Build America, Buy America Act
Frequently Asked Questions (FAQ) Related to the Broadband Equity, Access, and Deployment (BEAD) Program and the second funding round of the Tribal Broadband Connectivity Program (TBCP)

OVERVIEW

The Infrastructure Investment and Jobs Act (IIJA) created the Broadband Equity, Access, and Deployment (BEAD) Program, which provides an unprecedented $42.45 billion of federal investment to expand high-speed internet access to all Americans by funding planning and infrastructure deployment in all 50 states, Washington D.C., and five U.S. territories. The Tribal Broadband Connectivity Program (TBCP) is a $3 billion program, from the IIJA and the Consolidated Appropriations Act of 2021, to support Tribal governments and other eligible entities bringing high-speed Internet to Tribal lands, for increased access to telehealth, distance learning, and other digital skills initiatives. This FAQ applies to recipients of grants from the second round of funding from the Tribal Broadband Connectivity Program (TBCP NOFO 2 or TBCP 2), which makes approximately $980 million available on Native American, Alaska Native and Native Hawaiian lands.[1]

As part of the IIJA, Congress adopted the Build America, Buy America (BABA) Act, which established a domestic content procurement preference across all Federal financial assistance programs for infrastructure including the BEAD and TBCP Programs.

The Department of Commerce (DOC), in keeping with its mission to create the conditions for economic growth and opportunity for all communities, is ready to lead on implementing BABA. As we've seen already, the Buy America Preference catalyzes domestic manufacturing, builds resilient supply chains, and drives U.S. job growth.

IMPLEMENTATION

The questions and answers in this document apply to the implementation of BABA requirements for the National Telecommunications and Information Administration (NTIA) BEAD and TBCP 2 Programs. The purpose of this document is to answer the most frequently asked questions that we hear from manufacturers, internet service providers, trade associations, state broadband offices, Tribal governments, Tribal entities, and other parties interested in the BEAD and TBCP 2 Programs. NTIA emphasizes that this FAQ must be read in conjunction with the following documents – most of which are available on DOC's BABA webpage:[2]

- DOC's *Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband*

[1] TBCP grants have been awarded in two separate rounds of funding pursuant to separate Notices of Funding Opportunity ("NOFO"). BABA requirements were waived for all grants made pursuant to the first TBCP NOFO. This FAQ applies to the TBCP NOFO 2 BABA waiver released in December 2024. The waiver can be found here: https://www.commerce.gov/sites/default/files/2024-12/DOC%20NTIA%20BABA%20Nonavailability%20Waiver%20TBCP.pdf
[2] https://www.commerce.gov/oam/build-america-buy-america

Equity, Access, and Deployment Program (BEAD BABA Waiver).

- DOC's *Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied Solely to Recipients of Tribal Broadband Connectivity Program Grants Awards Made Pursuant to the July 27, 2023 Tribal Broadband Connectivity Program Notice of Funding Opportunity* (TBCP NOFO 2 Waiver).
- DOC's *Department-wide Public Interest Waivers of the Buy America Domestic Content Procurement Preference for: De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components within Iron and Steel Products* (DOC *de minimis* Waiver).
- 2 CFR part 184 and 2 CFR part 200.
- Office of Management and Budget, Guidance for Grants and Agreements, 88 Fed. Reg 57,750 (Aug. 23, 2023) (OMB Final Guidance).[3]
- Office of Management and Budget (OMB) Memorandum M-24-02 , *Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (OMB M-24-02) (or any successor M-Memorandum or guidance).

This FAQ will be updated on an "as needed" basis. Additional implementation details for the BEAD and TBCP 2 Programs, including guidance regarding the availability of any waivers, can be found in the BEAD and TBCP 2 Notices of Funding Opportunity (NOFOs) and related technical assistance materials.[4]

The questions and answers below are for informational purposes only and are intended solely to assist potential applicants in better understanding the BEAD and TBCP Programs, the application requirements set forth in the NOFOs for these programs, and the application of the BABA provisions of the IIJA. The guide does not and is not intended to supersede, modify, or otherwise alter applicable statutory or regulatory requirements, or the specific application requirements set forth in the NOFOs. In all cases, statutory and regulatory mandates, and the requirements set forth in the NOFOs, shall prevail over any inconsistencies contained in the below information.

