



NATHANIEL F. WIENECKE
SENIOR VICE PRESIDENT

July 23, 2019

The Honorable Jan Schakowsky
Chair
House Energy and Commerce
Subcommittee on Consumer Protection
and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
House Energy and Commerce
Subcommittee on Consumer Protection
and Commerce
2122 Rayburn House Office Building
Washington, DC 20515

RE: Hearing on Legislation to Make Cars in America Safer

Dear Chair Schakowsky and Ranking Member McMorris Rodgers:

The American Property Casualty Insurance Association (APCIA) commends you for holding the hearing tomorrow entitled, "Legislation to Make Cars in America Safer."

APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting individuals, families, communities, and businesses in the U.S. and across the globe.

The U.S. continues to experience a troubling increase in auto crashes and fatalities on the road – and marijuana-impaired driving is one of several factors believed to be contributing to the high number of motor vehicle deaths.

The National Safety Council preliminary data shows that over 40,000 people died and 4.56 million people were seriously injured in motor vehicle crashes in the United States in 2018. This is the third consecutive year that 40,000 people lost their lives in motor vehicle crashes.

As Congress considers legislation, there is an opportunity to address this deficiency by prioritizing the research and development of an objective marijuana impairment standard and adopt strong marijuana safety best practices including enforcement practices.

Marijuana Impairment Standard

It is indisputable that marijuana is an intoxicant and impairs those who use it. Marijuana use can slow reaction times and interfere with coordination, perception, judgment, and other critical abilities necessary for safe driving. As more states legalize marijuana, it is inevitable that there are more people driving under its influence.

The Highway Loss Data Institute found that collision claim frequency in Colorado, Nevada, Oregon, and Washington, all of which legalized marijuana for recreational use, was six percent higher than their neighboring states.¹ In Colorado, the Rocky Mountain High Intensity Drug Trafficking Area's Strategic Intelligence Unit released a report that found traffic deaths involving drivers who tested positive for marijuana more than doubled following the legalization of recreational marijuana.² Nonetheless, science and awareness of the risks associated with marijuana have received little mainstream attention.

Regardless of whether one supports or opposes legalizing marijuana, we can all agree on the importance of preventing marijuana impairment on our roads. Unfortunately, there is no standard or reliable methodology to determine marijuana impairment similar to how we detect alcohol impairment. When testing for alcohol impairment there is a clear correlation between the amount of alcohol in the blood and a level of impairment. Detecting marijuana impairment through a standardized test is more complicated.

Marijuana is metabolized by the body differently from alcohol. The level of THC (tetrahydrocannabinol), the psychoactive ingredient of marijuana, in the body can vary based on several factors, including how marijuana is ingested and the potency of the product. The level of THC can drop before a user experiences impairment, but traces of THC may still be found in the body weeks after using marijuana. This means that a positive test result for the presence of marijuana in someone's system does not necessarily mean he or she is impaired. In its March 2019, report, Michigan's Impaired Driving Safety Commission noted that blood-plasma concentrations are indicative of marijuana exposure but not a reliable indicator of impairment.³

In 2017, the National Highway Transportation Safety Administration (NHTSA) released a study on the effects of marijuana-impaired driving and reported that no reliable threshold or measurement methodology currently exists. NHTSA concluded that, until there is a scientific standard of impairment, the best test for marijuana impairment is an officer with advanced training in this area.⁴ While APCIA supports enhanced law enforcement training to identify marijuana impairment to protect our roadways, research to develop an objective impairment standard and a reliable testing method needs to be a priority.

