

Understanding Build America, Buy America

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Purpose

- Provide an overview of the Build America, Buy America statute
- Discuss how this applies (or does not) across federal funding programs
- Convey some of the key questions that must be asked when ordering materials for federally funded projects

Key Points Up Front

- Know where your funding is coming from and which rules/waivers apply
- Make sure your purchasers know where your funding is coming from and which rules/waivers apply
- Make your vendor certify what's compliant – by part number

Terminology

Government Funding Programs:

- **The BEAD program** is the largest U.S. government broadband funding program, allocating \$42.5 billion. This provides grants to individual U.S. states, who in turn award the money to recipients who will build broadband networks in underserved areas.
- **The American Rescue Plan Act (ARPA)** has two sub-programs – the Capital Projects Fund (CPF) and the State and Local Fiscal Recovery Funds (SLFRF).
- **Other U.S. government broadband funding programs** include the Rural Digital Opportunity Fund (RDOF), Middle Mile Program, Tribal Broadband Program, Digital Equity Program and a number of smaller programs.
- **State and local government programs.** Many states have their own programs in place to fund expanded broadband access. Also, some states put their own name or stamp when they implement federal programs (example: “GUMBO 2.0” is Louisiana’s implementation of BEAD)

Rules for Government Funding:

- **BABA** is a set of rules for products (particularly construction materials and manufactured products) used in government funding programs. In short, these rules require or heavily encourage the use of U.S.-manufactured items.
- **Waivers.** For each U.S. government program, the agency overseeing it may request a waiver (exceptions) to the BABA rules.
- **BEAD Waiver.** A document which modifies some of the BABA rules and regulations for manufactured products and construction materials used in BEAD-funded projects

What is Build America, Buy America

It's the Law...and it applies to most federal funding programs.

It sets a domestic preference for manufacturing and content.

It defines three specific categories of products:

Construction
Material

Iron & Steel

Manufactured
Products

...and how it is interpreted and implemented can change by
Government Agency and by Funding Program!

What's What

Iron & Steel

Simple...

It's in the name!



Construction Material

Not as simple....

Optical Cable is...

*and so is anything made of
non-ferrous metal*

or plastic or polymer based



Manufactured Products

You'd think it would be simple....

It's things you manufacture...

*but aren't a construction material
or predominantly iron and steel*



Did You Know....

...that everything which attaches to or is part of the infrastructure is covered by the law?

... That items which do NOT attach to/remains part of the infrastructure, are not covered? Ex: Splicers, Test Equipment, Cleaning Equipment

.....if you are a For-Profit, and receive direct funding from the Federal Government, you may be exempt? [Note: BEAD is not “direct funding!”]

...if you are a Cooperative you may or may not be exempt depending on the program you are participating in?

Bottom line – if you are buying something for a federally funded project, you and your purchasing people need to know which program you are part of and whether BABA (with or without a waiver) applies!

Vendors can assist in asking the right questions – but we can't give you legal advice.

Fun with Federal Agencies....

Agencies can determine that BABA does not apply

Department of Treasury Capital Projects Fund does not require BABA compliance.

Agencies can apply additional compliance criteria

DOT says Federal Highway Administration funding requires all steel used in Manufactured Product to be domestically sourced...down to the bolts and screws.

Agencies can interpret eligibility differently

USDA has ruled that Electric Coops are not considered non-Federal entities, NTIA says the opposite.

Bottom line – if you are buying something for a federally funded project, you and your purchasing people need to know which program you are part of and whether BABA (with or without a waiver) applies!

Just Call Me BEAD

The Broadband Equity, Access, and Deployment is the single largest broadband investment....a whopping \$42.5 Billion.

BEAD is managed by the National Telecommunications and Information Administration under the Department of Commerce.

Funding flows through the States...so everything MUST meet Buy America.

