

Commercial Vehicle Enforcement Quarterly

Spring 2013



Driveaway-towaway Operations

Federal Motor Carrier Safety Regulations (FMCSRs) part 393.71(c)(4) states, "if a motor vehicle towed by means of a saddle-mount has any vehicle full-mounted on it, the saddle-mounted vehicle must at all times while so loaded have effective brakes acting on all wheels in contact with the roadway." It is legal to carry a pickup in this manner; however an equipment violation exists if the steer axle brakes on the towed tractor are inoperative.



Case Law – Determining Axle Weights

Motor Carrier Officers can weigh a group of axles and divide that weight by the number of axles in the group to determine the individual axle weights.

In 1979 M&B Equipment Company (M&B) was issued an overweight citation where the officer used a platform scale to weigh a group of axles and then divided the groups gross weight by the number of axles in the group to determine the individual axle weights. The district court found M&B responsible and assessed a fine of \$3,045. M&B appealed to the circuit court arguing an officer must weigh individual axles to determine axle weights. The Macomb County Circuit Court affirmed the district court verdict, judgment, and fines.

M&B then appealed to the Michigan Court of Appeals. The court of appeals ruled in favor of M&B. In the ruling the court said, "It may well be that the public interest would be better served if, under certain conditions, excess weight could be determined by weighing groups of axles. The remedy lies with the legislature rather than by administrative rule promulgated in a manual or by judicial construction by this court. We respectfully suggest that the legislature address the problem at its next session. Until the statute is so amended *we hold it is error to weigh axles together and compute a per axle weight by assuming each axle carries an equal share of the excess weight.*" (emphasis added)

The point of the M&B case, and any subsequent reference to it was, at the time of the trial, the law did not provide for the weighing of a group of axles, and then dividing to obtain the individual axle weights. The Michigan Court of Appeals reversed the lower courts decisions and the defendant's conviction and fines were vacated.

Commercial Vehicle Enforcement Quarterly

Spring 2013

As a direct result of this case, the law was changed in 1980 to add MCL 257.722(7), now MCL 257.722(11), to read:

“For the purpose of enforcing this act, the gross vehicle weight of a single vehicle and load or a combination of vehicles and loads shall be determined by weighing individual axles or groups of axles, and the total weight on all the axles shall be the gross vehicle weight. In addition, the gross axle weight shall be determined by weighing individual axles or by weighing a group of axles and dividing the gross weight of the group of axles by the number of axles in the group. For purposes of subsection (12), the overall gross weight on a group of 2 or more axles shall be determined by weighing individual axles or several axles, and the total weight of all the axles in the group shall be the overall gross weight of the group.”

In 1983 M&B was cited for an overweight violation where the officer weighed a group of axles and divided by the number of axles to obtain individual axle weights. The defendant was found responsible for operating an overweight vehicle.

M&B appealed that decision to the same circuit court as in 1979. The court noted that the subsequent change to MCL 257.722 “**rendered the M&B Equipment case of dubious precedential value.** They also stated, “The weigh master’s actions were not in contravention of the law or case authority as appellant would have this court believe.” M&B was found responsible and that ruling was not appealed.

Despite being obsolete, the 1979 Court of Appeals decision continues to be successfully employed as a defense. Officers should be fully aware of this case and the 1983 Macomb Circuit Court decision and be able explain MCL 257.722 was amended since the 1979 decision.

Tow Truck Operators – CDL Endorsements

There has been a lot of discussion and advice regarding what, if any, endorsements are required by tow truck drivers. This article should provide consistent information.

The Motor Carrier Safety Act, PA 181 of 1963, adopts 49 CFR, part 383 of the Federal Motor Carrier Safety Regulations as state law. The guidelines provided in part 383 are relevant to Michigan enforcement.

383.91-Interpretations: Do tow truck drivers need CDL’s? If so, in what vehicle group(s)?

Guidance: For CDL purposes, the tow truck and its towed vehicle are treated the same as any other power unit towing a non-power unit:

-If the Gross Combination Weight Rating (GCWR) of the tow truck and its towed vehicle is 26,001 pounds or more, and the towed vehicle alone exceeds 10,000 pounds Gross Vehicle Weight Rating (GVWR), then the driver needs a Group A CDL.

-If the Gross Vehicle Weight Rating (GVWR) of the tow truck alone is 26,001 pounds or more, and the driver either (a) drives the tow truck without a vehicle in tow, or drives the tow truck with a towed vehicle of 10,000 pounds or less GVWR, then the driver needs a Group B CDL.

-A driver of a tow truck or towing configuration that does not fit either configuration description above requires a Group C CDL only if he or she tows a vehicle required to be placarded for hazardous materials on a “subsequent move,” i.e. after the initial movement of the disabled vehicle to the nearest storage or repair facility.

Commercial Vehicle Enforcement Quarterly

Spring 2013

383.93-Interpretations: Do tow truck operators who hold a CDL require endorsements to tow “endorsable” vehicles?

Guidance: For CDL endorsement purposes, the nature of the tow truck operations determines the need for endorsements:

-If the driver’s towing operation is restricted to emergency “first moves” from the site of breakdown or accident to the nearest appropriate repair facility, then no CDL endorsement of any kind is required.

-If the driver’s towing operation includes any “subsequent moves” from one repair or disposal facility to another, then the endorsements requisite to the vehicle being towed are required. Exception: Tow truck operators need not obtain a passenger endorsement.

Note that it says “from the site of breakdown or accident.” It does not say anything about the site being on a highway. A vehicle being towed from a rest area, or truck-stop, could still be considered a “first move” if that is where the vehicle became disabled.

So, what does that mean? For a “first move” a tow truck driver is only required to have the appropriate CDL type, A, B, or C. No other endorsements are required. For a “subsequent move” the endorsement that is required to operate the vehicle being towed is needed. A tank endorsement is required to tow a tank vehicle, and a hazmat endorsement is required to tow a placarded vehicle on a subsequent move.

A tow truck driver who is towing a tractor and trailer on a special permit does not require a doubles/triples endorsement because the permit is only valid for a “first move” and no endorsement is required for “first moves.”

Measuring the wheel base on multi-axle trailers

Now that trailers longer than 50’ are allowed more than 3 axles, there has been some confusion and much discussion on how to determine the wheel base. The Michigan Department of Transportation has determined lift axles will not be used when determining the wheel base. Before measuring the distance between the first and last axle on the trailer, have the driver raise all of the lift axles. Then, measure from the center of the first fixed axle, to the center of the last fixed axle. The midway point of that measurement should be between 37 and 41 feet from the kingpin.

