

A Long Time in Coming...FMCSA's New Crash Preventability Determination Program

May 2020

For years, the Federal Motor Carrier Safety Administration (FMCSA) rejected the trucking industry's argument that the Agency needed to consider crash preventability in its CSA program, saying that all crashes, regardless of fault, are predictive of future crashes. FMCSA cited an internal study of CSA and its ability to identify carriers more likely to crash in the future as evidence that the system was working just fine.

FMCSA could not, however, disarm industry advocates who made a simple and compelling argument to Congress during truck safety hearings in 2014-15: A driver or motor carrier should not be penalized for a crash that it did not cause and could not have prevented. Under pressure from Congress, FMCSA announced in 2017 the creation of a Crash Preventability *Demonstration* Program (i.e., a pilot program).

Between 2017 and 2019, FMCSA's accepted crash review requests from motor carriers. To be eligible, the crash had to fall in one of eight narrow scenarios like being struck in the rear or struck while legally parked.

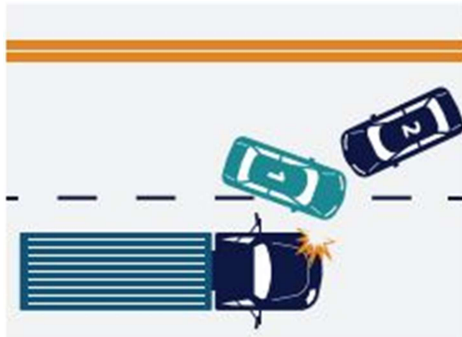
Overall, 9,090 eligible crashes were submitted and 8,419 were ruled not-preventable on the part of the truck driver, an astounding 93% success rate. FMCSA learned valuable lessons from the demonstration project.

On May 6, 2020, the [FMCSA announced](#) a new and permanent "Crash Preventability Determination Program." The new program consolidates a few crash scenarios and adds several more. In all, FMCSA now accepts crashes that fall in 16 different categories, doubling the number of eligible scenarios accepted under the earlier pilot program. Wisely, FMCSA also included a catch-all category for "rare and unusual" crashes, which captures those "did that really just happen?" type crashes. Crashes deemed not-preventable will be noted on the carrier's CSA profile and will not be used to calculate the Crash Indicator BASIC score. Also, drivers will finally receive

the recognition they deserve when the preventability determinations are added to their Pre-employment Screening Program record, which many carriers rely on to help make hiring decisions.

The program started immediately on May 6, 2020, and all eligible crashes that occurred on or after August 1, 2019 are eligible for review. Trucking companies should review their crash record as soon as possible to determine which, if any, crashes are eligible and request a correction. Carriers must use FMCSA's [DataQs system](#) to submit requests and must have a copy of the PAR to support their claim.

Ultimately, this program will improve the accuracy of CSA and help FMCSA and its State enforcement partners better target scarce resources to investigate the least safe motor carriers.



It's taken a long time for FMCSA to come to a basic conclusion: crashes a driver could not have prevented are not indicative of a driver's safety, or the safety of the driver's employing carrier. With any luck, as the program progresses, and our collective understanding of crash preventability and causation

improves, new scenarios will be added and carrier accountability will continue to improve.

We've come a long way, but there's still more road to travel.

[Here is a list of helpful Q&A's](#) gathered from a webinar Scopelitis Transportation Consultants presented on this topic.

Have questions on this or other regulatory topics? Contact Dave Osiecki or Sean Garney of Scopelitis Transportation Consulting at dosiecki@scopelitisconsulting.com or sgarney@scopelitisconsulting.com

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