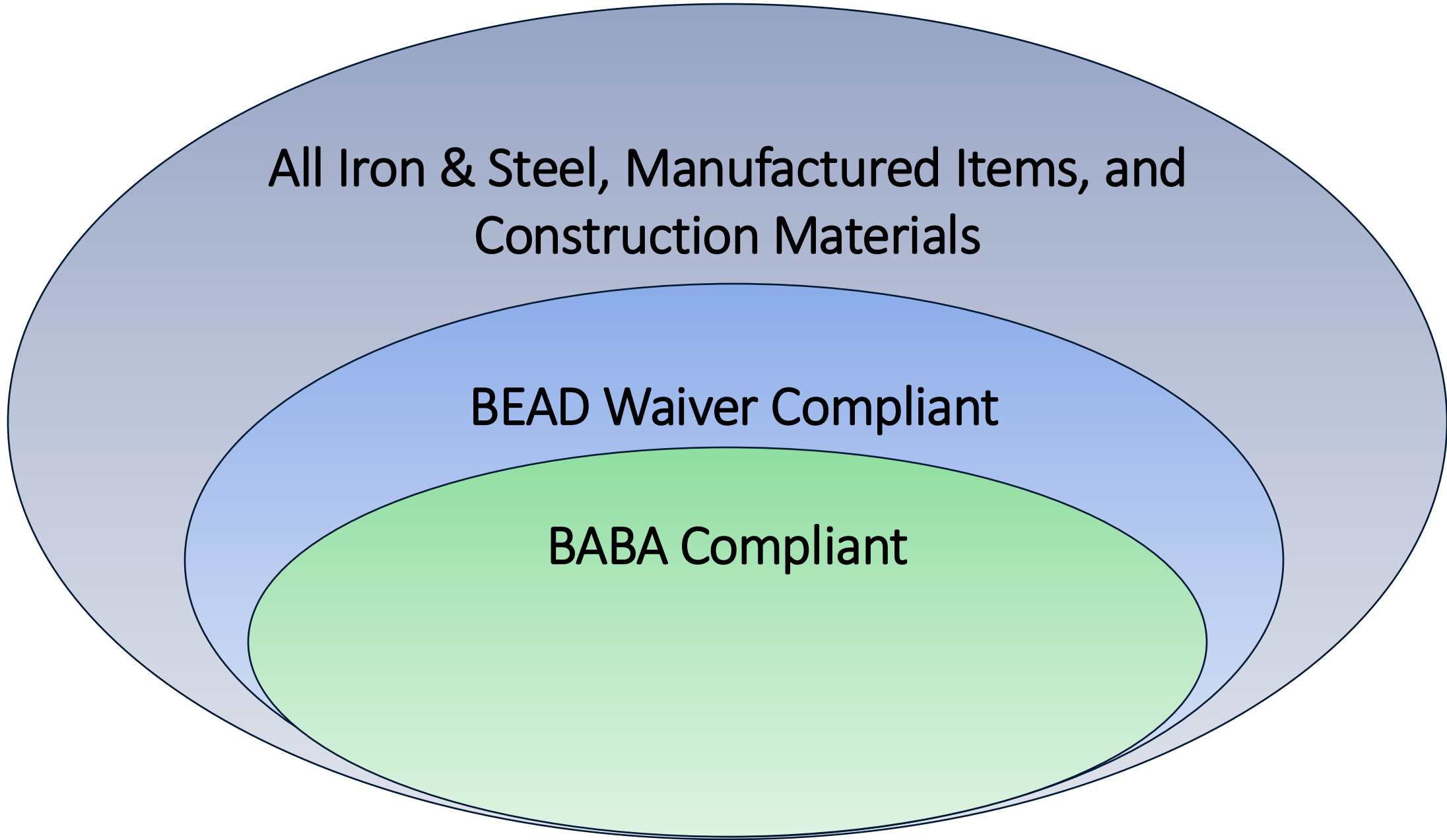
But there's a BEAD Waiver...that makes everything ok, right?

