



**16th Annual FTA Drug and Alcohol Program
National Conference**

March 14-16, 2023

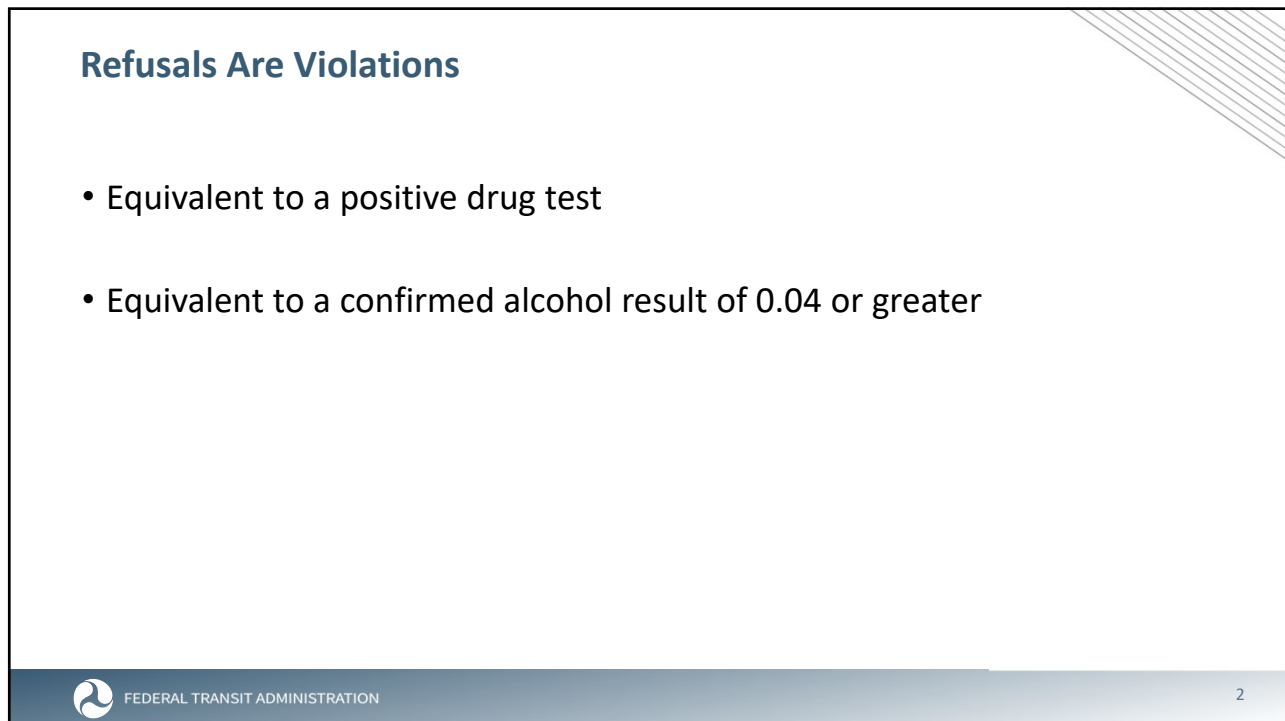
**DOT Test
Refusals**

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FEDERAL TRANSIT ADMINISTRATION



U.S. Department of Transportation
Federal Transit Administration

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Refusals Are Violations

- Equivalent to a positive drug test
- Equivalent to a confirmed alcohol result of 0.04 or greater

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Refusal Consequences

- Immediate removal from safety-sensitive duties
- Referral to local Substance Abuse Professionals (SAPs)
- Employee prohibited from safety-sensitive functions until completing Part 40's Return-to-Duty process



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Importance of Making the Right Call

- DOT test refusals are carefully defined
- Employers must understand what they are
 - Not all problematic behaviors are refusals to test
- Incorrect refusal determinations:
 - Affect employees' livelihoods
 - Undermine public safety
 - Could cause legal trouble for employers



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Regulatory Citations

- For FTA-covered employers, there are 14 refusal categories:
 - DOT drug test refusals: Section 40.191(a)
 - DOT alcohol test refusals: Section 40.261(a)
 - FTA’s post-accident testing refusal: Section 655.44(c)



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Who Determines if a Refusal Occurred?

- A Collector?
- The Medical Review Officer (MRO)?
- The Designated Employee Representative (DER)?
- An Evaluating Physician?
- A Supervisor?
- A third-party administrator (TPA)?



