



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2022-0233]**

### **Crash Preventability Determination Program**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** To address industry concerns about all crashes being used in the Agency's Safety Measurement System (SMS), since May 2020 FMCSA has been operating the Crash Preventability Determination Program (CPDP). This program reviews 16 specific crash types and modifies information in the SMS to distinguish not preventable crashes. The existing program was an expansion of the Agency's previous demonstration program that reviewed eight specific crash types. Through the incorporation of this information into SMS, FMCSA is better positioned to identify unsafe carrier and driver behaviors and prioritize carriers for interventions, by excluding not preventable crashes when calculating a motor carrier's Crash Indicator Behavior Analysis Safety Improvement Category measure and percentile. Based on the Agency's experiences with the crash types and its reviews of crash eligibility, FMCSA proposes modifying existing crash types to broaden eligibility, removing the distinction between direct and indirect strikes, and differentiating some types for improved reporting and use of the data to identify ways to reduce crashes involving non-motorists, in alignment with the Department of Transportation's National Roadway Safety Strategies at [www.transportation.gov/NRSS](https://www.transportation.gov/NRSS). In addition, FMCSA proposes that four new crash types be included in the program. FMCSA seeks comments on these proposed changes. FMCSA will respond to comments

it receives on the proposal and announce the start of the updated CPDP through a subsequent *Federal Register* notice.

**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 identified by Docket Number FMCSA-2022-0233 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2022-0233/document>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. DOT, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. DOT, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Catterson Oh, Compliance Division, FMCSA, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001; (202) 366-6160; [Catterson.Oh@dot.gov](mailto:Catterson.Oh@dot.gov). If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

#### **A. Submitting Comments**

If you submit a comment, please include the docket number for this notice (FMCSA-2022-0233), indicate the specific section of this document to which your 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0233/document>, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

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.

#### **Confidential Business Information (CBI)**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of

your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

## **B. Viewing Comments and Documents**

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0233/document> and choose the document to review. To view comments, click this notice then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

## **C. Privacy**

FMCSA solicits comments from the public to better inform its processes. FMCSA posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL 14 – Federal Docket Management System), which can be reviewed at <https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf>.

## **II. BACKGROUND**

Since its implementation in 2010, FMCSA’s Safety Measurement System (SMS) has used safety performance information in the Behavior Analysis and Safety

Improvement Categories (BASICS), in addition to recordable crashes involving commercial motor vehicles (CMVs), to prioritize carriers for safety interventions (75 FR 18256). The Crash Indicator BASIC uses crashes from the previous 24 months to calculate percentiles for motor carriers.

In addition, the public SMS website lists motor carriers' recordable crashes. Although the Crash Indicator BASIC percentiles have never been publicly available, stakeholders have expressed concern that the use of all crashes in SMS, without an indication of preventability, may give an inaccurate impression about the risk posed by the company. In response to this concern, FMCSA announced a demonstration program on July 27, 2017, to evaluate the preventability of certain categories of crashes (82 FR 35045). Based on its experience in conducting the demonstration program, and the strong support for continuing and expanding this program, FMCSA initiated the Crash Preventability Determination Program (CPDP).

Since May 2020, FMCSA has accepted Requests for Data Review (RDRs) in its DataQs system to evaluate the preventability by the CMV driver of the following 16 crash types, which were implemented as described in a May 6, 2020, *Federal Register* notice (85 FR 27017). This was an expansion from the Agency's previous demonstration program.

Struck in the Rear type of crash when the CMV was struck:

1. in the rear; or
2. on the side at the rear.

Wrong Direction or Illegal Turns type of crash when the CMV was struck:

3. by a motorist driving in the wrong direction; or
4. by another motorist in a crash when a driver was operating in the wrong direction; or
5. by a vehicle that was making a U-turn or illegal turn.

Parked or Legally Stopped type of crash when the CMV was struck:

6. while legally stopped at a traffic control device (e.g., stop sign, red light, or yield) or while parked, including while the vehicle was unattended.

