

# Federal-Aid Reimbursement Eligibility Process for Safety Hardware Devices *Revised 11/12/2015*

## **I. Introduction**

This document outlines the process for requesting and receiving a Federal-aid reimbursement eligibility letter from the Federal Highway Administration (FHWA) for a roadside safety hardware device or a work zone traffic control device. This document also identifies the information that must be submitted when requesting an FHWA Federal-aid reimbursement eligibility letter.

Federal-aid eligibility letters written by FHWA are not required in order for a State DOT to install the device on any road and are not required for the State DOT to receive Federal-aid reimbursement for that device. FHWA issues these letters as a service to the State DOTs. If an interested party (submitter) wants a Federal-aid reimbursement eligibility letter from FHWA, then it must comply with the process described in this document.

This guidance replaces the following documents:

- (1) FHWA Memorandum of July 25, 1997, "Identifying Acceptable Roadside Safety Features"
- (2) FHWA Memorandum of November 18, 2005, "FHWA Hardware Acceptance Procedures – Category 2 Work Zone Devices"
- (3) FHWA Memorandum of May 21, 2012, "Roadside Safety Hardware-Federal-aid Reimbursement Eligibility Process"

## **II. Required information, documentation, and related instructions for eligibility letter requests**

### **A. Official request for Federal-aid reimbursement eligibility letter**

#### Submitting request:

All requests for FHWA review of new or modified hardware devices must include a complete "Form to Request Eligibility for Federal Aid Reimbursement" (e-form). The e-form must be signed by both the submitter and a crash testing laboratory (where the submitter is not the laboratory). The e-form should be used for all requests for an eligibility letter, including both new and modified hardware. The e-form should be submitted electronically. The e-form must be accompanied by the appropriate supporting documents described below in section II B. The form can be located and downloaded from

the FHWA Office of Safety Web site here:

[http://safety.fhwa.dot.gov/roadway\\_dept/policy\\_guide/road\\_hardware](http://safety.fhwa.dot.gov/roadway_dept/policy_guide/road_hardware).

Submitting supporting documentation:

All supporting documentation, including crash test reports, photos, videos, and other related documentation, should be provided in an electronic format. This material may be submitted to FHWA electronically by using a file transfer protocol site (FTP) or by sending files to *eligibilityinbox@dot.gov*. Large files may need to be transferred via FTP or mailed to the following address:

Safety Design Team, Room E71-322  
Office of Safety Technologies – HSST  
Federal Highway Administration  
1200 New Jersey Avenue, SE  
Washington DC 20590

Please note, USPS Priority Mail and Parcel Post are subject to screening that may delay delivery and may be harmful to the contents of the submission. These mail methods are not recommended.

Disclosing Financial Interests:

All eligibility requests require disclosure of certain financial interests. A testing facility involved in evaluating a roadside hardware device for purposes of obtaining an FHWA Federal-aid reimbursement eligibility letter, and any testing facility employee who is directly and substantially involved in the testing and evaluation of a roadside hardware device, must disclose any related financial interest in the device or in the device manufacturer. This disclosure statement must be provided by the submitter seeking an eligibility letter at the time of submission of the request. FHWA will make this disclosure information publicly available. The dollar value of any financial interest is not needed by FHWA.

Financial interests include but are not limited to –

- i. Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals (dollar values are not needed);
- ii. Consulting relationships
- iii. Research funding or other forms of research support;
- iv. Patents, copyrights, and other intellectual property interests;
- v. Licenses or contractual relationships; or
- vi. Business ownership and investment interests.

The e-form includes a space for providing this information.

### Communicating with FHWA:

All substantive communications with FHWA that relate to a request for a Federal-aid reimbursement eligibility letter or relate to a modification of a device that is already covered by a previously issued eligibility letter must be documented in writing. The written materials must be in a format that permits FHWA to preserve copies of the documented communications. Substantive communications either request or support a request for a Federal-aid reimbursement eligibility determination by FHWA. FHWA will not take action or issue letters, decisions, guidance, or directions relating to the eligibility of a roadside hardware device based on oral communications.

FHWA Office of Safety has answers to a series of frequently asked questions on its website regarding communications before and after submitting a request for an eligibility letter.

### Identifying Proprietary Information:

FHWA posts information about devices on its website whenever it issues a Federal-aid reimbursement eligibility letter. In addition, all records submitted to FHWA are subject to the Freedom of Information Act, 5 U.S.C. § 552. Therefore, any information submitted to FHWA that is considered trade secrets or confidential business information should be clearly labeled. Before release of trade secrets or confidential business information, FHWA will notify the submitter of the request and afford the submitter the opportunity to object to disclosure of the information and to state the basis for the objection. For more information on FOIA and treatment of non-public information see: <http://www.fhwa.dot.gov/foia/>, and the policy document “Predisclosure Notification to Submitters of Confidential Commercial Information”.

