

PART 40 QUESTIONS AND ANSWERS

The Office of General Counsel and Office of Drug and Alcohol Policy and Compliance of the Department of Transportation are providing these questions and answers. They constitute official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5).

These Questions and Answers are dated 07/14.

Question:

When may a collector give an employee permission to leave a collection site?

Answer:

- A collector may give an employee permission to leave the collection site only after the testing process is complete.
 - For tests conducted under § 40.73, the testing process is complete when both the employee and the collector complete the chain of custody form in the order specified in § 40.73(a)(1)-(6). At that time, the collector must advise the employee that he or she may leave the collection site.
 - For tests conducted under § 40.193, the testing process is complete only after the employee has provided a sufficient specimen and the steps in § 40.73(a)(1)-(6) are complete, or the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide a specimen.

- There is no requirement for a collector to inform an employee that the failure to remain at the collection site is a refusal. Therefore, if the collector does not inform an employee that failure to remain at the collection site is a refusal, it does not mean that the collector has given the employee permission to leave the collection site. If an employee leaves prior to the completion of the testing process, the employer must decide whether the employee's actions constitute a refusal.

Question:

What happens if an employee leaves the collection site prior to the completion of the testing process?

Answer:

- As noted in § 40.191(a)(2), failure to remain at the collection site until the testing process is complete generally constitutes a refusal to test.
- If an employee leaves the collection facility prior to the testing process being completed, the collector must inform the employer as required under § 40.191(d). The employer, as required under § 40.355(i), must then determine whether the employee's actions constitute a refusal to test. To make this determination, the employer should consider the information documented on the CCF and the advice and information received from the collector and service agents, as well as any supporting information provided by the employee (i.e., in the event of a medical emergency, copies of hospital admission records/EMS records/police records, etc).
- The employer must document its decision, and the solid reasoning for the decision, in all collection site refusal determinations. Copies of these decisions, and the information relied on in making those decisions, must be maintained in accordance with § 40.333 and the applicable modal recordkeeping requirements. If during the course of an inspection, the DOT determines that you have not properly documented these determinations, you may be subject to penalty in accordance with these regulations.