



# Loss Control TIPS

## Technical Information Paper Series

*Innovative Safety and Health Solutions<sup>SM</sup>*

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## Alcohol Testing For Drivers

As of January 1, 1996, employers with drivers required to have CDLs (Commercial Drivers License), must have effective alcohol testing programs in place. Employers of drivers (including state and municipal employees) who operate commercial vehicles in excess of 26,000 pounds must conduct testing as follows:

- reasonable suspicion
- random
- return-to-duty
- follow-up
- post-accident

In addition, any employer *may*, but is *not required to*, conduct pre-employment testing.

Random testing needs to be done at a 25 percent rate (of company driving positions) unless the violation rate (tests above 0.04 BAC plus refusals to take the test) are lower than 0.5 percent. In this case, the rate of random testing can be lowered to 10 percent.

The Federal Highway Administration (FHWA) has extended the applicability of rules on controlled substances and alcohol use and testing to include foreign-based drivers (Canada and Mexico) of motor carriers operating in the U.S. Large foreign carriers are required to comply by July 15, 1996 while small foreign carriers (those with fewer than 50 drivers) have until July 1, 1997 to comply.

The testing must be done by a trained Blood Alcohol Technician (BAT) using an approved device. The approved device list includes breath-alcohol testers using semiconductor-type sensors and saliva testers using enzymatic techniques to measure the sample. All of the devices give a direct readout of the results.

The National Highway and Traffic Safety Administration (NHTSA) has approved more than 50 devices from more than twenty manufacturers (a list can be obtained from James Frank, Office of Alcohol and State Programs, NTS-21, National Highway and Traffic Safety Administration, 400 Seventh St. SW, Washington, DC, 20590, (202) 366-9581).

The final rule on alcohol testing only permits evidentiary breath testing devices (EBTs) to be used; *blood testing is not permissible*. When EBT cannot be conducted due to mitigating circumstances, an employer must submit annually to the DOT a record of alcohol testing which *should have been conducted* within eight hours, but was not.



The following information must also be submitted to the DOT:

- type of test (post-accident or reasonable suspicion)
- date, time and location of accident
- employee category (safety sensitive function, using standardized listing of functions)
- explanation of why the test could not be performed
- name, address and phone number of the agency which could have performed the blood alcohol test (if it were to be permitted).

The first test must be performed within two hours of an accident or from the time the driver is suspected of being under the influence. Federal rules require that positive readings (> 0.02 BAC) be confirmed by an evidential breath tester within thirty minutes of the original test.

Drivers must be removed from safety sensitive duties for a 24 hour period if the BAC is between 0.02 and 0.04. Drivers testing in excess of 0.04 BAC must be referred to a substance abuse professional (SAP).

An employer's program must also provide drivers with educational materials explaining the program, the company's related policies, and the testing procedures. Employees must sign a statement indicating that they have received the materials.

In addition to maintaining a summary of testing records on an annual basis, employers must maintain for a two-year period: an individual's negative test results, the company's test procedure, and training provided to BAT and driver/supervisors. These records must be maintained for five years: an individual's positive test results, documentation of refusal to be tested, evaluations by SAPs, and EBT calibration test results.

## References

1. Department of Transportation, Federal Highway Administration. "Commercial Driver's License Program and Controlled Substances and Alcohol Use and Testing. Final Rule and Technical Amendments." *Federal Register*, March 8, 1996, pp. 9546ff. (49 CFR Parts 382, 383, 390, 391, 392)
2. Department of Transportation. *Code of Federal Regulations*, Title 49, Part 382, & Part 654 (Transit Operations); March 8, 1996.

For more information, contact your local Hartford agent or your Hartford Loss Control Consultant. Visit The Hartford's Loss Control web site at <http://www.thehartford.com/corporate/losscontrol/>

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# Alcohol Testing For Drivers: Federal Requirements

## Employer Requirements

- Employers with drivers required to have Commercial Driver's License (CDL) must have effective alcohol testing programs in place. This includes drivers of:
  - commercial vehicles in excess of 26,000 lb.
  - vehicles designed to transport 16 or more passengers;
  - vehicles used in the transportation of hazardous materials requiring placarding.
- Includes State and Municipal employees as well as Canadian and Mexican drivers (foreign carriers with less than 50 drivers have until 7/1/97 to comply).
- Applies to intrastate drivers.
- Must provide educational materials explaining the company program, company policies, and testing procedures. This material must cover:
  - Employer's designated person to answer employee questions
  - Categories of drivers affected
  - Details regarding safety sensitive functions and when regulations apply
  - Prohibited conduct
  - Required testing and testing procedures
  - Consequences of refusal of testing
  - Consequences of misuse of alcohol
  - The effects of alcohol.
- Employees must sign a statement indicating they have received the materials.
- Employers must give either written or oral notice to employee that they will be tested.
- Testing must be done by trained Blood Alcohol Technician (BAT) using approved device (list obtained from NHTSA). BATs must receive at least 1 hour of training.
- Blood testing is not permitted.
- Must advise drivers, found to be in violation, of the available resources for resolving their problems.
- Employers must maintain an annual summary of testing records.
- Records must be kept for 1 year indicating:
  - Test results with a concentration of less than 0.02.
- Records must be kept for 2 years indicating:
  - an individual's negative test results
  - company's testing procedures
  - training provided to BATs and drivers/supervisors
- Records must be kept for 5 years for:
  - individual's positive test results
  - documentation of refusal to be tested
  - evaluations by SAPs
  - EBT calibration results.
- Records must be maintained in a "secure" location with controlled access and be available within 2 business days of the request, at the employer's principle place of business.

## Driver Requirements

- Cannot report to duty within four hours of consuming alcohol or with a BAC of 0.04 or greater.
- Cannot possess or use alcohol while performing *safety sensitive* functions.
- Must submit to required alcohol testing.
- Following an accident, a driver may not use alcohol until he/she has submitted to a post-accident alcohol test.

# Types of Testing

## Random

- For 25% of driving positions
- Unannounced using scientific random tables
- Driver can only be tested while: performing safety sensitive functions, immediately before or immediately after performing “*safety sensitive*” functions.
- Drivers must be removed from safety sensitive duties for 24 hours if BAC is between 0.02 and 0.04 per cent
- Drivers testing in excess of 0.04 per cent must be referred to a Substance Abuse Professional (SAP)

## Reasonable Suspicion

- Testing must be done if employer determines that there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver which point to a violation of the prohibitions regarding alcohol use and consumption.
- Test cannot be performed by the same person identifying the reasonable suspicion.
- A written record of the observations that led to the test must be prepared before the results of the test are released or within 24 hours, whichever comes first.

## Post Accident

- Driver must be tested for alcohol use after an accident if:
  - A fatality resulted
  - The driver received a citation for a moving traffic violation.
- Test performed within two hours of accident or from first time driver is suspected of being under the influence.
- Positive readings (>0.02 BAC) must be confirmed within 30 minutes of the original test.
- When EBT cannot be conducted within 8 hours, employer must submit an annual record of those instances listing specific information.

## Return-to-Duty

- Must administer an alcohol test after a driver has been previously tested at 0.04 or greater.
- The new test must show a BAC of 0.02 or less to qualify the driver for a return to safety sensitive duties.

## Follow-Up

- Unannounced follow-up testing must be conducted when a driver is determined by a SAP to need assistance in resolving problems associated with alcohol misuse.
- There must be at least 6 tests within the first 12 months of Return-to-Duty.