

RISK SIMPLIFIED

QUESTIONS

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Selecting a DER for a DOT Drug & Alcohol Testing Program

The Designated Employer Representative (DER) is the individual who will be conducting the day-to-day operations and processes for the employer.

Duties of the DER

The primary duty of the DER is to facilitate an employee's removal from safety sensitive duties for violating any of the Department of Transportation (DOT) drug and alcohol rules ([CFR 49 Part 382 Subpart B](#) and [CFR Part 655 Subpart C and Subpart D](#)).

NOTE: The DER does not need to be in a supervisory position for safety sensitive employees but if they are not, it is critical that employees who violate any rules are promptly removed from safety sensitive duties. The DER must be able to ensure that employee is no longer performing any safety sensitive duties until their privileges are reinstated.

The DER will also be responsible for coordinating tests and communicating with the Drivers (employees), the Collection Site, the Consortium or TPA (if part of a consortium), the Medical Review Officer (MRO) and Substance Abuse Professionals (SAPs) regarding DOT drug and alcohol test results.



DER Qualifications and Requirements

Your organization may have more than one DER if desired, but it must have at least one.

To ensure that a DER is readily available, during all work shifts, it is a best practice to have as many as are needed to ensure that a DER is always available during the operating hours when employees are performing safety sensitive duties.

When selecting an individual to be a DER it is important to select someone who:

1. Is an employee of the organization.
 - The DER may not be employed by a contractor, a third party administrator or a consortium administrator.
2. Who has knowledge and authority to make decisions about the testing process and answer questions about it. The DER should:
 - Understand the applicable DOT regulation that pertains to their organization.
 - [CFR 49 Part 655](#) for organizations that receive federal assistance under 49 U.S.C. 5307, 5309, or 5311
 - Generally, this encompasses revenue earning transit services and municipal transit such as buses (except school buses), streetcars and trolleys that require a fee.
 - [CFR 49 Part 382](#) for all other commercial motor vehicles (CMVs) operating on public roads, such as heavy construction equipment and other large vehicles meeting the definition of a CMV.
 - Be able to make decisions about when a DOT drug and alcohol test is required ([CFR 49 Part 382.601 \(b\)\(1\)](#) and [CFR 49 Part 655.15 \(a\)](#))
 - Determine when an employee has violated any of the DOT drug and alcohol rules. ([CFR 49 Part 382 Subpart B](#) or [CFR Part 655 Subpart C and Subpart D](#))
 - Have authority to immediately remove, or facilitate the immediate removal from safety sensitive duties for employees who violate rules.
3. Is not in the pool of drivers eligible for random selections.
 - This is important because although it is not strictly against the regulation, selected employees must not have any prior knowledge that they have been randomly selected until the moment they are notified that they must be tested it to be considered a valid test.
 - If the DER receives a list of the selected employees at the beginning of the quarter and they were one of the employees selected, they now have prior knowledge and their selection is not valid. The DER would then have to document why the test was not completed and make a new selection.

NOTE: All employees who perform safety sensitive duties MUST be included as an employee eligible for random selections. This includes supervisors and anyone who may be called on to perform safety sensitive duties, even if it is not one their primary job duties.

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4. Ability to generate or receive random selection lists and send selected employees for random drug and alcohol tests.
 - If your organization doesn't contract with a Consortium or Third Party Administrator (C/TPA) they will be required to use an effective method to randomly generate a list of employees each quarter to satisfy the minimum annual random drug and alcohol testing percentage requirements. The DOT published this guide to [Best Practices for Random Selections](#).
 - If your organization is part of a C/TPA, the DER will be the one to ensure that they receive the random selections for each quarter from their C/TPA.
5. Able to receive results from the Medical Review Officer (MRO) and take appropriate action such as:
 - To immediately remove employees from safety sensitive duties for violating the DOT regulations, or have them be able to notify proper supervisors so that they may immediately remove employees from safety sensitive duties.
 - Enter required information into the [FMCSA Clearinghouse](#) (if your organization falls under the FMCSA's jurisdiction)

For any additional questions regarding this topic or related regulatory requirements, contact the [PRISM Risk Control Department](#).