

PSATS CDL Program Guidance

Failure to provide sufficient sample

Employers should use the following procedure when one of your CDL employees fails to provide a sufficient sample to successfully complete a CDL drug or alcohol test. *This event is classified as a positive test result and must be reported to the FMCSA Clearinghouse.* The only way the employee can reverse the classification as a positive test result is to have a physician document a medical condition for the inability to provide a sufficient sample.

If the employee does not have a valid medical reason why the test cannot be completed, the test will be recorded as a positive and the employee would be required to follow the positive employee procedure as per 49 CFR 40 Subchapter "O" (outline above). The following outlines the employer's responsibilities under the federal CDL regulations concerning an insufficient sample:

Step One – Employee fails to provide a sufficient sample for a required CDL drug or alcohol test. If this was for a drug test, the collection site will urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours and under the control of the collector, or until the individual has provided at least 45 milliliters of urine, whichever occurs first. It is not a refusal to test if the employee declines to drink. However, it will be a refusal to test if the employee leaves the collection site during any part of the three hour period. Collector is to document on the Remarks line of the chain-of-custody form and inform the employee when the three-hour period begins and ends.

Step Two – Employee makes second attempt to complete test. If the employee refuses a second attempt for either a drug or alcohol test, this will be deemed a "refusal to test," which is an automatic positive test result that subjects the employee to the disciplinary provisions of the employers' CDL drug and alcohol testing personnel policy. If the employee cannot produce a sufficient sample for a drug test after the three-hour waiting period, the test will also be deemed a "refusal to test," which is an automatic positive test. The collector shall immediately notify the employer of this result. The employee must be removed from duty and complete the positive test procedure before returning to duty.

Step Three – Alternative test for alcohol. If the employee tries but fails to provide an adequate breath sample on the second attempt at completing an alcohol test, the test technician can, if qualified, use a saliva test. However, if a saliva test is not readily available, the technician must note the inability to complete the test in the "Remarks" section of the testing form and immediately inform the employer of a "refusal to test". The employer shall notify the employee that failure to provide a sufficient sample is an automatic positive test result and subjects the employee to the disciplinary provisions of the employers' CDL drug and alcohol testing personnel policy. The employee must be removed from duty and complete the positive test procedure (see above) before returning to perform safety-sensitive functions.

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Step Four – Determination of medical inability to test. If the employee believes that a medical condition exists which prevented completion of the test, the employee must obtain, within 5 days, an evaluation from a physician who is acceptable to the employer to determine the employee's medical ability to provide a sufficient sample. The employer must inform the selected physician of the following information:

- (1) the employee was required to take a CDL breath alcohol test but was unable to provide a sufficient breath sample,
- (2) failure to complete the test is deemed a positive test which could result in the employee's loss of employment,
- (3) the physician must provide the employer with a signed statement regarding the physician's evaluation, and
- (4) the physician must base their conclusion on one of the following determinations:
 - (a) a medical condition has, or likely could have, prevented the employee from providing a sufficient sample, or;
 - (b) there is not an adequate basis for determining that a medical condition exists which would have prevented the employee from providing a sufficient sample.

If the physician does not find a medical reason why the employee could not compete the test, the test result will be recorded as “positive – refusal” and the employee must be removed from duty and complete the positive test procedure (“Positive CDL Employee Procedure”) before returning to perform safety-sensitive functions.

Step Five – Affirmative determination. If a physician determines that a medical condition did or could have precluded the employee from providing a sufficient sample, the employee must immediately forward this information to the PSATS CDL Program's medical review officer (MRO), by fax to (804) 346-5050.

If the PSATS CDL Program's MRO accepts the physician's determination that a medical condition prevented completion of the test, the test result will be changed to “incomplete” and the employee will not have to finish the test. However, if the MRO does not agree with the medical determination, then the test will be recorded as a “positive – refusal” and the employee must be removed from duty and must fully complete the positive test procedure (“Positive CDL Employee Procedure”) before returning to perform safety-sensitive functions.

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