

# Build America, Buy America (BABA) 101

For Applicants to EPA's Community Change Grants Program

ENDYNA



U.S. Environmental  
Protection Agency

April 25, 2024





# Traducción al Español Disponible



Si desea escuchar el webinar de hoy en español, por favor haga lo siguiente:

- En los controles de su webinar, haga clic en Interpretación
- Elige español
- (Opcional) Para escuchar solo el idioma interpretado, haga clic en **Silenciar** audio original
- Debe unirse al audio a través del audio/VoIP de su computadora.  
No puede escuchar la interpretación de idiomas si utiliza las [funciones de audio](#) de acceso telefónico o [llámeme](#) por teléfono
- Como participante que se une a un canal de idioma, puede transmitir nuevamente al canal de audio principal si activa el audio y habla





# Using the Q&A Function



- **Participant Q&A:** Please use the Q&A function for your comments. We will attempt to answer as many questions as we can, but questions specific to an individual applicant or project will be addressed through individual TA.
- EPA is regularly updating the ***Frequently Asked Questions— Community Change Grants NOFO*** (found on the EPA's CCG Website <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-community-change-grants-program>).
- **No soliciting will be allowed.**





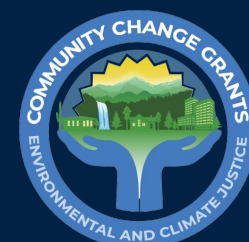
# Goals of Webinar for Applicants



- To understand BABA requirements
- To understand the types of projects and products to which BABA applies
- To understand the implications of BABA requirements for your CCG application (e.g., budget, compliance staff)
- *Disclaimer: This webinar is intended to provide general information about BABA for applicants of CCG grants*
  - *This webinar does not create or change guidance from OMB or the statute*
  - *EPA is not able to provide project-specific advice during the webinar*
  - *EPA can provide additional project-specific BABA support to recipients after they are selected for CCG grants*



# BABA Applicability



U.S. Environmental  
Protection Agency



# What is BABA?



- The 2021 Infrastructure Investment and Jobs Act (also known as the Bipartisan Infrastructure Law) included the Build America, Buy America Act (BABA)
- “None 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.” (P.L. 117-58, section 70914)





# What Does BABA Apply to?



- BABA requirements apply to all Federal Financial Assistance (e.g., grants) for infrastructure projects, including the Community Change Grants
- “Infrastructure” is defined very broadly (see next slide)
- Infrastructure does not need to be the primary purpose of the project
- BABA applies to an entire infrastructure project, even if it is
  - funded by both Federal and non-Federal funds, or
  - funded under more than one federal awards
- An infrastructure project is any activity related to the construction, alteration, maintenance, or repair of infrastructure





# Defining Infrastructure



## What it is

Infrastructure, **at a minimum**, includes the **structures, facilities, and equipment** for:

- Buildings and real property
- Water systems, including drinking water and wastewater systems
- Dams, ports, harbors, and other maritime facilities
- Roads, highways, and bridges
- Public transportation
- Intercity passenger and freight railroads
- Electrical transmission facilities and systems
- Utilities and broadband infrastructure
- Energy generation, transport, and distribution (including EV charging)



## What it is not

- **Non-infrastructure expenditures** (e.g., services, labor)
- Projects that **do not “serve a public function”** (e.g., private homes for personal use)
- **Temporary** items removed before project completion (e.g., scaffolding)
- Equipment and furnishings that are **not an integral part** of the infrastructure project (e.g., laptops, chairs, desks)







# Projects that are likely to be “Infrastructure”



- Build a new public park
- Install stormwater catch basins
- Construct new bikeways
- Implement energy efficiency measures in public buildings
- Install back-up power in community hub
- Install community solar / storage
- Install microgrids on community buildings
- Retrofit community resilience hubs
- Remediate public buildings
- Connect homes to nearby community water systems
- Install public water bottle refill stations

