarily engaged in retail or wholesale and normally sells the type of product being supplied." We can get into what is primarily engaged in and all this other stuff. All that really means is this isn't like a one-off activity for them. It's that they are routinely in the business of doing this type of reselling.

The next one was something we added more recently, but I guess for me, which is basically what it means to be a reseller and how much involvement the reseller has in the distribution network and stuff. That's like where they must take possession or ownership of the items consistent with industry practice. One of the reasons that we brought that up and we said "industry practice" is there's really just like a wide range of industry practices which returns to how supplies, and products, and stuff are basically stored, shipped and transported around the country. Basically, we didn't want to have like a one size fits all requirement for everybody. If you're wondering why we actually came up, we had to put this down, there were several industries where it was kind of weird. One of them was fruit. Fruit had very problematic things with like fruit contracts. We basically got a rule because there was weird stuff happening with fruit.

Then due to those statutory part, when you are non-manufacturer and it's a supply contract, you have to supply the end product. The actual manufactured product, that should be something manufactured by a small business. There's a... yeah, we'll just leave it at that.

Next slide. Here, we just go into basically the citation for what we consider a manufacturer. Surprisingly, it's not easy to determine what actual manufacturing is basically with supply chains and everything else. Very few companies actually manufacture every part and everything that goes into an end product, so just kind of what does it mean to be the manufacturer or last manufacturer. For the most part, other agencies don't have to worry about that. If there's usually a concern about it, FDA has like a body of law at SBA that has dealt... I wouldn't stress too much about it. It's usually pretty self-explanatory. Ninety-nine percent of the cases are easy to determine who is the manufacturer, but the 1% can be very hard and I wouldn't stress about it. If you have a question, it's really just helpful to just ask SBA. Eventually, someone at SBA will be able to put you in touch with the right person that could just put it at ease; but one other thing is if you have a question, ask, the question's already come up, and we'll be able to give you like a suitable answer so you'll feel comfortable; but most of the time, determining who is the manufacturer, who makes it, usually pretty easy.

Next slide. Then next slide too. We're now on page 16. One of the things that comes up is when is does the non-manufacturer apply. It applies in basically similar situations as the limitations on subcontracting - kind of think of them as analogous and in some ways interrelated. For small business set-asides, the non-manufacturing rule applies above the simplified acquisition threshold, wherever that's set. Set-asides under the... and for basically our socioeconomic programs, so 8a, **[0:14:10 SDVOSB, WOSB]**, and HUBZone, the non-manufacturing rule applies to all contracts above the micro-purchase threshold.

Then the next, the third one, is really important. It only applies to supply contracts, and for SBA, a supply contract is basically any contract that has a supply NAICS code. What happens is you have a contract that almost... I'm not going to say **[0:14:36 inaudible]** but there's very few contracts that are 100% services or 100% supply. Most contracts are basically a mix of the two, and SBA position has been you should be choosing the NAICS code that best represents what you're buying - services or supplies - and we'll go with that. If it's a contract, and it's a \$100,000, and \$55,000 of it is supplies, it should be probably go to supply NAICS code. That's not going to speak for everyone but for most part, and then we would treat that as a supply contract.

Then the next thing comes, say you have a contract and it's 55% services and 45% supply, but you go to the analysis and a service contract is the appropriate code for there and you think it's a

services contract, then the non-manufacturing rule doesn't apply. We're not going to make you apply the non-manufacturing rule to the manufacturing portion of a services contract, so that can sometimes be a little bit confusing. We hope that it's not confusing. We could do it one way or the other, but we think it's very... doing it this way kind of simplifies it where if you have a supply NAICS code, it applies; if you don't, it doesn't.

Next slide. We're currently on slide 17. Just a refresh. Sometimes this comes up a lot and there might still be... I'm not 100% up on the **[0:16:17 FAR]**, but there might still be some language in the FAR that hasn't made it to these thresholds. I just kind of don't keep that up-to-date on whether or not they've caught up to us yet, but these are from SBA's rules and feel free to use them. Eventually, the FAR will catch up to all the rules. Once again, this is micro-purchase, everything about the micro-purchase for socioeconomic and everything above the SAP for small business, so that also means that for small business set-asides between the micro-purchase and the simplified acquisition purchase, the non-manufacturing rule does not apply and the non-manufacturing does not apply to subcontracts or full open contracts.

