



October 23, 2024

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Subject: Federal Transit Administration Drug and Alcohol Compliance Audit

Overview

The Federal Transit Administration has completed a Drug and Alcohol Compliance audit of the Orange County Transportation Authority and contractors Transdev, Keolis Transit America, and Cabco Yellow, Inc. Management has addressed all deficiencies, and the audit is now closed.

Recommendation

Receive and file the Federal Transit Administration Drug and Alcohol Compliance Audit as an information item.

Background

In 1991, the Omnibus Transportation Employee Testing Act (Act) directed the Federal Transit Administration (FTA) to issue drug and alcohol testing regulations. These regulations are applicable to recipients of Sections 5309, 5307, and 5311 funds. The Act provides statutory authority for the FTA to require drug and alcohol testing of its grantees' safety-sensitive employees as a condition of FTA funding.

In order to assess compliance with these requirements, the FTA conducted a site visit from April 29, 2024 through May 2, 2024, of the Orange County Transportation Authority (OCTA) and contractors Transdev, Keolis Transit America (Keolis), and Cabco Yellow, Inc. (Cabco).

Discussion

Results of the FTA audit were discussed with management on May 3, 2024 (Attachment A). Responses to the 54 deficiencies identified, along with evidence of corrective actions, were submitted by OCTA staff by the due date of August 1, 2024. The FTA issued a compliance letter closing the audit on October 8, 2024, and finding OCTA fully compliant (Attachment B).

Summary

The FTA has completed a Drug and Alcohol Compliance audit of OCTA and contractors Transdev, Keolis, and Cabco. All deficiencies identified during the audit have been adequately addressed.

Attachments

- A. Final Audit Report FTA Drug and Alcohol Compliance Auditing Program
- B. Letter from Lyon Rosario, Sr. Drug and Alcohol Program Manager, Federal Transit Administration, to Darrell E. Johnson, Chief Executive Officer, Orange County Transportation Authority, re: FTA Drug and Alcohol Compliance Auditing Program, Dated October 8, 2024

Authorized by:



Janet Sutter
Executive Director, Internal Audit
714-560-5591



Federal Transit
Administration

FINAL AUDIT REPORT

FTA Drug and Alcohol Compliance Auditing Program

FTA Grantee
Orange County Transportation Authority

Contractors
Keolis Transit America
Transdev
Cabco Yellow, Inc.



IYON ROSARIO
SR. DRUG AND ALCOHOL PROGRAM MANAGER
OFFICE OF TRANSIT SAFETY AND OVERSIGHT



U.S. Department
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Federal Transit
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1200 New Jersey Ave., S.E.
Washington, D.C. 20590

5/3/2024

Provided Personally
& Electronically

Darrell E. Johnson
Chief Executive Officer
Orange County Transportation Authority
550 S Main St,
Orange, CA 92868

RE: FTA Drug and Alcohol Compliance Auditing Program

Dear Mr. Johnson,

As you know, during the period 4/29/2024 to 5/2/2024, the Federal Transit Administration (FTA) conducted an audit of the FTA-mandated drug and alcohol testing programs of the Orange County Transportation Authority (OCTA). Several items associated with OCTA's program were found that require attention. The attached Final Audit Report summarizes the findings of the audit team.

A 90-day period for corrective action commences as of the date of this letter. Therefore, the completion date for responses needed to bring your program into compliance is Thursday, August 1, 2024. Your staff has been provided access to FTA's secure Data Management System. Within this secure environment, you will find a download link for the software program you must use to respond to each audit finding, as well as a user manual for that software. When necessary, provide all supporting documentation that confirms the corrective actions taken.

For receipt on **8/1/2024**, please submit to FTA's secure Data Management System an electronic copy of the completed audit response, a copy of the electronic response file created by the software, and all supplemental materials.

Failure to fully resolve audit findings within 90 days may result in a formal finding of non-compliance by the FTA. Continued failure to fully implement FTA's drug and alcohol testing regulations may jeopardize OCTA's future funding from the FTA.

If you require assistance to resolve any of the deficiencies, please do not hesitate to contact Ms. Lori DeCoste or Mr. Sebastian Knott. If you have more general questions about the FTA's Drug and Alcohol Compliance Auditing Program or regulatory questions, please contact me, Lyon Rosario, FTA Senior Drug and Alcohol Program Manager, at (202) 366-2010, or via e-mail at iyon.rosario@dot.gov, or the FTA's Drug and Alcohol Program Hotline at (617) 494-6336 or email fta.damis@dot.gov.



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FTA's tools and publications may be useful to you and your staff as you prepare your audit response, and in the ongoing maintenance of your testing programs. Resources are available at the FTA Drug and Alcohol Program website at <https://www.transit.dot.gov/drug-alcohol-program>.

We understand that our audit has placed an additional management effort that entailed a great deal of time and planning on your part. We greatly appreciate your cooperation, patience and hospitality during this review. Because of your efforts, we believe that the goal of improved safety for patrons and employees of OCTA will be more easily achieved.

Once again, thank you for your assistance. We look forward to working with you in the future.

Sincerely,

Lyon Rosario
Sr. Drug and Alcohol Program Manager
FTA Office of Transit Safety and Oversight

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Orange County Transportation Authority

Policy Manual Review Interview

Orange County Transportation Authority

Interview Date: 4/15/2024

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action Date:** **8/1/2024** **Question #:** **13**

1

Question: PROHIBITED BEHAVIOR: Does the policy indicate that covered employees are prohibited from using the following at all times: (1) Marijuana; (2) Cocaine; (3) Opioids; (4) Amphetamines; and (5) Phencyclidine?

Answer: No.

Supplemental Answer: In response to this and the following policy findings, submit to FTA a new or revised policy that is compliant with the listed FTA regulatory requirements. Note that FTA has a free policy builder that may be useful in this effort. The policy builder can be found at: transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx

For this finding, ensure the revised policy states that use of these substances is prohibited at all times, as required by section 655.21(c).

FTA Rule Requirement: Section 655.15(c) states that the policy statement must include: "specific information concerning the behavior and conduct prohibited by this part."

Sections 655.21(b) and (c) state: "(b) When administering a drug test, an employer shall ensure that the following drugs are tested for: (1) Marijuana; (2) Cocaine; (3) Opioids; (4) Amphetamines; and (5) Phencyclidine. (c) Consumption of these products is prohibited at all times."

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action Date:** **8/1/2024** **Question #:** **14**

2

Question: PROHIBITED BEHAVIOR: Does the policy indicate that a covered employee may be tested for prohibited drugs any time while on duty?

Answer: No.

Supplemental Answer: Include this provision in the revised policy.

FTA Rule Requirement: Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

Section 655.45(i) states: "A covered employee may be randomly tested for prohibited drug use anytime while on duty."

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action Date:** **8/1/2024** **Question #:** **15**

3

Question: PROHIBITED BEHAVIOR: Does the policy indicate that covered employees are prohibited from performing safety-sensitive functions while having an alcohol

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concentration of 0.04 or greater?

Answer: The policy lists this prohibition at 0.02 or greater, rather than at 0.04.

Supplemental Answer: The current policy lists this prohibition at the 0.02 alcohol concentration, rather than at 0.04. While the employer may set a lower prohibition, it must clearly do so under its own authority, while still stating the federal prohibition (0.04). Revise the policy accordingly.

FTA Rule Requirement: Section 655.15(c) states that the policy statement must include: "specific information concerning the behavior and conduct prohibited by this part."

Section 655.31(b) states: "Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function."

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action** **8/1/2024** **Question #:** **16**
Date:

4

Question: PROHIBITED BEHAVIOR: Does the policy indicate that covered employees are prohibited from using alcohol within four hours prior to performing a safety-sensitive function, while on-call to perform a safety-sensitive function, and while performing a safety-sensitive function?

Answer: One or more elements is missing or incorrect.

Supplemental Answer: The policy states that, under OCTA's independent authority, safety-sensitive employees are prohibited from using alcohol for eight hours prior to the performance of a safety-sensitive function.

While policy may include this local provision, it must also state FTA's four-hour prohibition, as required by section 655.33(a). Revise the policy accordingly.

FTA Rule Requirement: Section 655.15(c) states that the policy statement must include: "specific information concerning the behavior and conduct prohibited by this part."

Section 655.32 states: "Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions."

Section 655.33 states: "(a) Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions. (b) An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include: (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function. (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function."

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action** **8/1/2024** **Question #:** **18**
Date:

5

Question: ALCOHOL TESTING: Does the policy indicate that random, reasonable suspicion, and follow-up alcohol testing are only permissible just before, during, and just after the

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performance of a safety-sensitive function?

Answer: Other. This provision is only included for reasonable suspicion testing.

Supplemental Answer: Revise the policy to state that random and follow-up alcohol testing may only be conducted just before, during, and just after the performance of a safety-sensitive function.

FTA Rule Requirement: Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

Section 655.43(c) states: "An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions."

Section 655.45(i) states: "A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions."

