



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0177]

Crash Preventability Determination Program

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

ACTION: Notice and request for comments.

SUMMARY: On July 27, 2017, FMCSA announced a crash preventability demonstration program to evaluate the preventability of eight categories of crashes through submissions of Requests for Data Review to its national data correction system known as DataQs. After 18 months of operating the program, FMCSA has decided to operate a crash preventability determination program, using a streamlined process, and proposes to modify the Safety Measurement System to remove crashes found to be not preventable from the prioritization algorithm and noting the not preventable determinations in the Pre-Employment Screening Program. In addition, FMCSA proposes to consolidate two of the original crash types in the demonstration program and start reviewing additional crash types to determine if crashes in the additional categories are predominantly not preventable. FMCSA seeks comments on its implementation of these changes and on the new crash types.

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., Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

Instructions: 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 processes. 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: Mr. Catterson Oh, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590, Telephone 202-366-6160 or by email: Catterson.Oh@dot.gov. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION

I. Public Participation and Request for Comments

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

II. Background

History

The Agency's Crash Indicator Behavior Analysis Safety Improvement Category (BASIC) in FMCSA's Safety Measurement System (SMS) includes all crashes, without regard to the preventability of the crash. 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 (80 FR 3719). In response to the January 2015 Federal Register notice, the American Trucking Associations (ATA) provided a list of certain types of crashes it considered not preventable 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.

In a Federal Register notice dated July 12, 2016, FMCSA proposed a demonstration program to determine the efficacy of preventability determinations on certain types of crashes that are generally less complex (81 FR 45210). The Agency proposed to accept Requests for Data Review (RDRs) to evaluate the preventability of certain categories of crashes through its national data correction system known as

DataQs. It proposed that a crash challenged through an RDR would be found not preventable when evidence submitted with the RDR established that the crash could not have been averted by an act, or failure to act, by the motor carrier or the driver.

On July 27, 2017, FMCSA published a subsequent Federal Register notice announcing the start of the demonstration program to test eight specific crash types and explaining the details of the program (82 FR 35045). On February 7, 2018, FMCSA published a Federal Register notice to clarify how crash types were being defined and to provide other information to help submitters (83 FR 5506).

First Set of Crash Types

To date, FMCSA has reviewed RDRs submitted under one of the following eight crash types:

1. When the commercial motor vehicle (CMV) was struck by a motorist driving under the influence (or related offense);
2. When the CMV was struck by a motorist driving the wrong direction;
3. When the CMV was struck in the rear;
4. When the CMV was struck while it was legally stopped or parked, including when the vehicle was unattended;
5. When the CMV struck an individual committing or attempting to commit suicide by stepping or driving in front of the CMV;
6. When the CMV sustained disabling damage after striking an animal in the roadway;
7. When the crash was the result of an infrastructure failure, falling trees, rocks, or other debris; or
8. When the CMV was struck by cargo or equipment from another vehicle.

Statistics

Between August 1, 2017 and May 31, 2019, 12,249 RDRs were submitted to FMCSA. Approximately 56 percent of the submitted RDRs were eligible, meaning they were one of the eight crash types. After reviewing the eligible crashes, approximately 93 percent were found to have been not preventable.

FMCSA maintains statistics on the program on its website at www.fmcsa.dot.gov/crash-preventability-demonstration-program. As of May31, 2019, information from the program is as follows:

Table 1: Crash Preventability Program Determinations by Crash Type

Crash Type	Total RDRs	Not Preventable	Preventable	Undecided
1. When the commercial motor vehicle (CMV) was struck by a motorist driving under the influence (or related offense)	417	386	12	19
2. When the CMV was struck by a motorist driving the wrong direction	365	334	6	25
3. When the CMV was struck in the rear	3,927	3,675	49	203
4. When the CMV was struck while legally stopped or parked, including when the vehicle was unattended	444	413	8	23
5. When the CMV was struck by an individual committing or attempting to commit suicide by stepping or driving in front of the CMV	17	16	0	1
6. When the CMV sustained disabling damage after striking an animal in the roadway	218	206	2	10
7. When the crash was a result	82	79	2	1

of an infrastructure failure, falling trees, rocks, or other debris				
8. When the CMV was struck by cargo or equipment from another vehicle	149	138	4	7
Total	5,619	5,247	83	289

As of May31, 2019, 3,558 unique carriers had submitted RDRs. Of these, 1,750 carriers submitted 1 RDR, 1,618 carriers submitted between 2 and 9 RDRs, and 190 carriers submitted 10 or more RDRs. The highest number of RDRs submitted by 1 carrier was 254 RDRs.

