



U.S. Department
of Transportation
**Federal Highway
Administration**

In Reply Refer To:
HSST-1/WZ-437
December 14, 2022

BY U.S. MAIL AND EMAIL

Kevin Harrison
President
Eastern Metal Sign and Safety
1430 Sullivan Street
Elmira, New York 14901
kevin@signssafety.com

RE: Eligibility Letter Number WZ-437

Dear Mr. Harrison:

Thank you for your correspondence of September 20, 2022, requesting reconsideration of the decision to rescind Federal Highway Administration (FHWA or agency) eligibility letter WZ-437 of June 22, 2022, for Eastern Metal's APEX Dual Recoil (device) work zone sign stand.

FHWA issues Federal-aid reimbursement eligibility letters for new roadside safety devices that are crash tested in accordance with the industry standard of the American Association of State Highway and Transportation Officials (AASHTO) Manual for Assessing Safety Hardware (MASH). FHWA, the Department of Transportation, and the United States Government do not regulate roadside safety devices, crash test facilities, or the manufacturing industry. Issuance of eligibility letters is discretionary and provided only as a service to the states. FHWA may, at its discretion, revise, rescind, or decline to issue an eligibility letter.

We met with Eastern Metal and a representative of the testing facility on September 15, 2022. During that meeting we explained our initial impression was the device met MASH crash test criteria because it did not penetrate the occupant compartment liner; however, on September 7, 2022, discussion with AASHTO provided clarity about occupant compartment penetration. That clarification is inconsistent with our initial impression and, for the reasons discussed below, the agency rescinds the eligibility letter for the device.

AASHTO referred the agency to its MASH questions and answers (Q&A) number 12 and 13, which were issued in May 2018. Number 12 asked whether rear window damage is cause for a test failure. The answer is "[u]ntil additional research is conducted, no penetration of any element of the test article through the rear window is allowed." Next, number 13 asked whether floorboard penetration or tearing was cause for a test failure. The answer is "because cutting or tearing of the floorboard by the test article is evidence of penetration, it is cause for failure. Until additional research is conducted, no penetration of any element of the test article through the floorboard is allowed."

Based on the information AASHTO provided, any tearing of the roof is penetration of the occupant compartment and a crash test failure. The device caused a tear in the roof of the test vehicle in test 3-72 and such a tear is penetration into the occupant compartment. Therefore, the device failed a MASH crash test and necessitates FHWA rescind the eligibility letter for the device.

Eastern Metal's correspondence asked for an official letter from AASHTO requesting that the eligibility letter for the device be rescinded and the evidence that supports rescinding the letter. AASHTO is an organization external to FHWA and a request for such a letter should be directed to it.

AASHTO did clarify that a cut into the metal part of the roof is an occupant compartment penetration and consequently a MASH crash test failure. AASHTO indicated it does not plan to issue a specific Q&A regarding this case because its already existing ones address similar situations. In addition, AASHTO is not directly involved in the issuance of FHWA eligibility letters. As discussed above, issuance of eligibility letters is discretionary, and the agency may rescind one at any time.

Eastern Metal's correspondence also requested an official letter from AASHTO, FHWA, or both defining MASH penetration and deformation crash test failures. MASH is an AASHTO product and as such FHWA neither defines its terms nor offers interpretations of it. Furthermore, Eastern Metal's letter cites MASH for the proposition that no penetration is allowed. Moreover, MASH already defines thresholds for deformation.

For the foregoing reasons, FHWA eligibility letter WZ-437 is rescinded. If you disagree with this decision, you may appeal it as described at the link below.¹ An appeal must be in writing and directed to FHWA's Associate Administrator for Safety at the address above. It should express the specific topic(s) of disagreement, reasons for such disagreement, and the remedy sought. Evidence or documentation supporting an appeal should also be provided. FHWA's decision on appeal is the agency's final determination.

Sincerely,



Louisa M. Ward
Acting Office Director
Office of Safety Technologies

cc: BY EMAIL ONLY

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¹ <https://highways.dot.gov/safety/rwd/reduce-crash-severity/requesting-letter-federal-aid-reimbursement-eligibility-safety>.