[3] Available at https://www.govinfo.gov/content/pkg/FR-2023-08-23/pdf/2023-17724.pdf.

[4] *See* Broadband Equity, Access, and Deployment Program Notice of Funding Opportunity, https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf; Broadband Equity Access and Deployment Program, https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program. See also TBCP NOFO 2: https://www.ntia.gov/sites/default/files/2024-03/ntia_tribal_broadband_connectivity_program_round_2_nofo_amendment_03_2024.pdf

QUESTIONS AND ANSWERS

This FAQ is organized to provide responses to common questions in the following topic areas:

1. General
2. International Agreements
3. Calculation for Manufactured Products
4. Certification & Compliance
5. Guidance on Existing Waivers
6. Additional Topics
7. Fixed Wireless and Low Earth Orbit Technologies
8. Enclosures
9. Optic Pluggables
10. Batteries
11. Leased Facilities
12. Cable Drop

<u>SECTION 1: GENERAL</u>

- Q1.1: *What is an "infrastructure project" for the purposes of applying BABA to BEAD and TBCP NOFO 2 awards?*
    - A1.1: Infrastructure project means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. *See* 2 CFR § 184.3. Infrastructure projects include, but are not limited to, broadband infrastructure, and may also include other BEAD- or TBCP 2-funded activities. *See* 2 CFR § 184.4(c).

- Q1.2: *What is the scope of a broadband infrastructure project for the purposes of the BEAD and TBCP NOFO 2 Programs and the BABA rules*?
    - A1.2: BABA defines "infrastructure project" to mean "any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project."[5] This encompasses the term "project," which for purposes of the BEAD Program, is defined as "an undertaking by a subgrantee under this section to construct and deploy infrastructure for the provision of broadband service."[6]
    - For purposes of the BEAD and TBCP NOFO 2 Programs, broadband infrastructure extends to the device that terminates service to the location served.[7]
        - For example, in an end-to-end fiber optic deployment, the broadband infrastructure project would terminate at the Optical Network Terminal

[5] 2 CFR § 184.3.
[6] IIJA § 60102(a)(2)(K).
[7] This includes, but is not limited to, broadband network infrastructure such as fiber optic cable, optical network equipment, and electronics including fixed wireless and satellite broadband transmitters and receivers.

(ONT) or Optical Network Unit (ONU) at the customer premises, whether that ONT/ONU is a standalone ONT/ONU or a combined ONT/ONU.[8] In a fixed wireless network, the broadband infrastructure project would terminate at the subscriber radio.

  - For purposes of the BEAD and TBCP 2 Programs, broadband infrastructure does not include consumer/customer premises equipment, such as standalone household routers used downstream of an ONT/ONU.[9]
  - A broadband infrastructure project includes all activities related to the construction, alteration, maintenance, or repair of BEAD or TBCP 2-funded broadband infrastructure,[10] regardless of the number of contracts or assistance agreements involved, so long as all the contracts and assistance agreements awarded are closely related in purpose, time, and place. Recipients and subrecipients may not intentionally split projects into separate and smaller contracts or assistance agreements to avoid BABA on some portions of a larger project.
  - Note that other construction under BEAD or TBCP 2 that is not related to broadband deployment may also be subject to BABA. *See* 2 CFR § 184.4(c).

- Q1.3: *If most of the project is BABA compliant, and a small portion is not, can a funding recipient self-fund (i.e., pay with non-federal dollars for) the non-compliant products?*
  - A1.3: No. A Buy America preference applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards (see OMB M-24-02, Section IV). As noted in the final waiver of the Buy America Preference for both the BEAD and TBCP NOFO 2 Programs, the DOC *de minimis* Waiver can be applied to "other network equipment." One hundred percent of the optical fiber, fiber optic cable, OLTs, rOLTs, OLT line cards, optic pluggables, standalone ONTs/ONUs, cabinets, Vaults, Pedestals, and closures and terminals used in BEAD or TBCP 2-funded broadband infrastructure projects must comply with the Buy America Preference, as set forth in the final waiver.