Next slide. Now, we're on slide 18. This is another reiteration that the non-manufacturing rule only applies to manufacturing supply contracts with assigned NAICS code. Here, you can see probably like the **[0:17:31 inaudible]** 99% of them probably make sense to everybody. The **[0:17:35 inaudible]** that might be a little bit off are 511210, which has a very special application, it's in the footnote, which is basically like certain off-the-shelf software products. A couple years ago, SBA decided to start treating them as a supply. The government was buying them like a supply. They were treating them like a supply. They were being treated much more like a supply than a service. The history is SBA wrote all of its rules on software in the '80s when software was maybe... most of the software that the government was buying, the government was actually just paying people to build its software from scratch, so it very much looked like a service.

Then the other one is 541519, that's the one exception to where 50% or more of the contract or the value of the contract is in supplies; so that one, you can get the probably the most interesting application of the waiver... of not just the waiver. Of application and waiver with regard to compliance with different requirements on that one. It also has a different size standard. It has a size standard of 150. That's an information technology value-added reseller, and so that one just kind of a unique piece. It has extra little wrinkles to

it, but they're in the rules. Getting into all the different wrinkles would probably take up most of the time today, so we can go on to next slide.

Then the next one... so we're going to be talking about individual waivers. Before I get into that, I didn't get into it in the slide. We gave you what is the standard rule for the non-manufacturing rule which is if you're going to set aside something for a small business and it's a supply contract, you have to be buying something made by a small business manufacturer, and basically it doesn't matter what peer that's at. That small business manufacturer, you basically can't buy from a small business reseller and have a second-tier large contractor unless - and this is under the statute - SBA grants a waiver. What there is, it's in the statute and then in SBA's rules, is a recognition that for certain items, the government isn't going to be able to find a small business manufacturer, but there's plenty of small business resellers. This goes back to my analogy: if you're going to be buying a washing machine, and you're not buying it directly from the manufacturer, and you have four different stores to go to, one of them is... I keep using BestBuy just because there's one near my house, but one of them's BestBuy and one's a local small business. The rule just says, "We'll grant you a waiver," and then, "Please go use the local small business." That's what the waiver is. The waiver basically says, "There's this item we want. Couldn't find any small businesses that are able to provide it on this contract, but we do know several small business resellers. Can we get a waiver?" so I'll go through the thing.

One of the things is individual waivers only apply to the single solicitation, and it's one time, and the specific items identified in the waiver request. Then one of the things, "Reasonably be expected to supply the product meeting specifications of the solicitation." What happens with individual waivers? Sometimes you can have-- there are small business manufacturers of the product you want, but they might not be able to meet either the scope or delivery terms or even the quantity of items that you want on this particular solicitation that happens. Basically, your market research shows that there may be small businesses that make the item that they want, but they can't really supply it in a manner consistent with what the government [0:21:24 inaudible].

Next slide. This is the procedure. Carol will talk a little bit more about it at the end, but it's there.

Slide 22. Next slide. Actually, do you want to go over this, Carol? You should.

Carol: Yeah. I can take it from here. Thank you. [0:21:49 inaudible] with that.

Christopher: It looks like the [0:21:53 inaudible].

Carol: That's [0:21:53 inaudible] that's between. It's between.

Christopher: Yeah.

Carol: Okay. I'm going to go over the standards for applying for the individual waivers as well as the class waivers, so let's start off with the individual waivers which are pretty straightforward. Of course, basically it's for only a single solicitation, and in that solicitation, you have to describe the items in detail. Each solicitation, each request, can have more than one item, but you still have to provide detailed description of each item. Of course, SBA has to be able to determine that an individual waiver is necessary as no small business manufacturer or processor can reasonably be expected to supply the product within the specifications of the solicitation, and that will be a statement that will be included by the contracting officer in the application.

The contracting officer will send the request, and here, you can see the email, nmrwaivers@sba.gov. If you need additional guidance, it's in the SOP 60-07; but basically, the request has to be signed by the contracting officer and that's really important. It says in the [0:23:34 inaudible] take it from anybody else. It's helpful to have the solicitation number or other ID in the subject line, and please provide the total dollar amount of the contract, identify the NAICS code so we can be certain that it is one for goods and supplies.

