

Mothers Against Drunk Driving (MADD)
Submission to the National Highway Traffic Safety Administration
Docket No. NHTSA-2-2022-0079
Advanced Impaired Driving Prevention Technology
Advance Notice of Proposed Rulemaking
March 5, 2024

Mothers Against Drunk Driving (MADD) appreciates the opportunity to submit comments to the Rulemaking Docket (NHTSA-2022-0079) in response to the Advance Notice of Proposed Rulemaking (ANPRM) on Advanced Impaired Driving Prevention Technology. MADD is the nation's voice of victims and survivors affected by a drunk or drug-impaired driving crash, providing services to those in need, helping individuals, families and loved ones through the court process and the healing process, and empowering victims and survivors to create change to prevent others from going through the same preventable trauma. MADD sees a future free of drunk and drugged driving with no more victims. Eliminating drunk and drugged driving is no longer a "moonshot" goal – it is a reality that is well within reach today.

Technology to stop impaired driving is available now, and a bipartisan law will ensure that a new Federal Motor Vehicle Safety Standard (FMVSS) is established for impaired driving prevention technology as mandated by Congress in the Infrastructure Investment and Jobs Act (IIJA). The Honoring Abbas Family Legacy to Terminate (HALT) Drunk Driving Act requires that all new vehicles come equipped with smart technology to prevent impaired driving. The HALT Act is named in honor of a Michigan family of five – Rima and Issam Abbas, and their three children Ali, 13; Isabella, 12; and Giselle, 7 – killed by a wrong-way drunk driver while on their way home from a family vacation. Thousands of other victims and survivors have shared their stories of grief and pain to ensure enactment of the HALT Act, working with a bipartisan group of Members of Congress to end this public health crisis once and for all.

The Insurance Institute for Highway Safety estimates that 10,158 lives will be saved every year when drunk driving prevention technology, as required by the HALT Act, is fully implemented. This estimate is based on preventing impaired drivers at .08 BAC or above from illegally operating their motor vehicles. As acknowledged in the ANPRM, "NHTSA believes that Congress did not intend to limit NHTSA's efforts under [the Bipartisan Infrastructure Law] BIL to alcohol impairment." Including other forms of impaired driving technology capability as part of this rulemaking, as Congress intended, translates to even more tangible public health and safety benefits on our nation's roadways.

*The Advanced Impaired Driving Prevention Technology rulemaking, when fully implemented, will be celebrated as one of the most significant public health initiatives in U.S. history in terms of lives saved and injuries prevented.*¹

Nation Experiences Historic Increases in Traffic Fatalities and Injuries: Impaired Driving Crisis Worsens

In 2021, 42,939 people were killed in motor vehicle crashes – up 10 percent over 2020 fatalities and the largest spike in the history of NHTSA’s Fatality Analysis Reporting System that dates back to 1975. An estimated 2.5 million people were injured in traffic crashes, a 9.4 percent increase over 2020. Alcohol-impaired-driving fatalities jumped to more than 13,000 deaths for the first time since 2007, marking the second year in a row of alarming increases in these preventable tragedies.² NHTSA reports:

- In 2021 there were 13,384 fatalities in motor vehicle traffic crashes in which at least one driver was alcohol-impaired. This represented 31 percent of all traffic fatalities in the United States for the year.
- Fatalities in alcohol-impaired-driving crashes increased by 14.2 percent (11,718 to 13,384 fatalities) from 2020 to 2021.
- One alcohol-impaired-driving fatality occurred every 39 minutes in 2021, on average.³

Alcohol-impaired driving, distracted driving and speeding all contributed to a 16-year high in traffic deaths, with reported historic increases in all three categories.⁴ Alcohol-impaired driving fatalities increased - for the second year in a row - by 14 percent, distracted driving fatalities increased by 12 percent, and speeding-related fatalities increased by 7.9 percent. Additionally, the number of pedestrians killed went up 13 percent, bicycle fatalities increased 2 percent, and the number of unbelted passengers killed rose 8.1 percent. Of the 13,384 people who died in alcohol-impaired-driving crashes in 2021, more than 1,600 fatalities were nonoccupants (12 percent), comprised of pedestrians and cyclists.

Two years in a row of historic traffic fatality increases, after a decade of stagnation, highlight the urgent need for NHTSA to promulgate a safety standard that would require lifesaving Advanced Impaired Driving Prevention Technology in all new motor vehicles. As NHTSA states in the ANPRM, the lifesaving potential of this rulemaking impels the agency to move forward. There is only one other countermeasure that compares in terms of annual lives saved: the seat belt. Currently, seat belts are the best defense motorists have against a drunk driver.

¹ Centers for Disease Control and Prevention (CDC) Morbidity and Mortality Weekly Report (MMWR) "Ten Greatest Public Health Achievements - United States," May, 2011.

<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6019a5.htm>

² National Highway Traffic Safety Administration (NHTSA) Traffic Safety Facts 2021 Data,; October 2023.

