Guidance on what charging documents provide a sufficient basis for the employer’s actual knowledge.

## Question:

Actual Knowledge – traffic citation: Would a document, other than a traffic citation, charging an employee-driver with operating a CMV while under the influence of drugs or alcohol provide a sufficient basis for the employer’s actual knowledge, as defined in 49 CFR 382.107, that an employee-driver has violated subpart B of part 382?

## Answer

Yes. In a 2019 final rule, FMCSA revised the definition of “actual knowledge” in 382.107. [84 FR 51427 (Sept. 30, 2019)]. Under the revised definition, an employer’s knowledge of any type of document that initiates a criminal charge for operating a CMV while under the influence of drugs or alcohol provides a sufficient basis for that employer’s actual knowledge that the employee-driver has violated subpart B of part 382. The type of charging document may vary depending on the State; for example, some States issue traffic citations to charge the driver, while others rely on short-form or long-form criminal complaints or other documents. Therefore, any type of document that charges a driver with operating a CMV while under the influence is sufficient.