



Clean Water
State Revolving Fund

BUILD AMERICA BUY AMERICA OVERVIEW

WATER ENVIRONMENT FEDERATION GOVERNMENT AFFAIRS UPDATE WEBCAST MARCH 2024

BUILD AMERICA BUY AMERICA OVERVIEW

- Domestic Preference History
- Bipartisan Infrastructure Law (BIL)
- Build America, Buy America Act (BABA)
 - BABA covered items
 - BABA waivers
 - Guidance
 - Request for Information
- Resources

EPA WATER – DOMESTIC PREFERENCE TIMELINE



BIPARTISAN INFRASTRUCTURE LAW (BIL) (IIJA)

- Signed by President Biden on November 15, 2021.
- Historic investment in key programs and initiatives implemented by the U.S. Environmental Protection Agency to build safer, healthier, cleaner communities.
- Includes \$50 billion to EPA to strengthen the nation's drinking water and wastewater systems – the single largest investment in water that the federal government has ever made.

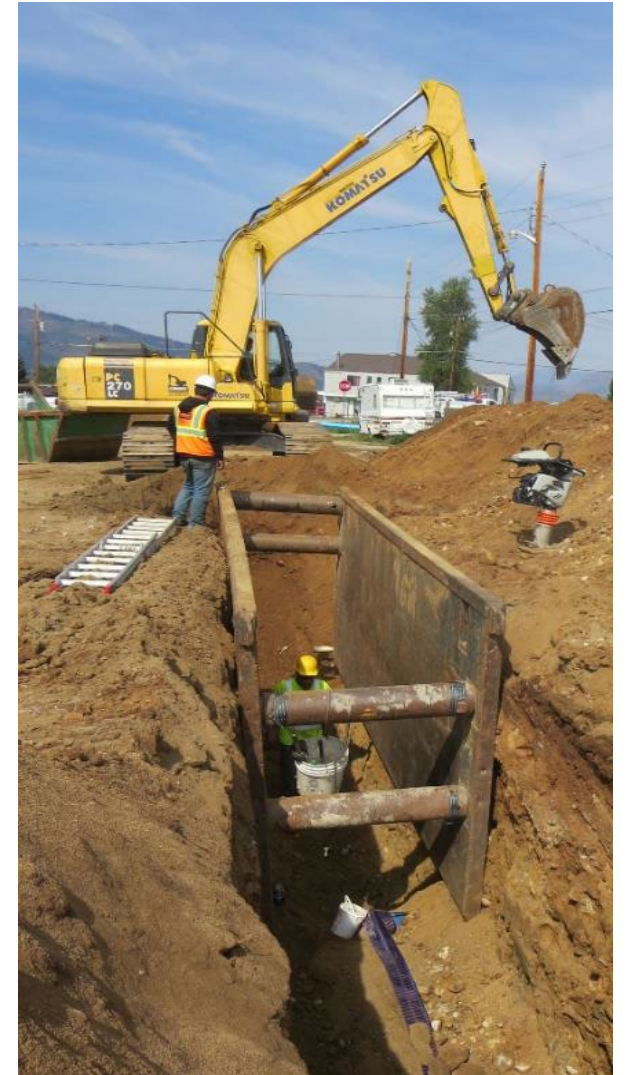


BUILD AMERICA, BUY AMERICA (BABA) ACT

- “[N]one of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the **iron, steel, manufactured products, and construction materials** used in the project are **produced in the United States.**”
- “Project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
- “Infrastructure” means anything fixed, permanent, and that serves the public interest.