Few federal studies have evaluated the effect of marijuana use on driver performance. Government agencies face difficulties in developing marijuana impairment standards because of federal prohibitions. Specifically, the requirements that must be met to use marijuana in studies due to its status as a controlled substance under federal law and many state laws. The difficulties in conducting this research

¹ *Crashes rise in first states to begin legalized retail sales of recreational marijuana*, IIHS News, October 18, 2018 at <https://www.iihs.org/iihs/news/desktopnews/crashes-rise-in-first-states-to-begin-legalized-retail-sales-of-recreational-marijuana>

² *The Legalization of Marijuana in Colorado: The Impact Volume 5, Update*, Rocky Mountain High Intensity Drug Trafficking Area, September 2018

³ Report from the Impaired Driving Safety Commission, March 2019 at https://www.michigan.gov/documents/msp/Impaired_Driving_Report_650288_7.pdf

⁴ *Marijuana-Impaired Driving: A Report to Congress*, National Highway Transportation Safety Administration (July 2017) at www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf.

will hopefully be addressed in the near future with the introduction of legislation by Congressman Blumenauer (D-OR). This legislation, H.R. 3797, proposes to amend the Controlled Substances Act to make marijuana accessible for use by qualified marijuana researchers for medical purposes. APCIA supports increased marijuana research and looks forward to working with Representative Blumenauer (D-OR) to advance this key issue.

Another factor complicating studies of marijuana's effect on drivers is that the potency of THC in marijuana (i.e., the concentration of THC) can vary from one plant to another. The marijuana produced by the only approved source of marijuana for federally funded research is considered by some researchers to be low quality (potency). Also, the way in which marijuana is processed can affect the potency of the product, and the way the user chooses to ingest marijuana may affect the level of THC in the body.

Research is being pursued at the state level. One promising study taking place in Colorado tests the blood of subjects smoking marijuana to measure the ratio of active and inactive cannabinoid metabolites. This indicates how recently marijuana has been used and how much a subject has used over time. Researchers see both measurements as indicators of impairment. The more recently marijuana has been used, the more impaired a subject is likely to be, but the more marijuana someone has used over time can create a tolerance which would make the subject less likely to be impaired. The expectation is that evaluating the ratio of active to inactive cannabinoid metabolites in a user's blood can approximate their impairment level.

Now is the time for Congress to address this deficiency by prioritizing the research and development of a marijuana impairment standard and enhanced law enforcement training. NHTSA itself recommended such a step in its July 2017 report to Congress, "Marijuana-Impaired Driving."

To address these critical lapses in our understanding of marijuana and its hazards, APCIA urges the subcommittee and Congress to:

- Support increased scientific research to develop objective marijuana impairment standards for auto and workplace safety and medical efficacy by allowing the Department of Transportation to fund highway safety research at the state level based on the laws of the respective states; and
- Promote increased awareness and education for the public and policymakers on the dangers of marijuana-impaired driving or working.
- Support efforts to gather better data on marijuana use among drivers involved in crashes and drivers arrested for impaired driving.

These are simple, common-sense needs to enhance our knowledge and understanding of marijuana and its risks, and to protect the roads, our workplaces and the public.

Adopt the Strongest Marijuana Safety Best Practices and Enforce Them

As with any intoxicant, marijuana impairment on the roads will harm people and property. Public policy for marijuana must be informed by both the harm that can be done when a person is impaired and the need to reduce that potential harm.

While there is universal support for both enforcing and reducing marijuana-impaired driving, the science of marijuana impairment is not yet sufficient to advance a testing regime akin to current standards for alcohol field sobriety. NHTSA has recommended well-trained law enforcement officers who can identify signs of impairment but that is not enough.

There are important safety practices that can be implemented to manage the safety of a state's legal marijuana program. As developed for alcohol, safety standards for marijuana and the enforcement of those standards will help keep our roadways safe. We urge the subcommittee and Congress to support the same kinds of standards for marijuana that we see with alcohol impairment on the roads:

- Support the strongest marijuana safety best practices from the states and Canada, some of which currently include:
 - a. Mandatory warning labels on marijuana products about driving and working while under the influence of marijuana;
 - b. 21 as the minimum age to purchase or consume marijuana; and
 - c. Zero tolerance for underage drivers to operate a vehicle with any evidence of marijuana consumption.
- Support strong law enforcement standards for marijuana safety, including law enforcement training.

APCIA neither supports nor opposes marijuana legalization but is concerned with the overall safety and protection of consumers and keeping our roads safe. We appreciate your leadership in holding this important hearing. APCIA is available to answer any questions you may have and to engage further on this topic with the subcommittee, its members, staff, or other stakeholders.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nathaniel F. Wienecke', written in a cursive style.

Nathaniel F. Wienecke