<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813515>

³ Traffic Safety Facts: 2021 Data, Alcohol-Impaired Driving, NHTSA, June 2023.

<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813450>

⁴ Associated Press, "Distraction, speeding and alcohol contribute to a 16-year high in traffic deaths," April 3, 2023.

<https://www.npr.org/2023/04/03/1167786510/distraction-speeding-and-alcohol-contribute-to-a-16-year-high-in-traffic-deaths>

Technology Exists to Prevent Drunk and Impaired Driving

The technology to save lives and prevent injuries due to drunk and impaired driving is here. Thanks to bipartisan leadership from Members of Congress directly impacted by drunk driving, and in response to victim and survivor constituents impacted by drunk and drug-impaired driving, collaborative government and auto industry research has been ongoing for 15 years. Simultaneously, auto suppliers and original equipment manufacturers have continued to develop additional technology solutions to impaired driving.

"The federal government and the automotive industry have jointly backed a research partnership into alcohol detection technology since 2008, exploring systems that use breath or touch sensors to determine the level of alcohol in a driver's blood. Robert Strassburger, chief executive of the Automotive Coalition for Traffic Safety, said the group has tested an initial version of its technology and aims to have a device that would comply with the law by the end of 2025."⁵

In December 2023, one day after the U.S. DOT announced this ANPRM and in response to a question on the announcement posed by DC *Economic Club* chair, David Rubenstein, General Motors CEO Mary Barra stated: "We've been working with regulators on that...We have technology to do that...I think that's technology that's coming that I think is going to be good for everyone."⁶ The automotive industry is ready for this rulemaking. NHTSA must meet this moment.

After 15 years of research and testing, it is time for NHTSA to create an FMVSS, provide a DADSS reference design package to auto suppliers and original equipment manufacturers, and propel this lifesaving technology, or equivalent technologies, into all vehicles.

In January 2024 at the Consumer Electronics Show, multiple Tier 1 and Tier 2 auto suppliers and original equipment manufacturers showcased new technologies designed to prevent impaired driving. In addition to multiple examples of driver monitoring systems focused on driver distraction and fatigue, several companies demonstrated drunk and impaired driving prevention technologies, including breath-based technologies used in combination with driver monitoring systems.

MADD has included with this docket submission a list of technologies that exist or are in development from auto suppliers and original equipment manufacturers. This extensive list, in addition to the DADSS federal research program that has been active for 15 years, provides justification for NHTSA to meet its legal obligation to implement the bipartisan Congressional mandate that all new vehicles are equipped with drunk and impaired driving prevention technology.

Auto industry engineers have been developing technology to prevent impaired driving for decades, and what was once viewed as exploratory research to determine the feasibility of impaired driving prevention technology is viewed today as achievable and inevitable. Advanced impaired driving prevention technology is the only solution to ending the scourge of drunk and impaired driving crashes on our roadways. The bipartisan mandate from

⁵ Duncan, Ian. "Car Safety Agency Takes Step Toward Requiring Anti-Drunk Driving Tech" December 12, 2023. <https://www.washingtonpost.com/transportation/2023/12/12/nhtsa-drunk-driving-technology-mandate/>

⁶ Laforest, Audrey. "General Motors CEO: Anti-Drunk Driving Tech Is Coming" Automotive News, December 13, 2023. <https://www.autonews.com/executives/gm-ceo-mary-barra-says-anti-drunken-driving-tech-good-everyone>

Congress is clear: NHTSA must expeditiously write a final rule, without further delay, that will put an end to drunk and impaired driving.

Do Not Let Perfect Be the Enemy of the Good: Pathways Forward Exist to End Illegal Impaired Driving, and Prevent Driver Distraction and Fatigue

While impaired driving prevention technologies exist today, there are still detractors who continue to raise rare, potential problems which serve to delay implementation of this lifesaving, preventative technology. ***For every potential roadblock to implementing the HALT Act, reasonable solutions exist.***

After 15 years of raising and debating the same potential roadblocks, policy questions and “what if” scenarios, industry, government, victims and survivors, public health and traffic safety advocates, privacy experts, and other stakeholders must now come together to find common ground and real solutions forward. Every day we delay, more are needlessly killed and seriously injured.

The Technical Working Group on Advanced Impaired Driving Prevention Technology (TWG) points out in its recently released docket submission: “The ANPRM discusses two important rulemaking approaches that can help us get where we need to be. One of these is that technology does not need to be fully developed and ready for deployment at the time a standard is promulgated. Safety standards can incentivize and lead technology development and encourage investments for public benefit...[T]he other approach described in the ANPRM is the potential of a phased approach to implementing the impairment prevention requirement. A phased or incremental approach could be an essential tool for achieving near-term benefit along with commitment to longer term progress.”