*Note: This list is not exhaustive.*





# Items Subject to BABA Requirements



U.S. Environmental Protection Agency

Category	Definition
<b>Iron and Steel</b>	<ul style="list-style-type: none"><li>• Items made of at least 50% iron or steel or a combination of both</li><li>• Examples: Manhole covers, nails, bolts, rebar, sheet piling</li></ul>
<b>Manufactured Products</b>	<ul style="list-style-type: none"><li>• Items processed into a specific shape or form</li><li>• Must have at least 55% of the components produced in the U.S.</li><li>• Examples: Electric vehicle charger, solar panel, heat pump</li></ul>
<b>Construction Materials</b>	<p>8 specifically listed materials:</p> <ul style="list-style-type: none"><li>• Non-ferrous metals</li><li>• Plastic &amp; polymer-based products</li><li>• Glass</li><li>• Fiber optic cable</li><li>• Optical fiber</li><li>• Lumber</li><li>• Drywall</li><li>• Engineered wood</li></ul>



# Other Items

## **BABA does *not* apply to:**

- Cement and cementitious materials (e.g., wet cement, wet asphalt)
- Aggregates such as stone, sand, or gravel
- Aggregate binding agents or additives

**Note:** Referred to as “Section 70917(c) materials”

If an item contains multiple Section 70917(c) materials or is processed into a specific shape before coming to the worksite, it is likely a manufactured product

BABA also does not apply to plants, soil, or equipment used only during construction



U.S. Environmental  
Protection Agency





# Projects That Are Not Likely to Trigger BABA



## Services: (unless physical items purchased)

- Conduct planning/ design/ engineering study
- Conduct home energy audit
- Conduct community resilience assessment
- Deliver training and educational outreach
- Establish workforce development program
- Distribute unused food to residents
- Develop land use and zoning policies
- Implement car-sharing program using already owned vehicles
- Deconstruction and green demolition

## Retrofit private homes:

- Replace inefficient wood heaters
- Install solar panels or behind-the-meter energy storage systems

## Vegetation (unless also purchase non-vegetation items):

- Plant trees
- Restore wetlands

Note: BABA applicability depends on the specifics of the project



# Compliance



U.S. Environmental  
Protection Agency



# How Do I Comply With BABA Requirements?

- Applicants and funding recipients should plan their projects with BABA in mind
  - **Budget** – domestic items may cost more than foreign items
  - **Timeline** – domestic items may take longer to get to the worksite than foreign items
  - **Planning** – all project stakeholders need to understand BABA requirements
  - **Appropriate staff** – have compliance and implementation staff on project team
- Ensure that your consultants, engineering firms, and contractors know to reflect BABA requirements in their estimates and bids
- Use iron, steel, manufactured products, and construction materials that are produced in the United States in your project
  - Keep documentation that items are made in the U.S.
  - Request a waiver from EPA if domestic items cannot be found



U.S. Environmental  
Protection Agency





# BABA waivers



- BABA gives EPA the authority to issue a waiver in certain, limited circumstances
  - Waivers are used a compliance mechanism on projects where BABA applies
  - Waivers are a tool to identify market gaps for domestic manufacturers
- Recipients will be expected to make every effort to find and use domestic items before resorting to a waiver (compliance first approach)
- Waiver requests must be accompanied by market research, including a description of the methods that the recipient used to find domestic items
- MIAO and our team at EPA has a high standard for waivers and the justification needed to support them
- Waivers cannot be retroactive (i.e., cannot apply to funds already expended)





# Types of BABA waivers



- **Nonavailability waiver** – Specific iron, steel, manufactured products, or construction materials needed for a project are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality
- **Unreasonable cost waiver** – Inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent
- **Public interest waiver** – Applying the domestic content procurement preference would be inconsistent with the public interest
  - *Examples* – De minimis, small grants, minor components
- **Waivers can be project/product-specific or general applicability (i.e., apply to multiple programs and projects)**







# EPA-wide National BABA Waivers



## Small Projects

- Waives entire project where EPA award or subaward is under \$250,000
- Expires in September 2027

## De Minimis

- Projects may use non-domestic products up to 5% of project cost
- Expires in October 2027

## Minor Components

- Allows an otherwise iron or steel product to contain up to 5% non-domestic content
- Expires in April 2028

