

Duties of the DER

Alexa D'Adamo, USDOT Volpe Center

Lori DeCoste, USDOT Volpe Center

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Session Topics

- Definition of Designated Employer Representative (DER)
- Roles and Responsibilities of the DER
- Other Employer Responsibilities



What is a DER (Part 40 Definition)?

- The DER is an employee authorized by the employer to:
 - Make required decisions in the testing and evaluation processes.
 - Receive test results and other communications for the employer.
 - Take immediate action(s) to remove employees from safety-sensitive duties.



Who Can Be a DER?

- The DER must:
 - Be an employee of the employer.
 - Often in Human Resources, Safety, or Operations department
 - Have authority to make immediate decisions about employee status.
 - Directly remove an employee from safety-sensitive or cause the employee to be removed
 - Be readily available to respond to testing situations.
- A service agent (e.g., TPA, consultant) cannot act as a DER.

DER vs. DAPM

- The Designated Employer Representative (DER) and Drug and Alcohol Program Manager (DAPM) are both key roles in the FTA drug and alcohol testing program.
- DER is a Part 40 defined role, DAPM is not.
- Sometimes they are the same person, sometimes they are not.



DER Duties: **Make Testing Decisions**



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Serve as Contact for Technicians and Collectors

- The appropriate DER contact information (name, phone number) must be provided to collection site (40.36)
- The DER's name and contact information must be included on all Alcohol Testing Forms (ATFs) and Drug Testing Custody and Control Forms (CCFs).
 - CCFs → Step 1 (may be pre-printed)
 - ATFs → Step 1C
- Screening test technicians (STTs), breath alcohol technicians, and urine collectors may contact the DER about any problems or issues that arise during testing process.

Verify Employee's Identity at Collection Site

- STTs/BATs/Collectors must obtain positive identification of the employee prior to testing.
- DER may verify the employee's identity if the employee cannot produce a photo ID.



§ § 40.61(c), 40.241(c)

Determine Urine vs. Oral Fluid (Eventually)

When oral fluid testing becomes available...

- The employer decides whether to collect a urine specimen or oral fluid specimen.
 - Standing order or discussion with collector
- If problems in collection (e.g., insufficient specimen, temperature out of range), collector may change to the alternate specimen type.
 - If no standing order, collector will contact DER.

§ 40.36

Receive Notice of Directly-Observed Collections

- The collector notifies the DER when conducting a directly-observed collection.
 - Materials brought to the collection site indicate an attempt to tamper with the specimen.
 - Employee conduct indicate an attempt to tamper with the specimen.
 - The specimen has a temperature out of range.
 - The specimen appears to have been tampered with.

§ 40.67

Determine Collection Site Refusals

- The STT/BAT/collector notifies the DER when an employee:
 - Fails to arrive at the collection site
 - Fails to remain at the collection site
 - Fails to provide a specimen
 - Fails to permit a monitored or observed urine collection
 - Fails to take an additional test as directed by the collector
 - Fails to cooperate with the testing process
 - Fails to follow instructions during an observed collection
 - Fails to sign Step 2 of the ATF
- The employer has the sole responsibility to decide whether a refusal occurred.

§ § 40.191, 40.261

Correct Alcohol Testing Problems

- If a problem in alcohol testing requires the use of another testing device:
 - STT/BAT may contact DER if another device is not available at the current testing site.
 - DER must make all reasonable efforts to conduct the test at another testing site as soon as possible.

§ 40.271



DER Duties: **Receive Test Results and Other Communications**



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Receive Alcohol Test Results

- STT/BAT must transmit result directly to the DER in a confidential manner.
 - Using Copy 1 of the ATF, in person, by telephone, or electronically.
 - DER must have a means to establish technician's identity.
 - E.g., passcode, voice recognition
- Results of 0.02 or greater require immediate transmission (e.g., telephone).
 - Follow up with Copy 1 of ATF.

§ § 40.247, 40.255

Receive Employer Copy of the ATF and CCF

- Alcohol testing:
 - Copy 1 of ATF transmitted to DER following the test.
- Drug testing:
 - Copy 4 of CCF transmitted to DER within 24 hours or during next business day.
- DER should promptly review ATF and CCF for errors and require correction as appropriate.

§ § 40.79, 40.255

Assist MRO During Test Verification

The MRO might need help contacting an employee they cannot reach:

- DER must attempt to contact the employee immediately, protecting the confidentiality of the MRO's request.
 - Make at least three attempts over 24 hours.
 - Document the date and times of the contact and inform the MRO
 - If successful, inform the employee:
 - They must contact the MRO immediately.
 - Consequences of failing to contact the MRO within 72 hours.
- If unsuccessful after all reasonable efforts, DER may place the employee on temporary medically unqualified status or medical leave.

§ 40.131

Receive Drug Test Results

- The MRO must report the results to the DER (or through a TPA) in a confidential manner.
 - Direct telephone contact with the DER preferred.
 - The DER must have a means to confirm the MRO's identity.
 - E.g., a passcode, voice recognition
- For verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test:
 - The MRO must transmit to the DER on the same day the MRO verifies the result or the next business day.
- The MRO must ensure written reports of verified tests are received by the DER within two days of verification.

§ 40.161

Handle Negative Dilute Test Results

- If the MRO informs the DER that a negative test was dilute:
 - The DER may direct the employee to take another test immediately (not required).
 - All employees must be treated the same for this purpose.
 - Different procedures may be established for different test types
 - Have this in the drug and alcohol policy!
 - The collection is **not** observed (unless there is another reason for direct observation).
- For dilute negatives with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL:
 - The MRO **will require** an immediate recollection under direct observation.

