



There is a crash on your company's Safety Management System (SMS) record. As far as the world knows, your driver could have run a red light and wiped out a line of cars. In reality, that crash that scars your record occurred when your truck was properly stopped for a red light. And that other car—it hit your truck in the rear.

The FMCSA has adopted a system whereby you can challenge the preventability of your company's crashes. Beginning August 1, 2017, you can request certain crashes be designated as "non-preventable". This procedure is for a limited time for specific types of accident.

The program will consider qualifying crashes that occur after June 1, 2017. This program will continue for a twenty four (24) months test period during which it will be evaluated by the FMCSA.

The types of crashes that are subject to review are as follows:

- CMV struck by a driver under the influence (or related offense);
- CMV struck by a motorist driving in the wrong direction;
- CMV struck in the rear;
- CMV struck while it was legally stopped or parked, even if unattended;
- CMV that struck an individual or vehicle that pulls in front of it with the intent of committing suicide;
- CMV that sustained disabling damage after striking an animal in the roadway;
- Crash that was the result of an "infrastructure failure", falling trees, rocks, or other debris; or,
- CMV struck by cargo or equipment from another vehicle.

That's it? Yes, but it better than including all crashes regardless of the facts.

Further, this list expands the original list from the original proposal's four (4) classes of crashes, adding the last three (3). Crashes not one of these seven (7) types will not be considered as to preventability.

Having a crash that is one of the seven on the list is just a start. You must still "show by compelling evidence that the crash was not preventable" even for those types of crashes.

The FMCSA will apply the definition of "preventable" of 49 CFR part 385 Appendix B as follows:

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 is preventable.

Key—train your drivers and dispatchers (or whomever takes you accident calls) to immediately begin documenting that the accident meets one of these categories. Photographs, witnesses, and police reports become crucially important.

Photograph that bent ICC bar, the debris that hit your truck, or even that dead deer (ok, a little extreme, but you want that accident off your record, right?).

In-cab camera become even more invaluable to provide the “compelling evidence”. Isn’t the ultimate definition of “compelling evidence” that video that shows a four-wheeler coming at your truck the wrong way on an interstate, having entered via the exit ramp? The Data Q system will accept videos of up to 5 MB in support of your proof.

Additionally, be sure to include proof that your driver was legal on hours at the time of the accident. This should be submitted with every crash you submit for review.

Why? Because you are not eligible if your driver was in violation of an out-of-service violation at the time of the accident. This means if you driver was over hours, you can’t qualify. Submit the proof up front and keep it from every being an issue.

I submitted comments to the FMCSA in response to the original proposal for the program. I argued that the original requirement proof of a conviction for the accident to be non-preventable as well as the requirement to submit the other company’s insurance documents (as if you would ever get them) were unfair and unnecessary.

The FMCSA acknowledged my comments in their final version and deleted these requirements. You no longer have to submit proof that the other driver was convicted or documents from insurance carriers. However, if you have either or both, still submit it. This will be further “compelling evidence” in support of your submission.

The final program includes a major provision that will help our industry in defending against accident suits. The FMCSA stated that this program is pursuant to 49 U.S.C. 504(f).

That section provides no part of a report may be made admitted into evidence “or used in a civil action” in any civil action for damages related to the matter mentioned in the investigation or report. This provides a foundation for objecting to the discovery of or admissibility of this information in a lawsuit.

You had one of the seven types of accidents, you accumulated your compelling evidence, and submitted your DataQ. Now what?

It will then be reviewed in two (2) stages using contract resources. The first stage is the collection of the documentation and data. In stage 2, an “experienced crash report reviewer” will evaluate the documents submitted, as well as FMCSA data.

The stage 2 review will first determine that the crash meets one of the seven (7) permissible types. They

will then make a recommendation to the FMCSA as to whether “compelling evidence” that the crash was not preventable.

The crashes will be classified as “preventable”, “not preventable”, or “undecided”. Additionally, if additional information is requested from a company and it is not provided, it will be designated “closed due to non-response.”

We now have a resource to remove the most obvious accidents from being considered “preventable”. Use it. Get your evidence. Submit your DataQ. Protect your record.



Douglas B. Marcello is a transportation attorney with Marcello and Kivisto, LLC, Carlisle. Founded in 2005, M&K, LLC is dedicated to and focused upon transportation law and the needs of their transportation clients.



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