

FEDERAL GOVERNMENT RENEWS CALL FOR NATIONWIDE 0.05 BAC LIMIT

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The federal government renewed its call for states to lower the legal alcohol limit for driving to 0.05. In its *2016 Most Wanted List of Transportation Safety Improvements*, published on January 13, 2016,¹ The National Transportation Safety Board again called on states to lower blood alcohol concentration or “BAC” limits from 0.08 to 0.05.² NTSB first called on states to establish BAC limits of 0.05 or lower in 2013. At the time, that call to action was largely was declaimed by the industry, and ignored by the public and the states.

Currently, the BAC threshold for determining illegal driving impairment stands at 0.08 in all 50 states and the District of Columbia. The NTSB cites data from the last 15 years showing one-third of highway deaths involved an alcohol impaired driver. In advocating a lower BAC threshold, the federal traffic agency argued that impairment begins before a driver’s BAC reaches 0.08, and by that time the risk of a fatal crash has more than doubled.

Setting driving impairment laws is a matter of state regulation. While it remains unclear whether state governments will adopt the NTSB’s recommendation, industry members and media observers already are raising objections to the agency’s recommendation. Numerous sources argue the change could mean some people will exceed the legal limit after just one drink.

For example, The American Beverage Institute, a trade group representing 8,000 restaurants, has argued for years that a 0.05 BAC level is misguided, because it focuses on moderate drinkers rather than more dangerous drunken drivers. ABI was quoted in a May 14, 2013 news article published by *USA Today* following the NTSB’s original recommendation from that year, stating that the average woman reaches 0.05% blood-alcohol content after one drink,³ while 70% of drunken-driving fatalities are caused by drivers with at least a 0.15% BAC, representing six or

¹ The “End Substance Impairment in Transportation” section of NTSB’s *2016 Most Wanted List* is accessible online at the NTSB’s Website: <http://www.nts.gov/safety/mwl/Pages/mwl8-2016.aspx> (last accessed on January 19, 2016).

² The NTSB Press Release “*NTSB Unveils 2016 Most Wanted List, Stresses Technology*” is accessible online at the NTSB’s Website: <http://www.nts.gov/news/press-releases/Pages/PR20160113.aspx> (last accessed on January 19, 2016).

³ A 0.05 BAC level would reduce the number of drinks an average-weight man of 180 pounds could have to two, according to the [Blood Alcohol Calculator](#), an online Website sponsored by a California law firm of that allows users to calculate BAC levels based body weight and the number of drinks consumed. Women could only have one drink before they exceeded the limit. A 100-pound woman reaches 0.05 BAC with just one drink, but two drinks would put any woman under 220 pounds at or above the government’s desired limit.

seven drinks.⁴ Similar arguments from ABI were quoted in an article on the NTSB's most recent proposal, published in the political journal *The Hill*.⁵

Law enforcement officials generally point to a variety of factors that can affect a driver's BAC, including metabolism, body weight and food consumption. They also typically note that drivers showing signs of impairment can be cited even if they are below the legal limit.

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⁴ See Jansen, Bart, "Make DUI limit 0.05% blood-alcohol level, NTSB says," *USA Today* (May 14, 2013), accessible online at: <http://www.usatoday.com/story/news/nation/2013/05/14/national-transportation-safety-board-drunken-driving/2158107/> (last accessed on January 19, 2016).

⁵ See Laing, Keith, "Beverage group slams NTSB call for lower DUI limit," *The Hill* (January 14, 2016), accessible online at: <http://thehill.com/policy/transportation/265865-restaurant-group-slams-ntsb-call-for-lower-dui-limit> (last accessed on January 19, 2016).