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action Date:** 8/1/2024 **Question #:** 20

6

Question: PRE-EMPLOYMENT DRUG TESTING: Does the procedure for an applicant or transferee who has previously failed or refused a DOT test include requiring evidence that the individual has successfully completed a referral, evaluation and treatment plan meeting DOT requirements?

Answer: Other. The policy only discusses this requirement for individuals who previously failed a pre-employment test at OCTA.

Supplemental Answer: Revise the policy to state that any covered employee or applicant who previously failed or refused a DOT pre-employment for any employer must successfully complete the DOT return-to-duty process as required by section 655.41(a)(2).

FTA Rule Requirement: Section 655.41(a)(2) states: "When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in 655.62."

Section 40.25(b) states: "You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer: (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-do-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee."

Orange County Transportation Authority - Policy Manual Review Interview

Item **Action Date:** 8/1/2024 **Question #:** 24

7

Question: PRE-EMPLOYMENT ALCOHOL TESTING: If the employer chooses to conduct

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pre-employment alcohol testing, does the policy indicate that an applicant or transferee must have a test result of less than 0.02 prior to first performing a safety-sensitive function?

Answer: No.

Supplemental Answer: Include this provision in the revised policy.

FTA Rule Requirement: Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

Section 655.42 states: "An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements: (e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02."

Orange County Transportation Authority - Policy Manual Review Interview

Item	Action Date:	8/1/2024	Question #:	32
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8

Question: RANDOM TESTING SPREAD: Does the policy state that random tests are to be spread reasonably throughout the year, and that testing may be conducted on all days and hours during which safety-sensitive functions are performed?

Answer: Other. The policy states: "Random testing will be administered at random times during OCTA's operating hours to avoid predictability."

Supplemental Answer: This statement does sufficiently cover all the required elements of section 655.45(g), specifically the requirement that testing be spread reasonably throughout the year, and that testing may be conducted on all days which safety-sensitive functions are performed.

Revise the policy to include all the elements of section 655.45(g).

FTA Rule Requirement: Section 655.15(d) states that the policy statement must include: "the specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part."

Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."

Orange County Transportation Authority - Policy Manual Review Interview

Item	Action Date:	8/1/2024	Question #:	53
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9

Question: EMPLOYER-SPECIFIC ELEMENTS: If the employer implements elements of an anti-drug or alcohol misuse program that are in addition to those required by Part 655, are such elements clearly described as being based on the employer's independent authority?

Answer: No.

Supplemental Answer: 1. On page 39, the policy states, under the employer's independent authority:

"Reasonable time means that employees are required to proceed to the clinic test site immediately upon notice of selection for a drug and/or alcohol test." Revise the policy to indicate that this is a federal requirement.

2. On page 52, the policy defines "Under the Influence" as: "When an employee is affected to any extent by alcohol or a drug, or metabolites of such, or the combination of alcohol and a drug, or has alcohol or a drug, or metabolites, of such, in the employees body in any detectable amount." This definition does not reflect any federal regulation. Revise the policy to clearly indicate that this definition is included under the employer's independent authority.

FTA Rule Requirement: Section 655.15(j) states: "The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part."

Orange County Transportation Authority - Policy Manual Review Interview

Item Action Date: 8/1/2024 Question #: 54

10

Question: PROVISIONS CONTRARY TO FTA or DOT REGULATIONS: Does the policy contain any provisions that are inconsistent with, contrary to, or that frustrate the requirements of Part 655 or Part 40?

Answer: Yes, the following items are not compliant with FTA and DOT regulations.

Supplemental Answer: 1. On page 9, the policy states: "The OCTA Drug and Alcohol Policy Manual has in some areas broadened the FTA and DOT requirements by including non-safety sensitive positions, as well as safety-sensitive positions, in some areas of testing." While this statement is bolded to indicate the employer's independent authority, it incorrectly suggests that the employer can broaden the scope of FTA and DOT requirements. Remove or revise this statement accordingly.

2. On page 21, the policy uses the term "opiates." For consistency with Part 40, change "opiates" to read "opioids."

3. On page 28, the policy states: "...a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis." Since all laboratories do not use GC/MS testing procedures, either remove this statement or verify the processes used by your primary laboratory and any laboratories that may be used to perform split specimen testing and ensure that your policy accurately reflect these processes.

4. On page 27, the policy states: "Any employee... who provides false information in connection with a test... will be considered to have a positive test and shall be subject to discharge proceedings." Providing false information with a test is not a DOT violation. Remove this statement from the revised policy.

5. On page 51, the definition for Substance Abuse Professional is missing "marriage counselor" as a qualification. Remove this definition or revise the policy to include this qualification.

6. The policy states or implies that urine specimen testing is the only type of drug testing permitted by DOT. For example, on page 5: "49 CFR Part 40 and Part 655 which regulates standards for the collection and mandated testing of breath and urine specimens". Revise these sections for compliance with the authorization of oral fluid drug testing in the currently adopted version of Part 40.

FTA Rule Requirement: Section 655.15(j) states: "The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part."

Drug and Alcohol Program Manager Interview

Orange County Transportation Authority

Interview Date: 4/29/2024

Orange County Transportation Authority - Drug and Alcohol Program Manager Interview

Item	Action Date:	8/1/2024	Question #:	25
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1

Question: Do you request information about prior DOT drug and alcohol test records from all DOT employers who employed an applicant within the previous two years?

Answer: No, we do not request this information.

Supplemental Answer: OCTA has not implemented a compliant procedure to request previous employer DOT drug and alcohol test records. In addition, OCTA currently uses the FMCSA Clearinghouse in an attempt to meet 40.25 regulatory requirements. However, use of the FMCSA Clearinghouse is allowed only for employers regulated by FMCSA. FTA regulated employers, who are also not regulated by FMCSA, are prohibited from using the FMCSA Clearinghouse to meet 40.25 requirements.

In response to this finding, submit to FTA a statement affirming you have reviewed and understand the requirements of sections 40.25(a) and 40.25(b). Should OCTA implement the use of any forms or other tools to assist in maintaining compliance with this requirement, submit samples of that material as well. In addition, provide to FTA a copy of any completed previous employer requests sent to any prior employers within the 90-day response period.

FTA Rule Requirement:

Sections 40.25(a) and (b) state: "(a) As an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions. (b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer: (1) Alcohol tests with a result of 0.04 or higher alcohol concentration; (2) Verified positive drug tests; (3) Refusals to be tested (including verified adulterated or substituted drug test results); (4) Other violations of DOT agency drug and alcohol testing regulations; and (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee." 40.25(a)(3) states "If you are an employer regulated by FMCSA, with a prospective employee subject to drug and alcohol testing with a DOT agency other than FMCSA, you must continue to request the information about the employee listed in paragraphs (b)-(j) of this section."

Orange County Transportation Authority - Drug and Alcohol Program Manager Interview

Item	Action Date:	8/1/2024	Question #:	26
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2

Question: Do you ask an applicant whether or not they have failed or refused a DOT pre-employment test in the previous two years?

Answer: We do not ask this question.

Supplemental Answer: In response to this finding, submit to FTA a signed statement affirming an understanding of section 40.25(j) and describe the procedures implemented. If the procedures include

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the use or revision of a form, include a copy of the form in your response.

FTA Rule Requirement: Section 40.25(j) states: "As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section)."

Orange County Transportation Authority - Drug and Alcohol Program Manager Interview

Item	Action Date:	8/1/2024	Question #:	29
3	Question:	When a safety-sensitive employee is to be on extended leave (90 or more consecutive days) and will not be performing safety-sensitive functions, how do you handle their placement in the random pool? Do you conduct any testing upon their return and prior to their performance of safety-sensitive functions?		
	Answer:	Employees are maintained in the random pool and pre-employment testing is conducted upon their return.		

Supplemental Answer: In response to this finding, submit to FTA a signed statement affirming that the relevant staff has reviewed and understands section 655.41(d). In addition provide a detailed description of the process implemented to ensure employees maintained in the random pool are not pre-employment tested upon return.

FTA Rule Requirement: Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."

Orange County Transportation Authority - Drug and Alcohol Program Manager Interview

Item	Action Date:	8/1/2024	Question #:	35
4	Question:	Do you have a method to document the post-accident decision-making process?		
	Answer:	Other. OCTA uses multiple forms to document information related to post-accident decision-making and testing.		

Supplemental Answer: OCTA uses a testing authorization form and an accident report. In five of the twelve post-accident cases reviewed, times and/or dates differed between the two forms. In two cases, the requirement to document a delay in testing for a post-accident alcohol was called into question as the requirement differed depending on which form was used to make the determination.

In response to this finding, describe the process implemented to ensure consistency in reporting.

FTA Rule Requirement: Section 655.44(d) states: "The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test."

Orange County Transportation Authority

Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: (iv) Documents generated in connection with decisions on post-accident drug and alcohol testing."