Now, a brief description of the procurement history if necessary if there is one. If the contract's over 500,000, please provide a statement of work. Now, we'll also need a narrative describing the market research that was undertaken and the supporting documentation, and it's based on this that the contacting officer is going to make the statement that there's no one available in the marketplace to provide the product. Excuse me.

Of course, we'll... please turn to page 23, I'm sorry. Are we all on the same page, 23? Okay. We really discourage the use of [0:24:57 inaudible] requirements; however, if you are going to do that, you're going to have to provide your justification statement, and that's fairly in depth.

For the market research tools, what we look at are our size, really describing the items that you're looking for, searches in [0:25:25 **DSPS and SEM**] for potential manufacturers. It's helpful to have

industry-based and roundtable discussions to get a feeling of what's out there.

Another step, it's direct correspondence with small businesses to see if they produce these items and... let's see. As we found out, the **[0:25:55 inaudible]** seems to be the most effective research tool we like to see out there for a few days, and if it's posted on **[0:26:07 inaudible]** we recommend 14 days. Let's see. Again, potential offers must be afforded the opportunity to be notified that the solicitation is out there. If it can't be done beforehand, you may do it after, but again, you have to give potential offers additional time to respond.

The NMR, if you're doing multi-item procurement, it's going to be necessary to attach this to each and every item. You just have to figure out which items it applies to and that you'll be requesting the waiver for. What I look for when I receive the package request in an individual waiver, basically in the front, I want to see the proposed solicitation number, NAICS code, estimated dollar amount, brief history of the procurement history. If it's over 500,000, a statement of work.

Note that the finished statement description of the items to be waived must be clearly identified including specifications and other characteristics, not just the brand name. Following this will be a justification as to why those products are required. This will be followed by the market research. Again, it's a detailed summary of the market research, and it's mandatory that based on all this information, the contracting officer provides a statement that no small business manufacturer can reasonably be expected to supply the products meeting the specification of the requirement. I believe the individuals is pretty straightforward, but you can always contact me with any questions about that and I would be happy to shepherd you through the process.

Class waivers. Now... excuse me. I have a cold. Now, **[0:28:42 inaudible]** who can ask a request? Now, anyone can answer a class waiver, both from an agency business association and interested party, and in this, you're going to put it... they'll have a statement of the class of products to be waived including the NAICS code PSC description and detailed information on the efforts to identify to small business manufacturers of the products **[0:29:14 inaudible]** conducted a market research to determine that there really isn't any small business that can provide the items described or that has provided the government within the last 24 months. Then this will be followed, if there are no item find on either, we will publish a notice in the federal register **[0:29:38 inaudible]** notifying the public

of the intent to establish a class waiver. The public will be given 15 days to provide any comments on this, and the final notice, if it's approved, and there are no objections, and we find no small business manufacturer, should be published within 45 days.

Helen: Carol, may interrupt?

Carol: Sure. Go ahead.

Helen: Our next slide, can I ask what slide we are on?

Carol: Okay. We're on 38.

Helen: Okay.

Carol: Are we good to go?

Helen: Yes, we're now showing slide 38.

Carol: Okay. The class waivers have no time limitation in contrast to the individuals that are limited to the contract and the renewable one-year period. However, discovery of just one business that can meet this item will result in the termination of the class waiver and that, again, will be published in the federal register.

We've recently updated the class waiver list, and that can be found on the website. It's ideal to track... to just to check in there to see if the product that are being procured are actually listed on the class waiver list. I believe we have gone over everything that's pertinent to both class and individual waivers, so we're open for questions. Are we--

Valerie: Gwen, do we have any questions that have come in?

Gwen: Yes, we do.

Carol: Can I put this on speaker so we can both hear? Hold on. We're going to put this on speaker, so that we can both hear the questions. Chris has something to add, may have something to add.

Gwen: Okay.

Christopher: **[0:32:10 inaudible]** Hi. This is just Chris real quick. Is there any way of like... should we go over pages 30 and 31? Can we just check? I think we may have moved over those really quick. I just want to... yeah. If we got to page 30, I'm going to cover this and like maybe one other issue that's not in the list but kind of important, so we can go to 30.

