

**ISSUE NUMBER**

21-049-DRV

**ISSUE NAME**

OOSC, Part I, Item 7.c. Prohibited from Performing Safety Sensitive Functions

**STATUS**

Closed

Driver-Traffic Enforcement Committee

**NAME**

Bryan Price

**AGENCY**

FMCSA

**ADDRESS**

1200 New Jersey Ave, SE  
Washington, District of Columbia 20590  
United States

**PHONE**

202-680-4831

**EMAIL**[bryan.price@dot.gov](mailto:bryan.price@dot.gov)**SUMMARY OF ISSUE**

To support the implementation of the Drug and Alcohol Clearinghouse and the Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License rulemaking (Clearinghouse II final rule), FMCSA is requesting an updated violation code for the out of service condition of drivers who are prohibited due to a drug or alcohol program violation and are found to be operating at the roadside. This is an update to the 390.3(e) out of service violation to replace the violation with 392.15

**JUSTIFICATION OR NEED**

To promote safety at the roadside, drivers with positive drug or alcohol violations should not be operating CMVs until they properly complete their return-to-duty process. Drivers who are found to be operating CMVs are currently placed OOS under a violation code that ties back to general knowledge of and compliance with the Federal Motor Carrier Safety Regulations (FMCSRs): 390.3(e).

The 390.3(e) general knowledge and compliance violation was chosen for roadside use and the CVSA OOS criteria because the driving prohibition was previously only included in the controlled substances and alcohol testing regulations (part 382) that are not required to be adopted as a condition of Motor Carrier Safety Assistance Program (MCSAP) funding. .

With the Clearinghouse II rule, FMCSA has added a new section 392.15 to the FMCSRs that specifically states: No driver, who holds a commercial learner's permit or a commercial driver's license, shall operate a commercial motor vehicle if prohibited by § 382.501(a) of this subchapter. The new violation will improve safety on the roadways as all States adopt part 392, and further ensure drivers will not be performing safety sensitive functions, including operating a CMV until they have gone through proper rehabilitation.

**REQUEST FOR ACTION**

Update the out of service violation, from 390.3(e) to include 392.15 beginning April 2022 to support the Clearinghouse II rule. Provide option for States to use 390.3(e) until their State has adopted the new section 392.15 of the FMCSRs.

**ACTION TAKEN BY COMMITTEE**

FMCSA request to update out of service violations, from 390.3(e) to include 392.15 to support DACH. Committee discussion with concerns expressed by states as it related to adopting language change. Closed with no motion.