NHTSA can write a final rule that allows for an iterative rulemaking process to implement impaired driving prevention technology, requiring technology that is available now in the early phase of the final rule, and creating a roadmap outlining an additional phase to prevent all types of impaired driving. As our nation continues to see historic increases in roadway fatalities, NHTSA must take deliberate action to end this public health crisis, starting with what works now, charting a course for innovation and progress toward the achievable goal of no more victims.

The deadline for the final rule for implementing advanced impaired driving prevention technology is November 2024. MADD urges NHTSA to issue a final rule that includes a rulemaking roadmap that can detect and prevent ALL dangerous impairments - drunk, drugged, distracted, and drowsy driving – and mitigate serious risk on our roadways.

Vehicles can and must be able to respond to numerous driver impairments, including pre-start and during the driving process. NHTSA must issue a Final Rule that builds toward comprehensive function.

Defining Impaired Driving and the Scope of the Impaired Driving Problem

Euro NCAP describes driver impairment as a disconnection from the driving task or not in a physical state that is sufficient for safe driving (see box below). Recent research has gone

"one step further, complementing this idea of disconnection with the presence of dangerous/reckless driving."⁷

Driver State Monitoring (DSM) – Driver State Monitoring system that is able to (in)directly determine the state of the driver.

- **Impaired driving – A driver who is disconnected from the driving task or not in a physical state that is sufficient for safe driving**
- **Fatigue – State of the driver where he/she is not awake enough to properly perform the driving task**
- **Distraction – Anything (e.g. secondary tasks) that prevents the driver from focusing on the primary task of driving/controlling the vehicle**
- **DUI – Driving Under the Influence of alcohol or drugs**
- **Sudden sickness – An instant and unexpected illness wherein the driver is not able to perform the driving task**

It is well established that various substances can dangerously impair driving, resulting in significant crash risk for the driver, vehicle occupants, surrounding motorists and passengers, pedestrians and bicyclists. Alcohol reduces coordination, concentration, ability to track moving objects, and negatively impacts steering and the ability to maintain lane position. Alcohol can also cause drowsiness. Cannabis affects psychomotor skills and cognitive functions critical to driving including drowsiness, time and distance perception, reaction time, lane tracking, and coordination. Opioids can cause drowsiness and impair cognitive function. Cocaine and methamphetamine can cause drivers to become more aggressive and reckless, resulting in increased risk-taking. Poly-substance use is when a driver is impaired from using two or more drugs, including alcohol, at the same time. Poly-

⁷ Lie, Anders et al; "Vision Zero and Impaired Driving: Near and Longer-Term Opportunities for Preventing Death and Injuries," January 2024. <https://www.sciencedirect.com/science/article/pii/S0001457523003913#f0005>

substance use is a growing concern, particularly with the advent of cannabis legalization. Research shows that two or more drugs combined can amplify the impairing effects of each drug in a person's system.⁸

Alcohol-Impaired Driving and BAC Levels: The Legal Limit

Research has demonstrated repeatedly that a driver's crash risk increases exponentially as BAC levels rise, as NHTSA indicates in the ANPRM, Table 1 – Effects of Alcohol on Driving. MADD's message to the motoring public is clear and simple: if you drink, don't drive. Alcohol consumption and driving a motor vehicle should be two separate activities. In the 1990's MADD victims and survivors successfully advocated for the national .08 BAC per se standard, which became law in October 2000. All states and the District of Columbia, except Utah (.05 BAC) now have a .08 BAC legal limit.

As NHTSA states in the ANPRM, impairment begins before .08 BAC. In 2020, there were 2,041 people killed in alcohol-related crashes where a driver had a BAC level of .01 to .07 BAC. The agency also acknowledges that "In the United States, in general, a BAC of .08 and higher in drivers is defined as legally impaired and is a condition for arrest." NHTSA continues "However, alcohol-impairment of various driving-related skills can occur at lower concentrations, and alcohol-impaired drivers can pose serious injury risks to themselves and others with any amount of alcohol in their bodies."

MADD represents victims and survivors impacted by drivers with a BAC between .01 and .07 BAC, just as we represent victims and survivors impacted by drivers with a BAC at or above .08 BAC. During negotiations on the HALT Act, MADD was asked to support the inclusion of .08 BAC in the law. While MADD represents victims and survivors where an offender's BAC was below .08 BAC, we also understand the need to base alcohol detection technology on a legal threshold, clearly delineating when a driver is illegally impaired and therefore not able to safely operate a vehicle as defined by law.

MADD would like to specifically address an agency comment in the ANPRM that is concerning and in direct opposition to previous statements made by the U.S. Department of Transportation and NHTSA under numerous Administrations. The ANPRM states that "BAC levels provide an imperfect measurement of probable impairment."

