FMCSA-D&A-CLEAR-382.717-FAQ003(2022-01-28)

**Part 382 – Controlled Substances and Alcohol Use and Testing**

**Clearinghouse FAQ**

**Question:** If a CDL driver’s employer is aware that the driver received a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, the employer must report this to the Clearinghouse as actual knowledge of prohibited use of drugs or alcohol. If the citation does not result in a conviction, may the driver petition to have this violation removed from their Clearinghouse record?

**Guidance:**Effective November 8, 2021 an actual knowledge violation, based on the issuance of citation for DUI in a CMV, will not be removed from the Clearinghouse when the citation does not result in a conviction.

In the final rule published on October 7, 2021 ([86 FR 55718](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.govinfo.gov%2Fcontent%2Fpkg%2FFR-2021-10-07%2Fpdf%2F2021-21928.pdf&data=04%7C01%7CGian.Marshall%40dot.gov%7C19d6e29f6d7d4bf6d30c08d9aa0e2958%7Cc4cd245b44f04395a1aa3848d258f78b%7C0%7C0%7C637727800057904637%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Q4gIiNlxCr5omcyQs9X3Z5TQzQ4ipvOlG%2FVyD948%2BsU%3D&reserved=0)), FMCSA clarified that a driver subject to FMCSA’s drug and alcohol use and testing requirements, who has been issued a traffic citation (or other charging document) for DUI in a CMV, has violated [49 CFR part 382, subpart B](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ecfr.gov%2Fcurrent%2Ftitle-49%2Fsubtitle-B%2Fchapter-III%2Fsubchapter-B%2Fpart-382%2Fsubpart-B&data=04%7C01%7CGian.Marshall%40dot.gov%7C19d6e29f6d7d4bf6d30c08d9aa0e2958%7Cc4cd245b44f04395a1aa3848d258f78b%7C0%7C0%7C637727800057904637%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=j6HJaFiLkDoKzq%2BEAgRVIEJ6uZUUmnYKVEQiIfig6vI%3D&reserved=0). Accordingly, the 2021 final rule amends the regulation to state that a report of actual knowledge of prohibited use of drugs or alcohol, based on the issuance of DUI in a CMV, will remain in the Clearinghouse for 5 years, or until the driver has completed the return-to-duty process, whichever is later, regardless of whether the driver is ultimately convicted of the DUI offense. Drivers who are not convicted of the offense may petition to submit documentary evidence of non-conviction to their Clearinghouse record.

**FMCSA Drug and Alcohol Clearinghouse**, 1-844-955-0207

**Regulatory Topic:** Clearinghouse FAQ

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