

**Office of Drug Enforcement and Program Compliance
49 CFR Part 40 Interpretation**

Question: In a "shy bladder" scenario, may a company interpret the DOT regulations to read that employees must provide a specimen within two hours, and if they don't that the inability is a refusal?

Response: Section 40.25(f) states, in part, with respect to either a single sample or a "split sample": *"If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container."* and *"If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the employer so notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. (In preemployment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing."*

The individual must provide the specimen within two hours. The inability to provide does not automatically mean that the individual being tested will be deemed to have refused testing. The required medical evaluation would produce the information which the MRO will use to draw final conclusions. If the finding by the MRO is that there was no legitimate medical reason for the individual's inability to provide the sufficient quantity of urine, then this finding constitutes a refusal. A refusal to provide a specimen has the same sanctions under the DOT rule as a positive test.

Once it has been determined that the employee has violated a DOT rule (e.g., verified positive test, refusal), the employee must be immediately removed from performing any safety-sensitive duties. The employee may not again perform safety-sensitive duties until he or she has met the conditions of the applicable operating administration (e.g., Federal Transit Administration) rule for return to duty. The DOT rule does not address

employer policies on subsequent personnel actions.

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