For the majority of crashes that were determined to be preventable, the driver was operating with an out of service (OOS) condition under the North American Standard OOS Criteria, including that the driver was not properly licensed on the day of the crash. The Agency was clear in its July 2017 Federal Register notice that in these circumstances, crashes would be found to be preventable.

The undecided determinations were largely due to the submitter’s failure to provide, after FMCSA’s request, documentation confirming the validity of the driver’s commercial driver’s license (CDL) or medical certification on the date of the crash, or would found to be undecided because the documentation provided contained conflicting information about the submitter’s actions in the crash.

Review Processes

FMCSA has used contract resources to complete two stages of review within the DataQs system. In stage 1, the reviewer collects all documents related to the crash from the submitter and FMCSA systems including the Motor Carrier Management Information

System (MCMIS) crash report, the Commercial Driver's License Information System (CDLIS) driver history record, any post-crash inspection report, the Driver Information Resource, any recent enforcement information for the motor carrier, and any media reports about the crash.

If the CDLIS record has been updated since the date of the crash, the reviewer requests documentation of the CDL or medical certificate on the date of the crash. In the cases of fatal crashes, the reviewer requests the CMV driver's post-crash drug and alcohol test results.

In stage 2, an experienced crash report reviewer evaluates all of the documents from the submitter and stage 1. Based on the evidence reviewed, the stage 2 reviewer makes a recommendation to FMCSA as to whether the submitter demonstrated, through compelling evidence, that the crash was not preventable.

An FMCSA employee reviews the evidence collected and considered by the stage 2 reviewer and the recommendation and makes the determination. If FMCSA agrees with the recommendation of not preventable, the crash is posted for public input on the DataQs system for 30 days. Any new documents or data will be reviewed and considered before FMCSA makes a final determination. At this time, the DataQs public input functionality has been used only two times, to provide additional information from the submitter and to make a general comment about not preventable crashes that was not crash specific.

In addition, as announced in the Agency's February 2018 Federal Register notice, the Agency recognized that some parties involved in the crash might not be able to provide input within 30 days. The Agency is maintaining a list of not preventable final

determinations on its website at <https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program>. This list is updated monthly. If at any time a party has information and documentation to counter a determination, FMCSA will accept that information at crash.preventability@dot.gov and may change the determination. To date, no emails have been received with information contrary to a determination.

Final determinations (i.e., not preventable, preventable, undecided) made through this demonstration program are noted on the Agency's public SMS website within 60 days. No crashes are removed from the SMS Crash Indicator BASIC. However, a logged-in motor carrier viewing its own data in SMS sees an alternative percentile and measure with the crashes with not preventable determinations removed. The Crash Indicator BASIC percentiles have never been publicly available and remain available only to motor carriers who log in to view their own data, as well as to FMCSA and law enforcement users.

Submitted Documents

FMCSA has not required submitters to provide any specific documentation. The burden is on the submitter to show, by compelling evidence, that the crash was not preventable. FMCSA estimates that 99 percent of submitters of eligible crashes provided Police Accident Reports (PARs). In the limited situations where a PAR was not submitted and the crash was found to be eligible, another official law enforcement-issued document with sufficient information was provided, such as a State-issued driver information exchange report with sufficient details of the crash.

FMCSA notes that other evidence such as photos and videos significantly improved the Agency's ability to determine: (1) if the crash met one of the eligible crash

types or not; and, if eligible, (2) preventability. Internal company documents and insurance reports were provided by some submitters but, when reviewed on their own, did not generally provide compelling evidence.