Records Management Interview

Orange County Transportation Authority

Interview Date: 4/29/2024

Orange County Transportation Authority - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	32
1	Question:	If a post-accident alcohol test is not administered within two hours following the accident, does the employer maintain a record stating the reason the alcohol test was not promptly administered?		
	Answer:	No.		
Supplemental Answer:	In four of the twelve post-accident cases reviewed, the post-accident alcohol tests were performed more than two hours after the accident without documentation explaining the reason for the delay.			
	In response to this finding, submit a statement affirming an understanding of the documentation requirements of section 655.44. Also, submit legible copies of all documentation related to any post-accident testing that may occur during the 90-day audit response period, to include accident reports, decision-making forms, ATFs, CCFs, and MRO-verified results.			
FTA Rule Requirement:	Section 655.44(a)(2)(ii) states: "If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered."			

Orange County Transportation Authority - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	51
2	Question:	Does the employer ensure that, before an employee returns to safety-sensitive duties following a DOT drug and/or alcohol violation, the employee receives an evaluation by a qualified SAP and successfully complies with the SAP's recommendations?		
	Answer:	Other. Four employees without a DOT violation were incorrectly referred to a SAP.		
Supplemental Answer:	On four occasions, employees underwent DOT alcohol testing with results of 0.02 to less than 0.04. These tests occurred on 6/1/2022 (confirmed result of 0.038), 7/5/2022 (confirmed result of 0.021), 1/24/2023 (confirmed result of 0.030), and 9/6/2023 (confirmed result of 0.028). While none of these tests had a DOT violation, all four employees were incorrectly referred to a Substance Abuse Professional (SAP).			
	In response to this finding, submit a statement signed by all relevant OCTA staff affirming that SAP referrals will only be made after legitimate DOT testing violations (e.g., verified positive drug tests, confirmed alcohol results of 0.04 or greater, and refusals to test).			
FTA Rule Requirement:	Section 40.289 states: "(a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation. (b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of 40.281 and that the employee successfully complies with the SAP's evaluation recommendations."			

Orange County Transportation Authority - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	52
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Orange County Transportation Authority

Date:

3

Question: Does the SAP's written report of the initial evaluation meet the requirements of Part 40?

Answer: No.

Supplemental Answer: In one case reviewed, an OCTA employee refused to test because they failed to provide a sufficient amount of urine without an adequate medical explanation. This employee was referred to a SAP and was eventually returned to the performance of safety-sensitive functions.

The SAP's written report (dated 4/18/2022) documenting their initial evaluation with this employee did not include the name and address of the employer (OCTA) where the violation occurred. This information is required to be included by section 40.311(c)(2).

In response to this finding, the SAP must revise their report to include the missing information and provide a copy of the updated report to OCTA. This corrected report must be submitted to FTA.

FTA Rule Requirement: Section 40.311(c) states: "The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items: (1) Employee's name and SSN; (2) Employer's name and address; (3) Reason for the assessment (specific violation of DOT regulations and violation date); (4) Date(s) of the assessment; (5) SAP's education and/or treatment recommendation; and (6) SAP's telephone number."

Orange County Transportation Authority - Records Management Interview

Item Action Date: Question #: 53

4

Question: Does the SAP's written report of the follow-up evaluation meet the requirements of Part 40?

Answer: No.

Supplemental Answer: A SAP's written report (dated 4/22/2022) documenting their follow-up evaluation with an employee did not include the name and address of the employer (OCTA) where the violation occurred. This information is required to be included by section 40.311(d)(2).

In response to this finding, the SAP must revise their report to include the missing information and provide a copy of the updated report to OCTA. This corrected report must be submitted to FTA.

FTA Rule Requirement: Section 40.311(d) states: "The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items: (1) Employee's name and SSN; (2) Employer's name and address; (3) Reason for the initial assessment (specific violation of DOT regulations and violation date); (4) Date(s) of the initial assessment and synopsis of the treatment plan; (5) Name of practice(s) or service(s) providing the recommended education and/or treatment; (6) Inclusive dates of employee's program participation; (7) Clinical characterization of employee's program participation; (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance; (9) Follow-up testing plan; (10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and (11) SAP's telephone number."

Breath Alcohol Technician Interview

Akeso Occupational Health

Interview Date: 4/29/2024

Orange County Transportation Authority - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	44
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1

Question: Fatal or correctable flaw: The printer fails to print the confirmation test result?

Answer: That is a correctable flaw.

Supplemental Answer: In response to this finding, submit to FTA a statement signed by all DOT breath alcohol technicians (BATs) certifying an understanding that this is a fatal flaw, per section 40.267(c)(4), provided below.

FTA Rule Requirement: Section 40.267 states: "As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are: (c) In the case of a confirmation test: (4) The EBT does not print the result (see 40.253(f))."

Urine Collections Interview

Akeso Occupational Health

Interview Date: 4/29/2024

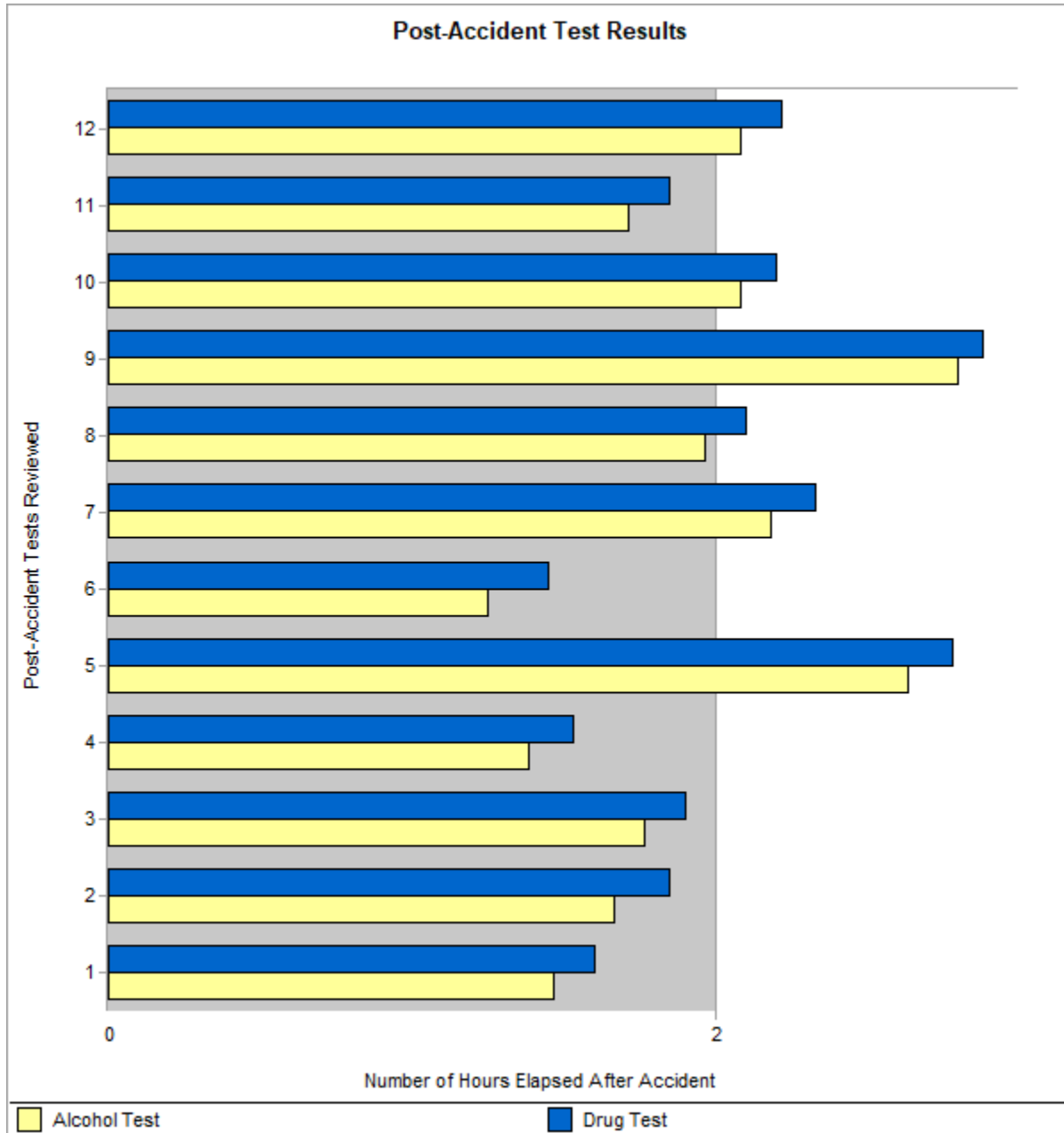
Orange County Transportation Authority - Urine Collections Interview