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Employer Refusal Determinations

- Employer:
 - You must make the final decision as to whether a refusal has occurred
 - From the moment of notification to the completion of the collection, the employer must evaluate actions of the employee
 - Refusals are possible at the moment of notification
 - Even if you determine it was not a refusal to test, you **must** document this



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Test Timeline

- Notification
- Proceeding to collection immediately
 - Stopping current duties/tasks
 - Proceeding to the collection (on/off-site)
- Participating in all aspects of the pre-collection
 - Refusing to sign a service agent's intake form is not a DOT-recognized refusal
- Providing a specimen
- Completing the steps as instructed



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Investigating Potential Refusals

- Some refusals require more verification efforts than others
- These involve MORE people in the process:
 - Supervisor
 - Collector/Technician or site staff
 - Employee
 - MRO



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Supervisors & Refusals

- The individual notifying the employee of the requirement to test starts the process (different for pre-employment tests)
- Must be aware of the requirement to report prohibited behaviors
- May also be transporting employee
- Supervisor reports the behavior to the employer for final determination



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Collectors & Refusals

- Collection site personnel must **only** describe the **facts** of what occurred
- **You** (the employer) make the final determination



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Collectors & Refusals, continued

Proper documentation is critical:

- Section 40.191(d) states: "As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a shy bladder condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER."
- Section 40.191(d)(1) states: "As the collector, you must note the refusal in the Remarks line (Step 2), and sign and date the CCF."

NOTE – employers may sometimes need additional documentation



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Refusal 1

Fail to appear for any test (except a pre-employment test) within a reasonable time, when directed to report

Decision Maker: Employer (after review of collection site documentation)



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Refusal 2

Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.

Decision Maker: Employer (after review of collection site documentation)



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Refusal 3

Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.

Decision Maker: Employer (after review of collection site documentation)



Refusal 4

In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.

Decision Maker: Employer (after review of collection site documentation)



Refusal 5

Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.

Decision Maker for Drug Tests: MRO

Decision Maker for Alcohol Tests: Evaluating Physician

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Refusal 6

Fail or decline to take a second test as directed by the collector or the employer for drug testing.

Decision Maker: Employer (after review of collection site documentation)

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Refusal 7

Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).

Decision Maker: MRO



Refusal 8

Fail to cooperate with any part of the testing process.

Decision Maker: Employer (after review of collector documentation)



Refusal 9

Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.

Decision Maker: Employer (after review of collector documentation)

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Refusal 10

Possess or wear a prosthetic or other device used to tamper with the collection process.

Decision Maker: Employer (after review of collector documentation)

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Refusal 11

Admit to the adulteration or substitution of a specimen to the collector.

Decision Maker: Employer (after review of collector documentation)



Refusal 12

Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).

Decision Maker: Employer (after review of collector documentation)



Refusal 13

Fail to remain readily available following an accident.

Important exception from 655.44(e): Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Decision Maker: Employer



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Refusal 14

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Decision Maker: MRO



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Clear Policy Language

- Policies must clearly and accurately state DOT's refusal categories
- Employees need to know what they can and cannot do
- FTA's free policy builder offers a list of refusals with compliant language:
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools>



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Potential Refusal: What to do?

- MRO-decided refusals are typically clear-cut
- Employer-decided refusals:
 - Investigate case to gather all facts
 - Match the actions with an actual federal/regulatory citation
 - If you can't match it to a citation, it isn't a DOT refusal



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Potential Refusal: What to do?

- Examine ATF, CCF and MRO-verified result for errors:
 - Fatal flaw? Not a refusal.
 - Correctable error? Fix it.
- Ensure case is accurately and thoroughly documented



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Some Pitfalls

- Confusion of DOT vs. Non-DOT
- Intake forms at the collection site
- Unclear account of interactions between collector and donor
- Well-meaning collectors giving bad instructions



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Documentation Matters

The collector writes “Employee refused second collection”

- This is too vague

The collector reports “Craig provided an insufficient cold specimen at 12:30 p.m. I explained to him that I was going to package up this specimen and collect another specimen under direct-observation. As soon as I mentioned that I would watch the urine leave his body, he left the collection site. I discarded the cold specimen, signed and dated the CCF, and immediately notified the employer.”

- Much clearer
- Allows the employer to understand the circumstances



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Documentation Matters

- Records related to FTA refusals must be maintained for at least five years
 - This includes reasons why actions were not considered a refusal
- If the DER can't read the documentation and understand the specifics of a case, neither can anyone else
- Other interested parties include:
 - FTA's auditors
 - Future employers
 - Substance Abuse Professionals
 - Attorneys



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