In a legislative history of .08 BAC per se laws, NHTSA states the following:

"...the President called for the promotion of a national limit, under which it would be illegal to operate a motor vehicle with a blood alcohol concentration (BAC) of .08 or higher...The federal agency charged with implementing the President's directive is the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation. Long before the President issued his directive in 1998, NHTSA had sponsored several studies on the effectiveness of .08 per se laws. In a 1992 Report to Congress, the agency recommended that all states should enact .08 per se laws for drivers 21 years of age or older. In 1997, NHTSA established an action plan to reduce alcohol-related driving fatalities on U.S. highways to 11,000 by the year 2005. NHTSA's plan, titled Partners in Progress: An Impaired Driving Guide for Action, recommended that all states pass a wide range of

⁸ National Highway Traffic Safety Administration, Drug-Impaired Driving Overview, June 2021.
<https://www.nhtsa.gov/risky-driving/drug-impaired-driving>

measures to combat DWI, including the enactment of illegal per se laws, and illegal limits of .08 BAC.”⁹

NHTSA’s report goes on to include reasons that built the case for a national .08 BAC per se legal limit, including: 1) Virtually all drivers are substantially impaired at .08 BAC; 2) The risk of being involved in a crash increased substantially at .08 BAC; 3) Lowering the per se limit is a proven effective countermeasure that will reduce alcohol-related fatalities; 4) A BAC of .08 is a reasonable level at which to set the illegal limit; 5) The public supports BAC levels below .10; 6) Most other industrialized nations have set BAC limits at .08 or lower and have had these laws in place for many years.

Cannabis and Other Drugs (Besides Alcohol)

After alcohol, cannabis is the drug most often found in the blood of drivers involved in motor vehicle crashes.¹⁰ Cannabis use can affect psychomotor skills and cognitive function critical to safe driving, including drowsiness, time and distance perception, reaction time, divided attention, lane tracking and coordination. Other drugs are shown to pose significant risks to safely operating a motor vehicle.

According to the Centers for Disease Control and Prevention (CDC), during 2018, approximately 12 million (4.7 percent) U.S. residents aged 16 years and older reported driving under the influence of cannabis, and 2.3 million (0.9 percent) reported driving under the influence of illicit drugs other than marijuana during the previous 12 months.¹¹ Driving under the influence was most prevalent among males and among persons aged 16-34 years. Research has determined that co-use of alcohol with other drugs increases driver impairment and crash risk.

According to the National Institute on Drug Abuse (NIDA), in 2021, 13.5 million people aged 16 and over drove under the influence of alcohol in the past year and 11.7 million drove under the influence of selected illicit drugs, including marijuana.¹²

It is challenging to measure how many crashes are due to drugs other than alcohol for several reasons. NIDA summarizes these challenges as follows:

1. A good roadside test for drug levels in the body does not exist yet;
2. Some drugs can stay in a person’s system for days or weeks after use, making it difficult to determine when the drug was used, and therefore how and if it impaired driving;
3. Law enforcement does not usually test for drugs if drivers have an illegal BAC level because there is already enough evidence for a DUI charge;
4. Many drivers who cause crashes are found to have both alcohol and another drug in their system, or a combination of two or more drugs, making it challenging to know which substance had the greater effect.

⁹ "Legislative History of .08 BAC Per Se Laws" DOT HS 809 286, July 2001.

<https://one.nhtsa.gov/people/injury/research/pub/alcohol-laws/08history/>

¹⁰ National Institute on Drug Abuse (NIDA). Drugged Driving Facts, December 2019.

<https://nida.nih.gov/publications/drugfacts/drugged-driving#ref>

¹¹ Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report (MMWR) December 20, 2019. https://www.cdc.gov/mmwr/volumes/68/wr/mm6850a1.htm?s_cid=mm6850a1_w

¹² NIDA, Drugged Driving Drug Facts <https://nida.nih.gov/publications/drugfacts/drugged-driving#ref>

More research is needed on crash causation linked to drugs other than alcohol, as well as poly-substance use, and solutions to the challenges identified above are urgently needed. MADD acknowledges that due to the above challenges, NHTSA has stated in the ANPRM that “Drugged driving, though important to prevent, is not included in the scope of this advance notice of proposed rulemaking.” The agency shares much of the same information provided by NIDA above and adds “Today’s knowledge about the effects of any drug other than alcohol on driving performance remains insufficient to draw connections between their use, driving performance, and crash risk.”

However, current vehicle-based safety technologies could be deployed to prevent significant risks posed by drug-impaired driving, and drug-impaired driving prevention technologies are currently in development and on the horizon. MADD urges NHTSA to include safety technologies in its final rule that consider some of the most common and dangerous characteristics of drug-impaired driving to mitigate significant crash risk. Technology can identify certain drug- impaired driving traits, regardless of the impairing substance. Vehicle-safety technologies can respond, particularly in the most egregious scenarios where the motoring public is put at significant risk.

When operating a motor vehicle, regardless of the impairing substance, impairment is impairment. Researchers and auto industry engineers continue to identify common characteristics of substance-impaired drivers and are getting closer every day to identifying real solutions, regardless of the drug. As part of an iterative rulemaking process, NHTSA’s roadmap to eliminate substance-impaired driving could include the identification of common signs of dangerous drug-impaired driving with various driver inputs, and appropriate vehicle responses when illegal impairment is detected.