Failure of the other vehicle to Stop type of crash when the CMV was struck:

7. by a vehicle that did not stop or slow in traffic; or

8. by a vehicle that failed to stop at a traffic control device.

Under the Influence of crash when the CMV was struck:

9. by an individual under the influence (or related violation, such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred; or

10. by another motorist in a crash where an individual was under the influence (or related violation such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred.

Medical Issues, Falling Asleep or Distracted Driving type of crash when the CMV was struck:

11. by a driver who experienced a medical issue that contributed to the crash;  
or

12. by a driver who admitted falling asleep or admitted distracted driving (e.g., cellphone, global positioning system (GPS), passengers, other).

Cargo/Equipment/Debris or Infrastructure Failure type of crash when the CMV:

13. was struck by cargo, equipment, or debris (e.g., fallen rock, fallen trees, unidentifiable items on the road), or a crash resulting from an infrastructure failure.

Animal Strike type of crash when the CMV:

14. struck an animal

Suicide type of crash when the CMV:

15. struck an individual committing or attempting to commit suicide

Rare or Unusual type of crash when the CMV:

16. Was involved in a crash type that seldom occurs and does not meet another eligible crash type (e.g., non-motorist involved crashes, being struck by an airplane or skydiver or being struck by a deceased driver).

Between May 1, 2020, and December 30, 2022, 39,133 RDRs were submitted to FMCSA. Approximately 72.5 percent of the submitted RDRs were eligible, meaning they were one of the 16 specific crash types. Approximately 96 percent of the eligible crashes were found to have been not preventable.

FMCSA maintains quarterly statistics on the program on its website at [www.fmcsa.dot.gov/crash-preventability-determination-program](http://www.fmcsa.dot.gov/crash-preventability-determination-program). As of December 30, 2022, information from the program is as follows:

**Table 1: Crash Preventability Program Determinations by Crash Type**

<b>Crash Type</b>	<b>Total Determinations</b>	<b>Not Preventable</b>	<b>Preventable</b>	<b>Undecided</b>
1. When the CMV was struck by a motorist driving under the influence (or related offense)	1,206	1,157	19	30
2. When the CMV was struck by a motorist driving in the wrong direction	1,288	1,195	36	57
3. When the CMV was struck in the rear	11,280	10,860	201	219
4. When the CMV was struck while legally stopped or parked, including when the vehicle was unattended	1,931	1,858	40	33
5. When the CMV was struck by an individual committing or attempting to commit suicide by stepping or driving in front of the CMV	54	51	2	1
6. When the CMV sustained disabling damage after striking an animal in the roadway	584	581	3	0
7. When the crash was a result of an infrastructure failure or the CMV was struck by cargo,	1,018	986	18	14

equipment, or debris (e.g., fallen rock, fallen trees, unidentifiable items in the road).				
8. When the CMV was struck on the side at the rear	2,311	2,196	59	56
9. When the CMV was struck by another motorist in a crash when a driver was operating in the wrong direction	64	55	0	9
10. When the CMV was struck by a vehicle that was making a U-turn or illegal turn	414	399	6	9
11. When the CMV was struck by a vehicle that did not stop or slow in traffic	726	702	11	13
12. When the CMV was struck by a vehicle that failed to stop at a traffic control device	3,306	3,205	40	61
13. When the CMV was struck by another motorist in a crash where an individual was under the influence (or related violation such as operating while intoxicated)	56	55	0	1
14. When the CMV was struck by a driver who experienced a medical issue which contributed to the crash	199	196	0	3
15. When the CMV was struck by a driver who admitted to falling asleep or admitted to distracted driving (e.g., cellphone, GPS, passengers, other).	965	940	15	10
16. When the CMV was involved in a crash type that seldom occurs and does not meet another eligible crash type (e.g., non-motorist involved crashes, being struck by an airplane or skydiver or being struck by a deceased driver)	294	254	9	31
<b>Total</b>	<b>25,696</b>	<b>24,690</b>	<b>459</b>	<b>547</b>



As of December 30, 2022, 7,669 unique carriers had submitted RDRs. Of these, 3,138 carriers submitted 1 RDR, 3,837 carriers submitted between 2 and 9 RDRs, and 694 carriers submitted 10 or more RDRs. The highest number of RDRs submitted by 1 carrier was 942 RDRs.