This is for... it's relevant for class and individual waivers in that, as I mentioned before, it's very uncommon to see the government only buy all supplies or all services. It's also becoming less and less common for the government to only buy one item in an individual contract. What we're seeing is basically the government's buying multiple items and various different classes and stuff, and the question comes up: "How do you do limitation of the subcontracting? How do you know non-manufacturing rule? How did this all happen when you're doing all this?"

Basically, what you're looking at is the top line is this 50% of the total estimated contracted value manufactured by small businesses; that will satisfy basically the non-manufacturing rule and the limitations of subcontracting. Basically, we're never at any point saying that if you have a contract where there's a thousand items that all thousand items have to be manufactured by small businesses; that's not what the non-manufacturing rule requires when combined with the limitations of subcontracting recent changes.

We have a contract and you're looking at how does the non-manufacturing rule apply when they have lots of items or lots of different values. Basically look, figure out how much you're buying, how many different things you're buying. At least 50% of what you're buying has to be manufactured by small businesses - total contract value.

Then the question becomes: "What if I have a mixture of items that are waived, not waived, everything else?" [0:34:28 inaudible] say you have a thousand item, million dollars, and 400,000 of that is covered by waived items, meaning you came to SBA, you said, "40% of the value of what I'm buying, I just can't find small businesses to make it at all," so then you basically subtract 400,000 from a million and you have \$600,000 left. Of that \$600,000 that's left, more than 300,000 has to be spent on items manufactured by small businesses. Nobody gets it.

Then the next thing that happened, and this was an old thing that should be settled, is we were having the issue - and it happened a lot. It's actually affected a lot of small businesses with the government with some multi-item procurement is you would have a small business that was the manufacturer of one of the items that the government was buying but not a manufacturer of all of them, so they were... both the manufacturer and the non-manufacturer, and some agencies, not all. We're basically saying like, "No, you have to manufacture everything. You can't be both the non-

manufacturer and the manufacturer,” so you’re basically changed-- and in SBA’s view, that was kind of a little bit unfair because they’re a manufacturer, they’re selling stuff from other small businesses. They should be able to get this contract. It was just kind of a quirk in the rule.

The other thing that we said is if they’re an actual manufacturer of one of the products, the size standard that should be used is that of a manufacturer, so that’s it. It was just kind of like we noticed the situation, thought it was a little unfair. It’s not perfect solution to it, but we think it solves the particular issue that pops up more often than we thought it would. Just one thing, you can’t be both the manufacturer and a non-manufacturer in the same procurement.

Slide 31. This is just a sample of examples. I can go through all them. We also put examples in the rule itself. Example one is the simple one. Total contract is a million dollars. Five hundred thousand dollars of it, it’s manufactured by small businesses. You don’t need anything to be waived. Even if 400,000 is not made by small businesses and could get a waiver, you don’t actually have to go get it.

Then example two is an example where basically even though you have a waiver, you kind of don’t meet the requirement of non-manufacturing rule. Then example three is where you basically have a waiver and compliance.

There’s two other issues I wanted to bring up and probably in the future will be added to the slide. The first one is basically just a problem with wording, and it’s basically been fixed in SBA’s rules and it’s currently on the path to being this fixed in the FAR. It has to do with when a waiver is granted, what are the obligations of the small business under other treaties? This would be Buy America Trade Act and stuff.

SBA had used the language for years that they had to supply the product of a domestic manufacturer which, as the original Buy America Act and trade agreements were worded and understood, that really didn’t become much of an issue because the wording was fine and basically small businesses were being treated the same as large business resellers. What we’ve noticed over time is that, because our language no longer tracks how basically people talk about the other statutes, small businesses sometimes aren’t treated the same as a large business reseller. The small business will get a... there’s a waiver and the small business would be reselling the same product as the large business is, but a contracting officer would say, “Yeah, but that’s not made domestically. It’s a server made in

Taiwan,” and that was never the intent. The intent was always if we grant a waiver, then small businesses would be on the same footing as large business resellers.