Effectiveness Analysis

FMCSA conducted a preliminary analysis of the 2-year demonstration program. A copy of the Agency's analysis using 18 months of safety data is included in the docket for this notice. This analysis quantified the program's impacts in terms of: (1) number of carriers impacted; (2) size of SMS percentile changes; and (3) future crash rate of identified carriers like is calculated in the Agency's SMS effectiveness analysis.

In summary, the carriers that have Not Preventable crashes removed through the demonstration program see a reduction in their Crash Indicator BASIC percentiles. The analysis team found a negligible impact on SMS effectiveness after removing Not Preventable crashes. Regardless of whether Not Preventable crashes are removed, carriers identified in SMS, when considering all BASICs, have a crash rate 97% higher than those not identified. The lack of an impact is mainly a result of the small number of carriers affected by the removal of Not Preventable crashes. Only 169 and 208 carriers are expected to gain and lose alert in the Crash Indicator BASIC, respectively, which is a small fraction (2%) of the 8,634 carriers identified in the Crash Indicator BASIC.

Small carriers that have Not Preventable crashes removed through the demonstration program have the largest reductions in their Crash Indicator BASIC percentiles, mainly by dropping below the data sufficiency threshold. However, most of the small carrier population, did not participate. To improve representation, small carriers could be encouraged participate in the Agency's future program.

Implementation Proposal

Changes to Eligible Crash Types

FMCSA proposes two changes to the original eight crash types. First, FMCSA would combine the crash type involving infrastructure failures and debris with the crash type for CMVs struck by cargo and equipment. The distinction between these two crash types did not result in different determinations and, in some cases, required submitters to resubmit their RDRs under the other crash type. In addition, FMCSA is changing the “Motorist Under the Influence” crash type to “Individual Under the Influence” to include pedestrians and bicyclists. As a result, the revised crash types are:

1. Struck in rear – Crashes would qualify when the striking vehicle was directly behind the submitter’s vehicle prior to the crash and strikes the CMV on the back plane. This crash type does not include side swipes or when the point of impact was on the side toward the rear of the truck/trailer.
2. Legally stopped or parked – Crashes would qualify if the CMV was stopped at a light, stop sign or other traffic control device, stopped for railroad crossings or school buses, or was parked. This crash type does not include crashes that occurred when the CMV was stopped in traffic.
3. Suicides or Suicide Attempts – Crashes would qualify if the submitter provided evidence that the CMV struck an individual committing or attempting to commit suicide. This crash type does not include action where a vehicle or pedestrian enters the CMV’s path with no documented reason.
4. Wrong Direction – Crashes would qualify only if the CMV was struck after the other vehicle fully crossed the center line or median, or the other driver was driving in the

wrong direction (e.g., driving southbound in the northbound lanes of an interstate or opposite on a one-way road). To qualify for this crash type the other vehicle was operating in the opposing direction before the crash. This crash type does not include when the vehicle partially crosses the center line or when the involved vehicles were traveling in the same direction. This crash type also does not include when the CMV crossed into the other lane.

5. Animal Strikes – Crashes would qualify only if the CMV struck the animal. This would not include crashes where the CMV crashed avoiding the animal.

6. Individuals Under the Influence – This crash type would require evidence that the CMV was struck by an individual who was operating “under the influence” (or related violation such as operating while intoxicated), according to the legal standard of the jurisdiction in which the crash occurred, to include either alcohol or drug test results, an arrest, a citation/violation, or a refusal.

7. Infrastructure failure or struck by cargo, equipment or debris – This crash type would be changed to include any cargo and equipment, not just fallen cargo and equipment. This would include crashes when the cargo or equipment on a vehicle shifts or extends into the path of travel. This crash type would not include when the CMV was struck by another vehicle that was not being transported as cargo.

In addition, FMCSA proposes to test the following additional crash types. These crashes were frequently submitted during the demonstration program, but did not qualify for one of the original crash types. However, the PARs provided sufficient information to reach a preventability determination.

