



Owner-Operator Independent Drivers Association

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June 12, 2023

The Honorable Robin Hutcheson
Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2022-0233, “Crash Preventability Determination Program”

Dear Administrator Hutcheson:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has over 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA’s mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation’s highways.

Since 2017, OOIDA has supported the Crash Preventability Determination Program (CPDP). Crashes that are not the fault of the driver or motor carrier should not be counted against them nor should they be interpreted to predict the likelihood that they will be involved in a future accident. For far too long, these non-preventable crashes have unnecessarily discredited safety ratings for drivers and motor carriers. We concur with FMCSA’s decision to further expand the CPDP by modifying currently eligible types of crashes and including the following four new crash types in the program:

- 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).
- CMV was struck because another motorist was entering the roadway from a private driveway or parking lot.
- CMV was struck because another motorist lost control of their vehicle.
- Any other type of crash involving a CMV where a video demonstrates the sequence of events of the crash.

During the Crash Preventability Determination pilot program conducted from 2017-2019, 93 percent of eligible crashes were determined as non-preventable. Following the CPDP's initial expansion in May 2020, there have been 39,133 requests for data review (RDR or DataQ) submitted to FMCSA. Approximately 72.5 percent of the submitted RDRs were eligible, meaning they were one of the 16 specific crash types and approximately 96 percent of the eligible crashes were found to have been non-preventable. We believe this shows sufficient data that eligible drivers should not have to submit compelling documentation and endure a review process in order to remove non-preventable crashes from their safety record.

Currently, the driver/motor carrier is still responsible for doing all the work to get the crash overturned and they have to do so through RDR/DataQs which is always problematic. The system forces drivers/carriers to step out of their roles as professional truckers and become crash investigators, evidence collectors, and perform multiple functions to upload necessary documentation for review. First, they are required to navigate the rules to know how to dispute non-preventable crashes. Second, they must navigate the minefield of effective persuasion to an audience that already holds all of the cards. Finally, submitters must wait months to receive a determination on their request. In fact, [FMCSA's CPDP website now displays a message stating "due to a high volume of submissions to the Crash Preventability Determination Program, requests for data review are taking over 90 days to process."](#) A non-preventable crash posted on a small motor carrier's safety record lingering for 90 days or more can be crippling and could shut down an otherwise safe carrier.

We propose that qualifying non-preventable crashes should not be posted in the Safety Measurement System for motor carriers with valid CDLs and medical certifications unless FMCSA determines these crashes to have been "preventable." Given the CPDP data over the last five years, the burden should now fall on the agency, rather than the submitter, to overturn qualifying crashes. The agency notes, "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." Furthermore, 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 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."

We believe transferring the burden to the agency to determine crash preventability will help keep safe, experienced motor carriers in business and will also reduce the current backlog of CPDP submissions. The implementation of the CPDP has clearly proven that motor carriers should not have to submit documentation and wait months on end in order to remove non-preventable crashes from their record.

More broadly, FMCSA must prioritize general DataQ reform. The current DataQ process is not objective – a determination is made by the same person or agency who issued the initial violation, which creates an inherent conflict of interest. This is problematic because inaccurate information or unmerited violations that remain on a driver/motor carrier's safety record can

negatively impact their employment or increase their insurance costs, among other consequences.

We encourage FMCSA to work with states and ensure that they have an equitable review system in place that establishes an independent appeals process. OOIDA supports a model that would allow states to setup a five-member review board made up of two representatives of a state commercial motor vehicle enforcement agency, one representative of a state department of transportation, one representative of a motor carrier, and one representative of a driver. DOT has already identified best practices for review systems that can be used as a model. Absent administrative action, OOIDA will continue to pursue DataQ reforms that will provide truckers the due process they deserve under the law.

Thank you,

A handwritten signature in black ink, appearing to read "Todd Spencer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.