

South Carolina Department of Transportation
Engineering Directive

Directive Number: ED-79 **Effective:** July 12, 2023

Subject: Patented and Proprietary Products

References: Title 23 Code of Federal Regulations (CFR), Part 635

Primary Department: Engineering Support

The Federal Highway Administration (FHWA) revised Title 23 Code of Federal Regulations (CFR), Section 635.411, to provide greater flexibility to use patented or proprietary materials, products, specifications, and processes.

The South Carolina Department of Transportation (SCDOT) may now:

- reference single trade name products in specifications, special provisions, and project plans;
- specify proprietary products on SCDOT qualified product lists;
- use AASHTO (American Association of State Highway and Transportation Officials) or ASTM (American Society for Testing and Materials) specifications where only one manufacturer can meet the requirements; and
- specify proprietary products in design-build Request for Proposal (RFP) documents.

A standard form titled “Approval for Patented and Proprietary Products” has been developed to ensure consistent discretion is applied when choosing to utilize patented or proprietary products. This form requires approval by the division director overseeing the development of the project and does not require concurrence from FHWA. A copy of the approved form shall be forwarded to the Letting Preparation Unit within Engineering Support. The form can be found on Engineering Support’s Intranet site, under the Forms tab for Project Submittals.

FHWA will continue to maintain and archive existing proprietary product information at the following website: <https://www.fhwa.dot.gov/construction/cqit/propriet.cfm>.

Submitted by: Mark H. Anthony, P.E.
Acting Director of Engineering Support

Recommended by: Chris Gaskins, P.E.
Director of Alternative Delivery

Recommended by: Robert E. Isgett, III, P.E.
Director of Construction

Recommended by: Jeff Terry, P.E.
Director of Maintenance

Recommended by: John D. Boylston, P.E.
Director of Preconstruction

Recommended by: Brent S. Dillon, P.E.
Director of Traffic Engineering

Recommended by: Rob Perry, P.E.
Chief Engineer for Bridges

Recommended by: Andrew T. Leaphart, P.E.
Chief Engineer for Operations

Recommended by: Randall L. Young, P.E.
Chief Engineer for Project Delivery

Approved by: George R. Bedenbaugh, Jr., P.E.
Interim Deputy Secretary for Engineering

History: Issued on July 12, 2023