

# Commercial Motor Vehicle

## Enforcement Quarterly



### Captain's Corner

Captain Robert R. Powers, Jr.

On June 19, 2005, 25 men and women from throughout Michigan began a 20 week training program to become a Michigan State Police Motor Carrier Officer. The 15<sup>th</sup> Motor Carrier Recruit School will graduate on November 4, 2005. Following the recruit training, probationary Motor Carrier Officers will complete a 17 week field officer training program.

With commercial vehicle traffic projected to continue to grow, and with increasing emphasis being placed on transportation security, the graduates of the 15<sup>th</sup> Motor Carrier Recruit School will be a welcomed and much needed addition to Michigan's commercial vehicle enforcement effort.

We have all heard the phrase, "saved by the belt." I would like to offer a new twist, "saved by a motor carrier officer!" On June 2, 2005, while working Michigan's Memorial Day Seat Belt Mobilization, Motor Carrier Officer James Griffiths of the Corunna Post stopped a truck driver on Eastbound I-69 for a seat belt violation. A citation was issued and the truck driver buckled up and proceeded down the highway. Later that same day, this very driver, who was now wearing his seat belt as a result of the stop by Officer Griffiths, was involved in a very serious rollover crash. Although he was seriously injured, the driver survived the crash. Without any doubt, this truck driver credits Officer Griffiths with saving his life.

Seat belts do save lives. Unfortunately half of all truck drivers still do not buckle-up when behind the wheel of a big rig. By maintaining street enforcement of our seat belt laws, all of us engaged in commercial vehicle enforcement have the potential to be a lifesaver.

The Michigan State Police Motor Carrier Division has applied for a grant from the Federal Motor Carrier Safety Administration (FMCSA) to fund the issuance of USDOT carrier identification numbers to intrastate carriers. Enforcement of the requirement for intrastate carriers to obtain and display a USDOT number has significant long term safety benefits. This program will enable the collection

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and analysis of citation, crash, and inspection data which in turn will provide law enforcement and safety advocates with information which can be used to guide various commercial vehicle enforcement and safety initiatives. Hopefully, there will be more information about this initiative in future editions of the Commercial Motor Vehicle Enforcement Quarterly.

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### **Securement of Sod**

#### Inspections

The transportation of sod has generated numerous questions recently, from both enforcement personnel and the trucking industry. Complicating the issue is the recent cargo securement changes in the Federal Motor Carrier Safety Regulations (FMCSR) and the fact that Michigan has two distinct cargo securement statutes.

#### Section 257.720 (Act 300 PA 1949)

When the subject of load securement is discussed, most courts, prosecutors, officers and trucking officials immediately think of the tarping/securement law in the Motor Vehicle Code.

However, agricultural/horticultural operations, including sod, are exempt from most of Section 257.720. Generally speaking, agricultural operations are not required to tarp, and are allowed to spill minor amounts of hay, straw, silage or residue of a product, but not the product itself, provided it does not interfere with traffic.

It is very important for transporters, law enforcement and the courts to understand that the exception to Section 257.720 for agricultural operations only applies to Section 257.720. **It does not extend to other acts of law**, such as the Michigan Motor Carrier Safety Act (Act 181 PA 1963). If a vehicle is subject to Act 181 (e.g., over 10,000 lbs. gross combination weight), then the cargo securement regulations apply.

#### Subpart I – Protection Against Shifting and Falling Cargo (FMCSR, 393.100)

Act 181 adopts the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390-399) into state law. Thus, the FMCSR is state statute. The cargo securement standards begin in Section 393.100 and are

much more detailed than the Motor Vehicle Code provisions. **There is no exception for agricultural/horticultural products for cargo securement in Act 181/FMCSR.**

To comply with the FMCSR, a vehicle loaded with sod on an open trailer must:

- Have a tiedown that meets the Working Load Limit (WLL) on each row of sod, whether on pallets or not (generally sod is loaded on pallets and there are two pallets placed side by side on the trailer). (See 393.106.)
- If the load is not secured against a headerboard or bulkhead, the first row must have an **additional** tiedown that meets the WLL. (See 393.110.)
- It is the responsibility of the motor carrier and the driver to protect the load from blowing or falling off. Sod transporters in many other states use netting, similar to the one required for crushed car transporters, to protect from dirt and rocks from blowing off. While the statute does not specifically require sod transporters to use netting, drivers and motor carriers are subject to enforcement action for any loss of cargo (See Section 393.100(b) and/or Section 257.720(1)).
- Protection from damage to the sod is the responsibility of the motor carrier and is not addressed in the statute. There are a number of devices available that are used by a variety of transporters (e.g., sheet rock, dressed lumber, etc.).

If a motor carrier chooses to use an enclosed cargo area, the walls of the cargo area must meet the performance criteria of Section 393.102 (See 393.104(d)). Generally speaking, most roller canopy devices do not meet those specifications and additional securement methods must be employed.

While this article will not discuss WLL in depth, enforcement personnel and trucking industry officials should closely review Sections 393.104, 393.106(d), and 393.108 to ensure the WLL is met.

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In the past, the sod industry in Michigan has employed a securement system using a large tarp and securing the tarp with bungee cords. The provisions of Act 181/FMCSR require **ANY** securement system to meet with WLL. If the WLL is not stamped on the securement device, Section 393.108 provides minimum WLLs for each type of device. Typical bungee cords will not meet these thresholds and as such are illegal/improper securement devices.

