

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2014-0177]**

**Crash Preventability Determination Program**

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

**ACTION:** Notice.

**SUMMARY:** On July 27, 2017, FMCSA announced a 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. On August 5, 2019, based on experiences with the demonstration program, FMCSA proposed a Crash Preventability Determination Program with a streamlined process. FMCSA proposed to modify the Safety Measurement System to exclude crashes with not preventable determinations from the prioritization algorithm and proposed noting the not preventable determinations in the Pre-Employment Screening Program. This notice responds to comments received on the proposal and announces the start of the Agency's new Crash Preventability Determination Program.

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

## **SUPPLEMENTARY INFORMATION**

### **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 is initiating the Crash Preventability Determination Program (CPDP) as described in this notice. Through this program, motor carriers and drivers may submit eligible crashes for preventability determinations through FMCSA's DataQs system. FMCSA will remove crashes that were not preventable by the motor carrier or driver from the SMS prioritization algorithm. FMCSA will also note the not preventable determinations in the driver's Pre-Employment Screening Program (PSP) record and will note not preventable, preventable, and undecided determinations in the motor carrier's list of crashes on the public SMS website.

## **Implementation Proposal**

### *General Comments*

FMCSA received 111 comments to this docket. More than 90 commenters supported the proposal and the Agency's plan to continue the program. Many noted their support of the expansion of eligible crash types. Gregory Cohen advised that Greyhound Lines, Inc., participated in the demonstration program and supports the continuation of the program. Dave Guyer, Cindy Staten, Dave Fisher, Scott Conklin, and several anonymous commenters advised the program should be maintained. Associations including the Owner Operator Independent Drivers Association (OOIDA), the American Trucking Associations, the International Foodservice Distributors Association, National School Transportation Association, and Truckload Carriers Association supported the proposal.

Thirteen commenters, including the Motor Carrier Regulatory Reform Coalition (MCRRC) and the National Association of Small Trucking Companies (NASTC), opposed the program. Both MCRRC and NASTC requested that the proposed changes be made through notice and comment rulemaking. MCRRC detailed this request by additional letters to FMCSA's Administrator dated June 14 and September 5, 2019, and requested an extension of the comment period by letter dated September 13, 2019. FMCSA posted these letters to this docket and considered the June 14 letter as part of MCRRC's comments. MCRRC and NASTC expressed concern that preventability would be conflated with fault, and that this confusion may cause negative impacts to insurance rates and outcomes in private litigation. MCRRC and NASTC stated that the program would cause unfair harm to small carriers.

The Commercial Vehicle Safety Alliance (CVSA) expressed multiple concerns, including issues with the new crash types, reviewers' qualifications, Federalism impacts, and the impact of an FMCSA not preventable determination on a State's criminal charges. The Insurance Institute of Highway Safety (IIHS) indicated the program does not improve safety and recommended FMCSA incentivize best practices and reward carriers' investments in safety.

The other commenters either asked questions or provided comments that made it difficult to discern their position on the proposal.

#### *FMCSA Response*

FMCSA declined to extend the comment period in response to MCRRC's September 13, 2019, request because MCRRC failed to show good cause for its request. FMCSA has provided ample notice and opportunities to comment throughout the development of this program, from the publication of its initial crash weighting analysis in 2015 (80 FR 3719), through the announcement of the demonstration program in 2017 (82 FR 35045), and the 2019 proposal to implement this program (84 FR 38087). At each stage, FMCSA has solicited, considered, and responded to public comments.

This program does not amend any prior legislative rules nor does it provide a basis for any new enforcement actions, and does not require a notice and comment rulemaking under the Administrative Procedure Act (49 U.S.C. §§ 551, 553). This program does not alter FMCSA's safety fitness standard under 49 U.S.C. § 31144 and 49 CFR part 385. As expressly stated on the SMS website, FMCSA uses SMS data to prioritize motor carriers for further monitoring, and data "is not intended to imply any federal safety rating of the carrier pursuant to 49 USC 31144." This program does not

impact preventability determinations made through FMCSA safety investigations conducted under 49 CFR part 385, nor the preventability standard contained therein.

The crash preventability determinations made under this program thus will not affect any carrier's safety rating or ability to operate. FMCSA will not issue penalties or sanctions on the basis of these determinations, and the determinations do not establish any obligations or impose legal requirements on any motor carrier. These determinations also will not change how the Agency will make enforcement decisions.

