[M] **NAMIC**®

NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES

317.875.5250 | [F] 317.879.8408
3601 Vincennes Road, Indianapolis, Indiana 46268

202.628.1558 | [F] 202.628.1601
20 F Street N.W., Suite 510 | Washington, D.C. 20001

September 20, 2022

Ms. Ann Carlson
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Agency Information Collection Activities; Notice and Request for Comment; Strategies to Improve Drug Recognition Expert Officers' Performance and Law Enforcement Agencies' DRE Programs NHTSA-2022-0032

Dear Acting Administrator Carlson:

On August 31, 2022, the National Highway Traffic Safety Administration ("NHTSA") published in the Federal Register a Notice and request for comments for a new information collection to study ways to help improve Officers' performance and Law Enforcement programs for Drug Recognition Experts ("DRE"). (the "Notice"). The National Association of Mutual Insurance Companies ("NAMIC") welcomes the opportunity to respond to this request for comments.

NAMIC is the largest property/casualty insurance trade group with a diverse membership of more than 1,500 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 55 percent of the auto market. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

As detailed in the Notice, DRE are law enforcement officers trained and certified to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol. Although there is a standardized process for DREs, there are differences in how each State and local DRE program collects evidence, records data, and determines who will respond when a DRE is needed. These come from differences in funding, the number of trained DREs, individual laws, and other factors. Some States have strengthened their programs with the utilization of tools and technologies, such as tablets and software that aid in the accurate and efficient collection of data.

This project is a one-time demonstration project to study the strategies needed to improve the ability of DRE officers and effectiveness of DRE programs to address drug-impaired driving by consistently gathering and reporting evidence of drivers suspected of impaired driving. Participation in the program would be voluntary and will request and review information about existing DRE processes and procedures, tools and strategies used, and how the agency plans to implement new or enhance existing processes and procedures.

Impaired driving resulting from cannabis or other drug use poses challenges for our nation's law enforcement officers, prosecutors, toxicologists, highway safety offices, and others. As the number of States legalizing marijuana continues to increase, the need for effective strategies to address the growing concerns about impaired driving is imperative. Law enforcement agencies are eager for strategies to improve their efficiency, consistency, and completeness of their DRE programs. This program will play a critical role in a state's efforts to reduce impaired driving.

Although any drugged driving is a serious problem, the issues with cannabis are an even greater issue. The proliferation of cannabis legalization and its widespread medical and recreational use by millions of Americans presents a host of new challenges for law enforcement, public safety officials, lawmakers at all levels of government, and property/ casualty insurers. Cannabis, legal for either medical or recreational use in more than 35 states and Washington, D.C. has created a public policy labyrinth with a tangled web of unique state and local laws, regulations, and guidelines governing cultivation, manufacture, distribution, food safety, sale, storage, use, and cannabis-impaired driving, among many others.

For more than 60 years, insurers have embraced their role as leading advocates for highway and vehicle safety, individually and collectively through the establishment and support of the Insurance Institute for Highway Safety. The insurance industry has been on the front lines working to reduce traffic crashes and fatalities, and it is that commitment and leadership that have led to the universal adoption of seatbelts and airbags in motor vehicles. These and other insurance-industry-backed improvements to auto safety have saved countless lives and reduced the risk of dying in crashes for millions of drivers and passengers across the United States and the world. Insurers have consistently offered a perspective that has helped galvanize efforts to enhance automotive safety against driving under the influence of alcohol, drugs, or distractions like cellular telephones.

Every kind of potential impairment to drivers presents new and unique challenges. Cannabis is no different, and the insurance industry will play an important and leading role in policy conversations about cannabis, its effects on drivers, and automobile safety as part of an ongoing effort to keep everyone on the road as safe as possible. It is important to note at the outset, however, that no standardized testing of cannabis impairment exists yet, making it difficult to measure its prevalence on our roadways. It is difficult for law enforcement agencies to identify, apprehend, and prosecute drug-impaired drivers, yet a survey by the Governors Highway Safety Association indicated that the majority of state highway safety officers considered drugged driving an issue at least as important as driving while impaired by alcohol.