For the majority of crashes that were determined to be preventable, the CMV driver was operating with a pre-crash out-of-service (OOS) condition under the North American Standard OOS Criteria, which includes the driver not being properly licensed on the day of the crash. Many of these OOS violations were identified through post-crash inspections that noted the pre-crash violations. The Agency explained in its May 6, 2020, *Federal Register* notice that in these circumstances, crashes would be found to be preventable (85 FR 27017).

The undecided determinations were primarily 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 to resolve conflicting information on the documentation provided about the crash.

Undecided determinations were also issued when a submitter did not provide drug and alcohol testing results or explain why testing did not occur for fatal crashes.

### **III. IMPLEMENTATION PROPOSAL**

#### **A. Proposed List of Eligible Crash Types**

FMCSA proposes changes to existing crash types and adds four new crash types to expand the CPDP to review even more crashes each year for preventability. These proposed changes are expected to double the size of the current program and provide more data for analysis of the impacts of a carrier's not preventable crashes on its overall safety. FMCSA would analyze these changes to existing crash types and new crash types for 24 months but may announce changes earlier if certain crash types cannot be

consistently reviewed or there is insufficient information to make eligibility and preventability determinations.

These changes and its incorporation into SMS allow us to further refine our prioritization to ensure the carriers and drivers with riskiest behaviors are identified for prioritization. In addition, the Agency believes that continued growth of the CPDP and the use of more preventability information in assessing motor carriers will provide an improved indication of a motor carrier's crash risk.

#### *Changes to Existing Crash Types*

FMCSA proposes changes to existing crash types to broaden the crash types to allow more crashes to be eligible.

The current crash types to be changed are:

1. CMV was struck by a motorist driving in the wrong direction
2. CMV was struck by another motorist in a crash when a driver was operating in the wrong direction
3. CMV was struck by a vehicle that was making a U-turn or illegal turn
4. CMV was struck by a vehicle that did not stop or slow in traffic
5. CMV was struck by a vehicle that failed to stop at a traffic control device
6. CMV was struck by an individual under the influence (or related violation, such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred
7. CMV was struck by another motorist in a crash where an individual was under the influence (or related violation such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred
8. CMV was struck by a driver who experienced a medical issue which contributed to the crash

9. CMV was struck by a driver who admitted falling asleep or admitted distracted driving (e.g., cellphone, GPS, passengers, other)

10. CMV was struck by cargo, equipment, or debris (e.g., fallen rock, fallen trees, unidentifiable items in the road); or crash was a result of an infrastructure failure

11. CMV was involved in a crash type that seldom occurs and does not meet another eligible crash type (e.g., non-motorist involved crashes, being struck by an airplane or skydiver or being struck by a deceased driver)

The proposed revised crash types are:

1. CMV was struck because another motorist was driving in the wrong direction

2. CMV was struck because another motorist was making a U-turn or illegal turn

3. CMV was struck because another motorist did not stop or slow in traffic

4. CMV was struck because another motorist failed to stop at a traffic control device

5. CMV was struck because another individual was under the influence (or related violation, such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred

6. CMV was struck because another motorist experienced a medical issue which contributed to the crash

7. CMV was struck because another motorist fell asleep

8. CMV was struck because another motorist was distracted (e.g., cellphone, GPS, passengers, other)

9. CMV was struck by cargo, equipment, or debris (e.g., fallen rock, fallen trees, unidentifiable items in the road);

10. CMV crash was a result of an infrastructure failure

These changes would allow more crashes to be submitted for consideration in the program.

11. CMV was involved in a crash with a non-motorist.

This change would create a separate type for these events. These crashes are currently the predominant type submitted in the Rare and Unusual crash type. This change will allow the Agency to distinguish these events and use the information to identify ways to reduce the increasing number of non-motorist crashes in alignment with the Department's National Roadway Safety Strategy objectives of Safer People and Safer Roads.