- Q1.4: *Do products purchased with BEAD or TBCP NOFO 2 Program* <u>*matching funds*</u> *need to comply with BABA requirements?*
  - A1.4: Yes, the entire BEAD or TBCP NOFO 2 project, including purchases made with matching funds (regardless of source), must comply with the BABA requirements. *See* OMB M-24-02 Section IV, "A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both Federal and non-Federal funds under one or more awards. In other words, if an infrastructure project receives a Federal award, the Buy America preferences

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[8] Combined ONT/ONUs are devices that provide the functions of an ONT or ONU, provide Ethernet and/or Wi-Fi access to the customer premises, and perform routing, security, and other management functions (*e.g.*, a combination ONT/gateway router that provides all ONT and gateway router functions on a single device). *See* BEAD BABA Waiver at 9 and TBCP NOFO 2 Waiver at 19.

[9] *See* OMB M-24-02 at 4 ("A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to . . . equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.") (emphasis added).

[10] 2 CFR § 184.3.

apply to both the Federal funds and non-Federal funds used for the infrastructure project." (emphasis in original).[11]

- Q1.5: *Can existing equipment (e.g., equipment that has been purchased but not yet been deployed) be used in a BEAD or TBCP NOFO 2 deployment?*
    - A1.5: It depends. The equipment must comply with the Buy America requirements listed in the BABA waivers for the BEAD and TBCP NOFO 2 Programs. Equipment that was previously purchased and is not compliant with the BABA waiver may not be used in BEAD or TBCP NOFO 2 deployments. See also Q1.3 and Q1.4 above.

- Q1.6: *Do the tools and equipment used to perform construction activities for a BEAD or TBCP NOFO 2 project need to be BABA compliant?*
    - A1.6: No. Per OMB M-24-02, "A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project."[12] *See* OMB M-24-02 for additional information about the applicability of BABA to equipment and supplies.

- Q1.7: *Do BABA requirements "flow down" to subrecipients?*
    - A1.7: Yes. All infrastructure projects funded by the BEAD or TBCP NOFO 2 Program, directly or indirectly, must comply with BABA. All Federal awards with infrastructure projects must include BABA requirements in the terms and conditions, and these requirements flow down to subawards and subrecipients. *See* 2 CFR § 184.4(b).

- Q1.8: *Do contributions toward in-kind matches for BEAD or TBCP NOFO 2 need to comply with BABA?*
    - A1.8: Yes. All aspects of the BEAD or TBCP NOFO 2 project must be BABA compliant (and otherwise compliant with any other aspects of grants law) in order to be used for in-kind match.

SECTION 2: INTERNATIONAL AGREEMENTS

- Q2.1: *How do recipients' obligations under International Agreements, such as the WTO GPA, affect the application of the domestic content procurement preferences of BABA to infrastructure projects funded by IIJA Programs?*
    - A2.1: Several commenters filed comments regarding the treatment of international agreements under BABA. Federal financial assistance awards are generally not subject to international trade agreements because these international obligations generally only apply to direct Federal procurement activities by signatories to such agreements. The Federal Acquisition Regulation (FAR) addresses how international trade agreements implemented by the Trade Agreements Act apply to direct Federal procurement activities of the U.S. at FAR subpart 25.4.[13] A number of U.S. states have opted to obligate their procurement activities to the terms of one or more international trade

[11] OMB M-24-02 at 4-5; see also OMB Final Guidance, 88 Fed. Reg at 57,768.
[12] OMB M-24-02 at 4.
[13] See also FAR 25.1101, 25.1103, and 52.225-5.

agreements and, as such, are included in schedules to the international trade agreements. If a BEAD recipient is a state that has assumed procurement obligations pursuant to the Government Procurement Agreement or any other trade agreement, a Federal agency that applies a BABA preference to Federal awards may propose to waive BABA requirements in the public interest to allow a State to comply with its international trade agreement obligations. DOC will follow the procedures in Section 184.7 of the OMB guidance in 2 CFR part 184 and relevant supplemental guidance in OMB M-24-02 in evaluating waiver requests. For additional information, interested entities may also consult with the state in question or NTIA.