Measuring a driver’s BAC level is one data point, albeit a critically important one. Alcohol remains the number one impairing substance on our nation’s roads, and as BAC levels rise research shows increased and deadly impairing effects. But what about a driver with a .04 BAC who has just gotten high in the bar parking lot before heading home? That driver will show significant signs of impairment well above the BAC data point alone and may in fact be operating a vehicle in an equivalent manner to drivers with a significantly higher BAC (swerving in and out of his or her lane, exhibiting slowed reaction times to environmental factors, driving the wrong way down a highway, etc.).

MADD has participated in meetings with several government agencies for several decades to discuss the issue of drug-impaired driving beyond alcohol. As research continues to attempt to identify per se impairment levels, roadside testing, impairment versus presence, and accurate data collection on this critical issue, MADD urges NHTSA to create a roadmap to eliminate drug-impaired driving where advanced driver assistance technologies can be activated to reduce crash risk and severity, regardless of the impairing substance.

HALT Act: Bi-Partisan Law Ushers in New Era of Vehicle Safety

The HALT Act was signed into law on November 15, 2021. The historic, bipartisan mandate, led by Senators Ben Ray Lujan, Rick Scott, Gary Peters, and Shelley Moore Capito in the Senate, and Representatives Debbie Dingell, Jan Schakowsky, David McKinley, and Kathleen Rice in the House of Representatives, requires NHTSA to create a FMVSS for advanced impaired driving prevention technology. The HALT Act was included in the Infrastructure and Investment and Jobs Act (IIJA) following 15 years of conceptualization, research,

federal funding, dedicated victim and survivor leadership and advocacy, publicly stated auto industry commitment, alcohol industry and insurance industry support, and various public health and traffic safety stakeholder involvement.

MADD first began collaborative discussions on advanced technology solutions with the auto industry and other stakeholders starting in 2006, when we convened the *International DUI Technology Symposium: A Nation Without Drunk Driving (the Symposium)*. The Symposium explored the role of technology as the ultimate solution to the persistent public health crisis of alcohol-impaired driving. More than 100 representatives participated, including leadership from DOT and NHTSA, technology experts, researchers, automobile manufacturers, insurers, law enforcement, courts, federal and state legislators - all with the goal of creating a future of no more victims.

Later that same year, in November 2006, MADD, U.S. DOT Secretary Mary Peters, NHTSA Administrator Nicole Nason, the Insurance Institute for Highway Safety, the Alliance of Automobile Manufacturers, the Governors Highway Safety Association, the International Association of Chiefs of Police, the Century Council, and the Distilled Spirits Council of the United States announced the Campaign to Eliminate Drunk Driving. A main pillar of the announcement included the exploration and commitment to developing advanced, in-vehicle technologies to eliminate drunk driving.

MADD has included with this docket submission a timeline of events and milestones, spanning two decades, that led up to the enactment of the HALT Act and the release of the Advanced Impaired Driving Prevention Technology ANPRM, officially beginning the rulemaking process to implement this historic law and ushering in a new era in vehicle safety and traffic safety.

It is worth noting again that the Insurance Institute for Highway Safety (IIHS) estimates that 10,158 lives will be saved every year when the technology required by the HALT Act is fully implemented.¹³ IIHS's estimate focuses solely on alcohol-impaired driving fatalities. Incorporating drug-impaired driving prevention technology beyond alcohol, driver distraction and fatigue would increase the life-saving potential of this historic motor vehicle safety standard. As NHTSA states in the ANPRM, "The enormous safety potential of addressing the three states of impaired driving considered here impels NHTSA's activities relating to driver impairment."

Drunk driving prevention technology has been conceptualized and developed in some form by auto suppliers and original equipment manufacturers for decades, with the first known onboard experimental alcohol and drug impairment detection device developed and evaluated by General Motors engineers in the 1970s.^{14,15} There are countless other examples of industry public announcements, diagrams and patents, demonstrating thoughtful approaches to solving the impaired driving crisis on our roads.

¹³ IIHS "Potential lives saved by in-vehicle alcohol detection systems" January 2021.

<https://www.iihs.org/topics/bibliography/ref/2209>

¹⁴ The New York Times – G.M. Testing a Car to Bar Drunken Driver, December 22, 1972.

<https://www.nytimes.com/1972/12/22/archives/gm-testing-a-car-to-bar-drunken-driver.html>

¹⁵ Hemmings – A GM onboard experimental alcohol and drug impairment detection device of the 1970s, January 16, 2019. <https://www.hemmings.com/stories/2019/01/16/a-gm-onboard-experimental-alcohol-and-drug-impairment-detection-device-of-the-1970s>

MADD has also included with this docket submission a summary of impaired driving technology, focused mainly on substance-impaired driving. There are many other examples of technologies designed to prevent distracted driving and fatigued driving, and many other vehicle safety systems that, once impairment is detected, can take specific action to prevent crashes, fatalities and injuries.

