

**ISSUE NUMBER**

21-022-DRV

**ISSUE NAME**

OOSC, Part I, Item 7. Drugs and Other Substances, a. Shall not be in Possession

**STATUS**

Closed

Driver-Traffic Enforcement Committee

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Requesting the removal of OOSC section 7. a.

"DRUGS AND OTHER SUBSTANCES - a. Shall Not be in Possession - Is in possession (392.4(a) Declare driver out of service for 24 consecutive hours."

FMCSR section 392.4(a) does not make the necessary connection as to how the possession of a controlled substance affects CMV safety. The mere possession of a controlled substance, without being under the influence of it, does not pose a safety hazard.

During an inspection, an inspector finds a controlled substance amongst the driver's personal possessions and not as part of the cargo, with no other violations cited, how can this violation be related to commercial vehicle safety? If the inspector had discovered an illegal firearm or other contraband, enforcement action can be taken but because of the nature of the violation and the lack of a connection to commercial vehicle safety, should not be cited on a commercial vehicle inspection report. The same applies to the possession of controlled substances.

Additional reasons supporting the removal of 7. a. include the unfair accumulation of safety points on a carrier's Drug & Alcohol BASIC.

Measures can be put in place to increase the likelihood of detecting a driver who is under the influence of a controlled substance before they perform a safety-sensitive function such as reasonable suspicion training etc., but there exists no such measures to detect or prevent a driver from possessing a controlled substance within their personal belongings. If the controlled substance is then found during an inspection and 392.4 is cited, the motor carrier's D&A BASIC will be negatively impacted through no fault of their own.

A motor carrier that is compliant and conducts the necessary FMCSA drug & alcohol clearinghouse background checks on a driver they hired, has no control if that driver then decides to operate a CMV while possessing a controlled substance.

Due to its vague description of what a controlled substance is, FMCSR section 392.4(a)(4) should also be revised/removed. According to 392.4(a)(4), a controlled substance includes: "Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle."

A driver can be placed out-of-service for possessing an over-the-counter bottle of tylenol according to this phrasing. Even an excessive consumption of water can render a driver incapable of safely operating a CMV.

**JUSTIFICATION OR NEED**

-While the possession of a controlled substance may be prohibited, it cannot be said that only possession of a controlled substance is a CMV safety concern.

**REQUEST FOR ACTION**

- Removal of 7. a. from the OOSC.
- Removal of the word "possess" from the 392.4(a).
- Removal of 392.4(a)(4) from the FMCSR's

**ACTION TAKEN BY COMMITTEE**

Table in Part 1 Item 7 (c) takes care of this issue. It was also discussed that the issuer could possibly pursue this request through congress as mere possession of a controlled substance is prohibited in the FMCSR.