



**DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration**

[4910-EX-P]

[Docket No. FMCSA-2014-0177]

Crash Preventability Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: On January 23, 2015, FMCSA announced the results of the Agency's study on the feasibility of using a motor carrier's role in crashes in the assessment of the company's safety. This study assessed: Whether police accident reports (PARs) provide sufficient, consistent, and reliable information to support crash-weighting determinations; whether a crash-weighting determination process would offer an even stronger predictor of crash risk than overall crash involvement and how crash weighting would be implemented in the Agency's Safety Measurement System (SMS); and how FMCSA might manage a process for making crash-weighting determinations, including the acceptance of public input.

Based on the feedback received in response to the January 23, 2015, Federal Register notice, FMCSA announced in a separate notice elsewhere in today's Federal Register that it conducted additional analysis in response to comments received. However, in this notice, FMCSA is proposing to develop and implement a demonstration program to determine the efficacy of a program to conduct preventability determinations on certain types of crashes that generally are less complex. This notice provides FMCSA's proposal for a demonstration program and seeks additional comment.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2014-0177 using any of the following methods:

Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 0590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed,

stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information contact Mr, Catterson Oh, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone 202-366-6160 or by email: Catterson.Oh@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366-9826.

SUPPLEMENTAL INFORMATION

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2014-0177), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a

mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, "FMCSA-2014-0177" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

B Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the docket number, "FMCSA-2014-0177" in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

II. Background

The Compliance, Safety, Accountability (CSA) program is FMCSA's enforcement model that allows the Agency and its State partners to identify and address motor carrier safety problems before crashes occur. The Agency's SMS quantifies the on-road safety performance of motor carriers to prioritize enforcement resources. FMCSA first announced the implementation of the SMS in the Federal Register on April 9, 2010 (75 FR 18256) (Docket No. FMCSA-2004-18898). Violations are sorted into Behavior Analysis and Safety Improvement Categories (BASICS), which include a Crash Indicator BASIC.

Since its implementation in 2010, the SMS has used recordable-crash records involving commercial motor vehicles (CMVs) that are submitted by the States through the Agency's Motor Carrier Management Information System (MCMIS), in addition to safety performance in other BASICS, to assess motor carriers' crash histories and prioritize carriers for safety interventions. The Agency uses the definition of "accident" in 49 CFR 390.5.

The crash data reported to FMCSA by the States does not specify a motor carrier's role in the crash or whether the crash was preventable. The Crash Indicator BASIC weights crashes based on crash severity, with more weight given to fatality and injury crashes than those that resulted in a vehicle towed from the scene with no injuries or fatalities. While the public SMS website provides information on the recordable crashes of motor carriers, the Crash Indicator BASIC percentiles created by the system have never been publicly available. The Crash Indicator BASIC percentiles are available only

to motor carriers who log in to view their own data, as well as to Agency and law enforcement users.

Research on this issue conducted by FMCSA, as well as independent organizations, has demonstrated that crash involvement, regardless of role in the crash, is a strong indicator of future crash risk. FMCSA's recently completed SMS Effectiveness Test shows that, as a group, motor carriers with high percentiles in the Crash Indicator BASIC have crash rates that are 85 percent higher than the national average.

https://csa.fmcsa.dot.gov/Documents/CSMS_Effectiveness_Test_Final_Report.pdf).

This document and related reports are available in the docket of this notice.

Because the Crash Indicator BASIC includes all crashes -without regard to the preventability of the crash, stakeholders have expressed concern that it may not identify the highest-risk motor carriers for interventions. In addition, some industry representatives have advised that, while the Crash Indicator BASIC percentile is not publicly available, some customers are requiring motor carriers to disclose this information before committing to a contract.

To identify a methodology and process for conducting preventability reviews, FMCSA completed a study on the feasibility of using a motor carrier's role in crashes as an indicator of future crash risk. The analysis focused only on three broad questions addressing the procedural issues surrounding a crash-weighting program and the feasibility of implementing such a program; it did not focus on any other implications of the program.

The three questions were individually designed and analyzed to inform Agency decisions.

1. Do Police Accident Reports (PARs) provide sufficient, consistent, and reliable information to support crash-weighting determinations?

2. Would a crash-weighting determination process offer an even stronger predictor of crash risk than overall crash involvement, and how would crash weighting be implemented in the SMS?

3. Depending upon the analysis results for the questions above, how might FMCSA manage the process for making crash-weighting determinations, including public input to the process?

The Agency's research plan was posted on the Agency's website on July 23, 2012, at http://csa.fmcsa.dot.gov/documents/CrashWeightingResearchPlan_7-2012.pdf. The resulting report is titled "Crash Weighting Analysis"; it is in the docket associated with this notice. The draft research was peer reviewed, and the peer review recommendations are also in the docket.

The comments to the January 23, 2015, Federal Register notice focused on methodology changes needed in SMS, and the preventability determination process.

Elsewhere in today's Federal Register, FMCSA responds to the comments and provides the results of additional analysis on removing tow-away crashes, removing the extra weighting for fatal and injury crashes, and using a higher minimum number of crashes for data sufficiency purposes. Additionally, FMCSA advised that it would publish a separate Federal Register notice seeking comments and input on a demonstration program to make preventability determinations on some specific types of crashes. This notice fulfills that commitment.

III. Proposal for Demonstration Program

A. Types of Crashes

In response to FMCSA's January 23, 2015, Federal Register notice, the American Trucking Associations (ATA) provided a list of certain types of non-preventable crashes and suggested that FMCSA establish a process by which documents could be submitted on these crashes and they could be removed from the motor carriers' records.