8. When the CMV is struck on the side in the rear – These crashes would include when the CMV is struck on the side at the rear of the CMV when the other driver was in another lane before the crash and strikes the CMV at the side. For example, this would include when the PAR indicates that the CMV was struck at the 5:00 or 7:00 point of impact;
9. When the CMV is struck by a vehicle that did not stop or slow in traffic – These crashes are when the CMV is stopped in a traffic lane due to traffic. This would include when the CMV is struck on the side;
10. When the CMV is struck by a vehicle that failed to stop at a traffic control device (e.g., stop sign, red light or yield);
11. When the CMV is struck by a vehicle that was making a U-turn or illegal turn;
12. When the CMV is struck by a driver who experiences a medical issue which causes the crash;
13. When the CMV is struck by a driver who admits falling asleep or admits distracted driving (e.g., cellphone, GPS, passengers, other);
14. When the crash involved an individual “under the influence” (or related violation such as operating while intoxicated), according to the legal standard of the jurisdiction in which the crash occurred, even if the CMV was struck by another vehicle involved in the crash and not by the individual under the influence. The standards for test results, arrest or a citation would continue to apply; or
15. When the crash involved a driver operating in the wrong direction, even if the CMV was struck by another vehicle involved in the crash and not by the driver operating in the wrong direction. The standard for the other wrong direction vehicle to be completely

operating in the wrong lane (e.g., completely across the center line or over a median) or the other driver was driving in the wrong direction (e.g., driving southbound in the northbound lanes of an interstate or opposite on a one-way road.) to qualify for this crash type.

FMCSA expects to analyze these additional crash types for 24 months but may announce changes earlier if: (1) certain crash types cannot be consistently reviewed; (2) these crash types result largely in preventable or undecided determinations; or (3) there is sufficient information to make recommendations for future implementation.

SMS and PSP Changes

Effective for crashes on or after August 1, 2019, for any of the 15 types noted above, FMCSA would continue to display the crashes in SMS with notations of not preventable, preventable or undecided but would remove crashes with not preventable determinations from the SMS Crash Indicator BASIC calculation. FMCSA will also note the not preventable determinations in PSP. FMCSA proposes that preventable determinations would not be noted in PSP because the driver may not be aware when the motor carrier submits a crash that results in a preventable determination. The Agency is specifically interested in receiving comments on this issue.

As crashes in SMS are only displayed for 2 years, notations in SMS for crashes reviewed during the demonstration program will remain for 2 years from the date of the crash. Crashes reviewed during the demonstration program will not be removed from calculation of the SMS Crash Indicator BASIC but motor carriers will still have access to the alternative measures and percentiles.

The Agency has an interest in maintaining transparent and accurate safety performance data. The Agency also believes that removing not preventable crashes from the SMS may provide additional safety incentives to carriers that are not reflected in the effectiveness study, but requests comments on this issue.

The proposed changes to SMS would go into effect only after comments to this notice are fully reviewed and any needed changes addressed. In addition, FMCSA needs to implement information technology system changes, specifically in the DataQs system, to sustain longer term operations and reduce costs and improve efficiencies.

As a result, the changes proposed in this notice would not go into effect until these steps, and other needed implementation actions, are completed and the Agency publishes a follow up Federal Register notice.

Impact of SMS Changes

Once FMCSA begins removing crashes from the Crash Indicator BASIC, and because SMS is a relative system, the calculation may increase the Crash Indicator BASIC percentiles of other carriers. As a result, a motor carrier that does not have any additional crashes may see its Crash Indicator BASIC percentile increase because its peers submitted RDRs and crashes were found to be not preventable and were removed from the calculations.

Although removing not preventable crashes from the calculation of the Crash Indicator BASIC may identify a different set of carriers for intervention, the Crash Indicator BASIC percentiles have never been publicly available and will remain available only to motor carriers who log in to view their own data, as well as to FMCSA and law enforcement users. This change would not change any carrier's safety fitness rating or

ability to operate, nor would it establish any obligations or impose legal requirements on any motor carrier. This change also would not change how the Agency makes enforcement decisions.

End of Demonstration Program and Start of New Program

FMCSA proposes to continue accepting crashes occurring on or after June 1, 2017, and through July 31, 2019, until September 30, 2019. This will allow RDRs for crashes occurring in July 2019 to be submitted, reviewed and preventability determinations noted in SMS.