#### *New Crash Types*

In addition, FMCSA proposes to test the following four additional crash types. These crashes were submitted during the determination program but did not qualify for one of the current crash types. However, the police accident reports (PARs), especially when paired with other supporting documents, particularly videos, provided sufficient information to potentially reach a preventability determination.

1. CMV was struck on the side by a motorist operating in the same direction. Currently, the crash type is limited to side strikes at the very rear of the vehicle (e.g., 5:00 and 7:00 points of impact).

2. CMV was struck because another motorist was entering the roadway from a private driveway or parking lot.

3. CMV was struck because another motorist lost control of their vehicle. FMCSA reviewed many PARs that included this information but were ineligible for the program under the current crash types.

4. Any other type of crash involving a CMV where a video demonstrates the sequence of events of the crash.

FMCSA believes that the submission of videos could allow it to review crashes that are not in the 21 other types.

As a result, a full list of the eligible crash types would be:

1. CMV was struck in the rear by a motorist
2. CMV was struck on the side at the rear by a motorist
3. CMV was struck while legally stopped at a traffic control device or parked, including while the vehicle was unattended
4. CMV was struck because another motorist was driving in the wrong direction
5. CMV was struck because another motorist was making a U-turn or illegal turn
6. CMV was struck because another motorist did not stop or slow in traffic.
7. CMV was struck because another motorist failed to stop at a traffic control device
8. CMV was struck because another individual was under the influence (or related violation, such as operating while intoxicated), according to the legal standard of the jurisdiction where the crash occurred
9. CMV was struck because another motorist experienced a medical issue which contributed to the crash
10. CMV was struck because another motorist fell asleep
11. CMV was struck because another motorist was distracted (e.g., cellphone, GPS, passengers, other)
12. CMV was struck by cargo or equipment from another vehicle, or debris (e.g., fallen rock, fallen trees, unidentifiable items in the road);
13. CMV crash was a result of an infrastructure failure
14. CMV struck an animal
15. CMV struck an individual committing or attempting to commit suicide

16. CMV was struck on the side by a motorist operating in the same direction as CMV
17. CMV was struck because another motorist was entering the roadway from a private driveway or parking lot
18. CMV was struck because another motorist lost control of the vehicle
19. CMV was involved in a crash with a non-motorist
20. CMV was involved in a crash type that seldom occurs and does not meet another eligible crash type (e.g., being struck by an airplane or skydiver or being struck by a deceased driver in another vehicle)
21. Any other type of crash where a CMV was involved and a video demonstrates the sequence of events of the crash.

## **B. Reminders on CPDP Process and System Impacts**

Since the implementation of CPDP, FMCSA has provided clarification and individual reminders to submitters participating in the program, as questions have arisen. In an effort to assist the public in better understanding the CPDP process and system impacts, FMCSA is providing the following reminders.

### *Preventability Standard*

The standard for making a preventability determination remains the same and is set forth in 49 CFR part 385, Appendix B, section II.B(e). The burden continues to be on the submitter to show by compelling evidence that the crash was not preventable. FMCSA will continue to display the current disclaimer on the Safety Management System (SMS) website and will continue to include language in its determination notifications to submitters explaining that a crash preventability determination does not assign fault or legal liability for the crash.

### *Process*

FMCSA will continue to make a determination of preventable if there is evidence that the driver or carrier could have prevented the crash or was prohibited from operating the CMV at the time of the crash. This includes OOS violations and license violations, as previously noted, and driver prohibitions in the Agency's Drug and Alcohol Clearinghouse.

FMCSA will continue to rely on the Motor Carrier Management Information System (MCMIS) crash report to confirm that the driver was properly licensed at the time of the crash. If this information is missing from the MCMIS report or MCMIS indicates the wrong license class for the vehicle being operated, the Commercial Driver's License Information System (CDLIS) report will be used to verify the driver's license. Additionally, the CDLIS report is used to confirm the driver was not operating while suspended due to a drug or alcohol violation. The crash will be deemed preventable if documentation shows that the driver was not qualified.

