

Consultants Update

COVID-19

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Discussion Topic

- New Crash Preventability Determination Program from FMCSA/DOT

Crash Preventability Determination Program

- FMCSA ran a demonstration program from 2017-2019; allowed carriers to submit certain categories of crashes for review through DataQs
- Review would determine whether the crash was preventable by the carrier/CMV driver or not
- Program was very popular with carriers and drivers; imposed a basic level of fairness into the Crash BASIC
- Now FMCSA is making this a permanent program, with a streamlined process and more categories of eligible crashes
- Crashes determined to be non-preventable by carrier or driver will be removed from Safety Measurement System prioritization algorithm and from the driver's Pre-Employment Screening Program record

Crash Review Program

- The Crash BASIC is part of the carrier's Safety Measurement System score which prioritizes carriers for enforcement actions by FMCSA
- Removing non-preventable crashes from a carrier's profile reduces the carrier's Crash BASIC percentile score
- In the pilot program, carriers with "not preventable" crashes removed had a percentile drop of 9 points in their recalculated Crash BASIC

What Crashes Are Eligible for Review?

- **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 or other test, or refused to test.

Additional Eligible Crashes

- **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).

CPDP Procedures

- Carriers and drivers may now submit for review crashes that occurred on or after August 1, 2019
- Submissions are made as a Request for Data Review through DataQs portal at <https://dataqs.fmcsa.dot.gov>
- Must include the Police Accident Report (or the RDR will be rejected)
- Must also include drug and alcohol test results (or the required documentation of why the testing did not occur in the required timeframes) for fatal crashes
- Burden is on the submitter to provide compelling evidence the crash is eligible and not preventable; submitters are encouraged to submit other documents to support their request, including videos, pictures, and court documents
- Maximum file size for files uploaded on DataQs is 5MB

CPDP Review

- DataQs system provides status information about all RDRs and is updated immediately when a crash preventability RDR moves from one stage of review to the next.
- For the Crash Preventability Determination Program, the statuses are as follows:
- SUBMITTED--FMCSA has received the RDR in the system but has not yet begun review.
- IN REVIEW--The RDR is in the review process.
- PENDING: REQUESTOR RESPONSE--FMCSA is waiting for the requestor to provide a document
- CLOSED: NOT ELIGIBLE--The crash was not one of the eligible crash types.
- CLOSED: NO REQUESTOR RESPONSE--FMCSA requested additional documents, and they were not received within 14 days.
- CLOSED: DETERMINATION MADE--FMCSA completed its review of the crash and rendered a determination of Not Preventable, Preventable, or Undecided.

CPDP Results—Not Preventable

- Once FMCSA makes a determination on the crash, the agency will post results to the SMS and PSP within 60 days.
- FMCSA will continue to list Not Preventable crashes for a carrier on the public Safety Measurement System (SMS) website. But the crash will appear in a separate table from all other crashes titled "Reviewed - Not Preventable Crashes."
- In addition, crashes found to be Not Preventable in the Determination Program will not be included in the carrier's Crash Indicator Behavior Analysis and Safety Improvement Category (BASIC).
- The Not Preventable determinations will be noted on the driver's Pre-Employment Screening Program (PSP) record.

CPDP Results—Preventable or Undecided

- If the crash is determined to be preventable, the public display of the SMS will include a notation that reads, "Reviewed - Preventable: FMCSA reviewed this crash and determined that it was Preventable." These crashes will be included in the Crash Indicator BASIC.
- Preventable crashes include those with evidence that the driver and/or carrier was legally prohibited from operating the vehicle at the time of the crash.
- If FMCSA cannot determine if the crash was Not Preventable, based on the evidence submitted, the crash reviews will be Undecided, and the public display of the SMS will include a notation that reads, "Reviewed - Undecided: FMCSA reviewed this crash and could not make a preventability determination based on the evidence provided." These crashes will be included in the Crash Indicator BASIC.

Other Uses of CPDP Results

- FMCSA reviews do not determine legal liability, fault, or negligence by any party
- A preventability determination is not a proceeding to assign liability for a crash
- Under federal law, 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"
- Also, the crash preventability determination will not affect any motor carrier's safety rating or ability to operate
- FMCSA will not issue penalties or sanctions based on this determination
- The crash preventability determination does not establish any obligations or impose any legal requirements on any motor carrier

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