

**ISSUE NUMBER**

21-009-DRV

**ISSUE NAME**

OOSC, Part I, Item 8. Intoxicating Beverages - a. Under the Influence

**STATUS**

Closed

Driver-Traffic Enforcement Committee

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**EMAIL**[Mike.mullen@wsp.wa.gov](mailto:Mike.mullen@wsp.wa.gov)**SUMMARY OF ISSUE**

CVSA OOS Guide does not follow FMCSA regulations under CFR 382.501.

A revision should be based on changes to the actual knowledge definition in CFR 382.107: "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

Currently a driver is only placed out of service for 24 hours roadside. Motor carriers are required to comply with Part 40 Subpart O for the return to duty process. If a driver is charged with a ticket, complaint, OR OTHER DOCUMENT the driver is required to be removed from safety sensitive functions.

CFR 382.503 Required evaluation and testing: No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

**JUSTIFICATION OR NEED**

The current 24 hour out of service condition should be limited to non DUI related offenses and non CDL drivers.

CFR 382.501 - Removal from safety-sensitive function:

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency. (b) No employer shall permit any driver to perform safety-sensitive functions; including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

CFR 382.205 Subpart B - No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

CFR 382.213 Subpart B - No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

**REQUEST FOR ACTION**

Update the prohibited driver OOS guidance to include drivers that receive a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.

Therefore, drivers should not be allowed to return to duty, until the carrier has complied with Part 40 subpart O.

Aspen could prompt officer for carrier official contacted for additional documentation of proof.

#### **SUPPORTING DOCUMENTS/PHOTOS**

- [DOC062821.pdf](#)

#### **ACTION TAKEN BY COMMITTEE**

The delay that occurs from roadside enforcement of Drug and Alcohol vs. OOS for no DOT number until they have one. We put driver OOS for Drug/Alcohol violation for 24 hours. Why isn't the OOS longer for impairment? The regulations call for 24 hours OOS. No way to verify every driver that may have been arrested the day before. Not asking for anything roadside. Driver should be OOS until he complies with SAP program. This would require a driver to carry SAP information with them, requiring change in regulation. Until driver is identified in Clearinghouse we cannot determine his status. Some states don't adopt all codes.

Discussion was that there just isn't much that can be done roadside. (until driver hits the DACH) should show up relatively quickly, but there's always the possibility the driver will operate before he does get entered. It's also possible he will operate after he's entered.