

## REFUSAL TO TEST – DRUGS OR ALCOHOL – DOT & ALCOHOL DRUG TESTING

### DER RESPONSIBILITIES

Many times in the drug and alcohol testing process, the DER must make a determination of a refusal to test. This is often misunderstood. It is an extremely important responsibility.

#### What exactly is a refusal to test and who determines it?

The DOT regulations outline refusals to test for drugs and alcohol. Some refusals are determined by MROs and BATs and STTs. For others, the determination is your responsibility. All have clear instructions from DOT. You must base your decisions on these DOT instructions and NOT on personal opinions about whether the employee is a long-time reliable worker; has ever tested positive or refused a test; was correctly selected for the test; or claims to have misunderstood the collector's instructions to remain at a collection site, among others.

**On the next page you will find a list of Part 40 refusals and the DOT regulation instructions for handling them.**

**IMPORTANT NOTE:** When a collector for a drug test, or an STT or BAT for an alcohol test, reports a refusal event to the DER, the EMPLOYEE MUST IMMEDIATELY BE REMOVED FROM SAFETY-SENSITIVE DUTIES, and after that you [or the DER] must verify if the employee actually refused the test based upon the documentation provided and DOT's instructions. When you [or the DER] determine that there is a refusal, do not return the employee to safety-sensitive duties until the SAP return-to-duty process is successfully completed.

In extremely rare cases for which you [or the DER] determine there is not a refusal, you [or the DER] must document your decision and your solid reasoning for it. You must maintain this documentation for a DOT Agency or USCG representative in the event of an inquiry or inspection.

Remember, your decision could be overturned by the DOT, a DOT Agency, or the USCG. So, as a safeguard to ensure that you make the correct determination, you ought to consult with your MRO on collection site refusals – the MRO is, after all, the —Gatekeeper|| for the drug testing process.

**NOTE:** An MRO's refusal determination is final and not subject to your review. Also, an evaluating physician's refusal determination for an employee's insufficient breath is final and not subject to your review.

**Here's a list of Part 40 refusals and the DOT regulation instructions for handling them:**

<b>Event</b>	<b>Decision Maker</b>	<b>DOT Instructions</b>
<b>Fail to appear at a urine collection site when directed to report</b>	<b>Employer / DER</b> [after review of the collector documentation]	If the employee did not get to the site or spent too much time getting there, it is a refusal.
<b>Fail to remain at the urine collection site</b>	<b>Employer / DER</b> [after review of the collector documentation]	If the collector reports that the employee left the collection site before the testing process was complete, it is a refusal.
<b>Fail to provide a urine specimen</b>	<b>Employer / DER</b> [after review of the collector documentation]	If the collector reports that the employee left the collection site before providing a required specimen, it is a refusal.
<b>Fail to permit a monitored or observed urine collection</b>	<b>Employer / DER</b> [after review of the collector documentation]	If the employer ordered an observed collection or if the collector required the collection to be monitored or observed, it is a refusal if the employee does not permit it to occur.
<b>Fail to provide a sufficient amount of urine</b>	<b>MRO</b>	If the MRO finds that there was no medical reason for the employee to provide an insufficient amount of urine, it is a refusal.

<b>Event</b>	<b>Decision Maker</b>	<b>DOT Instructions</b>
<b>Fail or decline to take an additional drug test the employer or collector has directed</b>	<b>Employer / DER</b> [after review of the collector documentation]	If the employer or collector directs the employee to take an additional test, as required or permitted by the DOT, and the employee does not, it is a refusal.
<b>Fail to undergo a medical examination or evaluation the MRO or employer has directed</b>	<b>MRO</b>	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.
<b>Fail to cooperate with any part of the urine collection process</b>	<b>Employer / DER</b> [after review of the collector documentation]	Some examples of failure to cooperate are when the employee: 1. Refuses to empty pockets when directed; 2. Behaves in a confrontational manner that disrupts the collection process; 3. Refuses to remove hat, coat, gloves, coveralls when directed; or 4. Fails to wash hands when directed.

Event	Decision Maker	DOT Instructions
<p><b>For an observed collection, fail to follow the instructions to raise and lower clothing and turn around</b></p>	<p><b>Employer / DER</b> [after review of the collector documentation]</p>	<p>If the employee does not follow these instructions so that the observer can check for prosthetic or other devices that could be used to interfere with the collection process, it is a refusal.</p>
<p><b>Possess or wear a prosthetic or other device that could be used to interfere with the collection process</b></p>	<p><b>Employer / DER</b> [after review of the collector documentation]</p>	<p>If the employee is found to have or wear a prosthetic or other device designed to carry clean urine or a urine substitute, it is a refusal.</p>
<p><b>Admit to the collector to having adulterated or substituted the specimen</b></p>	<p><b>Employer / DER</b> [after review of the collector documentation]</p>	<p>If the employee, during the collection process, admits to having tampered with his or her specimen, it is a refusal</p>
<p><b>Adulterate or substitute a urine specimen</b></p>	<p><b>MRO</b></p>	<p>If the laboratory reports a confirmed adulterated or substituted specimen to the MRO and the MRO determines there is no medical reason for the result, it is a refusal.</p>

Event	Decision Maker	DOT Instructions
<b>Admit to the MRO to having adulterated or substituted the specimen</b>	<b>MRO</b>	If the employee, during a medical review, admits to having tampered with his or her specimen, it is a refusal.
<b>Fail to appear for an alcohol test when directed to report</b>	<b>Employer / DER</b> [after review of the STT or BAT documentation]	If the employee did not get to the alcohol test site or spent too much time getting there, it is a refusal.
<b>Fail to remain at the alcohol test site</b>	<b>Employer / DER</b> [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the collection site before the testing process was complete, it is a refusal.
<b>Fail to provide an adequate amount of saliva or breath</b>	<b>Employer / DER</b> [after review of the STT or BAT documentation]	If the STT or BAT reports that the employee left the alcohol testing site before providing a required amount of saliva or breath, it is a refusal.
<b>Fail to provide a sufficient breath specimen</b>	<b>Evaluating Physician</b>	If the evaluating physician finds that there was no medical reason for the employee to provide an insufficient amount of breath, it is a refusal.

<b>Event</b>	<b>Decision Maker</b>	<b>DOT Instructions</b>
<b>Fail to undergo a medical examination or evaluation as the employer has directed as part of the insufficient breath procedures</b>	<b>Employer / DER</b>	If the employee does not go in for a medical evaluation or does not permit it to occur, it is a refusal.
<b>Fail to sign the certification statement at Step 2 of the ATF</b>	<b>Employer / DER</b> [after review of the STT or BAT documentation]	If the employee does not agree to have a test accomplished by signing Step 2 of the ATF, it is a refusal.
<b>Fail to cooperate with any part of the alcohol testing process</b>	<b>Employer / DER</b> [after review of the STT or BAT documentation]	One example of failing to cooperate is when the employee behaves in a confrontational manner that disrupts the alcohol testing process.

It is critical the DER take the time to understand the above scenarios that may cause a refusal to test and the DER take appropriate action. Failure to understand the refusals and not taking the appropriate action can lead to non-compliance with DOT regulations. It is also a safety issue for your employers and for the general public. A Designated Employer Representative (DER) should always seek training to properly perform the regulated duties that come with this position.