What Can Congress Do
For South Carolina’s Truck Operators?

(It’s National Truck Driver Appreciation Week!)

HOURS OF SERVICE (HOS)
In December 2014, Congress suspended the problematic 34-hour restart restrictions newly imposed by FMCSA in July 2013. The suspension was to expire when FMCSA reported to Congress the results of its mandated research, regardless of the study’s findings. In December 2015, Congress passed the 2016 Consolidated Appropriations Act which included a provision which effectively would have made the FMCSA revert back to the simple, practical and effective 34-hour re-start with no restrictions. A “drafting error” allowed DOT to interpret that if the study doesn’t “prove” the restart restrictions improve safety, then the entire restart provision must be eliminated. This would mean the industry would need to revert to using the “rolling recap” to calculate weekly available hours – a step backwards, which would create a shock to the nation’s supply chain. The Hours of Service Restart study report has not yet been approved by Secretary Foxx. Once that happens, the DOT Office of the Inspector General will have 60 days to review the study before it is delivered to Congress. (We are confident that FMCSA can’t prove its assertions.)

In May, the Senate overwhelmingly approved new appropriations legislation addressing the drafting error and preserving the simple 34-hour restart rule without the contentious restrictions. But, it also stipulates that drivers using the 34-hour restart cannot drive after having worked for 73 hours in the current 7-day period. Later that month, the House appropriations committee passed similar legislation aimed at preserving the simple 34-hour restart. The House version did not include a cap on weekly hours. Once approved by the full House, the two versions must be reconciled before a bill is sent to the president. We ask you to support and insist on the House version.

F4A
Background: In November 2015, as part of the full House of Representatives’ deliberations on HR 22 – the FAST Act -, the ATA supported “Denham Amendment” was added to the House version of the bill by a 248-180 vote. The amendment, sponsored by Congressman Jeff Denham (R-CA), was intended to strengthen the interstate commerce federal preemption law established as part of the Federal Aviation Administration Authorization Act (FAAAA or F4A) of 1994. Specifically, the Denham Amendment would clarify that under the FAAA, the federal driver hours of service regulations continue to supersede state meal and rest break requirements, thus ensuring states cannot create a patchwork of differing requirements companies and drivers cannot comply with. The language would also ensure states cannot prohibit interstate carriers from utilizing piece rate pay as a form of compensation and that both these provisions are retroactive to 1994 to protect carriers from existing and future frivolous lawsuits. Unfortunately, the Denham Amendment language was removed from the final version of the FAST Act when during the House/Senate conference committee discussions, as Senate Democrats threatened to hold up the larger bill in opposition to that provision. We ask you to support and insist on the House version.

We urge an approach which will allow Congress to return after the elections and pursue passage of an end of year spending package, in which we are advocating that both of our critically important priorities - Hours of Service and F4A - be addressed. (Frankly, both of these codify/clarify what we had previously.)
REGULATORY UP-DATE – As Information:

COMPLIANCE, SAFETY, ACCOUNTABILITY (CSA)
CSA is designed to identify potentially unsafe motor carriers. However, we have serious concerns with the program’s ability to do so accurately and reliably. These concerns were validated by a GAO investigation published in early 2014 that identified significant shortcomings in the ability of CSA to accurately predict crash risk for individual motor carriers. In addition, an ATRI (truckers’ research arm) study highlighted another deficiency, namely, that the jurisdiction(s) in which a carrier operates can have a dramatic impact on its SMS scores. A subsequent report detailed the negative impact non-preventable crashes have on carriers’ CSA scores. It found that, using a very conservative definition of non-preventable crashes, carriers’ Crash Indicator scores improved by nearly 15 percent with these crashes removed. In response to criticism, Congress included a provision in the Fixing Americas Surface Transportation (FAST) Act that required FMCSA to remove CSA scores from public view pending a study to be conducted by the National Academy of Sciences (NAS) on the accuracy and reliability of CSA in predicting crash risk.