## **B. Supporting documentation**

The following supporting documentation, when applicable to the request, must be submitted at the time of the request:

1. For all requests for an eligibility letter: A drawing or drawings of the hardware. Drawings that conform to the AASHTO Task Force-13 (TF-13) Drawing Specifications must be submitted. For proprietary hardware, both (1) detailed drawings and, (2) single isometric line drawing to illustrate the hardware in conformance with TF-13 must be submitted. Additional drawings (that do not need to be in TF-13 format) to show all details that are relevant to understanding the dimensions and performance of the hardware must be submitted.
2. For requests where physical crash testing is conducted: A PDF file with a summary of the crash test report must be submitted.
3. For requests where physical crash testing is conducted: All crash test videos and photos must be submitted.
4. For requests where physical crash testing is conducted: All crash test reports supporting the

crashworthiness of new hardware must be submitted.

5. For requests where no new crash testing is conducted: A PDF file with a summary of the crash test report related to the original crash testing must be submitted.
6. For requests where no new crash testing is conducted: All supporting documentation relied on by the laboratory to make the determination that the modification is non-significant must be submitted.

### **III. Crash Testing**

Crash testing is required to receive an FHWA eligibility letter for any new safety hardware devices. As of the date of this document, criteria for roadside safety hardware crash testing are described in the AASHTO Manual for Assessing Safety Hardware (MASH).

Crash test laboratories used to support a request for an FHWA Federal-aid eligibility letter must be properly accredited. See 23 CFR 637.209(a)(5). Any crash test reports submitted to support a request for an eligibility letter must include a statement from the accredited laboratory that certifies the testing was conducted in conformity with MASH criteria. Any crash test reports submitted to support a request for an eligibility letter must also include a statement from the accredited laboratory that certifies that the results of all necessary tests on the hardware meet MASH criteria. The e-form, discussed earlier in Section II, includes space for the accredited laboratory to certify that based on all testing, the device meets MASH criteria. Where the MASH matrix of recommended tests includes tests that were not conducted by the crash test laboratory, the test report and e-form must provide the engineering rationale for not running the tests.

If a submitter is seeking an FHWA eligibility letter for a “family” of related hardware, the submitter should choose, and must identify in its submission, which version or versions of the hardware is considered representative of the family of hardware to be used during crash testing. The submitter must provide its reasoning and rationale for choosing that representation of the family of related hardware for the crash testing, including why different devices are similar enough to constitute a family of related hardware for crash test purposes. A separate e-form must be submitted for each device in the family of hardware. If a submitter is seeking eligibility letters for a family of related hardware, then the worst case conditions must be considered when developing the crash testing matrix. The submitter must include an explanation from the crash test laboratory describing how all versions of the safety hardware are adequately addressed by the crash tests conducted.

All hardware that is to be used with auxiliary features must have those features in place during the MASH crash tests if a submitter is seeking an eligibility letter for a device with those features. For example, sign supports need signs; luminaire supports need mast arms; and work zone traffic control devices need signs, lights and/or flags if they will be marketed as being used with them.

#### **IV. Modifications to hardware that already has a Federal-aid reimbursement eligibility letter**

Manufacturers of successfully crash-tested hardware may modify the design of their hardware. Some modifications are low risk and will have no effect on the hardware's ability to meet crash test criteria. Other requested modifications may affect the hardware's performance in certain crash-test scenarios.

If a manufacturer modifies any hardware device that has an existing FHWA eligibility letter, then the manufacturer must notify FHWA of the modification with a request for continued eligibility for reimbursement. For more information on this policy, see FHWA Memorandum "[An open letter to all in the highway safety hardware and roadside design community](#)", dated May 18, 2015.

After December 31, 2015, FHWA will not accept requests for Federal-aid eligibility determinations for any modifications based on previous crash testing performed using NCHRP Report 350 criteria. All modifications to an NCHRP 350-tested device will require testing under MASH in order to receive a Federal-aid eligibility letter from FHWA. To be considered "received" by December 31, 2015, the package must be complete, including all the required documentation described in this guidance. FHWA may identify additional supporting information after that date that is necessary in order to issue an eligibility letter.