BABA: COVERED ITEMS

- Iron and steel + manufactured products + construction materials (non-ferrous)
- Items classified into only ONE of the three categories
- Applies to items consumed in, incorporated into or affixed to a project (aka permanently incorporated)
 - Similar to American Iron and Steel (AIS)
 - Scaffolding, Trench Boxes, Sheet Piling removed - Excluded



BABA: IRON AND STEEL

- Similar to American Iron and Steel (AIS)
- BABA Iron and Steel \Leftrightarrow AIS products
- Items that are primarily / predominantly iron or steel, unless another standard applies under law or regulation
- All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the U.S.
 - Coatings change minor difference to AIS



BABA: MANUFACTURED PRODUCTS

- Articles, materials, or supplies that have been:
 - processed into a specific form or shape; or
 - combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies
- Final manufacturing in the United States
- Cost of components that are mined, produced, or manufactured in the U.S. must be **greater than 55% of the total cost of all components** of the manufactured product



BABA: CONSTRUCTION MATERIALS (NON-FERROUS)

- Includes:
 - **Non-ferrous** metals
 - Plastic and polymer-based products (including PVC, composite building materials, and polymers)
 - Glass
 - Fiber optic cable
 - Optical fiber
 - Lumber
 - Drywall
 - Engineered wood
- Excludes:
 - Items made primarily of iron or steel
 - Manufactured products
 - Cement and cementitious materials
 - Aggregates such as stone, sand, or gravel
 - Aggregate binding agents / additives
 - Flora (plantings, landscaping)
 - Non-permanent / temporary items

CONSTRUCTION MATERIALS

Construction material	“Produced in the U.S.” means all manufacturing processes occurred in the U.S.
Non-ferrous metals	From initial smelting or melting through final shaping, coating, and assembly
Plastic and polymer-based products	From initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form
Glass	From initial batching and melting of raw materials through annealing, cooling, and cutting
Fiber optic cable	From the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States.
Optical fiber	From the initial preform fabrication stage through the completion of the draw
Lumber	From initial debarking through treatment and planing
Drywall	From initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels
Engineered wood	From the initial combination of constituent materials until the wood product is in its final form

HOW CAN PROJECTS COMPLY?

1. Certification Letter

- Letter asserting that all manufacturing processes for the purchased product occurred in the U.S.

2. Waiver


- EPA has authority to waive the BABA requirement and to issue waivers for a case or category of cases

HOW CAN PRODUCT COMPLIANCE BE DEMONSTRATED?

Manufacturer's documentation for the product(s) to include:

1. A project identifier (name, location, contract number, or project number)
2. The identity of the product(s) being supplied to the project (can be simple)
3. Location(s) of manufacturing being certified (city and state)
 - a. Minimum: documenting final point of manufacturing in the United States
4. Signature of company representative making the certification (on company letterhead, signature can be electronic)
5. A statement attesting that the products supplied are compliant with BABA requirements (the "certification")
 - a. Will list which category of product they are certifying (e.g., meets component cost test for manufactured products).

THE CERT LETTER HOLY GRAIL



MINAS MORGUL
August 29, 2017
Gondor Supply Co.
3477 One Ring Ln.
Fort Tiriith, IA 50501

Minas Morgul Steel, Inc.
1245 Barad Dur Ave.
Mordor, Middle Earth
+1 555 867 5309

Material Certification

RE: Job Name: Saruman Contracting
Project#: Hobbiton Water Treatment Plant, The Shire, WY
Order Type: Submittal

QUANTITY	DESCRIPTION
30	8550350 66-S VLV BOX 26T 36B 1.5 WTR

Dear Valued Partner:

We hereby certify that the iron used to make the construction castings manufactured by MMS for above referenced project is in full compliance with ASTM A48, Class 35B and AASHTO M105 for iron castings and ASTM A536, Grade 70-50-05 for ductile iron castings. Thank you for specifying and using products manufactured by Minas Morgul Steel, Inc.

The above listed castings are melted and manufactured 100% in the United States of America at our foundries in Moria, OK and Isengard, MI. These castings comply with the applicable provisions of the Code of Federal Regulations 23 CFR 635.410 BUY AMERICA Requirements.

We also certify that the above listed products supplied to the subject project are in full compliance with the Build America Buy America Act requirements, as an iron and steel product, as mandated in EPA's State Revolving Fund Programs.

Meriadoc Brandybuck
Product Quality Manager
Minas Morgul Steel, Inc.

