Federal Motor Carrier Safety Administration: Safety Audits

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Within a year of beginning operations, a new carrier will be subject to a Safety Audit conducted by the Federal Motor Carrier Safety Administration (FMCSA).[1] The Safety Audit is defined as a "review of a motor carrier's records designed to verify that a carrier has basic safety management controls in place to ensure compliance with applicable Federal Motor Carrier Safety Regulations (FMCSRs), Hazardous Materials Regulations (HMRs), and related record-keeping requirements."[2] A certified auditor conducts this audit, which may be completed either at the carrier's place of business or remotely through online, mail, or fax submissions.[3] Auditors may request specific documentation related to drivers, vehicles, general operations, and record keeping.[4] Specifically, the audit will focus on the following components of the carrier's operations:

+ Commercial Driver's License requirements, including a Licencia Federal de Conductor requirements for Mexico-licensed drivers[5]
+ Qualifications of drivers[6]
+ Driving a motor vehicle[7]
+ Hours of service[8]
+ Controlled substance and alcohol use and testing[9]
+ Inspection, repair and maintenance[10]
+ Transporting and marking hazardous materials[11]
+ Financial responsibility[12]

There are a number of violations that are "deemed egregious enough" to warrant an automatic failure. For example, alcohol and drug violations can lead to an automatic failure.[13] More specifically, a carrier who fails to implement an alcohol and/or controlled substance program or does not conduct random testing risks automatic failure.[14] Additionally, carriers who use drivers who either refuse a direct controlled substance/alcohol test, are known to have a BAC of .04 or greater, or who "tested positive, altered, or substituted a test for controlled substances" will lead to an automatic failure.

Next, certain driver violations will also lead to an automatic failure. While there are specific driver violations included within the alcohol and drug violations, these violations look more to driver qualifications. A carrier will automatically fail the audit if the carrier uses a driver without a CDL or is driving with a revoked, suspended, or cancelled CDL; the driver is disqualified; or, the driver is medically unqualified.[15]

Additionally, carriers that fail to mandate that drivers maintain hours-of-service records or carrier that operate a motor vehicle without the required level of insurance, both risk an automatic violation.[16] Further, repair and inspection violations can also lead to a failure.[17] These violations may include: (1) operating a vehicle designated out of service for safety issues before the repairs are made; (2) operating a vehicle not annually inspected; or (3) not performing repairs indicated in operator-vehicle inspection reports.[18] In short, inadequate carrier oversight over drivers can lead to an automatic failure.

Should a carrier fail the audit for any reason, including the automatic failures indicated above, the FMCSA will notify the carrier of the violations that warranted the failure.[19] From there the carrier must submit a corrective action plan within a specified timeframe that explains how the violations will be remedied.[20] If the carrier does not submit the corrective action plan or does not implement the corrective measures, it will lose FMCSA registration.[21] On the other

hand, if the carrier passes the audit “the safety performance will continue to be closely monitored for the remainder of the 18-month New Entrant period.”[22] After that, if no new safety issues are found the carrier receives permanent operating authority and will then be monitored under the Compliance Safety Accountability program.[23]

The FMCSA released its findings for the most common violations from 2021. These findings include those beyond the New Entrant Safety Audit explained above, but show how even experienced carriers can fall into poor standing. The most common violation from 2021was allowing a driver to operate with a revoked or suspended CDL.[24] Carriers are only required to check motor vehicle records annually, but failing to keep a constant eye on drivers can lead to failing to discovery discovering CDL issues in a timely fashion.[25] The second and third most common violations include failing to implement drug and alcohol testing programs and failing to implement random testing.[26] The easiest way to address this violation is to simply follow the Department of Transportation's (DOT) regulations.[27] The fourth most common violation was allowing drivers to operate with more than one CDL.[28] Typically, the state should ensure the driver only has one license before issuing a new one, but this process does not always produce the necessary information.[29] Therefore, a prudent carrier will work with the DOT to run the necessary checks to satisfy this requirement.[30]

It is clear that carriers must not only ensure compliance with the record-keeping compliance programs when beginning operations, but also must monitor record keeping obligations through further operations. Safety will be key to maintaining good standing with the appropriate federal agencies. Diligent record keeping and consistent monitoring of in-house records and regulation updates will go a long way in not only satisfying federal requirements, but operating a business safely.

[1] *Safety Audits*, FMCSA (lasted visited Mar. 29, 2022).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *See* 49 CFR Part 383.
[6] *See* 49 CFR Part 391.
[7] *See* 49 CFR Part 390.
[8] *See* 49 CFR Part 395.
[9] *See* 49 CFR Part 382.
[10] *See* 49 CFR Parts 393 and 396.
[11] *See* 49 CFR Parts 171, 177 and 180.
[12] *See* 49 CFR Part 387; *9.1.3 Safety Audit*, THE MOTOR CARRIER SAFETY PLANNER (last visited Mar. 29, 2022).
[13] Safety Audits, *supra note* 1.
[14] *Id.*
[15] Safety Audits, *supra note* 1.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Safety Audits, *supra note* 1.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Lindsey Bergeron, The Top 4 FMCSA Violations of 2021, TRUCKINGINFO (Mar. 9, 2022).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Bergeron, *supra note* 17.
[30] *Id.*

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