Additionally, ATA recommended that FMCSA consider a crash non-preventable when an individual commits suicide or vehicles are incapacitated by animals. FMCSA considered this list and, as a result, proposes that on an effective date to be named in a future Federal Register notice, the Agency would begin a demonstration program under which it would accept requests for data review (RDRs) that seek to establish the non-preventability of certain crashes through its national data correction system known as DataQs. The Agency would accept an RDR as part of this program when documentation established that the crash was not preventable by the motor carrier or commercial driver.

A crash would be considered not preventable if the CMV was struck by a motorist who was convicted of one of the four following offenses or a related offense:

1. Driving under the influence;
2. Driving the wrong direction;
3. Striking the CMV in the rear; or
4. Striking the CMV while it was legally stopped.

FMCSA is specifically interested in information related specifically to these four crash scenarios that would be useful for this demonstration program.

The Agency proposes that evidence of a conviction, as defined in 49 CFR 383.5 and 390.5, for one of the above offenses must be submitted with the RDR to document that the crash was not preventable by the motor carrier or driver. In addition to documentation of the conviction, these RDRs should include all available law enforcement reports, insurance reports from all parties involved in the crash, and any other relevant information. However, FMCSA specifically seeks comments on what other documentation would be sufficient to make this determination.

FMCSA notes that this list is not identical to ATA's proposed list. Because some of the crash scenarios submitted by ATA were too broadly defined and/or may not result in convictions, the Agency is not using the suggested standard of "was found responsible by law enforcement for the crash." Previous research by the Agency showed that PARs do not generally provide a clear determination as to the preventability of a crash. Relying on a conviction related to one of the crash scenarios described ensures the Agency will have a clear record on which to base its determination.

RDRs could also be submitted through DataQs when the crash did not involve other vehicles, such as crashes in which an individual committed suicide by stepping or driving in front of the vehicle or the vehicle was incapacitated by an animal in the roadway or the crash was the result of an infrastructure failure. The RDR must present sufficient evidence that the driver of the CMV took reasonable action to avoid the crash and did not contribute to the crash. If, for example, a CMV hit an animal but the CMV driver was on his/her cellphone or speeding at the time of the crash, this crash would be determined to have been preventable. In these and all crashes, the Agency reserves the right to request additional information to substantiate the cause of the crash. Failure to

submit a complete RDR with the required documentation would be cause for the RDR to be rejected.

Again, the Agency seeks comments on what other documentation would be sufficient to make this determination.

In addition, Section 5223 of the Fixing America's Surface Transportation, Pub. L. 114-94 (FAST) Act prohibits the Agency from making available to the general public information regarding crashes in which a determination is made that the motor carrier or the commercial motor vehicle driver is not at fault. Therefore, crashes determined to be not preventable will not be listed on the carrier's list of crashes on the public SMS website.

B. Reviewers

For this demonstration program, FMCSA is proposing to use DataQs to direct these types of requests to a group of reviewers under the Agency's direct supervision. FMCSA has not yet determined whether this would be a dedicated group of FMCSA staff or if these reviews would be conducted by a third party under contract to FMCSA. These RDRs would not be directed to the States.

C. Preventability Decisions

Upon receipt of a complete RDR, FMCSA staff or a contractor would review the submission using the preventability definition in 49 CFR part 385. The Agency proposes that the RDR would result in one of the following three decisions and actions:

1. Not Preventable - In these cases, the crash is removed from SMS.
2. Preventable - In these cases, the crash is not removed from SMS for purposes of calculating the Crash Indicator BASIC percentile. FMCSA is

considering options for weighting these crashes and is looking at the impacts if the current severity weighting is used (based on crash severity) or if a higher weighting is used since a preventability decision has been made. When crashes are determined to be “Preventable,” the crash is still listed on the Agency’s websites with a note that reads, “FMCSA reviewed this crash and determined that it was preventable.”

3. Undecided - In these cases, the documentation submitted did not allow for a conclusive decision by reviewers. When crash reviews are undecided, the crash is not removed from SMS and the severity weighting is unchanged. The crash will still be listed on the Agency’s websites with a note that reads, “FMCSA reviewed this crash and could not make a preventability determination based on the evidence provided.”

In keeping with the Agency’s current preventability guidance, if a post-crash inspection determines that the motor carrier, vehicle, or driver was in violation of an out-of-service regulation at the time of the crash, the crash will be determined to have been “Preventable.”

D. Review

The public, including motor carriers and drivers, would be allowed to seek review of the RDR decision using the DataQs system and processes currently in place.

E. Quality Controls

In order to ensure the quality and consistency of the reviews, FMCSA will build a quality control standard into either its contract or its internal procedures. For example, it is anticipated that a process will be established to require a certain percent of reviews to

be checked by a different reviewer to confirm consistent decisions are made. When a different conclusion is reached by the second reviewer, a supervisor will be responsible for reviewing the case and rendering a decision.

F. Fraudulent Requests

In accordance with the Agency's existing DataQs program, any intentionally false or misleading statement, representation, or document that is provided in support of an RDR may result in prosecution for a violation of Federal law punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 5 years, or both (18 USC 1001).

G. Agency Analysis

Throughout this test period, FMCSA will maintain data so that at the conclusion of the test, the Agency can conduct analysis. It is expected that the Agency's analysis would include, but not be limited to, cost of operating the test, future crashes of carriers that submitted RDRs, future crash rates of motor carriers with preventable crashes, and impacts to SMS crash rates. The analysis will be used to examine ATA's assertion that crashes of these types are not the responsibility of the motor carrier, and inform future policy decisions on this issue.

H. Testing Period

FMCSA proposes that the minimum time period for this crash preventability test would be 24 months.

Issued under the authority delegated in 49 CFR 1.87 on: July 5, 2016

T. F. Scott Darling, III
Acting Administrator.

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