



October 31, 2022

Barbara Sauers
Associate Administrator, Regional Operations and Program Delivery
National Highway Traffic Safety Administration (NHTSA)
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington DC 20590

Dear Associate Administrator Sauers,

The Coalition of Ignition Interlock Manufacturers (CIIM) is pleased to submit the following comments in response to the NPRM on Uniform Procedures for State Highway Safety Grant Programs (NHTSA-2022-0036-0069). As part of these comments, we have also attached the comments previously submitted jointly with Mothers Against Drunk Driving, National Safety Council, Governors Highway Safety Administration, Responsibility.org, and National Alliance to Stop Impaired Driving.

CIIM supports and commends the agency's direction in the NPRM and offers a few additional comments for consideration.

First, regarding membership and inclusion of state impaired driving task forces. CIIM believes these task forces provide valuable information for states to evaluate their impaired driving programs. CIIM members can provide expert insight into the administration of a strong ignition interlock program and should also be considered for inclusion on the task forces. NHTSA should consider making the recommendation for inclusion more specific than just a generic "ignition interlock." (*The State may include other individuals on the task force, as determined appropriate, from areas such as 24–7 sobriety programs, driver licensing, data and traffic records, **ignition interlock**, treatment and rehabilitation, and alcohol beverage control.*)

Second, CIIM believes law enforcement provides a pivotal role in reducing fatalities. Impaired driving enforcement is an activity the agency should aggressively support and fund. As such, the agency should reject any attempts to redirect funding to other activities.

Finally, CIIM would like the agency to address and clarify how a state would qualify for the 405(d) funding. In the attached joint letter, the commenters agree that the legislation's language is clear that a state only needs to have one of the three criteria to qualify for funding. NHTSA seems to acknowledge this on page 56782 – "*Under the BIL, two additional bases for compliance have been added to the grant. A State can receive a grant if it restricts driving privileges of individuals convicted of driving under the influence of alcohol or of driving while intoxicated until the individual installs on each motor vehicle*

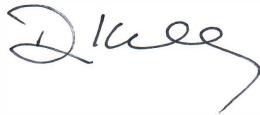
registered, owned, or leased an ignition interlock for a period of not less than 180 days. 23 U.S.C. 405(d)(6)(ii). Separately, a State can receive a grant by requiring individuals that refuse a test to determine the presence or concentration of an intoxicating substance to install an interlock for a period of not less than 180 days. 23 U.S.C. 405(d)(6)(iii)."

However, the agency further states later on the same page, *"The agency also received comments on the second new criterion. As a general matter, the group commenters noted that the criterion "components are to be read together" and the State must satisfy both requirements to qualify for a grant. The agency agrees that the structure of the criterion has three distinct requirements, and the State must demonstrate compliance with each to receive a grant."*

CIIM believes the legislative language is clear that states only need to qualify for one of the three components to receive funding. Hopefully, NHTSA is not inferring in the second statement that a state must possess all three of the criteria qualifications to receive the 405(d) funding and instead is agreeing the third criterion has multiple components, and a state must possess all of the criteria of ONLY the third component. Currently, no state would qualify for 405(d) funding if it were required to achieve all of the criteria qualifications.

CIIM members have enjoyed a healthy, productive relationship with NHTSA and look forward to continuing this partnership in the years to come.

Sincerely,

A handwritten signature in black ink, appearing to read "D Kelly", with a long, sweeping tail extending to the right.

David Kelly

December 1, 2021

ATTACHMENT

Steven Cliff
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Acting Administrator Cliff,

The Infrastructure Investment and Jobs Act provides significant changes to Section 405(d) that will require a rulemaking on behalf of NHTSA. Accordingly, we would like you to consider the following points as you progress through your process.

Statute Adds Additional Flexibility for Grant Awards

The Infrastructure Investment and Jobs Act adds flexibility for States to qualify for ignition interlock incentive grants based on additional criteria if their program contains other elements of an effective ignition interlock program. Both chambers of Congress were unified in their desire that NHTSA work with States and industry stakeholders to prevent drunk driving through the deployment of interlocks and assist States in implementing effective programs. Further, to reduce highway fatalities due to drunk driving as much as possible and consistent with existing law, we urge NHTSA to utilize Section 405(d) funding to the fullest extent for its stated purposes.

