

Procedure for Employer Deemed Refusal to Test Determinations

49 CFR Part 40 provides regulatory guidance on what is a refusal to test and who is the responsible party for making the refusal determination. Many of the refusal to test determinations are the Designated Employer Representative (DER)'s responsibility.

Refusal to test determinations have the same consequences to an employee as if a positive prohibited drug or an alcohol test of 0.04 or greater was reported. The only difference is there is no biological test that has been analyzed by a DHHS laboratory or by an Evidential Breath Testing device. These types of testing events require intervention, fact gathering and finally determination of deeming a testing event a refusal to test.

For testing events where the DER is required to determine a refusal, the DER is required to:

- keep documentation of all the facts gathered to make the determination,
- keep the information for 5 years per the recordkeeping requirements in the DOT agency and Part 40 regulations, and
- provide the employee with the Substance Abuse Professionals (SAP)'s information and next steps the employee is to take to be granted employment back to a DOT position with any DOT agency.

In addition, the refusal to test determinations are to be recorded on the MIS report that is requested by the DOT agency for submission into the DAMIS system.

FMCSA has an additional requirement that refusal to test determinations made by the FMCSA Motor Carrier Employer must be entered into the FMCSA Clearinghouse. This ensures the employee is not able to perform DOT functions for another employer without first going through the required SAP rehabilitation program.

The 40.25 previous employer drug and alcohol background checks are required by all other DOT agencies for this assurance.

FAA requires all refusals by any individual that holds a part 61, 63 or 65 certificate be reported to the FAA Drug Abatement Special Investigations Department within 2 working days after the violation.

The documents are located through your ITSA client portal under the "Help" link will help you with your different requirements.

If you have any questions, please do not hesitate contacting our regulatory compliance department for further explanation.

Respectfully,

ITSA Regulatory Compliance