

CLIENT ALERT

A Bridge Too Far: Court Vacates FHWA's 2012 Expansion of Its Buy America Waiver

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On December 22, 2015, the U.S. district court for D.C. vacated the Federal Highway Administration's position, set forth in a December 2012 policy memorandum, that exempted manufactured steel products from the FHWA's Buy America restriction if (a) they had less than 90% steel or iron content or (b) they were "miscellaneous steel or iron products" (*i.e.*, off-the-shelf products necessary to "encase, assemble and construct manufactured products"), causing FHWA on January 6 to rescind the policy memorandum, pending further update. The court held that both of FHWA's "clarifications" related to a 1983 public interest waiver exemption for manufactured products other than steel products; were substantive rules requiring notice and comment; and that, in any event, the 90% content rule was arbitrary and capricious under the current record. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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