- Q2.2: *How does BABA apply to Tribal governments or Tribal entities?*
    - A2.2: Entities that received funding via the BEAD Program must comply with the BABA waiver for the BEAD Program. Any entities that receive funding from TBCP NOFO 2 must comply with the TBCP NOFO 2 BABA waiver.

<u>SECTION 3: CALCULATION FOR MANUFACTURED PRODUCTS</u>

- Q3.1: *What is a "manufactured product"?*
    - A3.1: *See* 2 CFR § 184.3 for the definition of a manufactured product.

- Q3.2: *For the purposes of the BEAD and TBCP NOFO 2 Programs, what does it mean for a manufactured product to be "produced in the United States"?*
    - A3.2: 2 CFR § 184.3 and Section III.A.2. of the BEAD and TBCP NOFO 2 BABA waivers define the requirements for manufactured products to be considered "produced in the United States."

- Q3.3: *Will software, R&D cost, or labor count in calculating the cost of components for a manufactured product?*
    - A3.3: No. Note, however, that the BEAD and TBCP NOFO 2 BABA waivers identify "[s]oftware integration (including firmware integration, installation of licensed software, and customer specific configuration)" as one of the manufacturing processes that must be conducted entirely within in the United States in order for certain electronics to be considered "produced in the United States." *See* BEAD and TBCP NOFO 2 BABA Waiver Sections III.A.2.a.

<u>SECTION 4: CERTIFICATION & COMPLIANCE</u>

- Q4.1: *What entities are responsible for BABA compliance?*
    - A4.1: BEAD and TBCP NOFO 2 Program recipients are responsible for BABA compliance as provided in the waivers and in grants law and regulations. These entities include but are not limited to states, territories, tribes, and Internet service providers. To the extent that other entities (e.g., manufacturers and equipment providers) are not recipients or subrecipients of IIJA funds but have chosen to self-certify BABA compliance through the waiver procedures, those entities are responsible for complying with BABA requirements and are subject to the penalties for non-compliance as listed in the certification forms.

- Q4.2: *How should subrecipients demonstrate that a particular <u>product</u> or <u>project</u> is compliant with the BEAD or TBCP 2 BABA waiver?*
    - A4.2: An overview of NTIA's BABA compliance and self-certification framework was released in July 2024.[14] Manufacturers are required to provide a BABA certification letter to a BEAD or TBCP NOFO 2 subgrantee for equipment that requires domestic production in the BEAD or TBCP NOFO 2 BABA waivers. Subgrantees will also be required to report certain information on finished waived electronics used in BEAD and TBCP NOFO 2 deployments. Detailed information about these compliance and reporting requirements can be found on NTIA's website.[15]

- Q4.3: *When will the BABA requirements be assessed for compliance?*
    - A4.3: A product must be compliant before it can be installed or used in a project. BEAD and TBCP NOFO 2 Program recipients and subrecipients must ensure they possess proper compliance documentation, prior to "use" of a product in a project. NTIA will avail itself of all necessary tools – including regular reporting requirements, audits, and spot checks – to ensure full compliance with the BABA requirement.

- Q4.4: *How can companies prove that the broadband equipment they make is BABA compliant?*
    - A4.4: There are at least two ways:
        - Manufacturers will be required to provide a 'Manufacturer's Certification letter' (see FAQ 4.2) for all equipment sold into BEAD and TBCP 2 projects that require domestic production.
        - Additionally, NTIA published information in October 2024 that details how companies can certify that certain equipment they produce meets the domestic manufacturing requirements detailed in the BEAD and TBCP NOFO 2 BABA waivers.[16] The Department of Commerce maintains a website that lists manufacturers that have certified compliance with the BABA requirements as well as the products of those manufacturers.[17] Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.) and the False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), an officer of each of these companies has certified, subject to fine or imprisonment, that their products are compliant with the Buy America Preference.

