



May 18, 2015

An open letter to all in the highway safety hardware and roadside design community:

The Federal Highway Administration (FHWA) is revisiting its process for issuing Federal-aid eligibility letters for roadside safety hardware systems. This letter serves to notify you that FHWA is implementing some immediate process improvements as described in this letter. These changes will enhance the quality of information received by FHWA when evaluating a request for an eligibility determination, clarify the scope and purpose of the eligibility letters, and increase the amount of information available regarding the devices covered by these letters. FHWA may make more significant changes to the process in the future. Effective immediately, FHWA is implementing the following changes to the eligibility letter process for roadside safety hardware systems:

- **Notification of any modification.** If a manufacturer makes **any** modification to any of their roadside safety hardware that has an existing eligibility letter from FHWA, the manufacturer must notify FHWA of such modification with a request for continued eligibility for reimbursement. The notice of all modifications to a device must be accompanied by:
  - Significant modifications<sup>1</sup> – For these modifications, crash test results must be submitted with accompanying documentation and videos.
  - Non-significant modifications - For these modifications, a statement from the crash test laboratory on the potential effect of the modification on the ability of the device to meet the relevant crash test criteria.
- **Clarification in the eligibility letter.** FHWA revised its eligibility letter to include a clear statement of the scope and purpose of the letter as well as a statement indicating that a determination of eligibility is not an approval, certification or endorsement. The letter also specifies that FHWA may modify or revoke the letter if: (1) there are any inaccuracies in the information submitted in support of your request for this letter, (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.

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<sup>1</sup> A “significant modification” to a crashworthy device is one where analysis indicates the device may fail a testing criterion set forth under provisions of either:

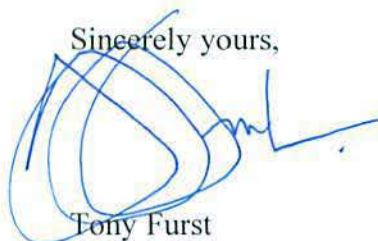
1. National Cooperative Highway Research Program (NCHRP) Report 350; or
2. American Association of State and Highway Transportation Officials (AASHTO) Manual for Assessing Safety Hardware (MASH).

- **Disclosure of financial interest.** FHWA will now require disclosure of any financial interests between the manufacturer seeking an eligibility determination and both the testing facility and certain testing facility employees in order to help ensure the integrity of testing and transparency of the process.
- **Additional documentation.** FHWA will post all records received by FHWA regarding devices that receive eligibility letters. This includes submissions from manufacturers and disclosure of financial interests. Crash test videos will continue to be made available by FHWA. FHWA will not post records or portions of records that are subject to a FOIA exemption such as the exemption for trade secrets and commercial or financial information that are privileged or confidential.
- **Documentation of Communications.** FHWA will formally document all substantive communications with a manufacturer seeking an eligibility letter. FHWA will implement a standard operating procedure to handle communications during the roadside safety hardware eligibility process to ensure uniformity and transparency. The standard operating procedure will also address how FHWA responds to comments or concerns about a device raised after an eligibility letter is issued.

Thank you in advance for your cooperation in helping FHWA to implement these improvements. I think you will agree that they will enhance the safety of roadside safety hardware and increase the integrity and transparency of FHWA's eligibility letter determination process. We will notify you of any future improvements to the eligibility letter process. For more information, please see our website for the federal-aid reimbursement eligibility process located at [http://safety.fhwa.dot.gov/roadway\\_dept/policy\\_guide/road\\_hardware/acceptprocess/](http://safety.fhwa.dot.gov/roadway_dept/policy_guide/road_hardware/acceptprocess/). In the near future, we plan to add some new questions and answers relative to communications between FHWA and entities seeking a federal-aid eligibility letter for roadside hardware and what financial interest information should be disclosed in a request for a letter.

If you have any questions or comments, please contact Brian Fouch at (202) 366-0744.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Tony Furst', with a large, stylized circular flourish on the left side.

Tony Furst  
Associate Administrator for Safety