If CDLIS is used to verify the license and the driver has renewed the license or medical certificate since the date of the crash, evidence of licensing or medical certification on the date of the crash will continue to be requested from the submitter. Failure to provide any requested information will continue to preclude a not preventable determination and result in an undecided determination.

As a reminder, for crashes resulting in a fatality, proper DOT post-accident drug and alcohol testing results or the required explanation of why the tests were not completed or not completed within the timeframes specified in § 382.303(d)(1) and (d)(2), must be submitted. The tests must be conducted in accordance with the requirements of 49 CFR part 40, which requires only the use of a urine specimen for drug testing and either breath or saliva testing for alcohol. An exception for post-accident alcohol testing conducted under the authority of Federal, State, or local officials permits the use of a blood test. The crash will be deemed preventable if the drug or alcohol test

results are positive or the driver refuses to submit to a test. More information about proper drug and alcohol testing procedures can be found at <https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing-program>.

Failure to provide requested documents will preclude a not preventable determination and may result in an undecided determination.

#### *Document Requirements*

FMCSA will continue to require submitters to provide the complete PAR to participate in the program. The submitter may also provide other documentation, as the burden will remain on the submitter to provide compelling evidence showing that the crash was eligible and not preventable. Therefore, if only the PAR is submitted and it contains conflicting or insufficient 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 21 crash types, the crash will be deemed not eligible. If the crash is found to be eligible, but FMCSA does not have compelling evidence to make a determination, FMCSA will issue an undecided determination.

Additionally, if the submitter starts an RDR in DataQs without having a PAR, the submitter can save the request as a draft. Once a saved draft is inactive for more than 14 days and the crash is older than 90 days from the date of the crash, CPDP will close these requests. The submitter still has an opportunity to open a new RDR but should ensure that a PAR is uploaded with the request and confirm that the submission is completed.

#### *Impacts to SMS and Pre-Employment Screening Program (PSP)*

For any of the 21 crash types noted above, FMCSA will continue to display the crashes in SMS with notations of not preventable, preventable, or undecided and will remove crashes with not preventable determinations from the SMS Crash Indicator BASIC calculation. FMCSA will also note the not preventable determinations in PSP for 5 years. FMCSA will continue to refrain from notating preventable or undecided



determinations in PSP because the driver may not be aware when the motor carrier submits a crash that results in one of those determinations.

#### *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. If 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.

#### *Implementation of Crash Type Updates to CPDP*

In order to accommodate the needed changes to FMCSA's DataQs system, FMCSA expects that to have a start date for the new crash types. These new crash types will not be retroactive, that is, a crash that occurs before the start date of the new crash types will not become eligible for submission under the CPDP after the start date. The new date will be provided in the subsequent *Federal Register* notice or on the Agency's website for the program.

For unchanged crash types and crash types with wording changes, DataQs will continue to allow submissions for crashes occurring on or after August 1, 2019, up to 5 years from the date of the crash. For example, a crash from 2020 where a CMV was struck because another motorist failed to stop at a traffic control device may be submitted after the DataQs changes are implemented.

In addition, RDRs submitted but not yet receiving a determination in crash types with wording changes will be converted into the new types by FMCSA during the DataQs programming.

The DataQs changes may require the system to be temporarily unavailable to accept new RDRs. System information will be conveyed on the program's website and on DataQs.

#### **IV. COMMENTS SOUGHT**

FMCSA seeks comments generally on the proposals described above. However, FMCSA has been advised that obtaining PARs from some States, specifically Oregon, is more complex. FMCSA also seeks information on any other State that generally does not provide a PAR and requests comments on what alternative official document or combination of documents the submitter could provide as a substitute for the required PAR.

Once comments are reviewed, and any needed program changes are made, the Agency will respond to comments received to this notice and announce the start of the updated program in the *Federal Register*.

**Robin Hutcheson,**

*Administrator.*

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