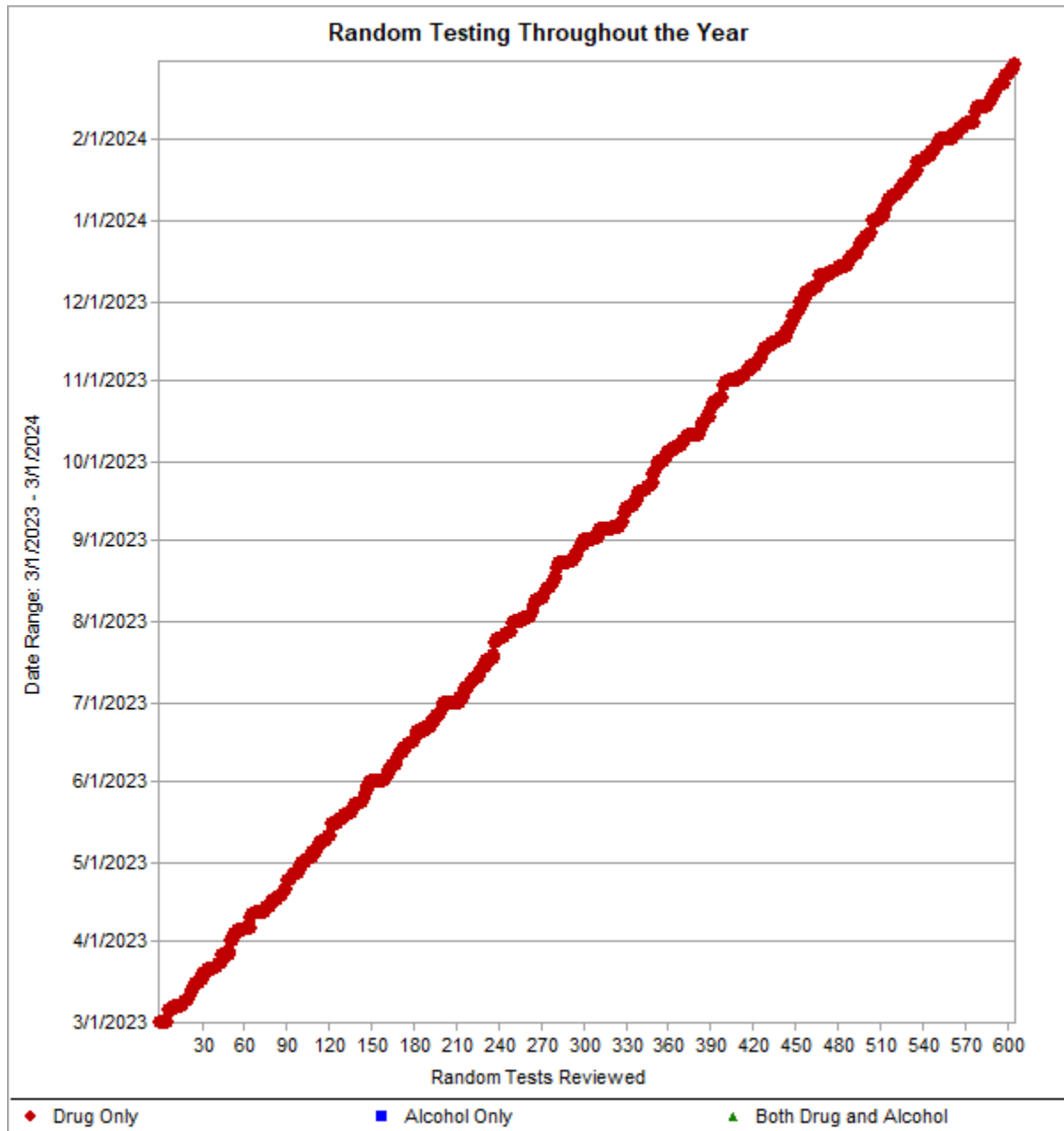
Item	Action Date:	8/1/2024	Question #:	64
1	Question:	What would you do if the employee admits to adulterating or substituting their specimen?		
	Answer:	Conduct a directly observed collection.		

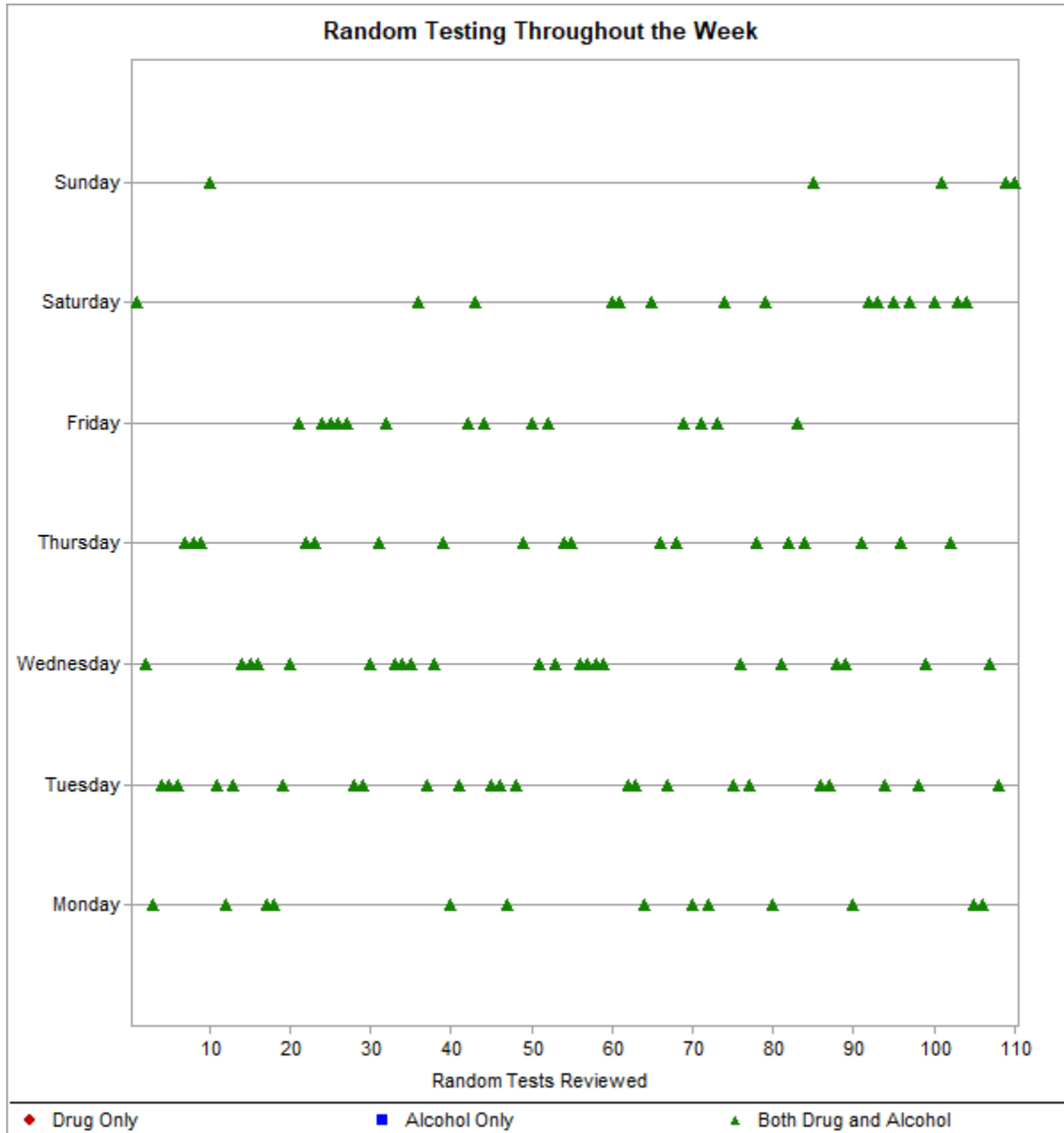
Supplemental Answer: In response to this finding, submit to FTA a statement signed by all DOT collectors certifying they have reviewed and will comply with the requirement to note this as a refusal in the "Remarks" line of the CCF (and then contact the DER), per section 40.191(d)(1).

