

MEMORANDUM

TO: All Local Public Agencies, LPA Section, Project Management, Utilities and Railroad, C&S, Environmental Planning Group

FROM: Jodi Rooney, Local Public Agency Section Manager

CC: Steve Boschen, ITD Director; Tom Deitering, FHWA; Eunice Chan, FHWA

DATE: January 11, 2016

RE: EFFECTIVE IMMEDIATELY: ACTION REQUIRED - Buy America Compliance Requirements

This memorandum serves as notice that, effective immediately, ADOT and local public agencies administering Federal-aid projects must ensure Buy America compliance for **all** steel and iron manufactured products, in accordance with existing Federal regulations and policy memos. Contracting agencies should take reasonable steps (consistent with their procurement process) to implement the revision on all new construction project awards. This decision will not impact Federal-aid construction projects that have already been awarded.

BACKGROUND

On December 22, 2015, Judge Amit P. Mehta from the U.S. District Court for the District of Columbia issued a decision granting Plaintiffs' motion for summary judgment and denying Defendant's motion for summary judgment in a case that challenged FHWA's issuance of a [December 21, 2012 memorandum](#).

In the memo, "miscellaneous steel or iron components, subcomponents and hardware" that are not predominantly steel or iron would not be subject to Buy America coverage. The memo defined predominately steel and iron manufactured products as those that have more than 90 percent steel or iron and waived Buy America requirements for miscellaneous steel or iron components, subcomponents and hardware. As a result, the judge vacated the 90 percent threshold exemption for manufactured steel and iron products and the miscellaneous steel or iron components, subcomponents and hardware waiver.

As a result of the court decision, the FHWA has withdrawn the December 21, 2012 memorandum. Until FHWA updates its regulatory policy, State DOTs and local public agencies administering Federal-aid projects must use the existing statute, regulation and implementing policy memos to administer the Buy America requirements. For details, see [FHWA's Construction Program Guide for Buy America](#).