FMCSA emphasizes that these determinations do not establish legal liability, fault, or negligence by any party. Fault is generally determined in the course of civil or criminal proceedings and results in the assignment of legal liability for the consequences of a crash. By contrast, a preventability determination is not a proceeding to assign legal liability for a crash. Under 49 U.S.C. § 504(f), FMCSA's preventability determinations may not be admitted into evidence or used in a civil action for damages and are not reliable for that purpose.

In response to MCRRC's and NASTC's concerns about the potential conflation of preventability and fault, and CVSA's concern about the impact on State criminal proceedings, FMCSA added a disclaimer to the SMS website that states:

A crash preventability determination does not assign fault or legal liability for the crash. These determinations are made on the basis of information available to FMCSA by persons with no personal knowledge of the crash and are not reliable evidence in a civil or criminal action. Under 49 U.S.C. § 504(f), these determinations are not admissible in a civil action for

damages. The absence of a not preventable determination does not indicate that a crash was preventable.

In addition, FMCSA will continue to include the following text in its determination notifications to submitters, which it included during the demonstration program:

FMCSA made this crash preventability determination on the basis of information available to the Agency at the time of the determination, and it is not appropriate for use by private parties in civil litigation. This determination does not establish legal liability, fault, or negligence by any party and was made by persons with no personal knowledge of the crash. This crash preventability determination will not affect any motor carrier's safety rating or ability to operate. FMCSA will not issue penalties or sanctions on the basis of this determination. This crash preventability determination does not establish any obligations or impose any legal requirements on any motor carrier.

FMCSA addresses the impact of the program on small carriers in the “Effectiveness Analysis” section below. In response to IIHS’s comments, FMCSA acknowledges that the demonstration program was a first step in examining the impacts of preventability determinations on SMS with a small data set. Continuing the program and expanding crash types will allow FMCSA to continue to conduct analysis with more crashes.

Regarding reviewer qualifications, FMCSA reviewed nearly 15,000 police accident reports (PAR) during the demonstration program. Eligible crashes will continue

to reviewed by two reviewers and 10 percent of the crashes will also be reviewed for quality control. FMCSA recognizes that the law enforcement who respond to the crash have the most information on the event. That is why the CPDP requirements include submission of the PAR. Additionally, the Agency notes that the eligible crash types for the CPDP continue to be generally less complex crash events.

In response to IIHS' suggestion to incentivize best practices, the Agency notes that its preventability standard at 49 CFR 385, Appendix B, assesses if a driver exercising normal judgment and foresight could have avoided the crash by taking steps within his/her control without causing another kind of mishap.

The CPDP already takes into account whether the driver or vehicle was operating in violation of an out of service regulation at the time of the crash, which encourages carrier-wide best practices. The PAR generally does not contain sufficient information to account for best practices in the manufacturing of vehicles at this time.

#### *Changes to Eligible Crash Types*

FMCSA proposed 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 Requests for Data Review (RDRs) under the other crash type. In addition, FMCSA proposed changing the "Motorist Under the Influence" crash type to "Individual Under the Influence" to include crashes involving pedestrians, bicyclists and others.

In the August 2019 notice, FMCSA proposed to test the eight additional crash types. These crashes were frequently submitted during the demonstration program, but did not qualify for one of the original crash types.

#### *Comments*

Victor Van Kuilenburg asked that the Agency review all crashes. Some commenters provided additional crash types for consideration in the program. The National Motor Freight Traffic Association and United Motorcoach Association noted that the proposal made it unclear if unoccupied vehicles were still being included in the crash type that includes parked vehicles.

CVSA expressed concern about expanding the crash types because of concerns about the reviewers' training and experience. Specifically, CVSA said that the additional crash types require higher standards of training and education. CVSA noted the extensive training that crash reconstructionists receive. CVSA also requested clarification of the "under the influence" standard.

An anonymous commenter asked if the crash type of "When the CMV is struck by a driver who experiences a medical issue which causes the crash" includes when the CMV driver has the medical issue.

OOIDA recommended adding a "Rare or Unusual Crash" type and noted the recent crash between a CMV and a skydiver.

#### *FMCSA Response*

FMCSA supports OOIDA's proposal for a "Rare or unusual crash" type and added this type to DataQs. However, the Agency expects that most crashes submitted to this type will not meet the standard and will be common, recurring crash types. When this



occurs, the RDR will be found to be not eligible and closed upon review. The Agency does not support further expanding the crash types in the program at this time. The proposed new types are a reasonable extension of the demonstration program based on the volume of not eligible crashes submitted and reviewed, and the Agency's expected ability to determine preventability based on the documentation received from submitters.

FMCSA acknowledges that the text to include unattended vehicles was inadvertently omitted from the August 2019 notice and the final list of crashes has been revised to reflect this.

In addition, as FMCSA noted in the August 2019 notice, all not preventable crashes will be removed from the calculation of the Crash Indicator BASIC. However, the Agency will analyze the new crash types for 24 months but may announce changes earlier if certain crash types cannot be consistently reviewed. If the new crash types are able to be consistently reviewed, the Agency may consider expanding the program to include additional crash types in the future.

Regarding reviewer qualifications, FMCSA is building on its experience in reviewing nearly 15,000 PARs during the demonstration program. Because the eligible crash types are, by design, less complex crash events, FMCSA does not believe these reviews require extensive expertise. In addition, FMCSA has built in a quality control process to ensure the consistency and quality of these reviews. Eligible crashes will continue to be reviewed by two reviewers, and 10 percent of the crashes will also be reviewed for quality control. FMCSA will also require the submission of the PAR because FMCSA recognizes that the law enforcement official who responds to the crash will have the most information on the event.

Regarding the “under the influence” standard used, FMCSA is requiring the PAR or other document submitted to demonstrate that the other driver was charged with or arrested for driving under the influence (or a related charge such as operating while intoxicated), document a failed field sobriety test, document a blood alcohol level of .08 for non-CMV drivers or .04 for a CMV driver, or documentation of a refusal to test.

To respond to the anonymous question about medical issues, the crash is not eligible if the submitter’s driver was the person with the medical condition.

#### *SMS and PSP Changes*

During the demonstration program, notations of the preventability determinations were made in the motor carrier’s list of crashes on the publicly available SMS website. Crashes were not removed from the calculation of the Crash Indicator BASIC in SMS but the motor carrier was provided an alternative measure and percentile without not preventable crashes.

FMCSA proposed that for eligible crashes occurring on or after August 1, 2019, FMCSA would continue to display the crashes with preventability notations in the carrier’s list of crashes on the public SMS website, but would remove crashes with not preventable determinations from the SMS Crash Indicator BASIC calculation. FMCSA would also note the not preventable determinations in the driver’s record in PSP.

#### *Comments*

Numerous commenters supported both the removal of not preventable crashes from SMS entirely and the notation of these crashes on PSP. Lori Fisher, Jeff Loggins, Larry Nestor, and Stacey Johnson and OOIDA all supported removing the not preventable crashes from the SMS calculation.

MCRRC and NASTC opposed this change, noting that all other crashes will be “presumed preventable.”

*FMCSA Response*

FMCSA is implementing the associated changes to these information systems. The SMS public display is being revised to list not preventable crashes occurring on or after August 1, 2019, separately from other crashes to make it clear they are not included in the Crash Indicator BASIC. The carrier’s list of crashes and the notations associated with not preventable crashes will remain publicly available. Crashes deemed not preventable will not be used to prioritize motor carriers for safety interventions. FMCSA will continue to display one of three determinations for the eligible crashes that it reviews:

1. *Reviewed -- Not Preventable*—“FMCSA reviewed this crash and determined that it was not preventable.”
2. *Reviewed --Preventable*—“FMCSA reviewed this crash and determined that it was preventable.”
3. *Reviewed --Undecided*—“FMCSA reviewed this crash and could not make a preventability determination based on the evidence provided.”

Crashes with “Reviewed – Preventable” and “Reviewed – Undecided” will continue to be included in the Crash Indicator BASIC. The absence of a not preventable determination does not indicate that a crash was preventable. The Crash Indicator BASIC percentiles will remain available only to motor carriers who log in to view their own data, as well as to FMCSA and law enforcement users.

Determination notations for crashes reviewed in the previous demonstration program will remain in SMS for 2 years from the date of the crash. The Agency previously announced that crashes reviewed during the demonstration program would not be removed from the Crash Indicator BASIC, and some carriers may have decided not to participate on that basis. Therefore, 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.

Crashes remain in SMS for 2 years from the date of the crash and remain in PSP for 5 years from the date of the crash. As a result, FMCSA will not review crashes that are more than 5 years old.

#### *End of Demonstration Program and Start of New Program*

The demonstration program accepted crashes in the eight original eligible crash types that occurred from June 1, 2017, through July 31, 2019. RDRs for these crashes were accepted through September 30, 2019.

#### *Comments*

There were no comments specifically about the end of the demonstration program or start date for the CPDP. With the publication of this notice, FMCSA's DataQs system is available to accept RDRs for the expanded list of eligible crashes occurring on or after August 1, 2019.

#### *Public Input Changes*

FMCSA proposed to cease the 30-day public input period and cease the practice of publishing preliminary not preventable determinations. This change allows 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 proposed to stop publishing a list of not preventable determinations on the Agency's website. The Agency will continue to publish quarterly statistics, as was done during the demonstration program.

*Comments*

Angela Petry, Doug Anonymous, and Greyhound Lines commented that the 30-day public input period should be eliminated. No commenters opposed this change.

*FMCSA Response*

FMCSA will discontinue the 30-day public input period in the CPDP. However, as reflected in the August 2019 notice, the Agency will continue to accept information about any crash by email to [crash.preventability@dot.gov](mailto:crash.preventability@dot.gov). Any information received will be fully considered and could result in a change in the determination.

*Document Requirement*

FMCSA proposed requiring submitters to provide the complete PAR to participate in the program.

*Comments*

MCRRC objected to the Agency's reliance on PARs in the CPDP because PARs are hearsay that are entitled to little or no weight in a fault or legal liability determination. Alex Scott of Michigan State University stated that the program contradicts FMCSA's previous position on the sufficiency and reliability of the information in PARs.

*FMCSA Response*

The demonstration program did not require any specific documents be submitted with the RDR so that the Agency could determine which documents were the strongest

for future use. Based on the more than 14,000 RDRs reviewed, FMCSA determined that the PAR is the best single source of crash information. FMCSA's experience throughout the demonstration program was that the majority of PARs submitted contained sufficient detail to complete a preventability review. As noted above, preventability determinations do not assign fault or legal liability for a crash. In addition, FMCSA notes that previous studies of PAR accuracy were based on fatal crashes and were not limited to the generally less complex crash types in the demonstration program. The reviewers will continue to rely on PARs and other documents submitted to conduct the review.

Therefore, when submitting RDRs to the CPDP, the submitter must provide the PAR and is encouraged to submit other documentation providing compelling evidence that the crash is eligible and was not preventable. The DataQs system continues to accept documents, photos, and videos that do not exceed 5 MB in formats including MP4, MPG, MKV, AVI, MPEG, and WMV file types.

If only the PAR is submitted and it contains conflicting information about the crash (e.g., the narrative is different than the diagram or point of impact information), the crash may found to be not eligible or the determination may be undecided.

#### *Process Information*

FMCSA proposed 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. The Agency also proposed streamlining the review process and using only one stage of contract reviewers to provide a recommendation. In addition, FMCSA proposed allowing the contract reviewers to close RDRs for crashes that are not one of the eligible crash types.

FMCSA proposed to rely on the Motor Carrier Management Information System (MCMIS) crash report to confirm the driver's license and medical certification status as part of implementation.

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

#### *Comments*

Several commenters noted that it took longer than expected for RDRs to be reviewed in the demonstration program and supported changes to improve the process.

#### *FMCSA Response*

As a result, FMCSA is implementing these process improvements. However, FMCSA is making one clarification regarding the use of MCMIS to confirm proper licensing on the date 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 report will be used to verify the driver's license. If the driver has renewed his/her license and/or medical certificate since the date of the crash, evidence of licensing and/or medical certification on the date of the crash will be requested from the submitter. Failure to provide this information will continue to preclude a not preventable determination and will result in an undecided

determination. If documentation shows that the driver was not qualified, the crash will be deemed preventable.

If drug and alcohol testing results, or the required explanation of why the tests were not completed, are not submitted, this will also preclude a not preventable determination and will result in an undecided determination. If the drug and/or alcohol test results were positive, the crash will be deemed preventable.

FMCSA will continue to make preventable determinations if there is evidence that the driver and/or carrier was legally prohibited from operating the CMV at the time of the crash. Specifically, if a post-crash inspection identifies a driver or vehicle violation of an OOS regulation and the violation existed before the crash and was not attributed to the crash, or if the MCMIS crash report or other documents reviewed as part of the determination indicate that the driver was not qualified to drive on the date of the crash, the crash is not eligible for a not preventable determination because the driver and/or carrier were legally prohibited from operating the CMV at the time of the crash.

Also, to improve program efficiencies and facilitate postings with SMS, the updated DataQs system will not allow a submitter to complete the process if there is not a MCMIS crash report submitted by the State. However, the submitter may enter the required information and save the RDR in DataQs and then submit once the crash is in MCMIS. A State's delay in submitting the crash to FMCSA does not delay the removal of a not preventable crash from SMS because SMS uses only crashes that are in MCMIS.

#### *Effectiveness Analysis*

During the demonstration program, 4,089 unique motor carriers submitted more than 14,700 RDRs. FMCSA conducted an analysis of the 2-year demonstration program



and a copy is in the docket. For purposes of the updated analysis, FMCSA looked at the data for the 2,124 participating carriers that had at least one crash determined to be not preventable. The report includes three primary analyses: (1) summary of safety profiles of carriers that participate in the program; (2) impact on carriers' Crash Indicator BASIC percentiles; and (2) impact on SMS effectiveness.

The first analysis found that participating carriers are more likely to be large combination carriers (greater than 51 Power Units (PU)), have more inspections per PU, and have a crash risk that does not differ from non-participants. The second analysis found that, on average, carriers with not preventable crashes removed have a percentile drop of 9 points in the recalculated Crash Indicator BASIC. Only a small number of carriers change alert status in the Crash Indicator BASIC – out of both participating and non-participating carriers, 134 carriers gain alert status and 136 carriers lose alert status as a result of excluding not preventable crashes from the Crash Indicator BASIC. The third analysis found that removing not preventable crashes from the Crash Indicator BASIC should not have an impact on the effectiveness of FMCSA's prioritization programs (SMS, High-Risk). This is due to the relatively low number (about 2%) of crashes determined to be not preventable and removed from the calculation.

In conclusion, the evaluation of the effectiveness of the demonstration program found that while carriers who have had not preventable crashes removed via the demonstration program saw a reduction on their Crash BASIC percentiles, there was negligible impact on the overall SMS effectiveness.

On average, carriers that had not preventable crashes removed from the calculation of their Crash Indicator BASIC had a percentile drop of 9 points in that

BASIC. The decrease in percentiles was slightly greater for smaller carriers, primarily due to the low participation by carriers in smaller safety event groups. In addition, after the removal of not preventable crashes, small carriers were less likely have a sufficient number of crashes to be evaluated in the BASIC under the data sufficiency standards used in SMS.

To evaluate the impact of these changes on FMCSA's ability to identify high risk motor carriers for safety interventions, the analysis compared the future crash rate of the group of carriers in alert status before and after the removal of the not preventable crashes from the Crash Indicator BASIC. Although the group of carriers in alert status after removal of the not preventable crashes had a slightly higher future crash rate than the group in alert status before removal of the not preventable crashes, the analysis team found a negligible impact on the ability of the Crash Indicator BASIC to identify high risk carriers. The effectiveness analysis determined that when not preventable crashes were removed, the group of carriers identified in SMS, when considering all BASICs, had a future crash rate 97% higher than the group of carriers not identified.

The lack of an impact on SMS effectiveness is mainly a result of the relatively small number of carriers that participated in the demonstration program. Only 169 and 208 carriers were projected to gain and lose alerts in the Crash Indicator BASIC, respectively, which is a small fraction (2 percent) of the 8,634 carriers identified in the Crash Indicator BASIC.

*Comments*

Alex Scott of Michigan State University indicated that the program is biased to large carriers, does not improve identification of high risk carriers, and does not provide any evidence it improves crash predictability.

Justin Smoot, MCRRC, and NASTC also expressed concern that large carriers were over represented in the demonstration program.

#### *FMCSA Response*

FMCSA notes that participation by small carriers with fewer than 15 power units in the demonstration program was only 6 percent of the submissions. However, overall DataQs use by this same population is 45.5 percent. As a result, the Agency expects that the new program, and the removal of crashes from the SMS Crash Indicator BASIC, will result in an increased use by small carriers with eligible crashes.

Because SMS segments carriers into safety event groups, SMS does not directly compare the crash records of large carriers to those of small carriers. The greater participation by large carriers in the demonstration program therefore had no impact on the percentiles of small carriers.

The Agency's effectiveness analysis discussed above concluded that removing the not preventable crashes does not impede the Agency's ability to identify high risk carriers. This program offers all carriers and drivers the opportunity to request and obtain the removal of eligible not preventable crashes from their SMS calculations to more accurately reflect their crash history.

Lastly, FMCSA has never indicated that SMS predicts crashes. FMCSA uses SMS to identify and prioritize motor carriers for safety interventions before crashes occur, using risk management techniques for high consequence, low likelihood events

and considering carrier exposure across carriers of all sizes. Therefore, there was no expectation that this program would improve crash prediction.

#### *Impact of SMS Changes*

Although the removal of not preventable crashes from the Crash Indicator BASIC will not impact the Agency's ability to identify high risk carriers, some carriers will see changes to their Crash Indicator BASIC percentiles. The Agency points out again that because SMS is a relative system, the removal of not preventable crashes will decrease the Crash Indicator BASIC percentiles of some carriers and may increase the Crash Indicator BASIC percentiles of other carriers in the same safety event group. 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 the not preventable crashes were removed from the calculations. In addition, even a motor carrier that has not preventable crashes removed may see its Crash Indicator BASIC percentile increase if its peers had a greater number of not preventable crashes removed.

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 program will not change any carrier's safety fitness rating or ability to operate, nor will it establish any obligations or impose legal requirements on any motor carrier. This program also will not change how the Agency makes enforcement decisions.

#### *National Academy of Sciences' (NAS) Correlation Study*

FMCSA is making these changes to SMS separately from its ongoing work in response to the June 27, 2017, NAS report, "Improving Motor Carrier Safety

Measurement.” The NAS report noted that the crash preventability program was of interest but did not issue a recommendation directly relating to the program.

## ***Implementation***

### *Preventability Standard*

The standard for making a preventability determination is provided in 49 CFR part 385, Appendix B, section II.B(e): “If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.” This continues to be the standard used by the Agency for all preventability reviews. The burden continues to be on the submitter to show by compelling evidence that the crash was not preventable.

### *Crash Types*

FMCSA is implementing all crash types proposed in the August 2019 notice and adding a “Rare or unusual crash” type. However, to help submitters find the correct eligible crash type, FMCSA rearranged the order of crashes to group like crash events together. As a result, the final list of eligible crash types is:

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

- in the rear; or
- on the side at the rear.

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

- by a motorist driving in the wrong direction; or
  - by another motorist in a crash when a driver was operating in the wrong direction;
- or

- by a vehicle that was making a U-turn or illegal turn.

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

- 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:

- by a vehicle that did not stop or slow in traffic; or
- by a vehicle that failed to stop at a traffic control device.

**Under the Influence** type of crash when the 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; where the individual was charged or arrested, failed a field sobriety or other test, or refused to test; or
- 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 where the individual was charged or arrested, failed a field sobriety test or other tests, or refused to test.

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

- by a driver who experienced a medical issue which contributed to the crash; or
- by a driver who admitted falling asleep or admitted distracted driving (e.g., cellphone, GPS, passengers, other).

**Cargo/Equipment/Debris or Infrastructure Failure** type of crash when the 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.

**Animal Strike** type of crash when the CMV:

- struck an animal

**Suicide** type of crash when the CMV:

- struck an individual committing or attempting to commit suicide

**Rare or Unusual** type of crash when the 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).

### *DataQs*

With publication of this notice, DataQs is available to accept RDRs for eligible crashes occurring on or after August 1, 2019. Submitters must provide a PAR and are encouraged to provide other documents, photos, and videos to present compelling evidence that the crash is eligible and not preventable. FMCSA may request additional information on the crash, which may include any documentation the carrier is required to maintain under the Agency's regulations. Failure to submit documents requested by the Agency may cause the RDR to be closed without a preventability determination or with an undecided determination.

Only eligible crashes submitted to FMCSA's CPDP will be reviewed. RDRs for crash preventability reviews should not be submitted to the States or other organizations through DataQs and will be closed.

As during the demonstration program, if a submitter receives a determination that the crash was preventable or undecided, or if the RDR is closed for failure to submit additional requested documents, the RDR may be re-opened once. FMCSA will reconsider the request if the submitter provides additional documentation to support the request.

#### *Agency Websites*

FMCSA established a new website for the CPDP at [www.fmcsa.dot.gov/crash-preventability-determination-program](http://www.fmcsa.dot.gov/crash-preventability-determination-program). This website includes frequently asked questions and tools to help submitters complete the RDR process in DataQs. This website will be updated quarterly to provide information on the RDRs received and reviewed by the Agency.

The website for the demonstration program will continue to be available at [www.fmcsa.dot.gov/crash-preventability-demonstration-program](http://www.fmcsa.dot.gov/crash-preventability-demonstration-program).

The Agency's Motor Carrier Safety Planner at <https://www.fmcsa.dot.gov/safety/carrier-safety/motor-carrier-safety-planner> also includes information about the CPDP.

Dated:

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*James A. Mullen,  
Acting Administrator*