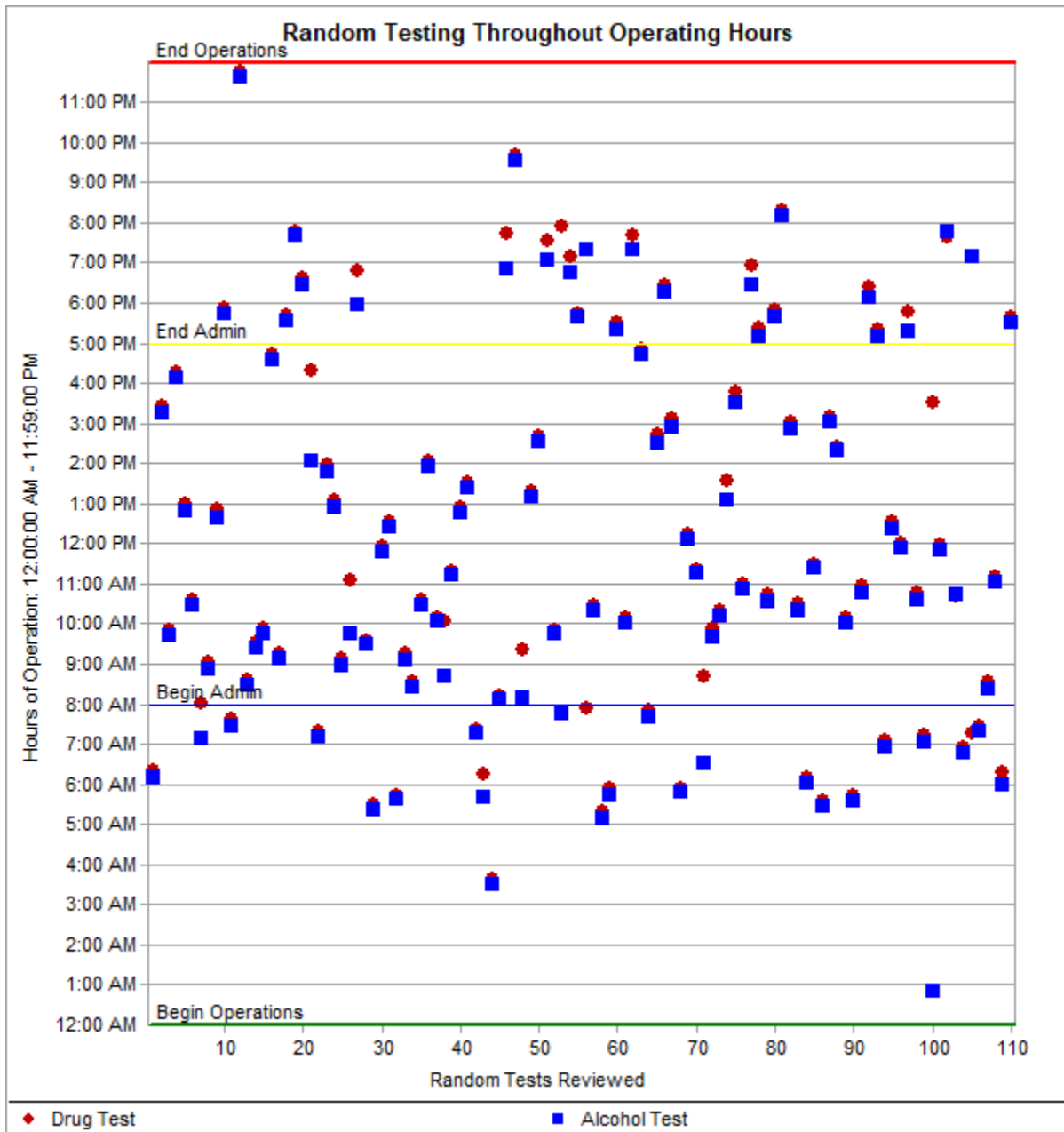
FTA Rule Requirement: Section 40.191(a) states: "As an employee, you have refused to take a drug test if you: (11) Admit to the collector or MRO that you adulterated or substituted the specimen."

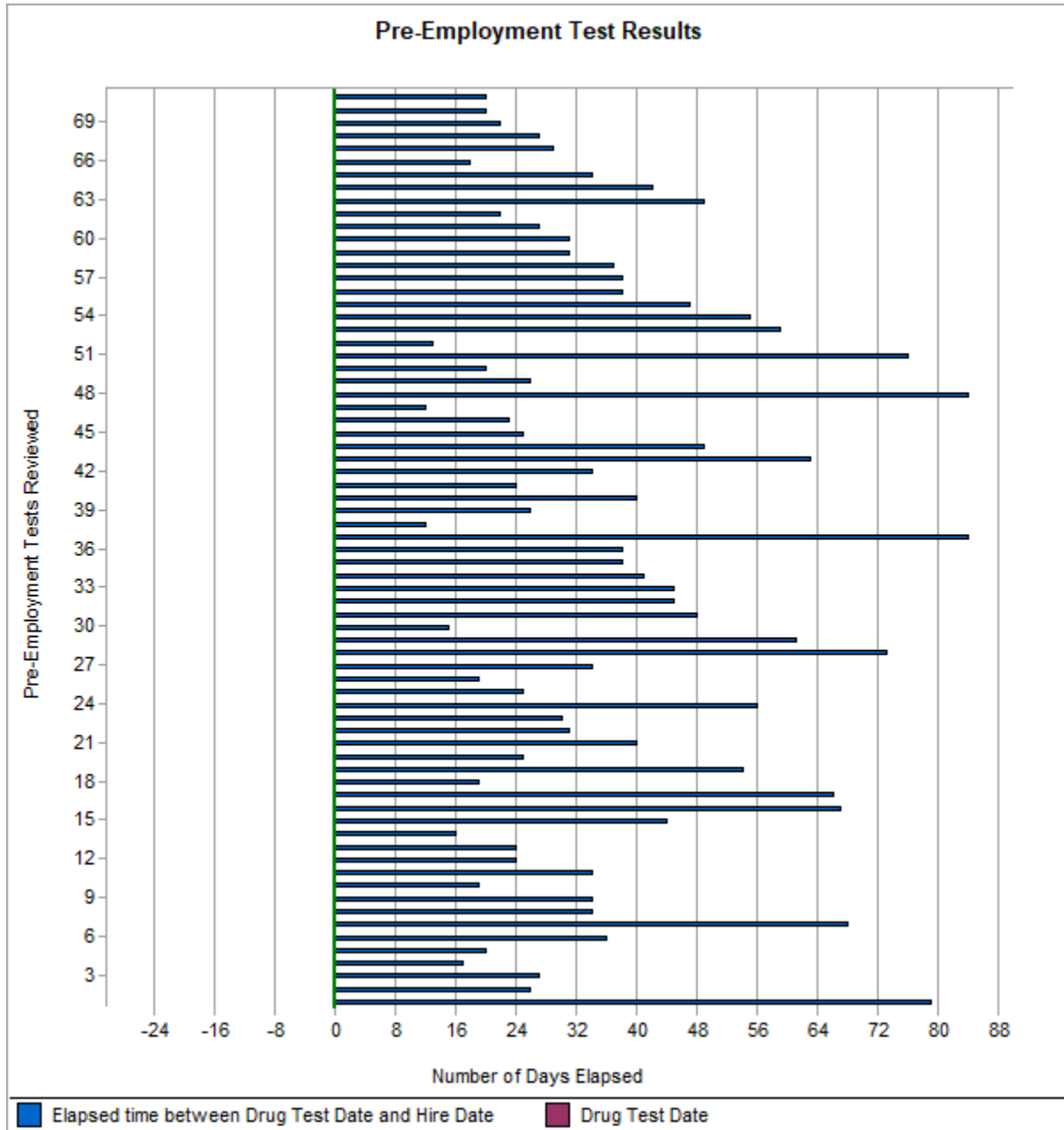
Section 40.191(d)(1) states: "As the collector, you must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF."











Cabco Yellow, Inc.

Policy Manual Review Interview

Cabco Yellow, Inc.

Interview Date: 4/15/2024

Cabco Yellow, Inc. - Policy Manual Review Interview

Item	Action Date:	8/1/2024	Question #:	15
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1

Question: PROHIBITED BEHAVIOR: Does the policy indicate that covered employees are prohibited from performing safety-sensitive functions while having an alcohol concentration of 0.04 or greater?

Answer: The policy lists this prohibition at 0.02 or greater, rather than at 0.04.

Supplemental Answer: The current policy lists this prohibition at the 0.02 alcohol concentration, rather than at 0.04. While the employer may set a lower prohibition, it must clearly do so under its own authority, while still stating the federal prohibition (0.04).

In response to this policy finding, submit a revised policy to FTA.

FTA Rule Requirement: Section 655.15(c) states that the policy statement must include: "specific information concerning the behavior and conduct prohibited by this part."

Section 655.31(b) states: "Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function."

Drug and Alcohol Program Manager Interview

Cabco Yellow, Inc.

Interview Date: 05/02/2024

Finding: Not deficient with FTA requirements.

Records Management Interview

Cabco Yellow, Inc.

Interview Date: 5/2/2024

Cabco Yellow, Inc. - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	42
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1

Question: Do the records indicate that employees proceed immediately to the collection site upon notification for random testing?

Answer: Other. The notification form includes an expected arrival time at the collection site.

Supplemental Answer: This procedure negates the immediacy requirement of random testing.

In response to this finding, submit to FTA a statement signed by all pertinent staff (those who inform employees of random testing) confirming an understanding that once notified of random selection, employees are to proceed immediately as required by section 655.45(h). Furthermore, submit to FTA a new or updated notification form.

FTA Rule Requirement: Section 655.45(h) states: "Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately."

Cabco Yellow, Inc. - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	48
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2

Question: Does the employer provide each employee (including an applicant) who violates a DOT drug and/or alcohol regulation a list of SAPs readily available to the employee, including names, addresses, and telephone numbers?

Answer: No.

Supplemental Answer: In one case reviewed, an applicant had a pre-employment drug test refusal and was not provided a SAP referral. This refusal occurred on 1/22/2024.

