



This document is scheduled to be published in the Federal Register on 11/13/2015 and available online at <http://federalregister.gov/a/2015-28753>, and on [FDsys.gov](http://FDsys.gov)

**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**[Docket No. FHWA-2015-0008]**

**Manual for Assessing Safety Hardware (MASH) Transition**

**AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).**

**ACTION: Notice.**

**SUMMARY:** In issuing Federal-aid eligibility letters for roadside safety hardware, FHWA currently makes determinations of continued eligibility for modifications to devices tested to the National Cooperative Highway Research Program Report 350 (NCHRP 350). In an effort to facilitate the implementation of the Manual for Assessing Safety Hardware (MASH), FHWA intends to discontinue issuing eligibility letters for requests received after December 31, 2015, for modified NCHRP 350-tested devices that do not involve full scale crash testing to the MASH. Modifications to NCHRP 350-tested devices that have, in the past, been based on engineering analysis or finite element modeling will no longer receive FHWA eligibility letters. Effective January 1, 2016, all changes to NCHRP 350-tested devices will require testing under MASH in order to receive a Federal-aid eligibility letter from FHWA.

**FOR FURTHER INFORMATION CONTACT:** For questions about the program discussed herein, contact Mr. Michael Griffith, Director of Office of Safety Technologies, FHWA Office of Safety, (202) 366-9469 or via e-mail at [mike.griffith@dot.gov](mailto:mike.griffith@dot.gov). For legal questions, please contact Ms. Jennifer Mayo, Assistant

Chief Counsel, FHWA Office of Chief Counsel (202) 366–1523, or via e-mail at [jennifer.mayo@dot.gov](mailto:jennifer.mayo@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue, SE, Washington, D.C., 20590.

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access and Filing**

This document, all comments, and the request for comments notice may be viewed on line through the Federal eRulemaking portal at: <http://www.regulations.gov>. The docket identification number is FHWA-2015-0008. The Web site is available 24 hours each day, 365 days each year. Anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

### **Request for Comments**

On May 19, 2015, at 80 FR 28761, FHWA published a Request for Comments soliciting public input on the impact of FHWA no longer issuing Federal-aid eligibility letters after December 31, 2015, for modified NCHRP 350-tested devices that do not involve full scale crash testing to MASH criteria. The FHWA solicited input because modifications to NCHRP 350-tested devices have, in the past, received FHWA Federal-aid eligibility letters based on engineering analysis or finite element modeling.

## **Summary of Responses**

The FHWA received a total of 16 responses to the docket. Of these responses, 11 were from private industry, 2 from State departments of transportation, 2 from private organizations, and 1 anonymous comment. Only three of the commenters addressed FHWA's proposal to discontinue issuing Federal-aid eligibility letters for modified NCHRP 350-tested safety devices that are not tested under the MASH criteria.

The Georgia Department of Transportation, the Illinois Department of Transportation, and the Advocates for Highway and Auto Safety, support FHWA efforts to move towards MASH testing. These three commenters also urged FHWA to move to MASH promptly and set sunset dates for the installation of hardware previously crash tested to NCHRP Report 350. Although FHWA recognizes the commenters' interest in this subject, this is an issue outside the scope of this notice and request for comment. The FHWA is currently working with the American Association of State Highway and Transportation Officials (AASHTO) to set as an aggressive schedule as possible to develop an update to the MASH 2009 Implementation Plan.

The other 13 commenters were from private industry, private organizations, or anonymous. Although none of these respondents commented on the proposed December 31, 2015, deadline to discontinue issuing Federal-aid eligibility letters for modified NCHRP 350-tested safety devices that are not tested under the MASH criteria, these

commenters generally objected to the use of MASH to test roadside safety hardware. A summary of the comments in opposition to MASH testing, and FHWA's response to them, follows.

Some commenters expressed their opinion that testing to the MASH criteria is unwarranted and that there are no in-service performance evaluations that show NCHRP Report 350-tested devices are causing serious or fatal injuries. Crash testing has shown that some products tested under NCHRP Report 350 criteria will fail the MASH criteria because passenger vehicles on our roads in general have become larger and heavier than those used for testing in the 1990's. The MASH reflects the change in the vehicle fleet on our Nation's highways and adds the pickup truck as a test vehicle for more devices. The FHWA believes these improvements are justified to improve safety for the traveling public.

