**The truth about the Denham Amendment**

**Myth:** Nothing in the Denham amendment impedes a states’ ability to govern the working conditions of truck drivers engaged solely in intrastate commerce.

**Fact:** The amendment ties preemption to USDOT’s jurisdiction under 49 U.S.C. 31502, which applies when a driver works in interstate commerce. However, virtually all cargo is considered interstate commerce via 49 U.S.C. 13501, thus subject to jurisdiction by USDOT. In fact, according to FMCSA, if your trade, traffic, or transportation is between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state of the United States, that is considered interstate commerce (click [HERE](#) to view FMCSA page). Further, FMCSA distinguishes between intra- and interstate commerce elsewhere. In their Guidance, the agency states, “When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single state, the driver and CMV are subject to the FMCSR’s” (click [HERE](#) to view FMCSA Guidance, Question 6). Finally, 49 C.F.R. 395 partially defines “interstate commerce” as any trade, traffic, or transportation in the U.S. between two places in a state as part of trade traffic, or transportation originating or terminating outside the state of the U.S. In other words, the origination and destination of cargo almost always transcends state lines and is considered interstate commerce.

**Myth:** The Denham amendment won’t impact intrastate drivers.

**Fact:** The amendment ties preemption to any related activities under 49 C.F.R. 395, which is the federal hours-of-service (HOS) regulations. Only a few states have intrastate HOS regulations so unless a driver is otherwise exempt, he/she would be subject to the federal HOS regulations even if he/she never crosses state lines. For example, Missouri’s HOS regulations reference the federal HOS regulations which apply to “…all motor carriers and drivers, with exceptions found in paragraphs (b) through (k) of 49 C.F.R. 395.1.” In other words, there are plenty of truck drivers that never cross state lines that are still subject to the federal HOS.

**Myth:** The Denham amendment only pertains to state meal and rest breaks.

**Fact:** The amendment includes the phrase “or imposing any additional obligations on motor carriers” which is undeniably overly broad. This language effectively provides motor carriers with a blanket federal preemption for any issue that a state might want to address to improve the lives of employee truck drivers. It is patently false for proponents of the Denham amendment to suggest otherwise.

**Myth:** The Denham amendment has been the subject of ample Congressional discussion and consideration.

**Fact:** The amendment has never been the subject of a Congressional hearing and ten minutes of floor debate is hardly considered meaningful discussion or analysis, especially for an issue as complex and controversial as this. Proponents of the Denham amendment need it to be hastily passed, because if Congress does fully review it, it will become obvious that it goes well beyond the author’s stated intent.