On January 15, FMCSA issued its proposal to use data from CSA, in addition to information gathered during on-site compliance reviews, to make Safety Fitness Determinations (SFD) (i.e. safety ratings) on a monthly basis. Under the proposal, a carrier could be deemed “unfit” if it “failed” in two of its BASICs if: BASIC measures exceed a predetermined “failure threshold,” a compliance review reveals unacceptable levels of critical or acute violations; or a combination of the two. A complete summary of the proposal is available at http://trck.ng/SFD. On May 23, ATA submitted its comments on the SFD proposed rule, calling on FMCSA to suspend the rulemaking until the aforementioned steps have been completed. In June, ATA submitted additional comments in response to those submitted by other organizations about the proposed rule. In early July, FMCSA announced a planned demonstration project to consider requests from motor carriers to remove non-preventable crashes from their CSA records. The announcement was in response to comments submitted by ATA in 2015 criticizing FMCSA’s Crash Weighting Study. ATA will file comments on the proposal soon.

OBSTRUCTIVE SLEEP APNEA
Obstructive sleep apnea (OSA) is a sleep disorder that can result in excessive daytime sleepiness and an elevated crash risk. In 2013, Congress passed legislation, supported by ATA, prohibiting FMCSA from issuing regulatory guidance on OSA. Instead, Congress stipulated that FMCSA must use the formal notice-and-comment rulemaking process to address the issue. In March, FMCSA published an Advance Notice of Proposed Rulemaking (ANPRM) seeking feedback on the prevalence of OSA in the industry as well as appropriate screening, testing and treatment of the disorder. In May, ATA participated in an FMCSA hosted listening session and advocated for a pragmatic approach to any OSA rulemaking. In July, ATA submitted its formal comments on the ANPRM. In them, ATA called on FMCSA to consider the full costs and benefits of any action on OSA including an analysis of the number of crashes caused by OSA.

ENTRY-LEVEL DRIVER TRAINING (ELDT)
In 2007, FMCSA published a Notice of Proposed Rulemaking (NPRM) that required CDL candidates to complete a minimum number of classroom and behind-the-wheel (BTW) training hours before they could receive their CDLs. Based on stakeholder feedback, in 2013 FMCSA decided to withdraw their NPRM in favor of a rarely used Negotiated Rulemaking (Reg Neg) process. The Reg Neg committee, of which ATA was a part, concluded its work in May 2015. On March 7, 2016 FMCSA published a new NPRM based on the Negotiated Rulemaking committee’s recommendations. The proposal seeks to require all drivers who need to pass a skills test to obtain a CDL to first take special training through a certified training provider. The training would consist of both classroom and behind-the-wheel (BTW) training elements and would be required before drivers are allowed to take their CDL skills test. The proposal also seeks to establish a registry of certified training providers who would be required to electronically submit completion certificates to drivers’ State Licensing Agencies. Comments were submitted, and in late August, FMCSA submitted the ELDT final rule to OMB for review. This is the final step before publication. ATA will be meeting with OMB to discuss concerns with the proposal. A final rule is expected by the end of the year.

FMCSA and NHTSA Release Speed Limiter NPRM
On Aug. 26, 2016, FMCSA and the National Highway Traffic Safety Administration (NHTSA) released a joint notice of proposed rulemaking (NPRM) that would establish safety standards requiring all newly manufactured U.S. trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating more than 26,000 pounds to come equipped with speed limiting devices. Comments will be due by 60 days after publication in the “Federal Register.”

FMCSA Announces CDL Pilot Program for Younger Drivers
On Aug. 22, 2016, FMCSA issued a notice and request for comments regarding plans to initiate a pilot program to allow a limited number of individuals between the ages of 18 and 21 to operate commercial motor vehicles in interstate commerce if they have received specified heavy-vehicle driver training while in military service and are sponsored by a participating motor carrier. The agency is seeking input on the three-year proposal. We prefer an expanded program, allowing cross-border operations, like between Charlotte and the SC state line. With the looming shortage of drivers poised to be at a “crisis” stage soon, we need to provide more opportunities for entry-level/young workers, now.