



Patented and Proprietary Products Federal Regulation Changes



Overview and Information Updates

Executive Summary

Regulation Changes:

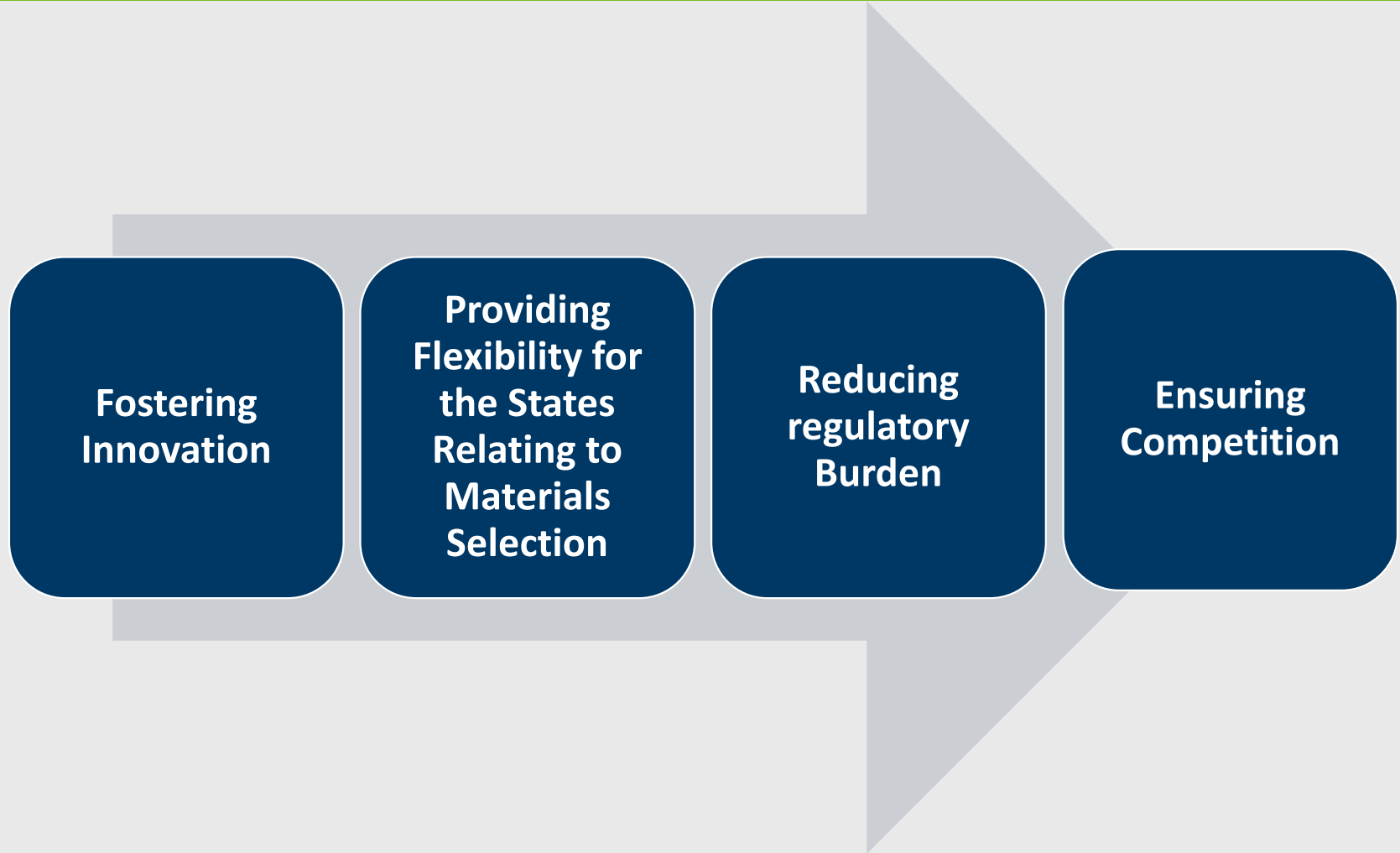
Rescind Patented and Proprietary materials requirements of 23 CFR 635.411 (a) – (e)

Change Title of 23 CFR Section 635.411 to “Culvert and Storm Sewer Materials Types” (previous section 635.411 (f) to comply with Section 1525 of MAP 21 for states to retain autonomy for the selection of storm sewer materials.