If you’re ever wondering about this, we basically changed our regulation a couple years ago and it’s actually weirdly in 124... where did we put it? It’s 121, 406, B7, and I’ll just read it out for you. This is the language that we thought would basically solve the issue, with the main issue being is SBA doesn’t want a small business non-manufacturer treated differently than a large business reseller on the same contract item. If there’s obligations that the large business has to follow with regard to Buy America and trade agreement, small business has to, too.

Basically, what SBA wrote is, “SBA’s waiver of the non-manufacturing rule means that the firm can supply the product of any size business without regards to the place of manufacturing. However, SBA’s waiver of the non-manufacturer rule has no effect on requirement external to the Small Business Act which involves domestic sources of supply such as Buy America Act or Trade Agreement Act.”

Basically, what we’re saying is we’re waiving the Small Business Act provision and we have nothing to do with these other provisions, that’s it. All those other contract [0:40:35 inaudible] all that other stuff applies in the way you would apply it to large businesses. We just don’t have to comply with the Small Business Act. That can be a little bit confusing for some people sometime. One of the reasons it’s very confusing is when it was written 30 years ago, it was a nomenclature that was common at that time in the way everyone talked about something, and the way we talked about things changed. We just need to update our regulations.

I need to move really quickly. You know what, we’ll take questions. The other issue was going to be how waivers apply to large multiple board contracts [0:41:11 inaudible]. Maybe someone will just ask the question and I’ll answer it, but if not, we can just answer the questions now.

Gwen:

Okay. The first one goes back to slide 13. They wanted you to elaborate on when you said, “What a business normally sells.”

Christopher:

Yes. In SBA’s view, that’s just kind of like the wording of the statute and it just... “normally sells” means that them doing something as a reseller isn’t abnormal. It doesn’t mean that all they do is this. It just means that them doing this as part of their business isn’t abnormal. We honestly tell people, “What you should really be looking at is

someone that's never been involved in this that's doing this rather than someone that..." and this comes back to like the firm that's both the manufacturer and the non-manufacturer. It's just super common now. The firm does 70% of its business as a manufacturer in terms of sale volume, but for 30 years, it's also been reselling other items. They normally [0:42:26 inaudible]. They're engaged in it and they sell it, so that's SBA's position on that. What we would just be looking for is them participating in this procurement or this line business is abnormal. It's just both out of line.

Gwen: The next question is, "Do you have to be an authorized distributor of a manufacturer?"

Christopher: SBA doesn't care, that's just contracting stuff.

Gwen: Okay. Slide 16: "Why the distinction of applying to the sub-categories of small business but not the larger umbrella of small business? For example, like with the NMR applying to the [0:43:17 inaudible] decision at the VA, if they set it aside for SDVOSB, the NMR applies, but if they set it aside just small business, it doesn't under the SAP?"

Christopher: This goes for limitations on subcontracting also. We're talking about non-manufacturing a little bit. These thresholds apply to... because that's what the statute says. The statute is somewhat silent on small business set-asides, so SBA made a policy decision to do... not really a 100% policy decision.

For the socioeconomic, it's very clear that they applied above the micro-purchase in the statute. For the small business set-aside, it's less clear exactly where they want it set... this is congress, where they want it set, but it's not clear that they wanted it set at the micro-purchase threshold like the other one. SBA set it at the simplified acquisition threshold about five or six years ago. Congress hasn't told that they don't want it there, so we're assuming we got it where they wanted it. This is really just a matter of... SBA's trying to do what we think congress wants us to do.

For the socioeconomic ones, congress has been very clear: those all apply at that threshold. For the other one, it was less clear exactly where they wanted it was, but it was basically this thought process. They know how to set something at the micro-purchase threshold. The fact that they didn't probably means that they didn't mean to. It's weird. It's easier when congress is much more explicit, but that's kind of how it ended up there. Congress was really specific about one set and less specific about the other, but in being less specific about the other, we are trying to basically gauge that they didn't

intend to set it there. I hope that answers the question, but yeah, we actually can't change the socioeconomic one that's statutory. Next question.

Gwen: Okay. Going to slide 17, "The CFR has been updated regarding our SBA rules, but many of our agencies, their legal opinion say that they have to follow the FAR. Do we know when the FAR is going to be updated?"

Christopher: No. It was progressing and then... so it was supposed to be published this fall. Last I heard, it was pulled back and still under review.

