

Client Alert

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

January 15, 2016

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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