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#### **AG Opinion No. 7175**

##### Size and Weight

On June 13, 2005 Attorney General Mike Cox issued Opinion No. 7175 in response to a question from a state Representative. The Opinion outlines the authority of county road commissions and county boards of commissioners regarding the designation and enforcement of Michigan weight laws. Although the Opinion focused on the issuance of "haul route permits," it made several significant points that we will discuss. The Opinion relied on a number of court decisions and statutory language in reaching its decision. The entire Opinion is available at [http://www.ag.state.mi.us/opinion/op\\_main.htm](http://www.ag.state.mi.us/opinion/op_main.htm).

The Opinion began with the assumption that "haul route permits" were being required on vehicles that were within the weight limitations of Section 257.722 and that the "haul routes" had not been designated with any special weight limitation or a restriction against truck traffic per Section 257.726.

A haul route permit was described in the Opinion as a permit required of private motor carriers transporting construction materials to and from road construction projects. Apparently some county road commissions require these carriers to obtain a permit by paying a fee, making a cash deposit, or by posting a bond as security for road damage. The fee is imposed to pay for the inspection of the roadway to ensure no damage has occurred.

The Opinion noted that a county road commission only has that legal power as provided by statute and delegated to it by the county board of commissioners. The Opinion discussed the County Road Law (Act 283 PA 1909, Section 224.9) and noted that nothing in the County Road Law provided authority to commissions to require haul route permits.

The Opinion next reviewed the Motor Vehicle Code (Act 300 PA 1949) as it relates to the authority of county road commissions. The Opinion found that there is no statutory language that provides road commissions the express authority to require haul route permits.

In its discussion of any implied authority to require haul route permits, the Opinion analyzed Section 257.726 (truck routes) and Section 257.725 (permits) and found that county road commissions do have authority to restrict routes and to issue permits for oversize/weight loads. It also noted the authority in Section 247.188 given to county road commissions to require the posting of a bond to cover possible damage, but only in specific circumstances (moving buildings or "other obstruction to traffic").

One significant point the Opinion made regarding the authority of county road commissions to regulate truck traffic is that county road commissions do not have the authority to lower the weight law below what is provided for in the Motor Vehicle Code. The Opinion states that "Section 716(1) of the Code, MCL 257.716(1), prohibits local authorities from altering the size and weight limitations provided in the Code, except as it specifically allows:..." The only circumstances the Motor Vehicle Code provides for lower weight limits is for frost laws (257.722(7)) and for restricted bridges (257.631).

Last, the Opinion searched applicable statute and court decisions to determine if a county board of commissioners could grant such authority to the county road commission. The Opinion determined that no such authority was provided for in statute.

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#### **Seat Belts**

##### Vehicle Code

As Captain Powers discussed in the Captain's Corner, seat belt usage by truck drivers lags the national average. Seat belts allow truck drivers to stay behind the wheel and control the vehicle during a crash, in addition to protecting the driver.

Section 257.710e(1)(g) of the Motor Vehicle Code excepts "A commercial or United States postal service vehicle that makes frequent stops for the purpose of pickup or delivery of goods or services" from the requirement to wear a seat belt.

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While “frequent stops” is not defined and has not been interpreted by the Attorney General or the courts, the enforcement policy of the Motor Carrier Division allows stops within ½ mile and does not recognize the exception for travel on limited access freeways.

Section 392.16 of the FMCSR also requires truck drivers to wear his/her seat belt, but does not contain any exemptions. It is also important to note that the Federal Motor Vehicle Safety Standards do not mandate a shoulder harness for vehicles over 10,000 lbs. gross vehicle weight rating. Many manufacturers choose to install shoulder harnesses and a driver must wear the seat belt provided as designed and installed.

### **REMINDERS**

- ◆ CDL drivers with hazardous materials endorsements must be fingerprinted upon renewal. More information, including fingerprinting locations, can be obtained at [www.hazprints.com](http://www.hazprints.com). The requirement is part of the federal Patriot Act and is administered by the US Department of Homeland Security’s Transportation Security Administration.
- ◆ The 2005 MDOT Truck Operator’s Map is available on line at [www.michigan.gov/mdotmaps](http://www.michigan.gov/mdotmaps). The maps are broken into regions and are available in Adobe Acrobat files.
- ◆ The definition of “Authorized Emergency Vehicle” in Section 257.2 of the Motor Vehicle Code was amended last year to include wreckers, but only for the purposes of Section 257.653a (“Move Over” law).

## **COMMERCIAL MOTOR VEHICLE ENFORCEMENT QUARTERLY PROGRAM SURVEY**

In an effort to assess the effectiveness of the CMV Enforcement Quarterly newsletter, we are requesting that all the recipients of the newsletter complete this survey. Your comments are very valuable and will be used to assist us in providing a better newsletter in the future.

***Please return your response by August 20, 2005.*** Forms may be faxed to 517-333-4414, emailed to [forddw@michigan.gov](mailto:forddw@michigan.gov), or mailed to Lt. David Ford, Michigan State Police, Motor Carrier Division, 4000 Collins Road, Lansing, MI 48909.

**Be sure to fill out the CMV Quarterly Survey right away!** We really need your input, and the **first 50 survey responses** will receive a **FREE current edition of the Federal Motor Carrier Safety Regulations!** **(Include an address for us to mail it to you!)**

Thank you for your participation. Circle one answer for each question.

1. Are you more confident when dealing with Commercial Motor Vehicles (CMVs) since receiving the newsletter?

**VERY                      USUALLY                      SOMEWHAT                      NOT AT ALL**

Please rate the various sections of the newsletter on a scale of 1 to 5, with 1 being poor and 5 being excellent:

<b>Section Heading</b>	<b>Value of Articles/Subject Matter</b>
2. Captain's Corner	
3. Size and Weight	
4. Inspections	
5. Vehicle Code	
6. Reminder Box	

7. Please provide any comments you may have or suggestions for future articles.

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