§ 40.197

Insufficient Urine Specimen (Shy Bladder)

- When an employee is unable to provide a sufficient amount of specimen for a drug test:
 - Consult with the MRO.
 - Direct the employee to obtain an evaluation from a licensed physician within five days.
 - Acceptable to the MRO and has expertise in the medical issued raised by the employee's failure to provide.



§ 40.193

Insufficient Saliva Specimen

- When an employee is unable to provide a sufficient amount of saliva for an alcohol screening test:
 - Immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

§ 40.263

Insufficient Breath Specimen (Shy Lung)

- When an employee is unable to provide a sufficient amount of breath for a breath alcohol test:
 - Direct the employee to obtain within five days an evaluation from a licensed physician who has relevant expertise and is acceptable to the employer.
 - Provide the evaluating physician with instructions.
 - Employee could not provide sufficient breath to complete DOT test.
 - Consequences for refusing to test.
 - Physician must determine if medical explanation exists.
 - Physician must provide a signed statement of conclusions.
- Upon receipt of the report from the examining physician, immediately inform the employee and take appropriate action (test cancelled or refusal to test).

§ 40.265

DER Duties: **Remove Employees from** **Safety-Sensitive Functions**



Remove Employees from Safety-Sensitive Duties

- When the DER receives notification of a positive test, adulterated or substituted specimen, or refusal to test:
 - **Immediately** remove the employee from performing safety-sensitive functions.
- This is one of the most critical DER responsibilities.

§ 40.23

Managing Return-to-Duty Process



- Ensure that employees who violated drug and alcohol regulations complete the entire return-to-duty process:
 - Refer employee to Substance Abuse Professionals (SAP).
 - Receive evaluation reports and follow-up testing plan from SAP.
 - Direct employee to take a return-to-duty test.
 - Ensure a verified negative result.
 - Direct follow-up testing according to SAP's plan.

Part 40, Subpart O

Other Employer Responsibilities



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Make Testing Decisions

- Responding to Reasonable Suspicion Situations
 - When a trained supervisor documents observations of appearance, behavior, speech, or body odors consistent with drug or alcohol use, authorize and coordinate the testing
- Coordinating Post-Accident Testing
 - After an accident meeting FTA DOT criteria, ensure that drug and alcohol testing occurs as soon as practicable
 - For alcohol tests: within 2 hours if possible, but no later than 8 hours
 - For drug tests: within 32 hours

§ § 655.43, 655.44

Direct Error Correction Training

- Who is responsible for notifying a collector that error correction training is needed?
 - The MRO, in cancelling a drug test, determines if the collector is at fault.
 - MRO will note this when reporting the cancelled test.
 - The employer or service agent (e.g., TPA) designated by the employer must notify the collection site of the error and the retraining requirement.
 - Also ensure that the training takes place.
- This is the employer's responsibility!

§ 40.33 Q&A

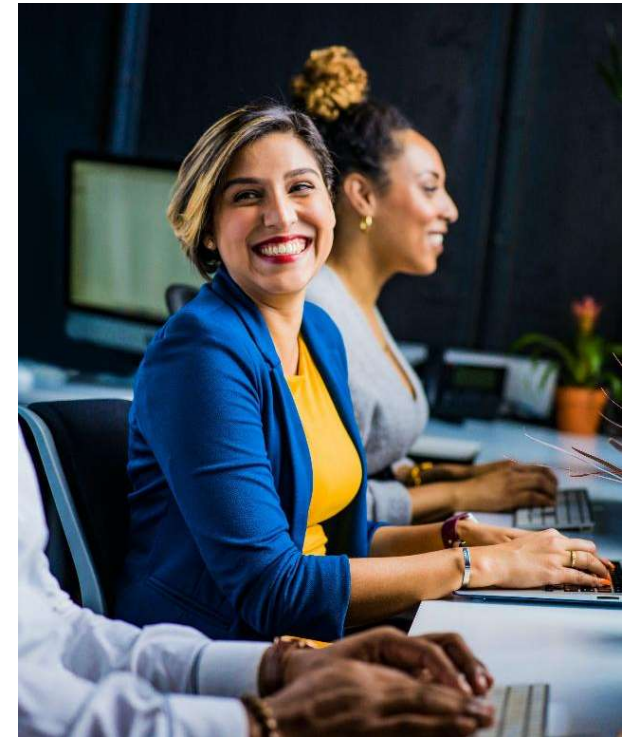
Be Responsible for Service Agents

- The employer is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out DOT requirements.
 - Employers are responsible for compliance with all applicable requirements of Part 40 and Part 655, even when using a service agent.
- The employer is responsible for obtaining information from its service agents.
 - E.g., Do not assume that “no news is good news” and allow the applicant to perform safety-sensitive duties before receiving the result.

§ § 40.11, 40.17

Other Important Areas of Compliance for DERs

- **Knowledge of Requirements:** Be familiar with FTA (Part 655) and DOT (Part 40) regulations.
- **Written Policy:** Know what is in the policy and follow it.
 - Employer actions after DOT violations
 - Employer actions for negative dilutes
- **Record Keeping:** Maintain comprehensive records in accordance with Part 655 retention periods.
- **MIS Reporting:** Prepare and maintain an annual summary of drug and alcohol testing results.
 - A TPA may prepare the report, but a company official (e.g., DER) must certify it's complete and accurate.



Thank you!

Lori DeCoste

617-494-2379

lori.decoste@dot.gov

Alexa D'Adamo

617-494-2028

alexa.d'adamo@dot.gov



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