Carol: There's still going to be tension between when they apply.

Christopher: There's going to be tension. However, if you're DOD, the thresholds in our in the deviation. For all DOD contracting officers, the DOD deviation has these new thresholds. For civilian agencies, that deviation I don't think was adopted by the **[0:46:17 CAG]**. You basically have SBA rules and DOD mostly lining up and the civilian agencies not. SBA's position is you can do what you want to do, but you're not wrong following the FAR. As a lawyer, I would give the same legal advice that they had given. You're not going to be held wrong following the FAR.

Gwen: Okay. Next question: "How does the SBA approach NMR waiver requests based on the internal policy of a procurement center when the CFR or SBA policy states the NMR does not apply?"

Christopher: Can you give an example of what that means like--

Gwen: They didn't provide me an example, so--

Christopher: If the agency requested a waiver, but... because I've given this advice before, if you request a waiver for a small business set-aside below the threshold, we're not going to process it because I don't think it applies, if that's the question. I might not be understanding the question right.

Gwen: Okay. Well, I'll go to the next one: "Does the NMR apply to multiple award scheduled contracts, and if so, does it apply at the schedule level or at the task order level?"

Christopher: Good. This is the question that... this was the issue I was going to delve into. No. It doesn't apply at the base **[0:47:53 GSAs]**. If I am, I'm going to just expand on this. I'll be talking about large multiple award contracts and GWACs and scheduled contracts. I'll do scheduled contracts first. Scheduled contracts, no, the NMR does

not apply at the scheduled contract level because that contract is not set-aside. If you go back further, we said it only applied to set-aside contracts, not full and open, and now whatever we're... competition thing you want to say GSA schedules are, so it doesn't apply. However, if the order of the schedule is set-aside or reserved and the order is above the threshold, it would apply. That's the other thing. There's no individual waivers on scheduled contract, but there can be individual waiver on an order of a scheduled contract [0:48:46 inaudible].

Then we're going to go to... I'll just use GWACs because they're kind of common. Just like like any large multiple award contract, class waivers apply on the schedule, but they only apply to the order.

GWACs, you can get an individual waiver at either the contract level or the order project level. If the contracting agency comes to SBA and says, "We're buying this stuff, and we've gone to market research and say there's no small--" we'll give the individual waiver for the entire GWAC so that any agency buying off it, any order, the waiver flows through. However, not every agency wants to do that at that level, so an individual agency buying off a GWAC can get a waiver if either the GWAC was set-aside or... maybe in the future, you're going to be able to do set-asides on set-asides and all the other stuff. If the original GWAC wasn't set-aside but they're doing a set-aside under, you can get a waiver.

One of the questions, and we'll work it out, is whether or not we're going to be doing waivers on reserve pools. I think we might. Basically, I think we're going to take the approach that anytime that competition on the GWAC is restricted, or there's a pool of only small businesses, or one of the socioeconomic classes, we will do an individual waiver on that reserve class depending on how they're structured. Think about it more like a whole policy objective. If there's like a cordoned off group of small businesses on a GWAC and the agency that's issuing the GWAC wants individual waiver for that group, we probably look at giving it to them. That doesn't mean... the ancillary is, any order that is specifically set-aside under a GWAC, the contracting officer for that order can request a waiver.

That was really cumbersome, and I apologize, but yes, you can get at the... if the GWAC is set-aside, you can get it at the GWAC level. In the order level, if the GWAC isn't set-aside, you can get it at the order level [0:51:01 inaudible] the order, and GSA-scheduled contracts only at the order level and only if the order is set-aside, and that's when it applies. Great, that question's over.

Gwen: Okay. "Can you provide the CFR reference that stipulates the NMR applies to socioeconomic set-asides under SAP?"

Christopher: Yes. Oh, where is it? You know what, how about we do this just so I don't waste time: I'll send it to Valerie by email and then she can distribute that if that's okay?

Valerie: Or if you all have questions, send it to sbalearning@sba.gov and we'll get your answer for you if you don't get the answer to your questions because we're almost out of time.

Christopher: Yeah, so I'm going to write that one down because it was like I'm there, but I don't want to waste like a minute-and-a-half of the time here looking it up online, but I can send it today.

