



Protecting people, bridges and roads™

Guidance for the purchase and use of SafeLane™ overlay system for Experimental, Patented, and Propriety Product Approval

Cargill's SafeLane™ anti-icing and anti-skid pavement overlay system is a polymer pavement overlay that minimizes ice or frost formation on its surface while protecting the infrastructure from corrosion and chloride intrusion. SafeLane™ overlay is a patented system, which uses polymer epoxy in which an aggregate is distributed for enhanced friction and as a durable wear surface. This aggregate also has the ability to store anti-icing liquids and releases these liquids when needed, eliminating the formation of black ice, frost and preventing snow from bonding to the treated road surface.

The U.S. Department of Transportation Federal Highway Administration (FHWA) states that a proprietary product such as SafeLane™ overlay system must meet specific conditions listed under 23 CFR 635.411(a) or (c) for Federal funds to participate in its use on a highway construction project.

The FHWA may participate in funding the purchase and installation of the SafeLane™ overlay proprietary product under the following provisions:

- 1) Competitive bidding, provided under 23 CFR 635.411(a)(1)
 - a) The proprietary product is obtained through competitive bidding with other suitable proprietary and non-proprietary products from multiple manufacturers. Where both proprietary and non-proprietary products are available, the contracting agency must compose specifications that allow the contractor to choose amongst as many acceptable products and technologies as possible. If the specification lists specific products, it must list all or at least a reasonable number of products, and must include the words "or equal" to ensure the broadest range of choice.
 - b) A competitively bid performance-based warranty specification is permitted, if it does not limit product selection to a single source. The warranty specification must clearly describe all potential products that are acceptable for use at the time of project advertisement
- 2) A certification by the contracting agency, as provided in 23 CFR 634.411(a)(2), that the specified proprietary product is either:
 - a) Necessary for synchronization with existing facilities; or
 - b) A unique product for which there is no suitable alternative.
- 3) A proprietary item is to be used for research or for a distinctive type of construction on relatively short sections of road on an experimental basis as provided in 23 CFR 635.411(a)(3).
- 4) Whenever the Division Administrator approves of the State's request to use a proprietary product as being in the public interest as a Public Interest Finding (PIF) as provided in 23 CFR 635.411(c).

If the State DOT certifies that no equally suitable alternative exists; can the FHWA Division Office require the State DOT to provide supporting documentation?

Yes. Under 23 CFR 1.5, the FHWA may require the State DOT to provide "information as the Administrator shall deem desirable" to administer the Federal-aid highway program. Supporting documentation can be in a number of formats, including correspondence from a public agency that explains the need for synchronization, market analyses of the availability of suitable alternatives, and other unique considerations.

What should be included in a public interest finding (PIF)?

While there is no specific format for a public interest finding, the level of documentation will be dependent upon the specific nature of product and projects involved. In general, the PIF should document the reasonableness of the contracting agency's minimum needs and the best method to meet these needs

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consistent with the requirement for the broadest practical competition. The supporting material may include engineering and economic considerations, product availability and compatibility, logistical concerns, and other unique considerations.

For your information, the FHWA "Contract Administration Core Curriculum Participant's Manual and Reference Guide 2005" contains guidance regarding the content and review of PIFs. The manual also contains guidance about product selection, specifications and other contract administration topics, and is available on the FHWA Internet site at <http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>.

What should be included in a State DOT request to use a proprietary product for research or experimental purposes?

If the State DOT requests to use a proprietary product for research or for a distinctive type of construction on a relatively short section of road for experimental purposes, it must submit an experimental product work plan for review and approval in accordance with the FHWA/State DOT Oversight agreement. The work plan should provide for the evaluation of the proprietary product, and where appropriate, a comparison with current technology. Go to <http://www.fhwa.dot.gov/programadmin/contracts/expermnt.cfm> for additional information. This office recommends that the State DOT submit the product evaluation results information to the AASHTO Product Evaluation Listing (APEL) database so that other agencies may benefit from their experience. The APEL is available on the AASHTO Internet site at: <http://apel.transportation.org/programs/apel/site.nsf/homepage/Overview?OpenDocument>

Is a specification reference to a State DOT's approved product list subject to the FHWA's proprietary product requirements?

Yes. Since many State DOTs reference their "Qualified" or "Approved" products list in either standard specifications or project special provisions, FHWA Division staff should become familiar with the State DOT's product approval process to ensure that proprietary, sole source, or in-state or local preference products are not being inappropriately or inadvertently required for Federal-aid projects.

Experimental Work Plans for Proprietary Products

FHWA policy allows for the use of experimental materials, processes, methods, equipment, traffic operational devices or other features that:

- Have not been sufficiently tested under actual service conditions to merit acceptance without reservation in normal highway construction, or
- Have been accepted but need to be compared with alternative acceptable features for determining their relative merits and cost effectiveness.

Specifically, 23 C.F.R. 635.411(a)(3) allows for the use of patented or proprietary items through experimental projects

This document was prepared by Cargill, Incorporated/SafeLane™ overlay group and it is to be used as a guide. Please check with your local FHWA representative for specific rules and regulations regarding eligibility of funding sources and options

Questions can be directed to: safelane@cargill.com or 866-900-7258