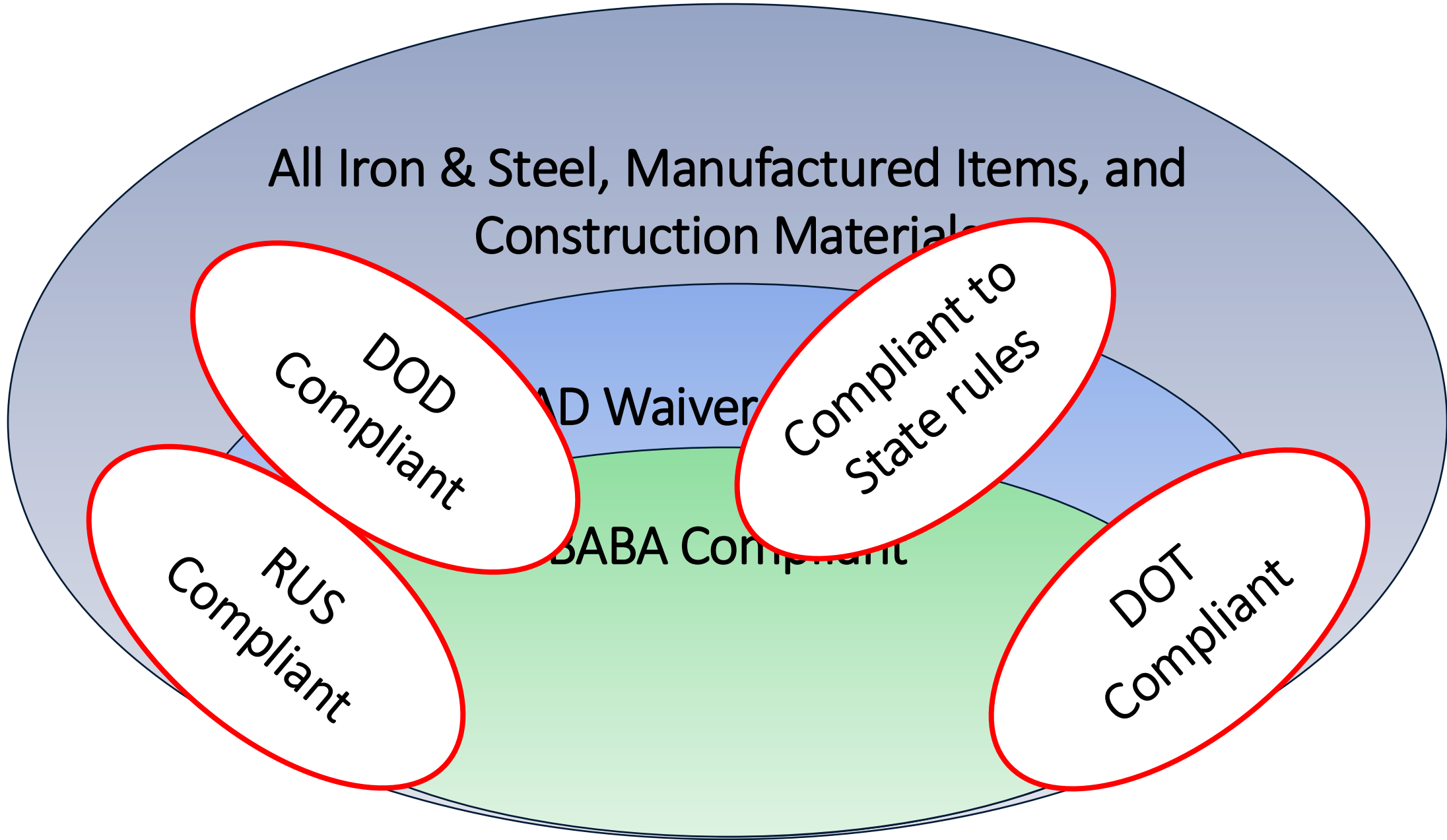
The waiver modifies some BABA rules and regulations for manufactured products and construction materials used in BEAD-funded projects

An item might meet the requirements of BABA with the BEAD waiver but not the unmodified BABA requirements – “BEAD compliant” versus “BABA compliant”

It also mentions a “de minimis” amount which does not need to meet BABA/BEAD Waiver – up to \$1M or 5% of total, whichever is less

“De minimis” is meant to allow for the purchase of minor materials and very low-use items. It is not meant to be “get \$1M of whatever you want and not apply BABA.” – and there are specific restrictions





Isn't it Easier to Just Apply BABA (without a waiver)?

- Some purchasers have stated that dealing with waivers is complicated, and they intend to apply unmodified BABA rules across all their purchasers
- On the surface this sounds like it would simplify things... but....
- There are reasons these waivers were requested and approved!
 - Items which meet unmodified BABA rules are prohibitively expensive
 - There simply isn't enough US-based production to satisfy demand
 - The goals of the program can't be met without granting exceptions

What Should a Purchaser do?



Help Us
Help You



Gather information before requesting a quote or ordering:

- Program/Agency/Funding Source
- Whether BABA applies and if so, whether there is a waiver (ex: BEAD)
- Product List

Make sure the vendor provides:

- For a quote: confirmation that the *specific parts quoted* are or will be compliant to BABA, the BEAD waiver, or other applicable requirements
- For an order: certification that the *specific parts quoted* are compliant to BABA, BEAD waiver, or other applicable requirements

Remember...

If you use any money from BEAD, or any Federal program for which BABA applies, on a project... then the entire project must meet Buy America (with waivers as applicable), not just some percentage.

What if I can't find compliant products, they're too expensive, or I can't get them in time?

