

A federal appeals court in Washington, D.C. declined to rule on a challenge by OOIDA to the Department of Transportation's (DOT's) enforcement policies on driver fatigue. In the year 2000, DOT determined that direct measurement of individual driver fatigue by officers in the field was neither technically feasible nor operationally practical. Since then the Federal Motor Carrier Safety Administration (FMCSA) continue to address the problem of driver fatigue exclusively through hours-of-service regulations. The agency has been silent on the question of the ability of state and federal enforcement officers to discern and measure fatigue on an individual driver basis. No rules have been promulgated authorizing enforcement action against drivers other than under the hours-of-service regulations. OOIDA's recent case against FMCSA was based upon the belief that the agency had broken its silence and should be held to account for its fatigue enforcement policy. The U.S. Court of Appeals for the D.C. Circuit found that FMCSA had not issued a rule, regulation or final order on fatigue and therefore it had no subject matter jurisdiction to address OOIDA's grievances against that agency.

Jim Johnston, President of OOIDA, expressed disappointment over the court's refusal to address the merits of OOIDA's concerns. "All responsible individuals should support constructive efforts to remove fatigued drivers from the road" said Johnston, "but to do so one must establish standards. FMCSA has not adopted any such standards. Instead, FMCA has turned a blind eye to enforcement actions where states like Minnesota have put drivers out-of-service for fatigue if they had TVs or Playboy magazines in their sleeper berths."

Recently, OOIDA, the Commercial Vehicle Safety Alliance (CVSA) and the National Safety Council (NSC) wrote a joint letter to FMCSA to express concerns over the lack of a federal standard defining excessive driver fatigue. CVSA pointed out that the state enforcement officers were unclear as to the level of fatigue that would justify enforcement action on their part.

OOIDA complained that drivers did not know how to conform their conduct to a clear legal standard. NSC joined in the plea for the agency to address this problem.

The D.C. Circuit did not address these concerns or the merits of OOIDA's position on fatigue. "The court's recent ruling will certainly not be the last word on this important subject" promised Mr. Johnston. The court's pass on the opportunity to address fatigue means that the issue remains open to challenge in the future. Challenges to agency enforcement practices may be filed in U.S. district courts with appeals from such trial courts eventually going to federal appellate courts. OOIDA will continue to promote constructive solutions to the fatigue problem, but nothing constructive can happen until FMCSA identifies an approach that overcomes the problem identified years ago when DOT found that performance based fatigue regulation was neither "technically feasible" nor "operationally practical."