In response to this finding, provide the applicant with the required SAP referral, ensuring the referral provides the contact information for two or more SAPs. Submit a copy of this referral to FTA.

FTA Rule Requirement: Section 40.287 states: "As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent."

Breath Alcohol Technician Interview

Edinger Urgent Care

Interview Date: 5/2/2024

Cabco Yellow, Inc. - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	24
1	Question:	What do you do if the employee does not follow your instructions concerning the waiting period?		
	Answer:	Other. Give the employee an additional 15 minutes.		
	Supplemental Answer:	In response to this finding, submit to FTA a statement signed by all DOT breath alcohol technicians (BATs) affirming they understand and will comply with the requirements of sections 40.251(a)(2)(iv) and 40.251(a)(3).		
	FTA Rule Requirement:	Section 40.251(a)(2)(iv) states that the BAT must tell the employee: "That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed." Section 40.251(a)(3) states: "If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF."		

Cabco Yellow, Inc. - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	40
2	Question:	Fatal or correctable flaw: You use a non-DOT ATF for a DOT test?		
	Answer:	That is a fatal flaw.		
	Supplemental Answer:	In response to this finding, submit to FTA a statement signed by all DOT BATs affirming they understand and will comply with the requirements of section 40.269(c).		
	FTA Rule Requirement:	Section 40.269 states: "As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are: (c) The BAT or STT uses a non-DOT form for the test (see 40.225(a))."		

Cabco Yellow, Inc. - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	44
3	Question:	Fatal or correctable flaw: The printer fails to print the confirmation test result?		
	Answer:	I don't know.		
	Supplemental Answer:	In response to this finding, submit to FTA a statement signed by all DOT breath alcohol technicians (BATs) affirming they understand and will comply with the requirements of section 40.267(c)(4).		
	FTA Rule Requirement:	Section 40.267 states: "As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are: (c) In the case of a confirmation test: (4) The EBT does not print the result (see 40.253(f))."		

Urine Collections Interview

Edinger Urgent Care

Interview Date: 5/2/2024

Cabco Yellow, Inc. - Urine Collections Interview

Item Action 8/1/2024 Question #: 53
 Date:

1

Question: Can you explain your "shy bladder" procedures?

Answer: While the collector knows the requirements, there is no method in place to consistently and accurately provide 40 ounces of fluid to each donor requiring that amount.

Supplemental Answer: In response to this finding, describe the procedure implemented to consistently and accurately provide 40 ounces of fluid to each donor requiring that amount.

FTA Rule Requirement: Section 40.193(b)(2) states the collector must: "Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of, the time at which the three-hour period begins and ends."

Cabco Yellow, Inc. - Urine Collections Interview

Item Action 8/1/2024 Question #: 68
 Date:

2

Question: If an initial specimen is out of the acceptable temperature range or appears to be tampered with, and the employee refuses to allow a second specimen to be collected under direct observation, what is done with the initial sample?

Answer: The initial specimen is sent to the laboratory.

Supplemental Answer: In response to this finding, submit to FTA a statement signed by all DOT collectors certifying they have reviewed and will comply with the requirements of section 40.65(b)(7).

FTA Rule Requirement: Section 40.65(b)(7) states: "In a case where the employee refuses to provide another specimen (see 40.191(a)(3)) or refuses to provide another specimen under direct observation (see 40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure."

Cabco Yellow, Inc. - Urine Collections Interview

Item Action 8/1/2024 Question #: 74
 Date:

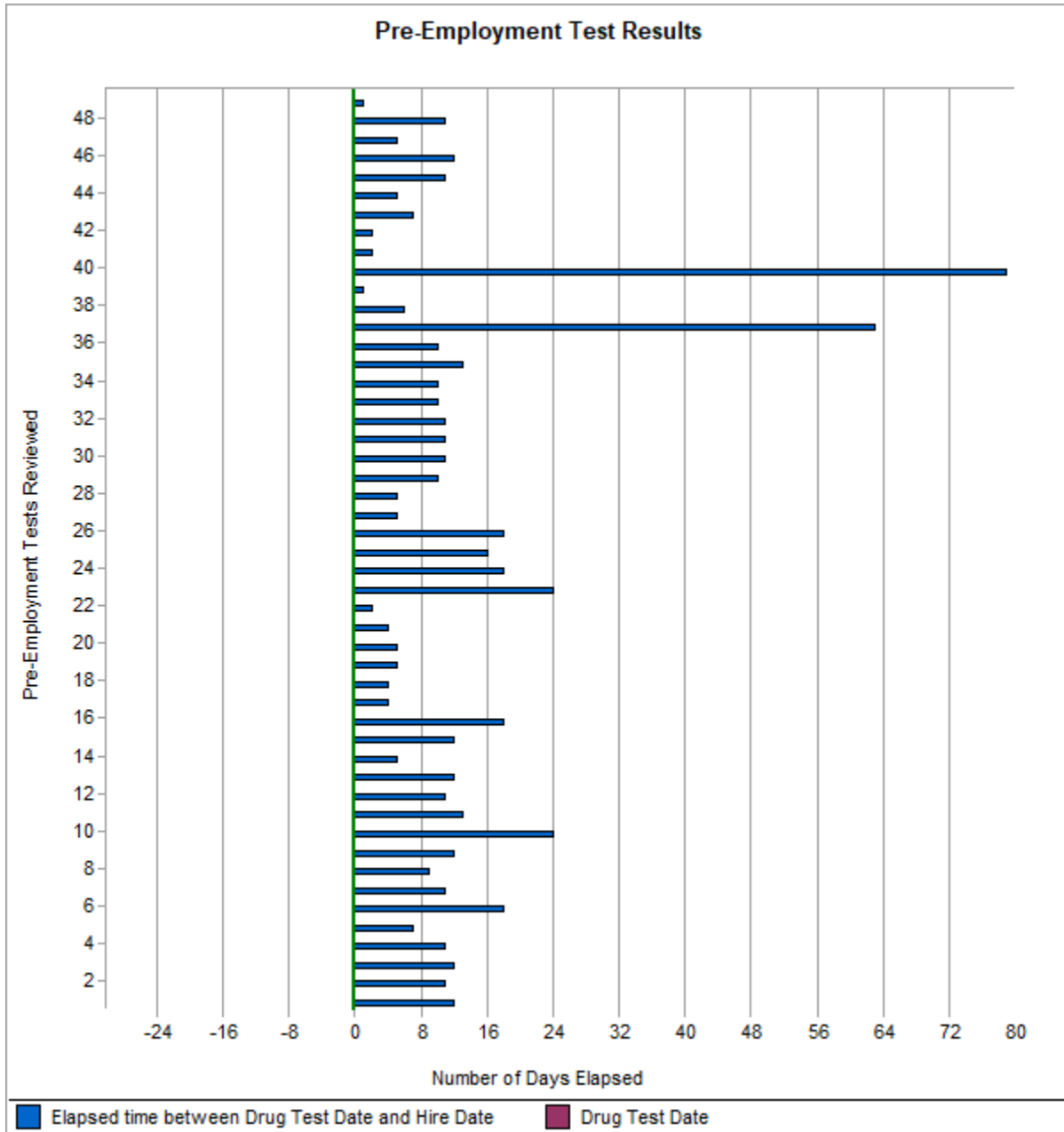
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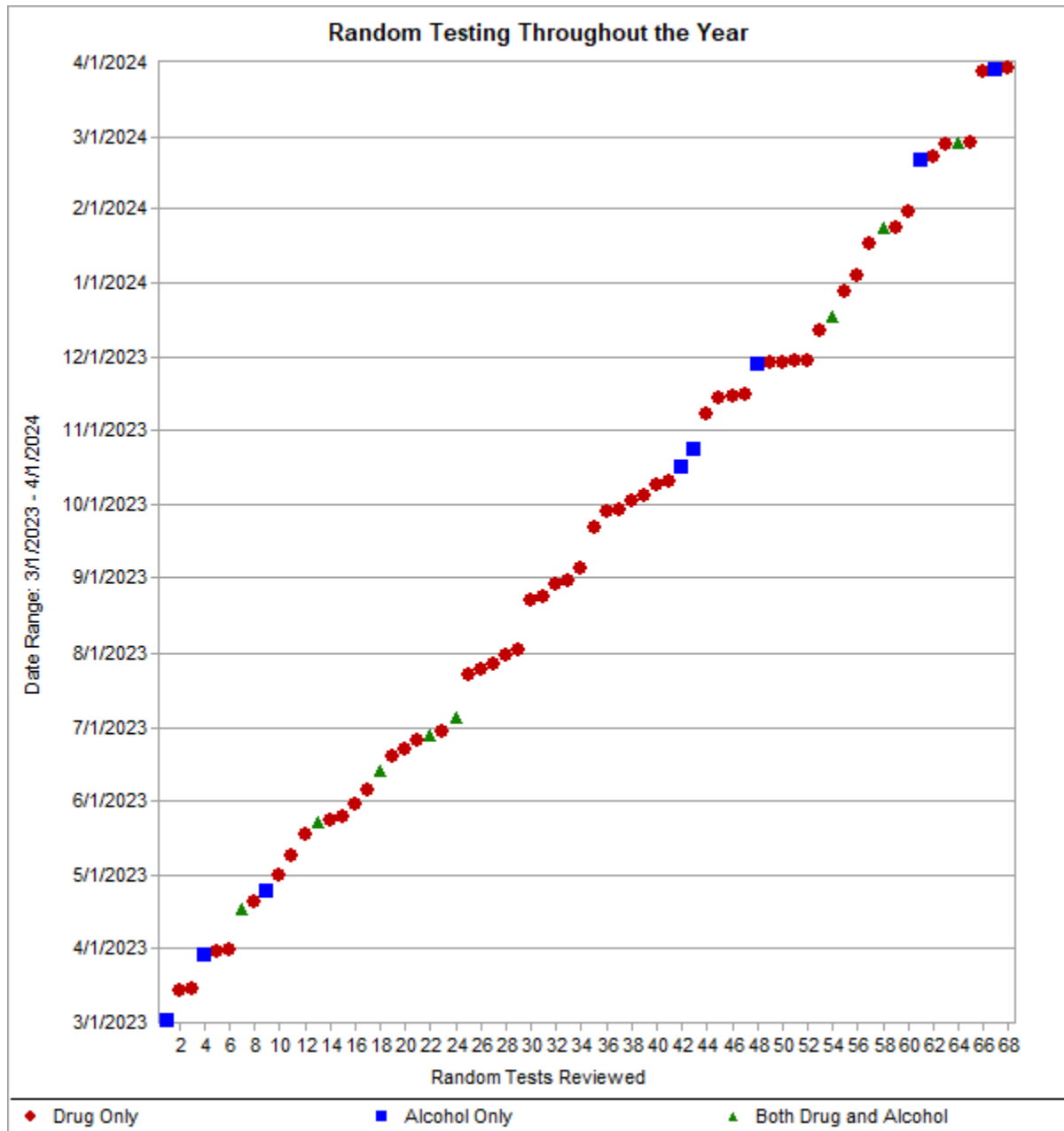
Question: Fatal flaw or correctable flaw: You do not sign AND print your name in Step 4 on the CCF?