By retaining current 405(d) language, Congress agrees that the existing 405(d) provision that allows states to qualify for incentive funding if they have an all-offender law should continue as it is currently applied. The legislation, however, also makes clear that Congress wants to afford significantly more flexibility for states to qualify for these funds. This flexibility includes alternate criteria that will qualify States that do not have a mandatory, all-offender law for 405(d) funding.

The statute directs the basis for qualification and serves as the basis for defining the additional requirements through the clear language enacted by Congress - under the original all-offender law requirement as outlined in the FAST Act **or** under the two new components included in the Infrastructure Investment and Jobs Act. Under these new provisions, a state can qualify with an inclusion of a no wait out provision of any kind of DUI/DWI offense. Additionally, a state would also qualify if their State law includes both a law requiring an ignition interlock after a refusal of a roadside test **and** a compliance-based removal program requirement for any interlock period of use. The agency has supported studies and materials that identify best practices for improving ignition interlock programs that include these provisions. The agency should rely on definitions in these publications.

THE SPECIFIC SECTIONS

All-Offender Qualification

GRANTS TO STATES WITH ALCOHOL IGNITION INTERLOCK LAWS.—The Secretary shall make a separate grant under this subsection to each State that—

“(i) adopts, and is enforcing, a mandatory alcohol-ignition interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated;

This section is already defined under existing law and previously interpreted by NHTSA.

ADDITIONAL QUALIFICATIONS

The statute directs two additional bases for qualification if the State does not have a qualified mandatory ignition-interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated. These additional bases should be interpreted as intended by Congress as evidenced by the difference in language used in identifying the criteria. Further definition should be directed by NHTSA guidance on ignition interlock programs.¹

No Wait Out Qualification

“(ii) does not allow an individual convicted of driving under the influence of alcohol or of driving while intoxicated to receive any driving privilege or driver’s license unless the individual installs on each motor vehicle registered, owned, or leased for operation by the individual an ignition interlock for a period of not less than 180 days;”

A No Wait Out provision does not allow an individual to receive full driving privileges until they have successfully completed the ignition interlock mandate. Different from an all-offender mandate, this would apply to any ignition interlock requirement – repeat offender, high BAC offenders, etc. To qualify under this criteria, the law should require that the convicted impaired driver subject to the requirement must prove that an offender only drove a vehicle with an installed ignition interlock for a period of not less than 180 days. Typically, this requirement is met when an individual installs an interlock on all vehicles they actually operate with the allowance for approved exceptions, such as for an employer-

¹ Mayer, R., *Ignition Interlocks—What You Need to Know: A Toolkit for Program Administrators, Policymakers, and Stakeholders*, 2nd Ed., DOT-HS-811-883 (Washington, DC: National Highway Traffic Safety Administration, 2014). Available at https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/ignitioninterlocks_811883_0.pdf; *Model Guideline for State Ignition Interlock Programs*, DOT-HS-811-859 (Washington, DC: National Highway Traffic Safety Administration, 2013). Available at <https://www.nhtsa.gov/staticfiles/nti/pdf/811859.pdf>.

owned vehicle. This is consistent with NHTSA guidance on components of State laws to include in effective programs.²

It is important to note the difference in language used by Congress in defining this criterion. In this section, Congress clearly differentiates that this criterion is met if an individual is required to show proof of installation of an interlock after conviction, but it explicitly does not state that ALL individuals under state law are required to install an interlock. For example, if a state requires a mandatory interlock installation only for repeat offenders, that state should qualify under this criterion.

Requiring an ignition interlock for a minimum of 180 days before restoration of driving privileges has proven to be an effective tool in reducing impaired driving and changing impaired driving behavior. In addition, up to 75% of people with suspended driver's licenses continue to drive, putting the public at risk. The addition of this provision as a qualifying measure for ignition interlock program funding seeks to prevent the ability of those drivers States deem most in need of interlock use to wait out an interlock period and helps strengthen the effectiveness of interlock programs.

Combined Refusals and Compliance-Based Removal Qualification

(iii) has in effect, and is enforcing—

“(l) a State law requiring for any individual who is convicted of, or the driving privilege of whom is revoked or denied for, refusing to submit to a chemical or other appropriate test for the purpose of determining the presence or concentration of any intoxicating substance, a State law requiring a period of not less than 180 days of ignition interlock installation on each motor vehicle to be operated by the individual;”

and

(II) a compliance-based removal program, under which an individual convicted of driving under the influence of alcohol or of driving while intoxicated shall—

“(aa) satisfy a period of not less than 180 days of ignition interlock installation on each motor vehicle to be operated by the individual; and

“(bb) have completed a minimum consecutive period of not less than 40 percent of the required period of ignition interlock installation immediately preceding the date of release of the individual, without a confirmed violation.”;

² “Eliminate options that allow offenders to avoid participation in the ignition interlock program.” *Model Guideline for State Ignition Interlock Programs*, p 3.