Summary of changes included in the Proprietary Products Final Rule , Questions& Answers

Effective Date: October 28,2019

Reasoning For Selection and Commenter Concerns



Requirements that Remain in Place

State Federal Projects

- ▶ NEPA (42 U.S.C. 4321)
- ▶ Buy America
- ▶ No State Preferences
- ▶ Section 1525 of MAP-21, State Autonomy for Culvert Pipe selection
- ▶ MUTCD – No Patented or Proprietary Items
- ▶ SEP 14
- ▶ Contractor Competition and Availability of Materials - supply of patented products and not limiting access of certain proprietary products or offering inconsistent pricing. - Mandate in 23 U.S.C. 112.
- ▶ Office of Management and Budget's (OMB) uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Requirements that Remain in Place

State

- ▶ Dept Admin – State Procurement Rules
 - ▶ No Substitution/Sole Source Justification/Generic Specs
- ▶ MnDOT Policies/Requirements
 - ▶ APL/QPL Policy OP005
 - ▶ MnDOT Product Screening and Evaluation
 - ▶ SME Defined Criteria
 - ▶ APL/QPL List
 - ▶ NTPEP AASHTO Product Evaluation
 - ▶ APEL List
 - ▶ HEP Policy OP010
 - ▶ Companion to APL/QPL for Environmental Screening
 - ▶ Use of Plastic Pipe for Storm Sewer and Culverts on trunk Highways - Technical Memorandum



State Aid For Local Transportation

Local Federal Projects

- ▶ NEPA
- ▶ Buy America
- ▶ No State Preferences
- ▶ Section 1525 of MAP-21, State Autonomy for Culvert Pipe selection
- ▶ MUTCD – No Patented or Proprietary Items
- ▶ SEP 14
- ▶ Contractor Competition and Availability of Materials - supply of patented products and not limiting access of certain proprietary products or offering inconsistent pricing. - Mandate in 23 U.S.C. 112.
- ▶ Office of Management and Budget's (OMB) uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

State Aid For Local Transportation

Local Led Federal Aid Project on TH

Lead Agency: Local

Funding : Federal

System is: TH

Requirements: TH Federal

State Aid Project on TH

Lead Agency: Local

Funding : Local

System is: TH

Requirements: TH

Local Led Federal Aid Project on

Local Road

Lead Agency: Local

Funding : Federal

System is: Local

Requirements: Local Federal

State Aid Project on Local Road

Lead Agency: Local

Funding : Local

System is: Local

Requirements: Local

For project specific questions –
Contact Elisa Bottos

What do we need to do?

“State DOTs are responsible for the effective and efficient use of Federal-aid funds, subject to the requirements of Federal law.”

“The statutory requirements of 23 U.S.C. 112 for competition and competitive bidding continue to apply to federally assisted projects.”



What do we do moving forward?

- Identify current processes used to evaluate and assess use of patented and proprietary items and other new products/processes
- Identify gaps that exist in current processes without the PIF/Certification process
- Identify questions and concerns
- Identify documents in need of development or Review and Updates
- Identify/Engage technical SME's to develop/update

What do we do moving forward?

- Creation of working teams to advance 1:
 - New Product evaluation processes
 - For items not on current APL/QPL
 - Items needing Review and Updates:
 - Standards, Details, Requirements
 - Process Guidance
- Factors to consider
 - Who is involved (current stewards)
 - Product stocking (inventory)
 - Life Cycle Cost, Safety, Performance
 - How product lists are kept and maintained

What do we do moving forward?

- Creation of working teams to advance 2:
 - Products currently used through past APL/QPL or PIF/Cert process
 - Items needing Review and Updates:
 - Specification Changes
 - Process Guidance
 - Factors to consider
 - Who is involved (current stewards)
 - Product stocking (inventory)
 - Life Cycle Cost, Safety, Performance
 - How product lists are kept and maintained

What do we do moving forward?

- Creation of working teams to advance 3:
 - Statewide Process and Requirements Development
 - Determining the need for a new product/process :
 - Defining evaluation process
 - Determining key stakeholders in evaluation criteria
 - Due Diligence in screening processes
 - Development of Process Guidance
 - Defining product variation to define use criteria
 - How product lists are kept and maintained

What do we do moving forward?

- Creation of working teams to advance 4:
 - Defining limitations in used of Patented and Proprietary products that do not apply to other new products and processes:
 - MUTCD
 - Must have authorization to experiment
 - Not sure what is coming with new MUTCD
 - Contractor availability/access to materials
 - Due Diligence in screening processes
 - Development of Process Guidance
 - Defining product variation to determine use criteria

Recommendations

- Possible working groups
 - TH – Process - 4 working teams identified
 - Local – Develop process (by Entity) ?
 - How to manage statewide?
 - Recommendations for SME's and Representatives
 - Small groups in process
- Comments and Questions??



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