November 25, 2020

The Honorable Elaine Chao  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590  

Dear Secretary Chao:

The U.S. Department of Transportation (DOT) has made tremendous strides under your and President Trump’s leadership to reduce regulatory impediments to innovation. A prime example of this success was the repeal of the anachronistic proprietary products rule in 2019, which opened the door to deploying new tools to protect public health and other infrastructure advances. The American Road & Transportation Builders Association (ARTBA) urges you to complement this milestone achievement by ensuring your policy directive extends to the oversight of the devices and procedures that promote safety on the nation’s highways and streets.

In announcing the proprietary products rule repeal, the Federal Highway Administration (FHWA) characterized the old rule as a “barrier to innovation in highway technology” and noted that its repeal “best provides State [Departments of Transportation] greater flexibility to use innovative technologies in highway transportation.” In addition to strong support from ARTBA, your repeal of this rule was endorsed by multiple state departments of transportation, national transportation-related and manufacturing associations, and a substantial majority of individuals commenting to the docket.

The FHWA publicly stated in October 2018 its intention to update the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD). The agency noted this process would “reflect advances in technological and operational practices, incorporate recent trends and innovations, and set the stage for automated driving systems as those continue to take shape.” The anticipated revisions would “propose to allow more flexibility and innovation to improve travel for drivers, pedestrians and bicyclists.”

Unfortunately, your repeal of the regulatory impediments to patented and proprietary products did not apply to the MUTCD. The pending FHWA action provides you the opportunity to rectify that technicality.

The commonality between FHWA’s characterization of the rule you repealed and the outcomes the agency is seeking by updating the MUTCD makes a clear case for removing any barriers to proprietary products that still exist in the manual. Each regulatory regime plays an important role in shaping the transportation infrastructure system we continue to build and operate.
together. We strive to do so while maximizing opportunities for safety and efficiency, especially through the use of new technologies. Regrettably, maintaining barriers to innovation within the MUTCD will negate many of the benefits from the earlier repeal.

ARTBA recognizes the need for consistency and uniformity in directional and safety guidance on the nation’s roadways. This has been cited as a rationale for retaining the MUTCD’s prohibition on patented and proprietary products. However, the new MUTCD could include broad guidelines that would be more than adequate to address this concern. More importantly, there should be consistency and uniformity among DOT policies as a whole, which can be better achieved through eliminating this outlying provision in the MUTCD.

Innovation and technology in our sector continue to evolve exponentially. Full embrace of those advancements, including through the MUTCD, will carry significant benefits for the nation in safety, economic growth, congestion relief and other areas.

Thank you for considering these views. We hope to see FHWA’s proposal for the MUTCD published in the near future and will provide more detailed comments at that time.

Sincerely,

David C. Bauer
President & CEO

cc: The Honorable Nicole Nason, FHWA Administrator