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[14] Demonstrating compliance with the Buy America requirement: https://www.ntia.gov/blog/2024/demonstrating-compliance-buy-america-requirement.

[15] BABA Compliance and Self Certification: https://broadbandusa.ntia.gov/technical-assistance/BABA_Compliance_and_Self_Certification.

[16] Build America Buy America: Companies Self-Certify Domestic Production for the BEAD Program: https://www.ntia.gov/blog/2024/build-america-buy-america-companies-self-certify-domestic-production-bead-program

[17] The BABA Self-Certification List can be founded under "Approved Waivers" here: https://www.commerce.gov/oam/build-america-buy-america

SECTION 5: GUIDANCE ON EXISTING WAIVERS

- Q5.1: *How will DOC's de minimis Waiver affect BEAD grants?*
    - A5.1: The *de minimis* Waiver's small grant threshold will flow down through recipients to subrecipients. To the extent that there are classes or categories of Other Network Equipment used in broadband network deployments that are not domestically available, DOC expects that the DOC *de minimis* Waiver will be sufficient for most projects.
    - The DOC *de minimis* Waiver may not be applied to recipient or subrecipient purchases enumerated in the waiver, namely, construction materials like optical fiber or fiber optic cable in Section III.A.1, electronic manufactured products listed in Section III.A.2.a, nor to the types of enclosures listed in Section III.A.2.b of the BEAD and TBCP NOFO 2 BABA waivers.
    - NTIA will be cognizant of efforts by recipients and subrecipients to excessively compartmentalize projects to avoid BABA compliance.

- Q5.2: *Which stakeholders may apply for additional waivers?*
    - A5.2: Eligible Entities may apply for waivers. NTIA will consider waivers on a case-by-case basis as detailed in the relevant NOFOs and 2 CFR § 184.

- Q5.3: *If a recipient has received a waiver on behalf of a subrecipient for a specific manufactured product, is that manufactured product waived for all BEAD or TBCP 2 subrecipients?*
    - A5.3: In considering waiver requests, NTIA may grant a project-specific waiver in addition to a program-wide waiver (called a "general applicability" waiver). If NTIA grants a project-specific waiver for a product under BABA, then that product would not be considered waived for all BEAD or TBCP NOFO 2 subrecipients—only for the subrecipient that received and is named in the waiver.
    - NTIA anticipates that subrecipients will be using many of the same products in the BEAD and TBCP NOFO 2 Programs. Accordingly, NTIA may adopt additional program-wide waivers when necessary and appropriate. That said, stakeholders should expect any waivers to be targeted to specific classes and categories of products, time-limited, and conditional.

SECTION 6: ADDITIONAL TOPICS

- Q6.1: *Can I buy equipment or materials from China?*
    - A6.1: Section 60102(g)(1) of the IIJA states that, "A subgrantee, in carrying out activities using amounts received from an eligible entity…may not use the amounts to purchase or support . . . fiber optic cable and optical transmission equipment manufactured in the People's Republic of China, except that the Assistant Secretary may waive the application of this clause with respect to a project if the eligible entity that awards a subgrant for the project shows that such application would unreasonably increase the cost of the project." This rule applies notwithstanding any waiver of the BABA rules. Additional prohibitions remain on certain telecommunications and video surveillance services or equipment found in 2 CFR § 200.216.

- Q6.2: *Do utility poles used in BEAD and TBCP 2 deployments need to comply with BABA?*
    - A6.2: Yes. Utility poles are equipment needed to build broadband infrastructure (see Q1.1 and Q1.2). *See* 2 CFR § 184.6 (a)(6-8[18]) for the specific manufacturing requirements for Lumber and Engineered wood that may be used as utility poles.