After years of patience and persistence, voices of victims and survivors sharing their stories of loss and life-altering injuries galvanized federal action in a bipartisan victory for all road users. There must be no further delay: the time to end drunk and impaired driving is now.

Consumer Acceptance

On March 14, 2019, before the House Energy and Commerce Subcommittee on Consumer Protection and Commerce at a hearing titled "Enhancing Vehicle Technology to Prevent Drunk Driving" Congresswoman Debbie Dingell, still reeling from the recent Abbas family crash, and having attended the family's funeral along with 7,000 others in mourning, stated:

"[The Abbas family] deaths, and the thousands just like them each year, are avoidable and preventable. The technology exists to save lives. A little girl at the funeral came up to me -- she was a classmate -- and said 'There is technology. Why are you not using it? Why won't Congress act? My friend should be here today.' That statement is my heart. So, my question to each Member, witness, and all the public watching today is simple: why aren't we using it? We need to explore every possible solution...and get the DADSS technology in cars as fast as we can."

Representative Dingell, in response to hearing industry representatives continuously use the 1970s seat belt interlock as a potential reason to delay implementation of the DADSS technology to prevent drivers from operating motor vehicles at .08 BAC or above, also stated:

"...we still to this day hear about that campaign to require seat belts being buckled. And it is used as an excuse for everything. And we have got to stop using it. It is now 2019, not the 1970's. And people are dying and the technology exists."

The 1970's example Representative Dingell refers to is cited by NHTSA and the auto industry time and time again as a reason for concern and delay. We must move past this example, and recognize that this occurred nearly 50 years ago, that seat belt use at the time was at best in the low teens, and victims and survivors had not yet organized to galvanize change.

A consumer education campaign is an essential part of this rulemaking and should be developed and implemented as soon as possible.

A report by researchers with Johns Hopkins Bloomberg School of Public Health, published in the Journal of the American Medical Association (JAMA) Network Open on April 20, 2023, found that nearly two-thirds of respondents, or 64.9%, either agreed or strongly agreed that vehicle impairment prevention technology should be available on all new vehicles. Nearly the same percentage of respondents (63.4%) said they support the mandate for the technology that is included in the Infrastructure Law.

NHTSA's Authority to Implement Advanced Impaired Driving Prevention Technology

Section 24220 of the Infrastructure Investment and Jobs Act directs the Secretary of Transportation, through NHTSA, to establish a federal motor vehicle safety standard (FMVSS) that requires all new motor vehicles to be equipped with “advanced drunk and impaired driving prevention technology.” This section, known as the HALT Act, requires NHTSA to complete its rulemaking within three years of enactment, subject to conditional extensions, and further provides industry with two to three additional years to comply with the new FMVSS.

Key to the implementation of the HALT Act is the law’s definition of “advanced drunk and impaired driving prevention technology.” Specifically, the term is defined under statute as a “system” that can “passively monitor the performance of a driver of a motor vehicle to accurately identify whether that driver may be impaired; and prevent or limit motor vehicle operation if impairment is detected.” The law further states that technology must, “passively and accurately detect whether the blood alcohol concentration of a driver of a motor vehicle is equal to or greater than the blood alcohol concentration described in section 163(a) of title 23, United States Code; and prevent or limit motor vehicle operation if a blood alcohol concentration above the legal limit is detected; or is a combination of systems.”

The law is very clear: NHTSA has an obligation to fulfill the mandate required by Congress to promulgate an FMVSS that requires a passive monitoring system that (a) detects and prevents or limits impaired driving, (b) detects and prevents or limits the operation of a vehicle when a driver has a blood alcohol concentration (BAC) above the federal threshold of 0.08%, or (c) is a combination of both (a) and (b).

Furthermore, the HALT Act directs NHTSA to promulgate the new FMVSS in accordance with its usual authority under the Motor Vehicle Safety Act (specifically 49 USC §30111), which requires NHTSA to consider whether the proposed standard is “reasonable, practicable and appropriate” for new motor vehicles (as contemplated under HALT). NHTSA is further directed to “consider the extent to which the standard will carry out section 30101 of this title,” which states the fundamental purpose of the Motor Vehicle Safety Act, i.e., to “reduce traffic accidents and deaths and injuries resulting from traffic accidents.” It is our contention that NHTSA can provide an FMVSS that is reasonable, practicable and appropriate, and results in far fewer drunk and impaired driving deaths and injuries resulting from preventable motor vehicle crashes.

Substance-Impaired Driving Prevention: Stopping the Crime Before It Happens and Rolling Tests

MADD contends NHTSA’s rulemaking must achieve two objectives: First, incorporating available technologies into vehicles that can passively detect the equivalent of a .08 blood alcohol content (BAC) and prevent the movement of a vehicle if the driver is above the threshold for impaired driving. When a vehicle detects a driver is impaired with a BAC of .08 or above, or equivalent, the driver must be unable to drive the vehicle.

