

## What is “Refusal to Test” and What Are the Consequences

### Refusal To Test

The following is a list of Refusal to Test found in 49 CFR Part 40.191

- A. As an employee, you have refused to take a drug test if you:
  1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a));
  2. Fail to remain at the testing site until the testing process is complete; Provided, that an employee who leaves the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;
  3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;
  4. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));
  5. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));
  6. Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, §40.197(b));
  7. Fail to undergo a medical examination or evaluation, as directed by the Medical Review Officer (MRO) as part of the verification process, or as directed by the Designated Employee Representative (DER) under §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or
  8. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
  9. For an observed collection, fail to follow the observer’s instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.

10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
  11. Admit to the collector or MRO that you adulterated or substituted the specimen.
- B. As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you are deemed to have refused to take a drug test.
  - C. As an employee, if you refuse to take a required Federal drug or alcohol test, you incur the consequences specified under that DOT agency's regulations. Generally that translates into being treated as if the test resulted positive. Normally that translates into immediate removal from the duties, and discharge by the employer depending on their drug policy.
  - D. 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 Custody and Control Form (CCF) and immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notifications immediately received.