Valerie: Okay. Gwen, we have time for a couple more questions.

Christopher: Hello? Did I get cut off?

Gwen: "Is SOP 6007 for waiver request readily available outside SBA?" This person did a quick Google search and could not easily find it.

Carol: I can definitely make sure it's on the website or--

Christopher: You can check. It might not be... are you guys using it?

Carol: [0:53:00 inaudible]

Christopher: Yeah, we can make sure that it's available.

Carol: [0:53:03 inaudible]

Christopher: If it's not, thanks for the heads up.

Gwen: Okay. Next question is: "Typically, how long does it take to receive a decision, and what's the benefit of receiving an NMR waiver when they can just procure the item on an unrestricted basis and all authorized vendors can compete?"

Carol: [0:53:25 inaudible]

Christopher: Unfortunately, we're on a speakerphone. Carol just answered an individual waiver change less than two weeks. Why would you want to buy stuff from small businesses that are selling new stuff? That's kind of the point of small business administration. Like I said before, if you can buy it at a fair and reasonable price from a small business reseller, congress and SBA would prefer that you buy it from them than the large reseller. That's just the... yeah, it's probably easier for you guys to want... I have no idea of why... that's just kind of like a personal thing. If you'd rather buy stuff from large businesses, go

ahead. SBA's position is kind of diametrically opposed to that. At the end of the day, though, buying stuff from small businesses that helps the increase the goal, meets the goal--

Carol: If you can find them.

Christopher: Yeah, so that's kind of the point is if you have a choice between buying from a large seller or a small reseller, SBA's rules permit you the opportunity to utilize the small reseller by getting a waiver. At the end of the day, it is the contracting agency's choice, but that's the **[0:54:48 inaudible]** you consider using a small business provided that you can procure it a fair and reasonable price.

Gwen: You want to do any more questions? It's two o'clock.

Valerie: Helen, do we have a few more minutes, or do we need to go ahead and stop?

Helen: You have a few more minutes from my perspective **[0:55:14 inaudible]**.

Valerie: Okay.

Gwen: Okay. Next question is: "For socioeconomic set-asides, can the company supply the product of any small business or does it have to be similarly situated? I.e. under a HUBZone set-aside, does the actual manufacturer have to be a HUBZone or can the HUBZone awardee supply goods manufactured by a non-HUBZone small business?"

Christopher: Any small business. The **[0:55:43 inaudible]** situated makes it somewhat confusing, but SBA has interpreted the way that those two provisions of the Small Business Act interact is it's very clear under the non-manufacturing provision, the non-manufacturing rule provision, that under either an socioeconomic set-aside or small business set-aside providing the manufacturer product from a small business will satisfy that, so yeah, any small business.

Gwen: Okay. "Are brokers excluded in the NMR since all they're doing is getting another business to provide the product, they are not touching or handling it all, and that's even if the other business is small?"

Christopher: SBA doesn't get involved with that if it's a large broker could do it like can a small broker do it. The definition of what's a broker and all that other stuff, like I said, we have the thing with we changed the rule several years back that they have to take possession that's standard with industry standard. If there's a small business

operating in the exact same way that the large business that you're going to award the contract to is, we don't see why you can't award it to the small business. Like I said, if you're going to have that type of scrutiny on the small business resellers, you probably have the same scrutiny of a large business that do the same thing. We don't think that there's that much difference between the two at least from our perspective.

Gwen:

Okay, that's all I've got. I'll turn it back over to Val.

Valerie:

All right. Well, we want to take Carol and Christopher for being here to talk about the NMR. Again, if you had a question and you did not get it answered, please send it to sbalearning@sba.gov, and we'll forward it to Chris and Carol and get you an answer. I want to thank everyone for taking your time to be here today. Don't forget, if you do not have a copy of the slides and you need copies so that you can get your CLP certificate, again, send the request to sbalearning@sba.gov.

I want to thank everyone for being on the call today, and we will look forward to having you on our first Wednesday webinar next month when we talk about subcontracting plans pre-award. Thank you all very much and have a great day.

Helen:

That concludes our conference. Thank you for using AT&T event conferencing enhanced. You may now disconnect.

[END OF TRANSCRIPT]