

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS
COMMERCE
HEALTH, EDUCATION,
LABOR, AND PENSIONS

May 23, 2023

The Honorable Shaileen Bhatt
Administrator
Federal Highway Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Notice and Request for Comment on FHWA's Review of its General Waiver of Buy America Requirements for Manufactured Products; Docket No. FHWA-2022-0027

Dear Administrator Bhatt:

I write to strongly urge the discontinuation of the Manufactured Products General Waiver of Buy America that the Federal Highway Administration (FHWA) has had in place since 1983. Discontinuing this blanket waiver will begin the long overdue process of developing FHWA's guidelines for the purchase of American-made manufactured products in Federal-aid highway projects.

In the 1982 Surface Transportation Assistance Act, Congress clearly directed and intended that the FHWA require the use of U.S.-produced manufactured products in its projects. Frustration with the 40-year waiver was a key driving force behind the passage of enhanced Buy America provisions in the Infrastructure Investment and Jobs Act, which explicitly requires review of existing, "deficient" blanket waivers like this one.

FHWA's request for comment notes that it will publish a determination on "whether to continue, discontinue, or otherwise modify" the waiver. Given that continuing the waiver as-is appears to still be on the table, I would remind you that On January 21, 2021, at his confirmation hearing before the Senate Commerce Committee, Secretary Pete Buttigieg committed to me that he would "adjust, change, or perhaps rescind" the blanket waiver that has made foreign manufactured products eligible for FHWA projects.

While I strongly oppose continuation of this blanket waiver, I do believe that targeted, transparent, and time-limited waivers are necessary for stakeholder planning and project execution and for manufacturers to make U.S. investments to fill gaps in our supply chains. A phase-in period based on market conditions, as was the case with FHWA's electric vehicle charger waiver, is a model that should be replicated. Waivers that are targeted, time-limited, and transparent should not be viewed as failures, but rather as indications of where our industrial base is lacking and as powerful market signals to investors. Companies seeking to make factory investments in the production of Buy America-compliant manufactured products, hire American

workers, and conduct their operations in compliance with U.S. environmental and worker safety regulations should be rewarded with the preference afforded under FHWA's Buy America law.

Again, I strongly urge you to discontinue the 1983 manufactured products waiver. In its place, FHWA should be prepared to issue clear guidance to applicants and industry on enforcement timelines. While I support the most robust enforcement of the Build America, Buy America Act possible, its requirements must be administrable and clearly communicated so that all infrastructure stakeholders have time to make planning decisions. The Department of Transportation has already issued "adjustment period" waivers to facilitate implementation. I urge that FHWA use such time afforded wisely by developing guidance that makes clear to program participants when new requirements will be enforced and how applicants can satisfy them.

Sincerely,

A handwritten signature in blue ink that reads "Tammy Baldwin". The signature is written in a cursive, flowing style.

Tammy Baldwin
United States Senator