Some commenters expressed concern about the high cost of re-testing Category II devices and maintained that MASH-tested products will be more expensive due to testing costs and material costs. Some suggested NCHRP 350 Category II devices should be moved to Category I to be "self-certified," while others proposed that manufacturers be allowed to make minor changes to 350 devices. It must be noted that it is the States' decision whether or not to continue approving NCHRP Report 350 devices that are currently being installed. Approval, installation, and maintenance of safety devices on Federal-aid projects is a State responsibility. The NCHRP 350-tested devices remain eligible for Federal-aid funding. The FHWA will not withdraw an existing Federal-aid

eligibility letter for a product that currently meets NCHRP Report 350 criteria. The proposed deadline does not prevent a manufacturer from modifying a device, does not impose any requirements for the installation of MASH-tested devices, nor does it prevent a State DOT from installing a device previously tested to the NCHRP 350 criteria. The proposed deadline only applies to those seeking a Federal-aid eligibility letter for a modified device previously tested to NCHRP 350 criteria. It will be the States' responsibility to determine if all future proposed modifications made to existing 350 devices comply with NCHRP Report 350 criteria.

Other commenters expressed their concern about a lack of MASH tested products and recommended that sunset dates be realistic to provide adequate time to develop products and receive approval. They also stated that sole-sourcing for MASH devices should be allowed if no alternatives are available. Another commenter said that FHWA's delay in issuing Federal-aid eligibility letters could be a problem and recommended that FHWA streamline the process to bring new MASH products to market. There was also concern about States' delay in adding devices to Qualified Products List. Although FHWA recognizes the commenters' interest in these subjects, these are issues outside the scope of this notice and request for comment. The FHWA is currently working with AASHTO to develop an update to the MASH 2009 Implementation Plan. The FHWA will continue to work on streamlining the process to seek Federal-aid eligibility for MASH tested devices. Finally, the General Material Requirements in 23 CFR 635.411

permits a State to specify sole-source products if it certifies that no equally suitable alternate exists.

Another commenter suggested that FHWA eliminate “approvals” based on engineering analysis or finite element analysis. Although FHWA recognizes the commenters’ interest in this subject, this is an issue outside the scope of this notice and request for comment. However, FHWA would like to clarify that the agency does not have the authority to “approve” safety hardware. Approval, installation and maintenance of safety devices on Federal-aid projects is a State responsibility.

One commenter stated that FHWA should prohibit conflict of interest between labs and manufacturers. Although FHWA recognizes the commenters’ interest in this subject, this is an issue outside the scope of this notice and request for comment. The FHWA only issues Federal-aid eligibility letters for roadside hardware devices that have been crash tested at accredited laboratory facilities, pursuant to [23 CFR 637.209(a)(5)].

There was one comment regarding the availability of the MASH to the public. The MASH is neither a Federal regulation nor guidance. The MASH was developed through the National Academy of Science’s National Cooperative Highway Research Program and can be purchased from the AASHTO Web site (<http://www.transportation.org/>).

Lastly, a commenter said that FHWA is avoiding its responsibility for “approving” safety hardware. The FHWA issues Federal-aid eligibility letters for devices that meet the applicable crash test criteria. While these letters are the most common way

for roadside safety hardware to qualify for Federal-aid reimbursement, FHWA eligibility letters are not a requirement for these devices to be eligible for reimbursement on Federal-aid highway projects. The FHWA is charged with implementing the Federal-aid highway program in cooperation with the States and local government. Therefore, FHWA relies on its relationships with State DOTs to ensure roadside hardware satisfies crash test criteria. The FHWA has established strong guidelines and policies in order to encourage all State DOTs to use roadside safety hardware that has successfully met the applicable crash test criteria.

In an effort to facilitate the implementation of the MASH, FHWA intends to discontinue issuing eligibility letters for requests received after December 31, 2015, for modified NCHRP 350-tested devices that do not involve full scale crash testing to the MASH. Modifications to NCHRP 350-tested devices that have, in the past, been based on engineering analysis or finite element modeling will no longer receive FHWA eligibility letters. Effective January 1, 2016, all changes to NCHRP 350-tested devices will require testing under MASH in order to receive a Federal-aid eligibility letter from FHWA.

AUTHORITY: 23 U.S.C. 148 and 315.

Issued on: October 28, 2015.

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[FR Doc. 2015-28753 Filed: 11/12/2015 8:45 am; Publication Date: 11/13/2015]