- Key Elements:
- ✓ Project reference
 - ✓ Specific list of products
 - ✓ Location of manufacturing (city and state)
 - ✓ Dom Pref. requirement reference (+BABA Category Reference)
 - ✓ Signature of representative

COMPLIANCE ROLES

- Manufacturer's provide signed certification letter(s) for the product (most effective method of product compliance demonstration).
- Contractors verify products used on-site are compliant prior to their installation.
- Assistance recipients (and their representatives) collect compliance documentation for products received at the project site.
- Projects maintain documentation from manufacturers, which should be made available to the funding authority upon request.
 - Documentation may be received and maintained in hard copy, electronically, or could be embedded in construction management software.
- States support projects and oversee compliance

BABA: AGENCY-WIDE GENERAL APPLICABILITY WAIVERS

- *De Minimis* public interest waiver
 - Agency-wide; Approved
 - All projects may use 5 percent non-domestic products (% of project cost)
- Small Award Threshold – agreements under \$250K threshold
 - Agency-wide; Approved
- Minor Components Waiver for Iron and Steel Products
 - Agency-wide; Approved
- Pacific Islands Territories Waiver
 - Agency-wide, Approved; excludes the three remote pacific territories

BABA: PROGRAM GENERAL APPLICABILITY WAIVERS

- For SRF: Amended Design Planning Waiver; Approved
 - EPA amended this waiver to extend coverage to water infrastructure projects subject to SRF requirements funded outside SRF appropriations (i.e., Community Grants projects).
 - **Limited Eligibility to only Fed FY 22 and FY23 (Cap Grants)**
- For WIFIA: Design Planning Waiver; Approved
- For Selected OW programs: 6-month Adjustment-Period Waiver; Approved (now **expired** – Mar 2, 2023)

SRF BABA DESIGN PLANNING WAIVER

- Waives projects that initiated design planning prior to May 14, 2022
 - “Documentable efforts made...to evaluate and identify...viable options”
 - Provides 8 “prescriptive” categories of qualifying documentation:
 1. Submitted PER or equivalent (to state or to recipient);
 2. Issued RFP or executed contract for design or engineering services;
 3. Executed SRF assistance agreement that includes design;
 4. For projects designed by recipient: documented initiating design (such as PER);
 5. Solicitation of construction contract bids;
 6. Submitted plans and specifications to state (do not need to be complete);
 7. Held public referendum or public meeting on proposed project; or
 8. Evidence of new bonds passed or other new funding backing secured.
 - Alternative option to request case-by-case evaluation review from EPA