As clearly stated in the Statute, both components are to be read together and State law must include both requirements to qualify for an ignition interlock impaired driving grant.

First component- Test Refusals

This first component of this qualification method requires a State have a law that requires an individual who has either: 1. been convicted of; **or** 2. whose driver's license has been denied or revoked for refusing to submit to a chemical test to install and maintain an ignition interlock for a period of not less than 180 days on each motor vehicle operated by the individual. Under this criterion, the statutory language is clear that the State law only requires a sanction be imposed. A criminal conviction, if available for such offense, is not necessary for this requirement to be met. An administrative sanction revoking the individual's driving privilege or license unless an ignition interlock device is installed is sufficient to meet this requirement.

Requiring an ignition interlock on implied consent test refusals is a valuable tool to ensure individuals are not bypassing the need for an ignition interlock simply due to their failure to comply with the State's implied consent law. Interlocks are a proven method of changing impaired driving behavior while also providing for public safety.³ Requiring a minimum of 180 days of ignition interlock use for individuals who might attempt to avoid establishing a set breath alcohol content (BrAC) level through refusing to provide a test sample is a remedy consistent with the statute and a prudent safeguard to cover those refusing testing.

Second component- Compliance-based Removal

In addition, this section requires that a State have a compliance-based removal program at some level that applies to individuals convicted of alcohol-impaired driving who are required to install an ignition interlock. Similar to the previous additional criteria, it is important to note the difference in language used by Congress in defining this criterion as compared to the mandatory all-offender provision. In this section, Congress again clearly differentiates that this criterion is met if **an** individual is required to meet a States' compliance based removal standard rather than the requirement that it is mandatory for all individuals who install an ignition interlock.

Compliance-based removal requires that a person remain free of confirmed violations for the last 40% of the interlock period. If there is a confirmed violation, the ignition interlock

³ See California DMV Study of Four-County Ignition Interlock Pilot Program, June 2016 (finding ignition interlocks are 74% more effective in reducing DUI recidivism than license suspension alone for first offenders during first 182 days after conviction); see also McGinty, Emma E. American Journal of Preventative Medicine, "Ignition Interlock Laws: Effects on Fatal Motor Vehicle Crashes, 1982–2013," January, 2017 (finding ignition interlock laws reduce alcohol-involved fatal crashes. Increasing the spread of interlock laws that are mandatory for all offenders would have significant public health benefit).

device stays on until they are free of any confirmed violation. Approximately 30 States have some form of a compliance-based removal program. Two particularly effective programs are in the states of Washington⁴ and Tennessee⁵.

State programs, like Washington and Tennessee, have led the way and established solid parameters for effective programs. NHTSA should look to what states that have already done the hard work to institute life-saving programs. NHTSA should show flexibility and should work with states to define what constitutes a program violation. Typical violations of an ignition interlock program:

⁴ (4) Requirements for removal. A restriction imposed under subsection (1)(c) or (d) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying the following:

(a) That there have been none of the following incidents in the one hundred eighty consecutive days prior to the date of release:

(i) Any attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples;

(ii) Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test;

(iii) Failure to pass any random retest with a breath alcohol concentration of lower than 0.020 unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.020, and the digital image confirms the same person provided both samples;

(iv) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device; or

(v) Removal of the ignition interlock device by a person other than an ignition interlock technician certified by the Washington state patrol; and

(b) That the ignition interlock device was inspected at the conclusion of the one hundred eighty-day period by an ignition interlock technician certified by the Washington state patrol and no evidence was found that the device was tampered with in the manner described in [RCW 46.20.750](#). Rev. Code Wash. (ARCW) § 46.20.720.