SECTION 7: FIXED WIRELESS AND LOW EARTH ORBIT TECHNOLOGIES

- Q7.1: *For purposes of the BEAD Program, do BABA requirements apply to equipment associated with fixed wireless and low earth orbit (LEO) technologies?*
    - A7.1: Yes, BABA applies to all BEAD infrastructure projects, including deployment of broadband networks by fixed wireless and low earth orbit (LEO) technologies. "Infrastructure projects" are defined as any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project (*see* 2 CFR § 184.3).
    - BABA is not limited to a particular broadband technology. It applies to all manufactured products and construction materials used in BEAD projects, including fixed wireless and low earth orbit activities. However, with the exception of four categories, all electronics, which includes radios used in fixed wireless and LEO systems, have been granted a waiver from the Buy America Preference requirements.[19] Specifically, the Department of Commerce clarified that the electronics waiver applies to "comparable electronics used in fixed wireless and other types of broadband network deployments (e.g., radios, power management systems, antennas and antenna arrays, and radiofrequency conditioning an connectivity devices)."[20]
    - Note also that BABA applies to Federal awards for infrastructure projects, regardless of whether infrastructure is the primary purpose of the award. *See* 2 CFR § 184.4(a).

SECTION 8: ENCLOSURES

- Q8.1: *Do BABA requirements apply to enclosures for Fixed Wireless and Low Earth Orbit technologies?*
    - A8.1: Yes, BABA requirements apply to enclosures, as described in the BEAD BABA Nonavailability Waiver. Enclosures are manufactured products used to protect and house a network function, generally falling into one of four categories:
        - Cabinets;
        - Vaults and Other Below Ground Housings (Vaults);
        - Pedestals and Other Above Ground Housings (Pedestals); and
        - Closures and Terminals
    - These enclosures, which are non-integrated protective housing for a network function, are typically purchased separately and are subject to the 55 percent cost of

[18] *See* 2 CFR § 184.6 (a)(6-8): https://www.federalregister.gov/d/2023-17724/p-473.
[19] Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access and Deployment Program, available at https://www.commerce.gov/oam/build-america-buy-america.
[20] *Id.* at 10.

components requirement and additional manufacturing requirements of BABA (*see* Section III.A.2.b.v. of the BEAD BABA Waiver).
    - However, housing materials that are integrated into electronics, such as Fixed Wireless and LEO terminals, are generally exempt from the Buy America Preference under Section III.A.2.a of the BEAD BABA Waiver.

- Q8.2: *Regarding the purchase of construction materials and manufactured products that are bundled or packaged with an enclosure, how do the BABA requirements apply?*
    - A8.2: If a BEAD Program subrecipient purchases a cabinet that comes packaged with a length of fiber optic cable, the subrecipient must ensure that the cabinet meets the standards set forth in the BEAD BABA waiver for cabinets and that the fiber optic cable meets the standards set for fiber optic cable (*see* Section II.B.3.fn. 26 of the BEAD BABA Waiver).
    - Components such as trays and brackets that are integrated within an enclosure are considered part of the enclosure and must be included in the 55 percent cost of components calculation. Other construction materials and manufactured products that may be bundled or packaged with an enclosure, such as electronics, must be evaluated separately for compliance with the Buy America Preference.

- Q8.3: *The waiver states that manufacturing of the molded outer shell (e.g., by injection molding) of enclosures and terminals must be conducted entirely within the United States. Does this refer to material besides plastic enclosures and terminals, such as metal?*
    - A8.3: The waiver specifies that the molded outer shell of enclosures and terminals must be manufactured entirely within the United States (*see* Section III.A.2.b.v. of the BEAD BABA Waiver). The waiver does not distinguish between specific materials (e.g., plastic, metal, or composite) used in the molding or fabrication process, nor does it provide a separate exemption for metal or other materials.
    - Accordingly, BABA requirements regarding the manufacture of enclosures and terminals apply regardless of materials used. DOC did not waive the Buy America Preference for any iron or steel products incorporated into BEAD-funded broadband infrastructure projects (*see* Section III.A.2.b. of the BEAD BABA Waiver).
    - To the extent that there are products or categories of iron or steel products used in broadband network deployments that are not reasonably domestically available, DOC expects the DOC de minimis waiver will be sufficient to accommodate most projects.