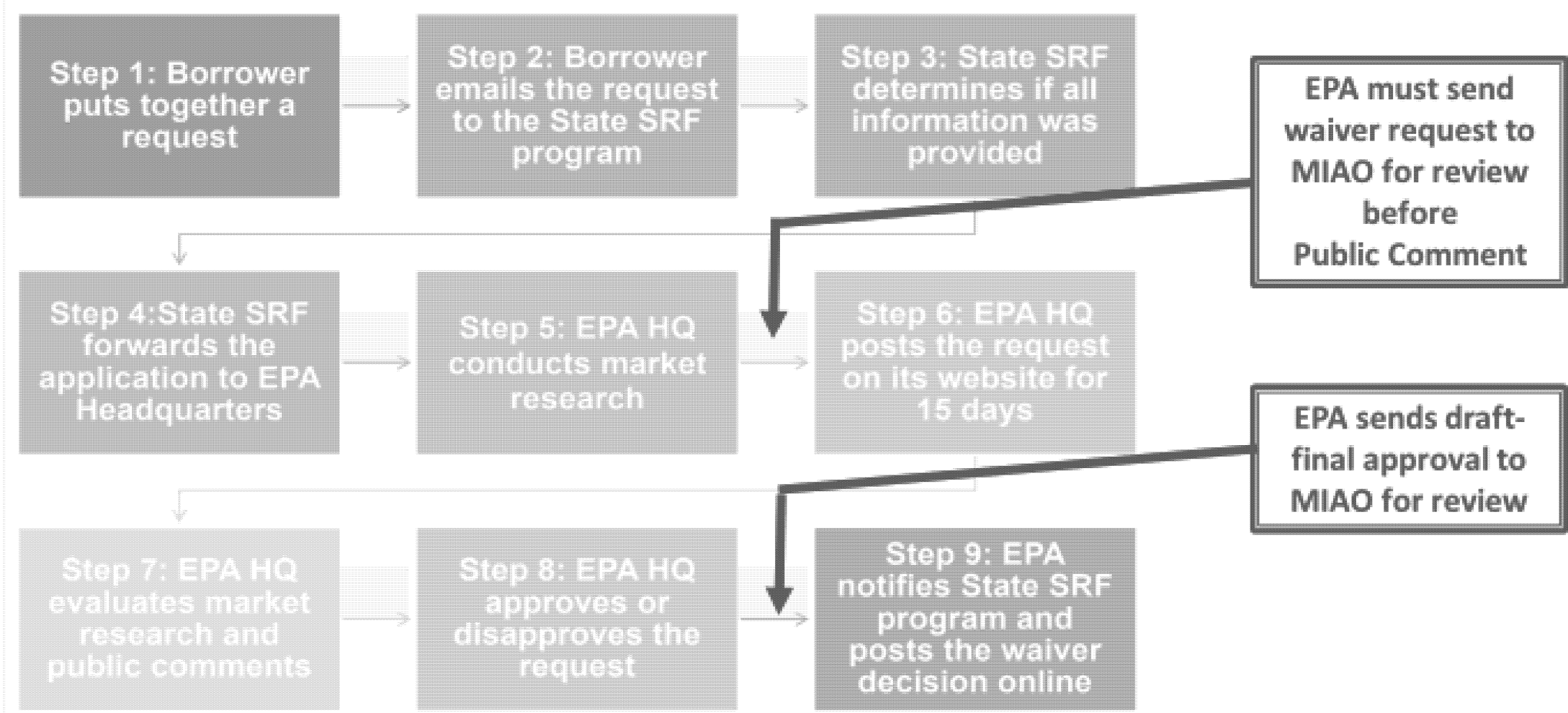
BABA: OTHER POTENTIAL WAIVERS

- OMB BABA guidance lists other public interest waivers for agency consideration:
 - Program Priority Waivers –other program waivers unlikely
- Short-term product-specific waivers (Nonavailability)
 - Short-term, targeted, conditional – required by guidance/OMB
 - General waivers for products not currently manufactured in U.S.
 - EPA Initiating research for many complex manufactured products

BABA: PROJECT/PRODUCT-SPECIFIC WAIVERS

- Nonavailability Waiver
 - Product(s) is not available or will not be available in a reasonable time
- Public Interest Waiver
 - High Bar
 - Evaluation can be complicated, longer decision time
- Unreasonable Cost Waiver
 - Increases the total project cost more than 25%

NEW STEPS IN WAIVER PROCESSING THROUGH MIAO



WHO MAY APPLY FOR A WAIVER AND HOW?

- Assistance Recipients and their authorized representatives
- EPA does not process waiver requests from suppliers, distributors, or manufacturers (we do consider manufacturer's product information)
 - Exception: the assistance recipient endorses it and submits the request on its behalf to the funding authority
- Approved general-applicability and Agency-wide waivers do not require a separate waiver request
 - De Minimis Waiver – executed by the Assistance Recipient (representatives)
 - Minor Components Waiver – for Iron and Steel product manufacturers

EPA OW IMPLEMENTATION MEMO

- Released November 3, 2022
- “Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs”
- Additive to OMB guidance
- <https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>
- Supplemental Q&As (Section 8) – May 2023



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

November 3, 2022

MEMORANDUM

SUBJECT: Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs

FROM: Radhika Fox
Assistant Administrator

A handwritten signature in black ink, appearing to be "Radhika Fox".

TO: EPA Regional Water Division Directors, Regions I – X
EPA Office of Water Office Directors

OVERVIEW

The Biden-Harris Administration recognized the Nation's critical need for infrastructure investment, championing the Bipartisan Infrastructure Law (BIL), which Congress passed on November 15, 2021 (also known as the Infrastructure Investment and Jobs Act (IIJA)). The BIL will provide an unprecedented level of federal investment in water and wastewater infrastructure in communities across America.