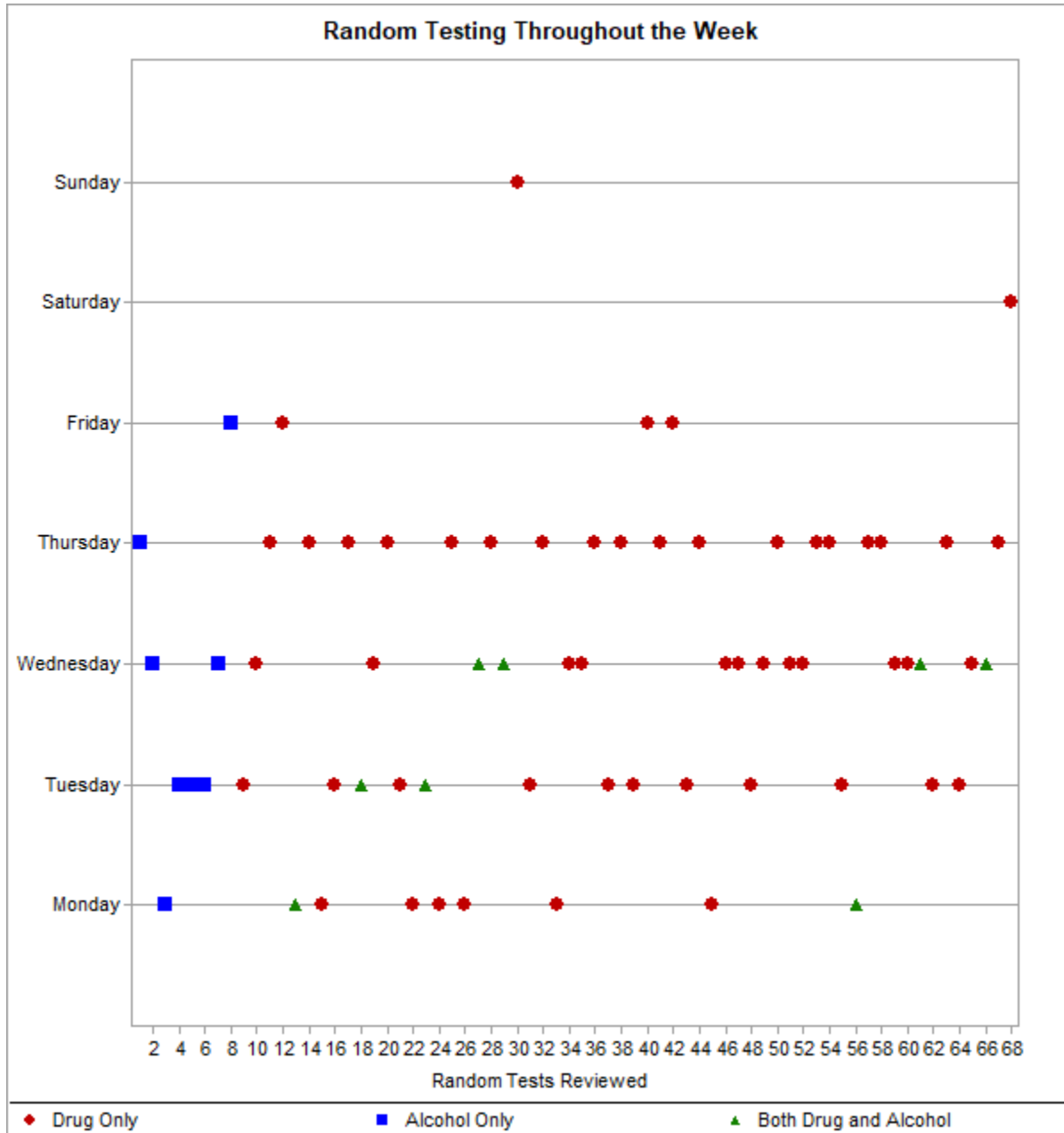
Answer: That is a correctable flaw.

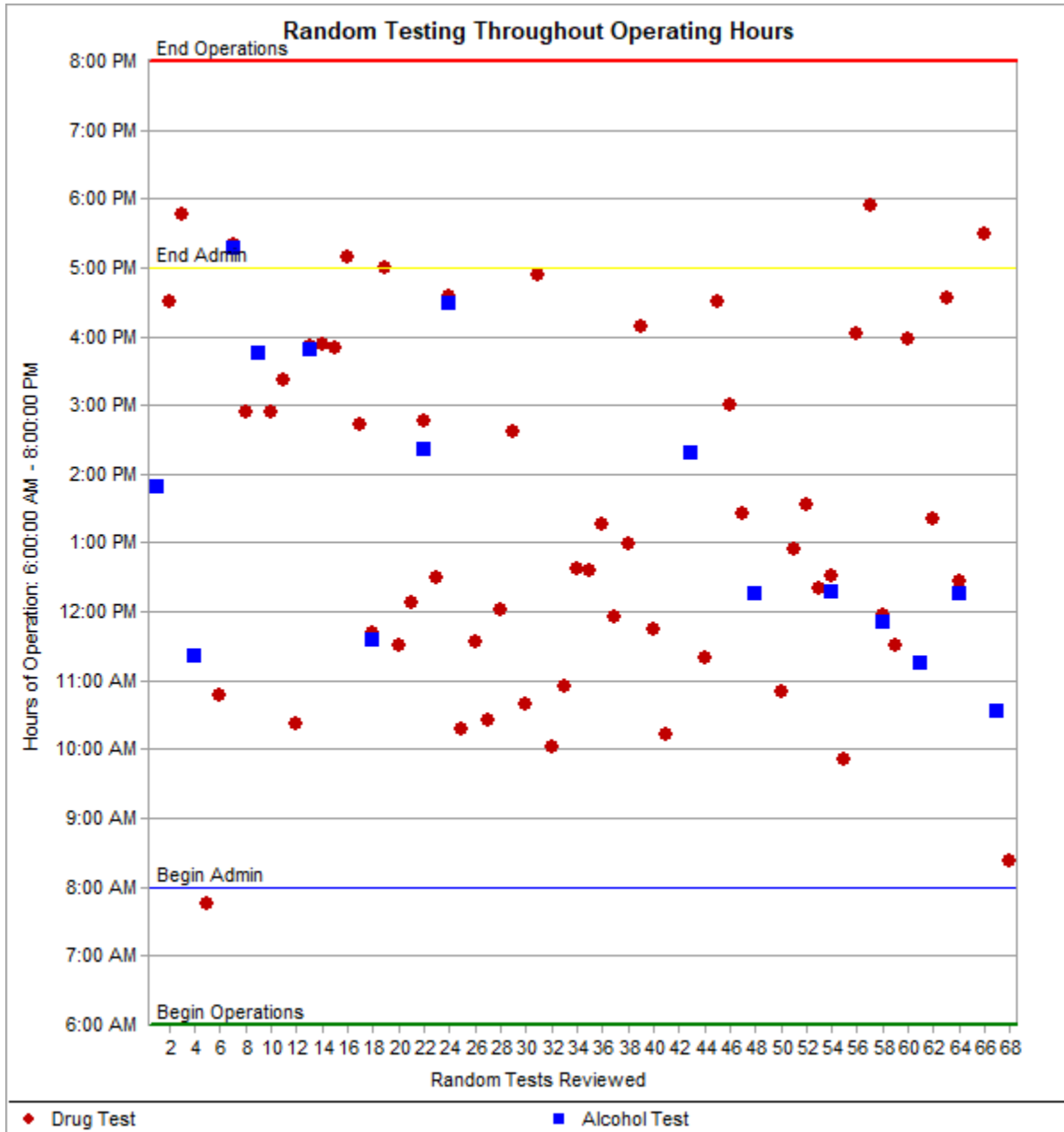
Supplemental Answer: In response to this finding, submit to FTA a statement signed by all DOT collectors certifying they have reviewed and will comply with the requirements of section 40.199(b).