A tremendous amount of research must be conducted on cannabis-impaired driving to confidently measure and assess. As more data is collected and analyzed, it is incumbent upon the insurance industry, in collaboration with other private and public partners, to advance new studies, analyses, and public educational campaigns on the implications of cannabis-impaired driving. While cannabis-impaired driving will undoubtedly present some novel challenges, there is at least one parallel technological blueprint that may help inform policymaking: for decades, U.S. law enforcement officials have used breathalyzer technology to ascertain the level of alcohol-related impairment of drivers. Unfortunately, effective systems for determining cannabis impairment are still in nascent phases and remain far from mass distribution and implementation.

One reason for this is because the primary psychoactive component in cannabis, tetrahydrocannabinol, can be detected in the body for varying lengths of time, depending on a variety of factors including body composition, metabolism, product type, potency, quantity, and frequency of use, which means the extent to which THC levels correlate with impairment is undetermined. It is also necessary to distinguish THC from cannabidiol, the major non-psychoactive compound found in the cannabis plant, which is sometimes recommended to alleviate anxiety, epilepsy, and even psychosis.

As early as 2017, the National Academy of Sciences, in a series of recommendations for further research, went so far as to conclude that "there is substantial evidence of a statistical association between cannabis use and increased risk of motor vehicle crashes." Prior to the COVID-19 pandemic, several reports were released by the insurance industry and federal agencies exploring potential relationships between cannabis legalization, impairment, and automobile accidents. At a minimum, the reports highlight the need to study further the possible links between cannabis impairment and the implications for driver and auto safety. While the literature varies in scope and is limited by the variance in details of how states legalize cannabis, it does indicate an overall increase in automobile crashes when drivers appear to have traces of THC in the blood stream, often concurrently with alcohol. This trend is primarily observed in states that have legalized cannabis for recreational consumption. The varied results further underscore the many unanswered questions about cannabis' cognitive impact and how and to what extent it affects driving ability.

According to the December 2019 National Survey on Drug Use and Health by the Substance Abuse and Mental Health Services Administration – an agency within the U.S. Department of Health and Human Services – 4.7 percent, or roughly 12 million, of U.S. residents aged 16 or older reported driving under the influence of marijuana in the past 12 months in 2018. This trend was most prevalent in individuals between the ages of 21 and 25. Interestingly, the same survey noted that participants driving under the influence of illicit drugs other than marijuana were significantly less at 0.9 percent, or 2.3 million. The survey analysis also identified the need for rapid and sensitive assessment tools to ascertain the presence of and impairment by marijuana and other illicit drugs.

Two challenges of conducting this and similar surveys were acknowledged in the summary, noting that (1) some respondents may have feared legal consequences for answering in the affirmative based on their local and state laws; and (2) self-reported data are subject to the respondents' interpretations of being under the influence of a drug. These two issues permeate much, if not all, the work conducted in this space to date. As a result, impairment may well be more ubiquitous than reflected in the data that has been produced. Acquiring more data on the real number of drivers who have or are driving under the influence of cannabis would be invaluable to stakeholders as they work to mitigate the potential ramifications associated with cannabis impaired driving.

More recently, a third of drivers who drink alcohol and use marijuana at the same time report getting behind the wheel within two hours of consumption, a September 2022 study from the Insurance Institute for Highway Safety shows. This is very concerning as most evidence is that the combination of alcohol and marijuana worsens driving performance more than either substance individually. While only 10 percent of drivers surveyed by IIHS reported using alcohol and marijuana simultaneously over the past year, compared with 70 percent who reported past-year drinking, among those simultaneous users, 33 percent reported drinking alcohol and consuming marijuana and then getting behind the wheel within two hours.

The Notice requests comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility. To that question, NAMIC responds with a resounding "Yes, this work is critical for the proper performance of the functions of NHTSA and there is every reason to believe that the results of the study will have great practical utility," NAMIC is supportive of the Notice as another positive step in the possible range of safety data collection and reporting. NAMIC applauds the Notice as worthwhile action by NHTSA, and strongly urges NHTSA to consider proposing more wide and extensive auto safety data recording and reporting.

If you have any questions or require further information, please contact me at tkarol@namic.org. Thank you for your time and consideration.

Thomas J. Karol

General Counsel – Federal
National Association of Mutual Insurance Companies