In Title IX of the IIJA, Congress passed the Build America, Buy America (BABA) Act, which establishes strong and permanent domestic sourcing requirements across all Federal financial assistance programs for infrastructure. The U.S. Environmental Protection Agency (EPA) Office of Water is honored to help lead the implementation of these provisions and is proud of its near decade of successful implementation of the American Iron and Steel (AIS) provisions for its flagship water infrastructure programs.

This is a transformational opportunity to build a resilient supply chain and manufacturing base for critical products here in the United States that will spur investment in good-paying American manufacturing jobs and businesses. EPA's efforts to implement BABA will help cultivate the domestic manufacturing base for a wide range of products commonly used across the water sector but not currently made domestically. This will take time, and flexibility will be important to ensure that EPA can leverage critical water investments on time and on budget to protect public health and improve water quality.

OMB BABA GUIDANCE M-24-02

- Effective October 25, 2023
- “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure”
- Replaces initial OMB M-22-11 guidance
- Incorporates changes from 2 CFR184
- [M-24-02](#)



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 25, 2023

M-24-02

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young *Shalanda D. Young*

SUBJECT: Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

This memorandum provides supplemental implementation guidance to Federal agencies on: (1) the application of a Buy America preference¹ to Federal financial assistance programs for infrastructure; and (2) the process for waiving such a Buy America preference — including the circumstances under which waivers may be justified as consistent with applicable law and policy.² This memorandum rescinds and replaces Office of Management and Budget (OMB) Memorandum M-22-11. In addition, this memorandum removes direct conflicts between the earlier Memorandum M-22-11 and subsequent guidance issued by OMB in part 184 of Title 2 of the Code of Federal Regulations (“CFR”).³ This memorandum also provides updated guidance on a limited number of topics — including the waiver process — which modifies earlier guidance provided by OMB in Memorandum M-22-11. To the extent that any guidance provided in this memorandum conflicts with guidance in 2 CFR part 184, the guidance in part 184 prevails.

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“BABA”). Pub. L. No. 117-58, §§ 70901-27. BABA strengthens Buy America preferences associated with Federal financial assistance for infrastructure and will bolster America’s industrial base, protect national security, and support high-paying jobs. BABA requires that the head of each covered Federal agency⁴ must ensure that none of the funds made available for a Federal financial assistance program for infrastructure are obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.⁵

BABA affirms, consistent with Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America’s Workers* (“the Executive Order”), this Administration’s priority to

¹ 2 CFR 184.3.

² 2 CFR 184.7; Executive Order 14005, “Ensuring the Future Is Made in All of America by All of America’s Workers,” 86 FR 7475 (Jan. 28, 2021).

³ 88 FR 57750 (Aug. 23, 2023).

⁴ For the purposes of this guidance, the terms “Federal agency” and “agency” mean any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section). IIJA, § 70912(3).

⁵ IIJA, § 70914(a).

OMB – FINAL GUIDANCE – 2 CFR 184

- Published Aug 23, 2023: [federalregister.gov/d/2023-17724](https://www.federalregister.gov/d/2023-17724)
- Final guidance for manufactured products cost test, product categorization, and non-ferrous construction materials
- Effective for BABA projects October 23, 2023
- OMB requested comments addressing 11 topics
 - Preamble includes OMB response to comments received (~2000 comments)
 - Guidance text = last 10 pages

OMB MADE IN AMERICA – FINAL GUIDANCE HIGHLIGHTS

- Section 184.3 - definitions of key terms, including:
 - Manufactured Product
 - Component
 - Manufacturer
 - Produced in the United States
- Discusses determining the cost of components for manufactured products
 - Definition of “cost of components” mirrors Federal Acquisition Regulation (FAR) with some key changes/differences
- Additional construction materials added

RESOURCES

- EPA Websites:
 - www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement
 - www.epa.gov/cwsrf/build-america-buy-america-baba
- Email Inboxes:
 - SRF_AIS@epa.gov (underscore!)
 - BABA-OW@epa.gov (hyphen!)



Thank You!