It is the submitter's responsibility to determine the effect of any modifications on the crash-tested performance of the existing hardware. FHWA has defined two categories of modifications: Significant and Non-Significant. This guidance document and a series of frequently asked questions on the FHWA Office of Safety website describe how to determine the proper category for a modification. All modifications must be submitted using the e-form, discussed earlier in Section II, and the laboratory must concur that the modifications are considered Non-Significant.

##### **A. Significant**

Any change is considered significant if an accredited testing laboratory concludes that it has the potential to affect the device's ability to meet crash test criteria. To receive an updated FHWA eligibility letter, full scale crash testing must be conducted for all significant modifications to hardware devices. Each crash test that is recommended for the modified hardware in order to establish it meets crash test criteria must be listed. The submitter must provide a summary of each test considered critical and relevant to evaluate the modification(s), and the results of each test. Because of the nature of the device, or of the modification, certain recommended tests may be considered non-critical or not relevant. An engineering evaluation of each of these non-critical tests must also be provided by the submitter. The submitter must provide all documentation necessary to demonstrate that the hardware satisfies crash testing criteria, including the signed crash test reports.

## **B. Non-Significant**

If a submitter wants a non-significant modification to a device to be covered under an earlier FHWA Federal-aid reimbursement eligibility determination, the submitter must provide supporting documentation describing the modification, including an engineering analysis of the crash testing conducted on the original hardware indicating that it is non-significant. The submitter must provide concurrence from an accredited laboratory that the modifications are considered non-significant. The submitter may also include a concurrence from an engineer that demonstrates proficiency in crash testing and engineering analysis of roadside safety devices, who is either affiliated with or retained by the laboratory and who participated in the analysis.

## **V. FHWA Review and Evaluation**

The FHWA will acknowledge receipt of a request for a Federal-aid reimbursement eligibility determination within ten working days. FHWA will endeavor to promptly review the submission to confirm conformity with the crash testing criteria. Requests for eligibility letters are generally reviewed in the order received.

An FHWA letter that states a device is eligible for Federal-aid reimbursement may list issues identified by the testing criteria as reportable even if existence of the issue does not represent a failure of the test. If FHWA identifies potentially undesirable test results not explicitly identified in the evaluation criteria, then FHWA reserves the right not to issue an eligibility letter for Federal-aid reimbursement. The submission will be returned to the sender without an eligibility letter.

## **VI. Appeals**

If the submitter disagrees with the FHWA's determination of Federal-aid reimbursement eligibility, the decision may be appealed in writing. The appeal should be directed to the Associate Administrator for Safety at the FHWA address provided earlier in this document. The appeal should specify the part(s) of the FHWA decision to which the submitter objects and the action desired. The appeal also should include relevant documentation supporting the claims being made in the appeal. The decision of the Associate Administrator for Safety is the final agency decision.

## **VII. Distribution of Federal-Aid Reimbursement Eligibility Letter**

An FHWA reimbursement eligibility letter will be sent in hard copy to the submitter and, upon request, sent electronically in PDF format. FHWA reimbursement eligibility letters are also posted on the FHWA [Roadway Departure Safety Web site](#).

## **VIII. Disclaimer**

Issuance of a Federal-aid reimbursement eligibility letter by FHWA does not ensure acceptance or use by any State DOT. Each State DOT may choose not to purchase and install a specific device, or may place additional limits upon use of a device.

A finding of Federal-aid reimbursement eligibility by FHWA does not convey property rights of any sort or any exclusive privilege. A finding of eligibility is based on the premise that information and reports submitted to FHWA are accurate and correct. FHWA reserves the right to modify or revoke an eligibility letter if (1) there are any inaccuracies in the information submitted in support of the request, (2) the qualification testing was flawed, (3) in-service performance or other information reveals safety problems, (4) the system is significantly different from the version that was crash tested, or (5) any other information indicates that the letter was issued in error or otherwise does not reflect full and complete information about the crashworthiness of the system.

This process document is not a regulation and does not impose legally binding requirements on the FHWA or the States. It does not create or confer any rights for or on any person or operate to bind the public. The FHWA, the Department of Transportation, and the United States Government do not regulate the manufacture of roadside safety devices. Eligibility for reimbursement under the Federal-aid highway program does not establish approval, certification, or endorsement of the device for any particular purpose or use. Eligibility for reimbursement does not eliminate the need for proper manufacturing, installation, and maintenance in order for a device to function as tested. The FHWA, the U.S. Department of Transportation, and the United States Government do not endorse products or services and the issuance of a Federal-aid reimbursement eligibility letter is not an endorsement of any product or service. This document is guidance and may be revoked at any time.