SECTION 9: OPTIC PLUGGABLES

- Q9.1: *How does BABA apply to optic pluggables?*
    - A9.1: Optic pluggables used in BEAD Program projects are subject to BABA requirements. Optic pluggables are defined as subscriber (or customer)-facing optic transceivers that can be installed in Optical Line Terminals (OLTs), Remote Optical Line Terminals (rOLTs), and equipment that has the characteristics of OLTs (*see* Section III.A.2.a.iii of the BEAD BABA Waiver).
    - DOC waived the 55 percent cost of components requirement for optic pluggables, but requires the following manufacturing processes to be conducted entirely within the United States
        - Optical sub-assembly installation;
        - Housing assembly;

        - Software integration (including firmware integration, installation of licensed software, and customer specific configuration);
        - Testing and quality assurance; and
        - Packaging and shipping.

- Q9.2: *Is it correct that network-facing optical transceivers do not have to be BABA compliant?*
    - A9.2: Correct. Network-facing optical transceivers, for purposes of the BEAD BABA Waiver, are not considered "optic pluggables." Instead, they are classified as electronics, which are waived from the Buy America Preference (*see* Section III.A.2.a of the BEAD BABA Waiver).
    - BABA only applies to subscriber- (or customer)-facing optic transceivers used as part of a BEAD last-mile deployment project (i.e. optic pluggables) as described in Question 3.1 above.

<u>SECTION 10: BATTERIES</u>

- Q10.1: *Are batteries used in BEAD Program subject to the Buy America Preference or are they exempt under the BEAD BABA Nonavailability Waiver?*
    - A10.1: To the extent the battery is disposable and not permanently incorporated into an infrastructure project and is not an integral or affixed component of the structure or permanently affixed, it is not subject to BABA requirements. (*See*, 2 C.F.R. 184.1(b)).
    - To the extent the batteries are integrated or incorporated into electronic equipment, the general waiver for electronics applies. The Buy America preference was waived for all electronics, including power systems, used in BEAD Program projects, with the exception of the four categories: 1) Optical Line Terminals and Remote Optical Line Terminals, 2) OLT line cards, 3) optic pluggables, and 4) standalone optical network terminals and optical network units (*see* Section III.A.2.b of the BEAD BABA Waiver).
    - In the case of those four categories, the 55% cost of components requirement was also waived, subject to the specific domestic manufacturing process requirements outlined in the waiver.

<u>SECTION 11: LEASED FACILITIES</u>

- Q11.1: *Does BABA apply to leased facilities? What if the lessor later replaces or adds any equipment to the leased facilities during the Federal Interest Period?*
    - A11.1: No, BABA requirements do not apply to leased facilities that are used as part of an infrastructure project. A facilities lease is a service agreement and does not represent an article, material, or supply that becomes part of the BEAD-funded infrastructure project (e.g., transport between two points, space on a utility pole, co-location space).
    - Alternatively, if a BEAD subgrantee or a subsidiary uses BEAD funds to construct, alter, maintain, or repair leased facilities, the replacements or additions of equipment during the Federal Interest Period must comply with BABA requirements. BABA

applies to the "articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project[21]," that is receiving a federal award.[22]

SECTION 12: CABLE DROP

- Q12.1: *Is the drop portion of the network included in the definition of a broadband infrastructure project? If so, does this mean that pre-terminated fiber optic cable needs to be manufactured in the United States?*
    - A12.1: Yes, the drop portion of the network is considered to be broadband infrastructure for the purposes of the BEAD Program and the Buy America Preference. However, DOC considers connectors and other pre-termination components to be minor additions or modifications made after the fiber optic cable has been produced in the United States. Therefore, connectors do not need to be manufactured in the United States, provided that the underlying fiber optic cable itself satisfies the domestic manufacturing requirements under BABA (*see* Section III.A.2.b.iii of the BEAD BABA Waiver).

[21] See 2 CFR § 184.3: https://www.federalregister.gov/d/2023-17724/p-443: An 'infrastructure project' means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

[22] OMB M-24-02, pg. 4: https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf.