



FMCSA'S Proposed CSA Crash Preventability Determination Program July 2017

Summary: FMCSA has [announced a planned demonstration project](#) to begin making preventability determinations on crashes meeting certain criteria and incorporating them into motor carriers' Compliance, Safety, Accountability (CSA) Safety Measurement System (SMS) records. The announcement comes in response to comments by ATA on the Federal Motor Carrier Safety Administration's 2015 Crash Weighting Study.

Beginning August 1, 2017, motor carriers will be able to challenge the preventability of crashes they say could not have been avoided. FMCSA will be accepting requests for data reviews (RDRs) from motor carriers and, if they find the crash to be not preventable, will note it as such on their CSA profile. In addition, their Crash Indicator Behavioral Analysis Safety Improvement Category (BASIC) score will be re-calculated with the crash omitted. FMCSA will display this new score to logged-in motor carriers and law enforcement alongside the traditional Crash Indicator score which includes all crashes. FMCSA will use the data from the demonstration project to determine whether removing non-preventable crashes improves the accuracy of the Crash Indicator BASIC. The program will last at least two years.

Why is FMCSA conducting the demonstration project? Since the inception of FMCSA's Compliance, Safety, Accountability program, ATA and other stakeholders have consistently voiced concerns about the fact that all crashes, regardless of fault, are listed on motor carriers' CSA profiles and used to calculate their Crash Indicator BASIC scores. In July 2015, FMCSA, in response to criticism, released their Crash Weighting Study, which investigated how a preventability determination might be made, the process by which it could be accomplished, and the costs and benefits associated with it. ATA and others submitted detailed comments calling for quick removal of non-preventable crashes and proposing feasible solutions for removal. In its comments, ATA suggested that FMCSA could start by focusing on crashes where it is "plainly evident" that the truck driver was not at fault, such as when the truck is struck by a drunk driver or when an infrastructure failure causes a bridge to fall on a truck. Congress also expressed concern that motor carriers may be unfairly judged by non-preventable crashes when it passed the Fixing America's Surface Transportation (FAST) Act, which calls on FMCSA to remove crashes in which the carrier was found to be not-at-fault from motor carriers' CSA profiles.

How will the program work? Beginning August 1, 2017, motor carriers that believe a crash was clearly non-preventable can file a Request for Data Review (RDR) through the [DataQ's website](#) to have it noted on their CSA profile. Carriers will submit details of the incident along with supporting documentation and FMCSA's reviewers will use this information to make a preliminary determination. FMCSA will post the results of the preliminary determination on the DataQ's website for 30 days, during which time anyone disagreeing with the decision can submit additional documentation to contest it. At the conclusion of the comment period, FMCSA's reviewers will make a preventability recommendation and, if FMCSA agrees, the determination will become final.

Determinations will be based on the preventability standard found in 49 C.F.R. § 385 Appendix B: "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." In addition, crashes in which a driver is found to have been

violating an Out-of-Service (OOS) order or was operating a vehicle with an OOS violation present will be deemed preventable.

Who will review the crash? Unlike the current DataQs process, the request will not be filtered back to the state agency that initially reported it. Instead, contract resources supervised by FMCSA will review the information and make a preventability recommendation to FMCSA.

Which crashes may be contested? Not all crashes are eligible for review. FMCSA limits the review of crashes to those considered by many to be obviously non-preventable. Only crashes from the following categories will be reviewed:

1. When the CMV was struck by a motorist driving under the influence;
2. When the CMV was struck by a motorist driving in the wrong direction;
3. When the CMV was struck the rear;
4. When the CMV was struck while it was legally stopped;
5. When the CMV struck an individual committing or attempting to commit suicide by stepping in front of the CMV;
6. When the CMV sustained disabling damage from an animal strike;
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 falling from another vehicle.

While the initial program proposal required a conviction of the opposing motorist, that condition was dropped from the final program.

What supporting documentation will be required?

While FMCSA will not require any specific documentation, the burden is on the submitter to provide compelling evidence that the crash was not preventable. Possible evidence could include, but is not limited to: crash reports; police accident reports; insurance documents; pictures; videos; media reports; affidavits; or transcripts. In all crashes, FMCSA reserves the right to request additional information that may assist in making a determination.

What will happen after a preventability determination is finalized?

An RDR can result in one of three final determinations: not-preventable, preventable, or undecided. Crashes considered non-preventable will be noted as such in CSA. The Crash Indicator BASIC scores, available to motor carriers and enforcement, will reflect two scores -- one with the non-preventable crash excluded, and one including all crashes. Crashes determined to be preventable or undecided will be labeled appropriately.

Can motor carriers that disagree with the final determination appeal? Yes, motor carriers who disagree with the determination can ask to have the RDR reopened by submitting additional evidence.

How long will the demonstration program last? The program will last at least two years.

Will motor carriers be able to submit crashes that occurred before August 1, 2017? Yes, motor carriers can submit an RDR for any crash that occurred on or after June 1, 2017.

More information can be found on [FMCSA's website](#) or by contacting P. Sean Garney at sgarney@trucking.org.