Second, NHTSA must determine as part of its final rule what action or actions the vehicle must take if impairment is detected while the car is in motion. Many of the victims and survivors MADD represents share stories of what was found in their offenders’ vehicles, including open, half-full alcohol containers, empty alcohol containers on the car floorboards and/or drug paraphernalia they were using as they drove the vehicle. When a vehicle detects driver impairment while the vehicle is in motion, the vehicle can and must take

action to prevent death and injury on our roadways. Actions to mitigate significant fatality and serious injury risk can include a “limp home mode,” which could include limiting vehicle speed, lane keeping assist, and/or identifying a safe location and pulling the vehicle over. These solutions are well within reach and must be included in a final rule.

Congress specifically provided NHTSA with the option to combine multiple systems that detect and prevent various scenarios of impaired driving, which can also provide a system of redundancies. NHTSA could require cars to be equipped with technologies that detect and prevent BOTH drunk driving (through, for instance, a BAC detection system) AND impaired driving (through, for example, a driver monitoring system.) Given that NHTSA’s specific statutory authority under HALT is coupled with NHTSA’s general mandate to “reduce traffic accidents and deaths and injuries resulting from traffic accidents,” MADD urges the agency to be aggressive and ambitious in fulfilling its statutory obligations. The bipartisan HALT Act directs NHTSA to change the behavior of millions of drivers who choose to get behind the wheel drunk or impaired. HALT Act’s directed and mandatory rulemaking complements NHTSA’s general statutory mission and presents the agency with a historic opportunity to save thousands of lives every year, and prevent hundreds of thousands of injuries, changing transportation and traffic safety as we know it.

Data and Privacy Protections

The benefits of the HALT Act are not at odds with driver and passenger privacy. NHTSA can promulgate an effective FMVSS that meets the requirements of the HALT Act, while concurrently protecting consumer data from unauthorized or improper collection and/or use. In fact, as noted by NHTSA in its AMPRM, because the agency must factor in consumer acceptance (as part of its statutory mandate to consider the practicability of the FMVSS), it is imperative that NHTSA establishes privacy protections as part of the rulemaking process. “Privacy by design” is a long, well-established best practice that infuses data protection into the design and execution of any technology or protocol. NHTSA should aggressively incorporate this principle throughout its regulatory deliberations.

While NHTSA does not have extensive regulatory or policy experience protecting consumer privacy, other agencies do. Most notably, the Federal Trade Commission (FTC) is the nation’s premier consumer protection agency with a long-established and well-regarded history of enforcement and regulatory actions protecting consumer privacy. MADD recommends that NHTSA consult with the FTC and other well-regarded and relevant government entities when deliberating on privacy and data protections in its rulemaking process. Also, see answers to questions below regarding privacy.

Conclusion

For 15 years, the auto industry and the Department of Transportation through the bipartisan DADSS program have researched and prepared for advanced impaired driving prevention technology in vehicles. Simultaneously, auto suppliers and original equipment manufacturers have been developing additional technologies to address impaired driving. NHTSA has the authority and is obligated to meet the rulemaking timeline outlined in the bipartisan Congressional mandate for advanced impaired driving prevention technology as a standard safety feature in all new vehicles and provide a final rule by November 2024. This law has encouraged continued innovation, which will allow NHTSA to write a flexible rule to accommodate various kinds of life-saving technologies. MADD victims and survivors will

continue to work with the Administration and bipartisan leaders in Congress to ensure HALT Act implementation. We look forward to a day when drunk and impaired driving is a thing of the past. A world with no more victims is here.

Answers to ANPRM Questions

Question 8.1.

MADD believes that there are numerous technology-neutral practices that can effectively protect driver and passenger data.

First, whatever system is in place, that system should only collect and use data that is absolutely essential for the purpose of effectuating the purpose of the HALT Act, i.e., to detect drunk and/or impaired driving and prevent or limit the operation of the vehicle upon detection. The collection and use of consumer data for any other purpose should be strictly prohibited. This concept, known as "data minimization", is another well-established concept in privacy public policy circles. For example, consumer data should not be used for marketing or advertising purposes; nor should it be used by law enforcement. On this latter point, the purpose of the HALT Act is NOT to aid in the prosecution of a drunk or impaired driver, but to prevent the operation of a vehicle by a drunk or impaired driver. The law is meant to save lives, not be punitive.

Second, any and all data that a motor vehicle system collects and uses should be anonymized or de-identified in order to protect the identity of the driver or vehicle. Such de-identification protocols should also prevent the re-identification of such data so that it cannot be linkable to an individual or vehicle.

Third, any data collection that occurs to detect and prevent impaired driving should be strictly confined to the vehicle; data should not be transmitted outside the vehicle to, for example, a remote server. In fact, all data transfers to third parties, no matter the means or vector, should be strictly prohibited. Prohibiting and preventing the migration of driver data to outside sources minimizes the risk of improper use of driver data for purposes other than the mandates of the HALT Act.