## Electric Vehicle Chargers

- Allows recipients to buy chargers that are assembled in the U.S. before June 30, 2024 if they are installed by October 1, 2024
- Expires in July 2024

All of EPA's approved

waivers: <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>

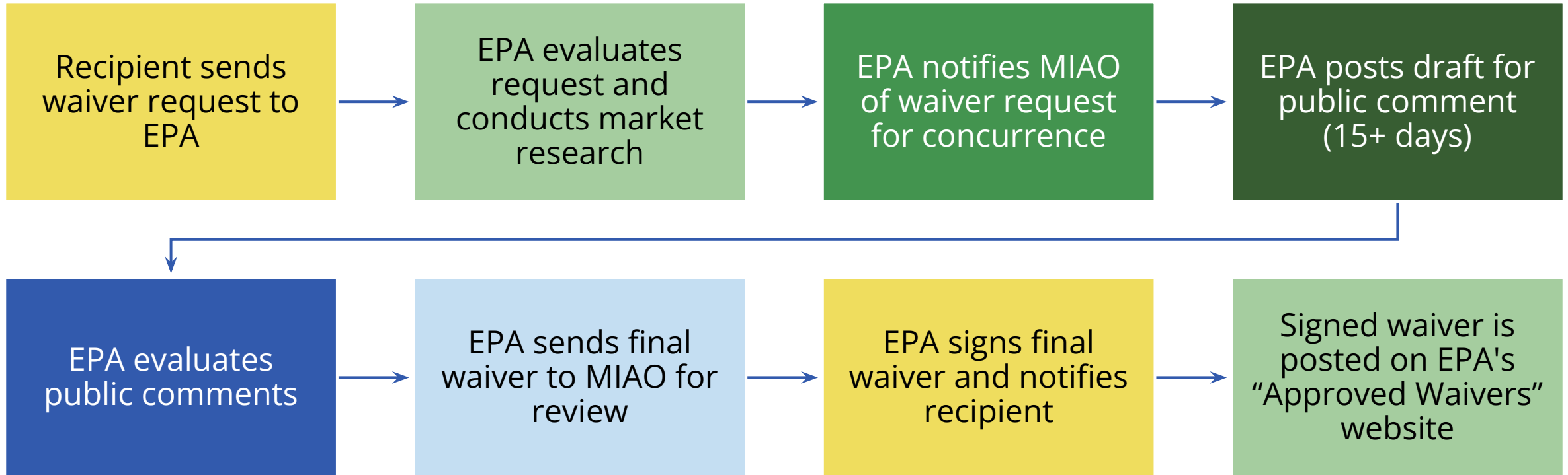




# Project-level Waiver Process (Nonavailability or Cost Waiver)



*EPA waivers can take 2-6+ months from initial submission to MIAO to final waiver approval*