For BEAD, work with your State Broadband office – they can request additional waivers or modifications to existing waivers

What do These BABA and BEAD Rules Actually Say?

Iron, Steel, and nonferrous metals

- All **iron and steel** must be **produced in the United States**.
- Aluminum – either original smelting occurs in US or recycling and post processes occur in US

Manufactured Products

- All **“Manufactured Products”** must have certain elements **manufactured in the United States** and **meet domestic content criteria (55% threshold)**
- Certain items like passive optical components are waived

Construction materials

- All **“Construction Materials”** must be **manufactured in the United States**
- For optical cable this means fiber preforms, fiber draw, ribbonization, and cable manufacturing

What do These BABA and BEAD Rules Actually Say?

If you are purchasing materials for use in building a network, these details should not be your problem.

They are the vendor's problem.

You need to make sure the vendor:

- 1) Knows what kind of compliance you need (BABA, BEAD waiver, other) based on your funding source...
- 2) Certifies that the specific part numbers are compliant

Finally, keep that letter in case you get audited!

So How Do I Know What's Certified?



For BEAD:

- The NTIA is making a list of vendors who certify compliance
- See [NTIA BABA Compliance and Self Certification Website](#) for more info
- You need a **certification letter** from the vendor

So How Do I Know What's Certified?

- The vendor must certify compliance – NTIA has a format for this
- There are significant penalties if a vendor does not do so accurately
- Be clear on what is or is not a certification
- Many vendors will probably be releasing BABA and/or BEAD waiver-specific part numbers (depending on how their ERP systems work)

This might be a helpful high-level guide:

| Product Category | Product Family | [Vendor] Compliance |
|------------------|------------------|---------------------|
| Category 1 | Product Family A | YES |
| Category 2 | Product Family B | YES |

But make sure the vendor guides you to the right part numbers

| Product | Part Number(s) |
|-----------|--|
| Product A | ABC-123-BEAD ABC-124-BEAD ABC-456-BEAD |
| Product B | XYZ-***-BABA |

[Vendor] certifies that the part numbers in this catalog are compliant to the Build America Buy America Act and/or BEAD waiver as indicated

So How Do I Know What's Certified?



Intake Form for Build America Buy America (BABA) Self-Certification List for the Broadband Equity Access and Deployment (BEAD) Program

After completing this form please email it to baba@ntia.gov for review and uptake.

PART 1

| |
|------------------------|
| Company Name |
| |
| Company Address |
| |

PART 2: The company is required to provide the following product information on its own Build America Buy America (BABA)-specific landing page:

- Product Name: Provide the specific name of the piece of equipment
- Product Identifier: Reference the specific product ID (e.g. SKU)
- Product Description: What it is or what it does
- Location of manufacturing: city & state

PART 3

| |
|---|
| Please provide a company-hosted URL to the BABA landing page mentioned above |
| |

What Other Responsibilities do I have as a “Subgrantee?”

- Subrecipients will maintain [Manufacturer Self-Certification] letters in the event of a request from the BEAD recipient (Eligible Entity) or NTIA.
- Subrecipients are required to compile and share with the BEAD recipient (Eligible Entity) a reporting tracker on the finished **waived electronics** used in a BEAD project(s).
 - Note that the following electronics are not waived – i.e. BABA applies:
 - Optical line terminals and remote optical line terminals (OLTs / rOLTs);
 - OLT line cards;
 - Optic pluggables; and
 - Optical network terminals and optical network units (ONTs / ONUs).

Will These Rules Change With the New Administration & Congress?

- Unlikely
- The BABA rules themselves come from a law, not a policy – and will require a law to overturn or fundamentally change
- There does not appear to be any political pressure to move away from BABA
- It is possible for executive agencies (like Dept of Commerce, NTIA) to change their interpretations of rules, waivers, etc.
- However, again we have not yet seen any indication or political pressure to do so.

Remember....

1. Know where your funding is coming from and which rules/waivers apply
2. Make sure your purchasers know where your funding is coming from and which rules/waivers apply
3. Make your vendor certify what's compliant – by part number
4. Keep that certification document in case of an audit
5. The BEAD Waiver applies only to the BEAD program
 - A. Other federal programs may end up with their own (and possibly different) waivers
6. If you're getting any BEAD money, the whole project must meet BABA requirements (modified by the BEAD waiver)
7. The “de minimis” exception is not intended as a “free pass;” it's only for a limited amount of minor materials
 - A. If you plan on using it, then you need to understand the rules which apply



Questions

Thank You