Lastly, MADD would like to emphasize that such privacy protective practices are technology neutral. That is, they can apply to any technology or system that an eventual FMVSS establishes to fulfill the HALT Act's legal mandate. Given this, NHTSA should not rule out any technology or system because it is deemed to be more privacy invasive than others. Whether a car is equipped with a driver monitoring system or a BAC detection system, the best practices outlined above can readily and effectively apply to all of them. In short, NHTSA should take nothing off the table.

Question 8.2

MADD rejects the premise of Questions 8.2. If NHTSA promulgates a rule that embraces privacy-by-design and requires certain best practices while prohibiting other improper practices, there shouldn't be any "potential for different privacy impacts associated with different types of systems and information used in those systems." As noted earlier, these practices are tech-neutral. For instance, requiring the de-identification of all driver data eliminates any privacy distinction between, say, a driver monitoring system and a BAC

detection system. If all of the data is de-identified and, further, cannot be reconstituted to identify an individual, it doesn't matter whether that data pertains to facial features or blood alcohol levels.

Furthermore and related, MADD rejects the premise of the ANPRM's example question, "how should accuracy be weighed against privacy?" If a final rule incorporates well-established, tech-neutral privacy practices and prohibitions (as outlined in our answer to Question 8.1), accuracy and privacy should not be at odds. As stated earlier, MADD does not believe that public safety and privacy are a zero-sum game.

Question 8.3

We are not clear to what NHTSA is referring when it references "performance-based security controls". However, MADD does not believe that NHTSA should rely on "any industry or voluntary standards" in its deliberations. In fact, state governments have passed their own privacy and security laws – and Congress is currently deliberating on a comprehensive federal law – precisely because the private sector has done such a poor job of adhering to meaningful voluntary privacy standards on its own. In fact, the automobile industry has been specifically cited as a particularly egregious stakeholder group in terms of their data privacy practices.¹⁶ Like other sectors of the economy, the automobile industry has embraced "Big Data" and collects, uses, and monetizes vast amounts of consumer data, often without consumer knowledge or consent. Other industry stakeholders, such as insurance companies and rental car companies, similarly have commercial interests in vehicle-generated data.

Consequently, MADD believes that NHTSA should largely rely on its relevant partners in the federal government, most notably the FTC, as well as stakeholders with well-established public interest credentials, such as privacy advocacy groups. Industry input can prove vital in understanding the technical nature of data collection and use, but how that data can be collected and used outside of the narrow confines of HALT's public safety mandate should be largely insulated from commercial, for-profit interests and motivations.

Question 8.4

MADD does not believe that technological systems required under a HALT-promulgated FMVSS pose any significant or "additional security vulnerabilities" than systems that are currently embedded in modern motor vehicles. Today's automobiles are largely rolling computers that are already collecting vast amounts of consumer data. They already have connectivity to sources outside of the vehicle – including to the open Internet – that already pose significant security risks and compromise consumer privacy. As noted in Question 8.3, the automobile industry has been specifically cited as a particularly poor steward of consumer data. Modern vehicles feature connectivity through smartphones, which in turn, feature connectivity to specific mobile applications and platforms. This connectivity and functionality pose far greater dangers to vehicle security and/or driver privacy than any

¹⁶ Mozilla – It's Official: Cars Are the Worst Product Category We Have Ever Reviewed for Privacy, September 2023. <https://foundation.mozilla.org/en/privacynotincluded/articles/its-official-cars-are-the-worst-product-category-we-have-ever-reviewed-for-privacy/>

system that would be contemplated under this ANPRM. In fact, if NHTSA establishes regulatory guardrails on how those systems may collect and use data (as MADD urges), then these systems will be far more privacy protective and secure than the myriad of largely unregulated technologies that currently reside in motor vehicles.

Question 8.5

If NHTSA promulgates a rule that incorporates strong, privacy-by-design principles in its FMVSS, MADD believes NHTSA's primary task in education and outreach should be to reassure the public that these life-saving technologies pose no danger to their privacy or security. Unfortunately, too much misinformation about the HALT Act has already been spread – including misinformation peddled by Members of Congress who are hostile to the law – and NHTSA should aggressively work to debunk these harmful myths. As noted earlier, modern day motor vehicles are already computers on wheels that collect vast amounts of consumer data. To single out the HALT Act and impaired driving technology as somehow being a unique threat to consumer privacy is either naively ignorant at best or disingenuous at worst. NHTSA and media outlets must push back against this false narrative.

Again, public safety and privacy are not at odds. NHTSA can craft a rule that effectively detects and prevents impaired driving while concomitantly protecting driver and passenger privacy. In so doing, NHTSA must also play the vital role of informing the public of this basic, complementary duality, while vehemently rejecting the false dichotomy that consumers must somehow sacrifice their personal privacy in order to save lives on our roads. This is simply not true, and NHTSA must unequivocally and aggressively debunk these harmful myths.