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ISSUE NAME

OOSC, Part I, Item 7. Drugs and Other Substances, a.

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Closed

Driver-Traffic Enforcement Committee

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Request the Driver Traffic committee review OOS Criteria section 7. Drugs and other substances, to add "Use" as referenced in FMCSR 392.4

JUSTIFICATION OR NEED

Based on a recent inspection by our department, when the officer contacted the driver of a vehicle stopped for inspection he smelled Marijuana from the cab of the truck. With PC our Officer searched the cab and sleeper of the truck and was unable to find any Marijuana. Upon an Interview of the driver, after the PC search, the driver admitted that he had one joint in the truck that he had smoked about 10-15 min prior while waiting to be loaded at a store a few miles down the road. 392.4 says, no driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or substances... However when we look in the OOS criteria, 7.(a) says they shall not be in possession and 7. (b) says shall not be under the influence, with probable cause. The issue is that upon review of the OOS Criteria for this scenario we did not believe we could place the driver OOS for the violation since we did not believe the amount used constituted under the influence/intoxicated.

In this instance our view was that "Under the Influence, with probable cause" listed in the OOS could mean many things. These things could include a Drug Recognition Expert(DRE) opinion or a charge of DWI with a blood draw. We did not have an available DRE during the hours our officer was conducting his inspection and our officer did not believe the driver was at that level to charge DWI/DUI at the time of inspection. So does the admission of use within a recent timeframe constitute under the influence, with probable cause that is currently in the OOS criteria? Or should we look at adding additional wording or section to the OOS criteria to prevent drivers who have just used a small amount of a narcotic or substance from operating on our roadways whether impaired/intoxicated or not.

So in this scenario the driver was no longer in possession of a narcotic as he had smoked his only joint prior to inspection and he was not believed to be under the influence. So if our understanding of the OOS criteria the way it is currently written, it is an imminent hazard for the driver to possess marijuana, however it is not an imminent hazard for them to have just smoked marijuana unless they are under the influence with probable cause? Is it still not an imminent hazard for the driver to use a narcotic or substance and be operating a CMV, regardless of the varying 50 states level of Influence factors?

How do we determine the time frames for "use" ? If we say currently in the OOS criteria that a driver is no longer

an imminent hazard after possession or influence after 24 hours, then it would stand to reason that evidence of use within 24 hours should also be an OOS violation. There could also be factors that could come up if we don't list a time frame for "use", an officer could determine that the driver used a narcotic 7 days ago and place OOS if no time limit is placed on it. Another justification for a 24 hour time frame could come from a reference to 382.121. If a driver makes an admission to use prior to a safety sensitive function, it is not reportable if educated or treated. So if a driver admits to an officer that they used a drug or other substance before that 24 hour time frame, it does not seem that there would be a imminent hazard anymore. A violation under 392.4 should still be listed on the inspection as a violation and not as an OOS, and this is reason for the additional note, to give some guidance for officers on what to do if admitted prior to the 24 hour period.

REQUEST FOR ACTION

To open the committee for discussion on the options available to update the Drugs and other substances section of the OOS criteria. The following is just a starting point to give the committee some ideas to start working off of and see what options could be implemented. Also for clarification on the Committees opinion on the intent of the statement "with probable cause"

Option 1

7. 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.

b. SHALL NOT USE

Evidence of a Driver's use within the last 24 hours. ("Evidence of a driver's use" means an inspector's direct observation of a driver's use of a controlled substance within the last 24 hours, or a driver's admission of using a drug or other substance within the last 24 hours. Use prior to the current 24 hour period should be listed as a violation only.) (392.4(a)) Declare driver out of service for 24 consecutive hours.

c. SHALL NOT BE UNDER THE INFLUENCE

Is under the influence, with probable cause. (392.4(a)) Declare driver out of service for 24 consecutive hours.

Option 2

7. 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.

b. SHALL NOT USE OR BE UNDER THE INFLUENCE

Evidence of a Driver's use within the last 24 hours or Is under the influence, with probable cause. ("Evidence of a driver's use" means an inspector's direct observation of a driver's use of a drug or other substance within the last 24 hours, or a driver's admission of using a controlled substance within the last 24 hours. Use prior to the current 24 hour period should be listed as a violation only.) (392.4(a)) Declare driver out of service for 24 consecutive hours.

ACTION TAKEN BY COMMITTEE

The committee discussed and a change to the OOSC was passed and approved by the BOD for April 2023.

b. Shall Not be Under the Influence

Evidence of a driver's use within the last 24 hours or is under the influence, with probable cause. (392.4(a)) Declare

driver out of service for 24 consecutive hours.

NOTE: Evidence of a “driver’s use” means an inspector’s direct observation of a driver’s use of a drug or other substance within the last 24 hours, or a driver’s admission of using a drug or other substance within the last 24 hours.