



Expires – Upon Issuance of LPP

Rescission of Patented or Proprietary Product, Specification and Process Regulations, 23 CFR 635.411 (a)-(e)

I. BACKGROUND

On September 27, 2019, the Federal Highway Administration (FHWA) issued a final rule in the Federal Register rescinding the requirements in 23 CFR 635.411 (a)-(e) that limit the use of Federal funds in paying for patented or proprietary materials, specifications, or processes specified in project plans and specifications. It is believed that rescinding the regulations will provide greater flexibility and encourage innovation in the development of highway transportation technology and methods.

II. POLICY

Effective October 28, 2019, local agencies are no longer required to submit Exhibit 12-F: Cost-Effective Determination/Public Interest Finding, for using the patented or proprietary materials in Federal-aid highway projects. Federal funds participation will no longer be restricted when local agencies specify a trade name in Federal-aid contracts. In addition, Federal-aid participation will no longer be restricted when a local agency specifies patented or proprietary materials in design-build Request-for-Proposal documents.

III. APPLICABILITY / IMPACTS

This Office Bulletin applies to all aspects of the Federal-aid program including, but not limited to, traffic operations, safety, geotechnical, and structural engineering. This change in Federal regulation does not, however, affect State requirements for the use of patented or proprietary products. For State requirements on the use of patented or proprietary products, please refer to California Public Contract Code 3400.

The following table lists the changes to the January 2020 LAPM and associated Exhibits that take effect with the publication of this Office Bulletin. Changes to the LAPM listed in the table will be incorporated into the January 2021 Local Programs Procedure (LPP); changes to the Exhibits will be incorporated and released as February 2020 versions.



Chapter Section / Exhibit	Description of Changes that supersede current publications
<p>LAPM 2.8 Projects on the NHS</p>	<ul style="list-style-type: none"> • Removal of proprietary items in the “Restricted Construction Contract Provisions” section.
<p>LAPM 12.11 Materials and Equipment</p>	<ul style="list-style-type: none"> • Revision of Proprietary Items section • Removal of the following sections: <ul style="list-style-type: none"> ▪ “Public Interest Finding” ▪ “Certification” ▪ “Other Proprietary Item Considerations”
<p>LAPM 16.10 Change Order</p>	<ul style="list-style-type: none"> • Removal of two bullets for nonparticipating items
<p>LAPM 20.2 Deficiencies</p>	<ul style="list-style-type: none"> • Removal of “use of patented/proprietary materials” for ER projects bullet
<p>Exhibit 2-B</p>	<ul style="list-style-type: none"> • Removal of PIF – Use of proprietary products and processes in Chapter 12 section
<p>Exhibit 12-D</p>	<ul style="list-style-type: none"> • Removal of Section XIII, (E) Proprietary Items
<p>Exhibit 12-E</p>	<ul style="list-style-type: none"> • Removal of Section XIII, (E) Proprietary Items
<p>Exhibit 12-F</p>	<ul style="list-style-type: none"> • Removal of Proprietary related statements / certification

Recommended: Original Signature By 02/06/2020
 Kitae Nam, Senior Transportation Engineer Date
 Office of Guidance & Oversight

Approved: Original Signature By 02/06/2020
 Felicia Haslem, Chief (Acting) Date
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