

Use of Video Cameras in Reasonable Suspicion Determinations

Many employers have video cameras on their vehicles and in their facilities. A common question posed by management is, “Can video footage from cameras be used for the purpose of making reasonable suspicion determinations?”

An employer is required under 49 CFR Part 655.43 to conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe the covered employee has used a prohibited drug and/or engaged in alcohol misuse. The determination to conduct a reasonable suspicion test must be based on specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech, and/or body odor of a safety-sensitive employee. These observations must be made only by company officials trained in accordance with 49 CFR Part 655.14(b)



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(2), and their observations must be consistent with the signs and symptoms of drug use and/or alcohol misuse.

A vital element and requirement to determine the need for reasonable suspicion testing is that the observations made by the trained company official must be contemporaneous. This means, the observations used as a basis for reasonable suspicion testing must have been observed during the time period immediately preceding the determination to test. For example, an employer could NOT send an employee for reasonable suspicion testing on Tuesday for observations which were made on Monday. Additionally, the trained company official making the determination for reasonable suspicion testing must be the same person who actually made the observations, and he or she could not make a determination for testing based on (Continued on page 2)

Reminder: Annual MIS Reporting Due March 15th!

Drug and Alcohol Management Information System (DAMIS) reporting packages were sent out to FTA Grantees at the end of December for the 2016 annual reporting year. The reporting packages include the new user names and passwords for this reporting year. The DAMIS online reporting system opened January 1, 2017 at <https://damis.dot.gov>. If you are an FTA Grantee and have not received your reporting package, contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or (617) 494-6336. ●

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U.S. Department of Transportation
Federal Transit Administration

Clarifying Federal Requirements for Shared Mobility

FTA developed a set of frequently asked questions (FAQs) to clarify requirements for shared mobility alternatives as they relate to FTA drug and alcohol testing requirements.

The links below provide additional guidance on shared mobility.

- [Shared Mobility landing page](#)
- [Shared Mobility FAQs](#)
- [Secretary Foxx's Dear Colleague letter](#) ●

Video Cameras

(Continued from page 1) “third-party” reports and/or hearsay (i.e., complaints from passengers, tips from concerned citizens, and/or reports from other “non-authorized” employees).

The trained company official making a reasonable suspicion determination must always conduct a face-to-face evaluation. Only if the trained company official has access to video camera footage meeting the requirement of “contemporaneous” observations, could the footage then be used as a part of the whole picture in making a determination to order a reasonable suspicion test. The face-to-face evaluation will serve to further investigate and confirm any observations seen on the video. ●

Company Policies Must State a Position on Negative-Dilute Tests

Occasionally, a drug test will have a negative result, but will also be dilute. In these instances, each employer must decide if they will send the employee for an immediate retest, as allowed by section 40.197(b)(2). All employees with negative-dilute test results must

be treated the same; employers are prohibited from retesting some employees but not others. An employer may, however, establish different negative-dilute policies for different test types (e.g., conduct retests for pre-employment situations, but not for random

testing situations).

The position each FTA-covered employer takes on whether or not to perform negative-dilute retests must be clearly stated in their anti-drug and alcohol misuse statement, per 655.15(d). ●



Save the date! Registration has begun for the 12th Annual FTA Drug and Alcohol Program National Conference, which will be held in New Orleans, Louisiana at the Hilton New Orleans Riverside on Tuesday, April 18–Thursday, April 20, 2017.

Please see our website for registration and additional conference information: <http://transit-safety.fta.dot.gov/drugandalcohol>. We hope to see you there!

Evidential Breath Testing Devices and Manual Mode

After the employee and the Breath Alcohol Technician (BAT) have completed Steps 1 and 2 of the Alcohol Testing Form (ATF), section 40.243(c) states the technician must “instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates an adequate amount of breath has been obtained.” The BAT, during the employee’s first attempt, is always required to operate the Evidential Breath Testing (EBT) Device in its default automatic mode. This is the case even when testing individuals who may preemptively state they are unable to provide a sufficient amount of breath.

If, after their first attempt, the employee is unable to provide enough breath, the BAT must then instruct the employee to try again. If this attempt is also insufficient, the BAT may provide another opportunity to the employee.



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The BAT may now attempt to conduct the test using the EBT’s manual mode, if the device is equipped to do so.

Manual mode function gives the technician administering the breath test

control over when the breath sample is taken. This mode is sometimes used when a subject is unable to deliver a large enough blow to satisfy the automatic sampling requirements of the device. ●

Federal Drug Testing Electronic Custody and Control Approved Lab List

The Office of Drug and Alcohol Policy and Compliance (ODAPC) issued a final rule on April 13, 2015 allowing employers, collectors, laboratories, and Medical Review Officers (MROs) to use the electronic version of the Federal Drug Testing Custody and Control Form (eCCF) in the DOT-regulated drug testing program. The final rule can be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-13/pdf/2015-08256.pdf>.

An employer may begin using the

eCCF only when the employer’s laboratory has been approved through the Department of Health and Human Services (HHS) National Laboratory Certification Program to use a specific eCCF, and the employer has decided to use the eCCF.

HHS posts a list of the most up-to-date approved laboratories that may use the eCCF. To view the latest list, go to: <http://www.samhsa.gov/workplace/resources/drug-testing/eccf-approved-list>. ●

“An employer may begin using the eCCF only when the employer’s laboratory has been approved through the HHS National Laboratory Certification Program.”