⁵ (d)(1) During the final one-hundred-twenty-day period for which the ignition interlock device is required, the person shall not violate any of the following conditions:

(A) Tampering with, circumventing, or attempting to start the vehicle with a breath alcohol concentration in excess of the two-hundredths of one percent (0.02%) blood alcohol concentration calibration setting required by § 55-10-417(b); provided, however, that a person shall not be in violation of this subdivision (d)(1)(A) for attempting to start the vehicle, if a subsequent retest within ten (10) minutes shows a breath alcohol concentration of two-hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same person performed both tests;

(B) Failing to take or skipping a rolling retest when required by the ignition interlock device; provided, however, that a person shall not be in violation of this subdivision (d)(1)(B) for failing to take or skipping a rolling retest if a review of the digital images associated with the test confirms that the vehicle was not occupied by the driver at the time of the retest;

(C) Failing a rolling test required by the ignition interlock device with a breath alcohol concentration in excess of two-hundredths of one percent (0.02%); provided, however, that a person shall not be in violation of this subdivision (d)(1)(C) for failing a rolling test, if a subsequent retest within ten (10) minutes shows a breath alcohol concentration of two-hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same person performed both tests;

(D) Removing or causing to be removed the ignition interlock device at any time during the three hundred sixty-five consecutive day period; and

(E) Failing to appear at the ignition interlock device provider when required for calibration, monitoring, or inspection of the device. Tenn. Code Ann. § 55-10-425.

- failure to install an ignition interlock device;
- tampering with the device;
- circumventing the device;
- failure to bring the ignition interlock in for required service;
- failure to take or pass a re-test;
- failing a breath test;
- use of emergency override feature without justification; and
- unauthorized removal.⁶

State programs leverage many different data for determining program violations, including:

- Alcohol positive breath tests (e.g., those above the set point),
- Failure to submit to a breath test,
- Tampering and circumvention attempts,
- Vehicle lockouts and/or early recalls, and
- Use of the emergency override feature (when available and activated).⁷

As outlined in NHTSA’s Toolkit, the record of tests logged by an ignition interlock has been found to be a predictor of recidivism risk. States that require a period of compliance-based removal prior to the removal of the device will better ensure that individuals who are at risk of recidivism remain on the ignition interlock until behavior has changed to better ensure public safety.⁸ Enabling States to use a compliance-based removal program to qualify for impaired driving funding under Section 405 ensures that States continue to utilize the data available to them to strengthen their program, make the roads safer, and save lives.

While various advanced technologies become more available in the vehicle fleet, for this incentive grant program, ignition interlocks remain the technology capable of preventing drunk drivers from operating their vehicle as recognized in the statute. Dozens of peer-reviewed studies prove the effectiveness of ignition interlocks. According to the Centers for Disease Control and Prevention, ignition interlock use prevents DUI recidivism by 67

⁶ *Model Guideline for State Ignition Interlock Programs*, p 7.

⁷ Mayer, R., *Ignition Interlocks*; p. 14.

⁸ “**Predictor of Future DWI Behavior.** The record of breath tests logged into an ignition interlock has been found to be an excellent predictor of future DWI recidivism risk. Offenders with higher rates of failed BAC tests have higher rates of post-ignition interlock recidivism, information that could be critical regarding whether to restore an offender’s license, and any conditions under which such action may occur. *Id.* at 7.

percent compared to license suspension alone.⁹ MADD released data in 2019 that showed ignition interlocks have stopped 3 million starts of a vehicle with a BAC above .08 from 2006-2018.¹⁰

We appreciate the partnership our organization has had with NHTSA through the years to ensure strong State ignition interlock programs. We also understand the dynamics of getting a rule through the rulemaking process. We hope that you thoughtfully consider our suggestions as the agency determines a final course of action. Please feel free to call David Kelly with any questions at (703) 786-0980.

Sincerely,

Jonathan Adkins, Executive Director
Governors Highway Safety Association

Brandy Axdahl, Senior Vice President, Responsibility Initiatives
Responsibility.org

Darrin Grondel, Director
National Alliance to Stop Impaired Driving

Stephanie Manning, Chief Government Affairs Officer
Mothers Against Drunk Driving

Jane Terry, Vice President of Government Affairs
National Safety Council

Stephanie Zugschwert, Executive Director
Coalition of Ignition Interlock Manufacturers

⁹ *Increasing Alcohol Ignition Interlock Use, Successful Practices for States*. Center for Disease Control Found at https://www.cdc.gov/motorvehiclesafety/pdf/impaired_driving/Ignition-Interlock_Successful_Practices_for_States-a.pdf

¹⁰ <https://www.madd.org/wp-content/uploads/2019/05/2019IIDReportData.pdf>