

New Carrier Entrant Audits look for “DEADLY SIN”

Catholicism has its seven sins considered fatal to spiritual progress — lust, gluttony, greed, sloth, wrath, envy, and pride. Now trucking has 16 sins considered fatal to a new motor carrier’s progress in the business.

The Federal Motor Carrier Safety Administration (FMCSA) has raised the bar for passing a new carrier safety audit. In December 2008, the agency announced that new carriers will automatically fail an audit if they have committed any of 16 violations. For 14 of the violations its “one strike and you’re out.” For two of them — failing to require a driver to make a record of duty status and using a commercial motor vehicle not periodically inspected (the annual inspection requirement) – violations must have been discovered 51% of the time in trips audited.

New carriers who commit the violations risk losing their operating authority if the problem is not soon corrected. The regulation went into effect February 17, 2009.

All new interstate motor carriers are considered a new entrant for 18 months after they register with the FMCSA and receive a U.S. DOT number. New carriers are required to pass a safety audit within this period of time. A carrier who fails an audit is notified within 45 days and given 60 days to correct the problem or lose its operating authority. Passenger carriers and hazmat haulers are given only 45 days to correct violations. Once the FMCSA revokes the authority and issues an out-of-service order, the new entrant must wait 30 days before again applying for authority and starting the process all over.

New carrier entrant audits are usually conducted at the carrier’s place of business, although group audits can be arranged. It takes 2-4 hours as auditors ask 72 safety-related questions, including 19 related to hazardous materials. They check compliance with requirements related to insurance, accident records, equipment and maintenance records, driver qualifications, CDL license standards, driver records of duty status, drug and alcohol testing, and hazardous materials, if applicable.

The new entrant audit was originally designed to stress education before enforcement. In the past it was a pass/fail audit that very few failed. If an auditor found critical safety problems it triggered a formal Safety Compliance Review. A carrier could still pass, for example, even if it did not have a drug and alcohol testing program or had not implemented

random testing. Under the new rule, carrier automatically fails if an auditor finds a single occurrence of these violations.

FMCSA looked back at audits conducted in a recent five year period and estimated that 47.9% would have been failures under the new rules. Since about 40,000 audits are done each year that means more than 19,000 new entrants could now fail annually. “One would not necessarily expect such a high failure rate to persist after the rule is implemented,” FMCSA noted in a December 2008 Federal Register notice. “Upon implementation of this rule, many carriers will take the appropriate action to pass the stricter new entrant safety audit, and the actual failure rate will be significantly lower.”

Safety regulations that are being called the “16 deadly sins” that will result in failure of a new motor carrier entrant audit:

- Failing to implement an alcohol and/or controlled substances testing program.
 - Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.
 - Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382.
 - Using a driver known to have tested positive for a controlled substance.
 - Failing to implement a random controlled substances and/or alcohol testing program.
 - Knowingly using a driver who does not possess a valid CDL.
 - Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver’s license which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle.
 - Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.
 - Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
 - Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility coverage.
 - Knowingly using a disqualified driver.
 - Knowingly using a physically unqualified driver.

- Failing to require a driver to make a record of duty status.
- Requiring or permitting the operation of a commercial motor vehicle declared "out-of-service" before repairs are made.
- Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.
- Using a commercial motor vehicle not periodically inspected.

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