Role of the Substance Abuse Professional

Issue 60 of the FTA Drug and Alcohol Regulation Updates discussed the vital function Substance Abuse Professionals (SAPs) play as gatekeepers for the U.S. DOT's return-to-duty process. To ensure the integrity of the return-to-duty process, the U.S. DOT prohibits employers, management, unions, SAP referral services, and other stakeholders from interfering with a SAP's return-to-duty requirements for employees with drug and alcohol violations.

Following an initial evaluation, an SAP is required to devise an education and/or treatment plan for the referred employee. Only the original SAP may make changes to this plan. Should the SAP determine an employee has complied with the education/treatment plan, a follow-up evaluation letter document-

ing this determination is issued, as is the SAP's written follow-up testing plan. Per section 40.307(c), the SAP is the sole determiner of the number and frequency of follow-up tests, and is the sole determiner for whether these tests will be for drugs, alcohol, or both. Other stakeholders are prohibited from altering an SAP's follow-up testing plan. Employers, per section 40.307(d)(4), must never impose additional testing requirements—such as tests conducted under company authority that exceed the SAP's follow-up testing plan.

If the SAP determines the employee has not complied with the education/treatment plan, they must issue a follow-up evaluation letter documenting this determination. The employee remains prohibited from performing safety-sensitive duties. ●

Common Mistakes and How to Fix Them

Question: I sent an employee for both random drug and random alcohol testing, but the collector only performed the alcohol test. What do I do now?



Answer: There is no requirement for an employee who was selected for both random drug and random alcohol tests to be tested for both on the same day. You have the entire testing period to have the missed drug test performed. You should also work with your collection site to ensure all employees are tested as directed. ●

Drug and Alcohol Training

FTA sponsors free training sessions that provide essential information to facilitate covered employers' compliance with the drug and alcohol testing regulations (49 CFR Part 655 and Part 40). These one-day trainings are available on a first-come, first-serve basis and are led by the FTA Drug and Alcohol Program and Audit Team Members.

For more information about available training sessions and to register, go to: <http://transit-safety.fta.dot.gov/DrugAndAlcohol/Training>.

If you are interested in hosting a one-day training session, contact the FTA Drug and Alcohol Project Office at fta.damis@dot.gov or (617) 494-6336 for more information.

The Transportation Safety Institute Training Schedule

FTA's strategic training partner the Transportation Safety Institute (TSI), will offer the following upcoming courses:

- **Substance Abuse Management and Program Compliance.** This three-day course for DAPMs and DERs will show how to evaluate and self-assess an agency's substance abuse program and its compliance with FTA regulations.
- **Reasonable Suspicion Determination for Supervisors.** This half-day seminar educates supervisors about the FTA and DOT regulations requiring drug and alcohol testing of safety-sensitive transit workers, and how to determine when to administer reasonable suspicion drug and/or alcohol tests.

There is a small attendance/materials fee. For more information, please call (405) 954-3682. To register, go to: <http://www.tsi.dot.gov>.

Employees Must Relinquish Firearms at Collection Site

49 CFR Part 40.61 (f) requires collectors to direct employees to leave “personal belongings,” outside of the restroom, in a “mutually agreeable location.” *The Urine Specimen Collection Handbook* (May 31, 2014) further directs the collector to ask the donor to “leave other personal belongings” with their outer garments.

DOT has determined a “personal belonging” includes a firearm, even when the donor possesses the firearm as part of their safety-sensitive armed

security function.

For employees hesitant to relinquish control of their firearm, even for a few minutes, it has been suggested the employee could:

- 1.) Place the firearm in a lockbox, with the donor taking possession of the key.
- 2.) Have a supervisor meet or accompany the employee to the collection site and take possession of the firearm. ●



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Non-DOT Follow-up Tests Are Not Allowed

Section 40.307 describes the steps a SAP must take when prescribing an employee’s follow-up tests. Section 40.307(d)(4) goes on to state “As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP’s follow-up testing plan.” The SAP’s plan for additional treatment,

return-to-duty, and follow-up testing are based upon clinical judgment and must not be adjusted or added to by the employer.

Additional information on the role of the employer in the follow-up testing process can be found at § 40.309 *What are the employer’s responsibilities with respect to the SAP’s directions for follow-up tests?* ●

“As the employer, you must not impose additional testing requirements that go beyond the SAP’s follow-up testing plan.”

Tracking Post-Accident Testing Delays

“If an alcohol test is not completed within two hours of the accident, the employee must create and maintain a record explaining the delay.”

FTA-authorized testing must occur as soon as practicable following an accident. If an alcohol test is not completed within two hours of the accident, the employer must create and maintain a record explaining the delay. If the alcohol test is not completed within eight hours, testing efforts must cease and the record updated to explain why no test occurred. Post-accident drug

tests must be completed within 32 hours.

Decision makers responsible for documenting post-accident testing delays should understand that the two hours is measured from the time of the accident to the time of the alcohol screening test (time recorded on the Alcohol Testing Form) and document delays accordingly. ●

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Instructions: Solve the clues, then locate the words either across, down, or diagonally.

1. Location of the 12th Annual FTA Drug and Alcohol National Conference
2. FTA stands for the Federal _____ Administration
3. Negative drug and alcohol test results must be kept at least this long
4. An employee must have one of these with a verified negative result before performing safety-sensitive functions for the first time
5. Post-accident alcohol tests must be completed within this timeframe
6. It's due by March 15th
7. An employee who fails or refuses a DOT test is referred to this person (abbr.)
8. All return-to-duty and follow-up tests must be conducted under these conditions
9. All EBTs used for DOT alcohol tests must be approved by this DOT agency (abbr.)
10. This type of pre-employment test is allowed, but is not required
11. A specimen with creatinine and specific gravity values that are lower than expected for human urine
12. All safety-sensitive employees must be in the _____ testing pool