

Appendix E

Non-Compliance with Buy America

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NOTE: Within this appendix, FHWA quotes and guidance are not in the same order when compared to the guidance document.

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 - A. Inadvertent incorporation of foreign iron and steel

[Buy America Questions and Answers \(12/20/2012\)](#)

Q# 48. How does FHWA resolve an after-the-fact discovery of an inadvertent incorporation of foreign iron and steel products into a Federal-aid project?

A# 48. For resolving an after-the-fact discovery of incorporated foreign iron and steel products exceeding the minimal use amount (the greater amount of \$2,500 or 0.1% of the contract value), FHWA will review the following information to determine the appropriate resolution:

- i. The state's material certification procedures for determining Buy America compliance.
- ii. Degree of diligence by the State DOT and contracting agency in ensuring Buy America compliance.
- iii. Contract provisions prescribing Buy America requirements.
- iv. Availability of domestic iron and steel products or its equivalent at the time when excess foreign iron and steel products were incorporated into the project.
- v. Issues associated with removal and replacement with domestic iron and steel products during construction/completion.

With the Headquarters' concurrence, available options based on the conclusion of the reviews include the following:

- a. Remove the excess foreign iron and steel products and replace with domestic iron and steel products.
- b. Make the non-compliant iron and steel products Federal-aid non-participating.
- c. In instances where there is evidence of carelessness, negligence, incompetence, or understaffing on the part of the contracting agency, the Division Office may determine that all project costs are ineligible.