# Roles and Responsibilities



U.S. Environmental  
Protection Agency

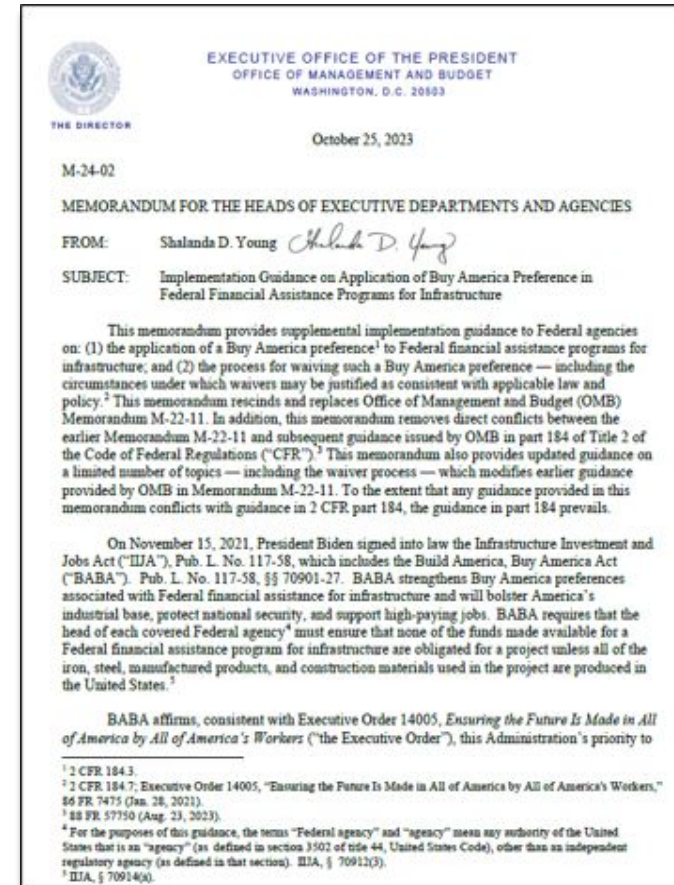


# Made In America Office (MIAO)



U.S. Environmental Protection Agency

- Within the Office of Management and Budget (OMB) in the Executive Office of the President
- MIAO aims to support domestic manufacturing and increase reliance on domestic supply chains
- Issues guidance that applies government-wide
- 2 CFR 184 (August 23, 2023)
- M-24-02 Final Guidance (released October 25, 2023, rescinded earlier guidance in M-22-11)





# EPA Responsibilities

- Coordinate with MIAO
- Provide guidance to recipients on BABA requirements
- Answer BABA applicability questions
- Process waiver requests from recipients
- Review market research and conduct additional research, as needed
- Conduct compliance oversight





# Grant Recipient Responsibilities

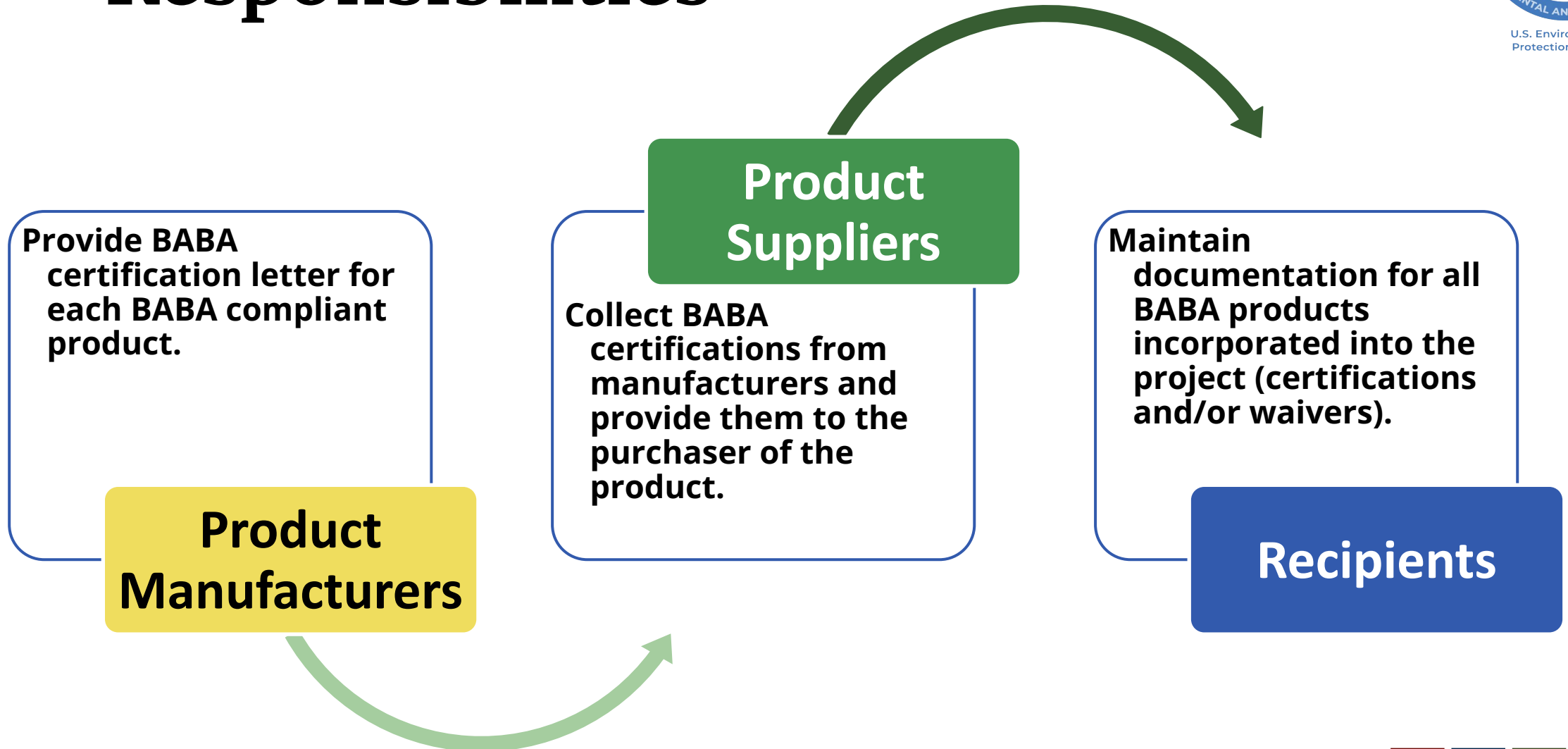
Grant recipients must comply with BABA, like all other federal cross-cutters in the grant terms and conditions, which includes:

- Maintain documentation of BABA compliance
  - Retain manufacturer certifications for items
  - Retain emails or other documentation from EPA that support use of waivers
  - Track items and their cost if using the De Minimis Waiver
- Issue RFPs or contract solicitations that include BABA as a requirement
- Ensure subaward or loan recipient compliance with BABA and submit applicability questions, waiver requests, etc., on their behalf
- Provide information to EPA to justify any waiver requests
- Allow audits and inspections of the project site to verify compliance, if needed






# Compliance Roles and Responsibilities





## Example: Manufacturer Certification Letter



**MINAS MORGUL**

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

### Material Certification

August 29, 2017  
Gondor Supply Co.  
3477 One Ring Ln.  
Fort Tirth, IA 50501

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

<u>QUANTITY</u>	<u>DESCRIPTION</u>
30	8550350 66-S VLV BOX 26T 38B 1.5 WTR

Dear Valued Partner:

We hereby certify that the iron used to make the construction castings manufactured by MMS for the above referenced project is in full compliance with ASTM A48, Class 35B and AASHTO M105 for gray 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 American Iron and Steel (AIS) requirement as mandated in EPA's State Revolving Fund Programs.

*Meriadoc Brandybuck*  
Product Quality Manager  
Minas Morgul Steel, Inc.

- 5 Key Elements:
- Project reference
  - Specific list of products
  - Location of manufacturing (city and state)
  - Signature of representative
  - BABA reference







# Takeaways



- BABA applies to certain products within federally-funded infrastructure projects
- The definition of infrastructure is broad
- Proactively plan for BABA in your Community Change Grant application
- Build a team capable of handling federal requirements like BABA
- Don't sweat too much, EPA will be here for you if you receive a grant award!





# Learn More



## EPA's BABA

**website:** <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>

- Implementation procedures (FAQ for CCG coming soon!)
- Approved waivers
- Waivers open for public comment

**OMB's Made In America website:** <https://www.madeinamerica.gov>

- M-24-02: <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
  - 2 CFR 184: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-184>





U.S. Environmental  
Protection Agency

**BABA Questions?  
BABA-OEJECR@epa.gov**





# Thank You!



## **CommunityChangeTA.org**

Visit [CommunityChangeTA.org](https://www.communitychangeta.org) to view a recording of today's webinar, as well as register for other upcoming webinars and events.

**Today's recording will be posted within 24 hours of this presentation.**

## ***EPA FAQs - Community Change Grants NOFO***

- Visit the EPA's CCG

Website <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-community-change-grants>

**General TA Questions?**

**Email [EJ\\_TechAssist@epa.gov](mailto:EJ_TechAssist@epa.gov)  
or call (800) 540-8123**