FMCSA is preparing to be able to accept the 15 crash types noted above in DataQs on or about October 1, 2019. Submitters will be able to submit crashes occurring on or after August 1, 2019, for all 15 crash types. As a result, there is no gap in time for submissions of RDRs.

Public Input Changes

As previously noted, FMCSA has not received public input on any of the crashes. As a result, FMCSA proposes to cease the 30-day public input period and cease the practice of publishing preliminary not preventable determinations. This will allow RDRs to be closed with not preventable determinations without the 30-day delay and will reduce resources to take additional action on the RDR. In addition, FMCSA proposes to stop publishing a list of not preventable determinations on the Agency's website. Instead, the Agency would accept information about any crash by email to the crash.preventability@dot.gov email address for any crash in SMS with a not preventable notation. Any information received would be fully considered and could result in a

change in the determination. The Agency is specifically interested in receiving comments on this issue.

Document Requirement

FMCSA also proposes requiring submitters to provide the complete PAR to participate in the program. In nearly all qualified submissions, a PAR was needed to reach a determination, and most submitters provided the PAR as the required compelling evidence. The submitter may provide other documentation as well, as the burden will remain on the submitter to provide compelling evidence showing that the crash was not preventable. Therefore, if only the PAR is submitted and it contains conflicting information about the crash (i.e., the narrative is different than the diagram or point of impact information) and FMCSA cannot determine eligibility for one of the 15 crash types, the crash will be deemed Not Eligible. If the crash is found to be eligible, the the PAR information conflicts, this may result in an undecided determination.

Process Information

The demonstration program required submitters to resubmit the RDR for it to be considered under another crash type. In the future, FMCSA proposes to develop the functionality in DataQs to allow FMCSA to change the crash type on behalf of the submitter to another eligible crash type, when appropriate.

FMCSA will streamline the review process and use only one stage of contract reviewers to provide a recommendation. In addition, FMCSA may allow the contract reviewers to close RDRs for crashes that are not one of the 15 eligible crash types.

To date, the stage 1 reviewer has pulled the MCMIS crash record and a current CDLIS report for the submitter's driver. For many RDRs, the driver had a license change

such as a renewal or new medical certificate after the date of the crash, and FMCSA requested confirmation of the CDL or medical certificate on the date of the crash. On only a few RDRs did this result in a determination that the driver was not qualified on the date of the crash. In most RDRs, the MCMIS crash report accurately reflected the driver's proper licensing status at the time of the crash. As a result, FMCSA proposes to rely solely on the MCMIS report to confirm the driver's license and medical certification status as part of implementation.

FMCSA proposes to continue reviewing any post-crash inspection reports and if the inspection shows that the CMV was in violation of an OOS regulation under the North American Standard OOS Criteria prior to the crash or that the driver was not properly licensed, the crash would be deemed preventable. In addition, FMCSA will continue to request post-crash drug and alcohol test results when the crash results in a fatality.

Crash Preventability Determinations during Investigations and Safety Audits

It should be noted that the crash preventability determination program does not change FMCSA's processes for reviewing crashes during an investigation or safety audit. In the event an investigation or audit results in a different determination than was made through this program, FMCSA will review all information provided and the determination made through this program may change.

National Academy of Sciences' Correlation Study

FMCSA proposes to make these changes to SMS separately from the ongoing work that FMCSA is undertaking in response to the June 27, 2017, report of the National Academy of Sciences (NAS), "Improving Motor Carrier Safety Measurement." In its

report, the NAS noted that the demonstration program was of interest but did not issue a recommendation directly relating to the program.

Comments Sought

FMCSA seeks comments generally on the proposals described above. FMCSA also seeks comments specifically on the following questions.

1. If you participated in the demonstration program, did you realize any new safety incentives to your operations? If so, how were they quantified?
2. Would the ability to have not preventable crashes removed from the calculation of your Crash Indicator BASIC measure and percentile provide any new safety incentives to your operations?
3. If you have not submitted a crash for a preventability determination, what were your reasons for not participating?

Dated: July 31, 2019

Raymond P. Martinez
Administrator

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