FTA Rule Requirement: Section 40.199(b) states: "The following are "fatal flaws": (3) There is no printed collector's name and no collector's signature."









Keolis Transit America

Policy Manual Review Interview

Keolis Transit America
Interview Date: 4/15/2024

Keolis Transit America - Policy Manual Review Interview

Item	Action Date:	8/1/2024	Question #:	54
1	Question:	PROVISIONS CONTRARY TO FTA or DOT REGULATIONS: Does the policy contain any provisions that are inconsistent with, contrary to, or that frustrate the requirements of Part 655 or Part 40?		
	Answer:	Yes, the following items are not compliant with FTA and DOT regulations.		
	Supplemental Answer:	<p>The policy states or implies that urine specimen testing is the only type of drug testing permitted by DOT. For example, on page 5, the policy states: "...Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" mandates urine drug testing and breath alcohol testing."</p> <p>In response to this policy finding, revise these sections for compliance with the authorization of oral fluid drug testing in the currently adopted version of Part 40 and submit a revised policy to FTA.</p>		
	FTA Rule Requirement:	Section 655.15(j) states: "The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part."		

Drug and Alcohol Program Manager Interview

Keolis Transit America

Interview Date: 4/30/2024

Keolis Transit America - Drug and Alcohol Program Manager Interview

Item Action Date: 8/1/2024 Question #: 26

1

Question: Do you ask an applicant whether or not they have failed or refused a DOT pre-employment test in the previous two years?

Answer: Other. Keolis asks a similar question using the text 'tests administered', but does not specifically reference drug or alcohol pre-employment tests.

Supplemental Answer: In response to this finding, submit a revised question asked of applicants that specifically references 'pre-employment test'. Additionally, submit a statement affirming an understanding of section 40.25(j) and include a copy of the new or revised form.

FTA Rule Requirement: Section 40.25(j) states: "As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section)."

Keolis Transit America - Drug and Alcohol Program Manager Interview

Item Action Date: 8/1/2024 Question #: 29

2

Question: When a safety-sensitive employee is to be on extended leave (90 or more consecutive days) and will not be performing safety-sensitive functions, how do you handle their placement in the random pool? Do you conduct any testing upon their return and prior to their performance of safety-sensitive functions?

Answer: Other. In three records reviewed, employees were tested after being out of the random pool for less than 90 days.

Supplemental Answer: Pre-employment testing is not authorized unless the employee has been removed from the random pool for a minimum of 90 days.

In response to this finding, submit to FTA a signed statement affirming that you have reviewed and understand section 655.41(d). Additionally, describe the procedure implemented to be in compliance with section 655.41(d).

FTA Rule Requirement: Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."

Keolis Transit America - Drug and Alcohol Program Manager Interview

Item Action Date: 8/1/2024 Question #: 33

3

Question: Can you explain the FTA post-accident testing thresholds?

Orange County Transportation Authority

Answer: Other. The DAPM / DER assists in making post-accident determination but did not have an understanding of 'disabling damage'.

Supplemental Answer: The DAPM was not aware that the 'exclusions' listed below must be accounted for post-accident determinations.

In response to this finding, submit a statement, signed by the DAPM and all supervisors who make post-accident testing determinations, affirming an understanding of the FTA post-accident testing thresholds set forth in section 655.4. and specifically of the definition of 'Disabling damage'. Also submit a statement affirming that FTA post-accident tests will only be conducted following events meeting an FTA accident threshold.

655.4 defines 'Disabling Damage' as follows:

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) Inclusion. Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) Exclusions. (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts. (ii) Tire disablement without other damage even if no spare tire is available. (iii) Headlamp or tail light damage. (iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

FTA Rule Requirement: Section 655.4 defines an "accident" as "an occurrence associated with the operation of a vehicle, if as a result: (1) An individual dies; or (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or (3) With respect to an occurrence in which the public transportation vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or (4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation."

Keolis Transit America - Drug and Alcohol Program Manager Interview

Item **Action Date:** 8/1/2024 **Question #:** 48

4

Question: How do you ensure that an employee is only subject to random alcohol testing just before, during, or just after the performance of safety-sensitive functions?

Answer: I don't know.

Supplemental Answer: In response to this finding, submit to FTA a description of the procedure that has been implemented to ensure compliance with section 655.45(i).

FTA Rule Requirement: Section 655.45(i) states: "A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty."

Keolis Transit America - Drug and Alcohol Program Manager Interview

Item **Action Date:** 8/1/2024 **Question #:** 82

5

Question: Do you ensure the MIS report submitted to FTA only includes testing information for FTA-covered employees?

Orange County Transportation Authority

Answer: Other. The covered employees categorized as 'CDL/Non-Revenue' have been mis-categorized and misreported.

Supplemental Answer: Keolis revenue vehicle maintenance employees who hold a CDL and may test drive or move revenue vehicles have been reported on the 2023 Annual MIS in the incorrect category. These employees and their DOT test results must be reported in the Revenue Vehicle Maintenance employee category.

In response to this finding, revise the 2023 MIS submission at <https://damis.dot.gov>, ensuring the correct number of employees is reported for each employee category. Additionally, submit a statement to FTA affirming that you have done so.

FTA Rule Requirement: Section 655.72(e) states: "To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool."

Records Management Interview

Keolis Transit America

Interview Date: 4/30/2024

Keolis Transit America - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	9
1	Question:	Do the records indicate that the employer requests information about an applicant's prior DOT drug and alcohol testing records in accordance with the requirements of section 40.25?		
	Answer:	No.		

Supplemental Answer: While Keolis uses a fully compliant form for this purpose, auditors noted that the forms frequently were not filled out completely and did not include an address for the previous employer. This hinders Keolis' ability to request records from previous employers, and fails to meet the "good faith effort" requirement of section 40.25(d).

In response to this finding, submit to FTA a description of the procedure implemented to maintain compliance with the requirements of section 40.25, specifically section 40.25(d).

FTA Rule Requirement:	Section 40.25(a) states: "As an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions."
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Section 40.25(d) states: "If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information."

Keolis Transit America - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	32
2	Question:	If a post-accident alcohol test is not administered within two hours following the accident, does the employer maintain a record stating the reason the alcohol test was not promptly administered?		
	Answer:	Other. In three cases reviewed, the alcohol test was not administered within two hours, but no record was maintained stating the reason for the delay.		

Supplemental Answer: In response to this finding, describe the procedure that has been implemented to ensure compliance with section 655.44(a)(2)(ii).

FTA Rule Requirement:	Section 655.44(a)(2)(ii) states: "If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered."
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Keolis Transit America - Records Management Interview

Item	Action Date:	5/10/2024	Question #:	66
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Date:

3

Question: After the MRO required an immediate observed collection, did the employer immediately direct the employee to submit to recollection under direct observation?

Answer: No.

Supplemental Answer: In one case reviewed, the MRO required an employee to submit to recollection under direct observation (see the MRO result from 6/5/2023 related to specimen ID 2082781520). This employee was retested, but the second test was not directly observed.

In response to this finding, the employee must immediately be sent for the required directly observed test. Submit copies of the CCF and MRO result for this retest to FTA by 5/10/2024.

FTA Rule Requirement: Section 40.67(a) states: "As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if: (1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result; (2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or (3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see 40.197(b)(1))."

Breath Alcohol Technician Interview

Concentra Anaheim

Interview Date: 4/30/2024

Keolis Transit America - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	14
1	Question:	After a screening test result less than 0.02, does the BAT complete Step 3 of the ATF by signing and dating the certification?		
	Answer:	Other. The technician marked the "15-minute Wait" box when no confirmation testing was required.		
	Supplemental Answer:	In response to this finding, submit to FTA a statement signed by all DOT breath alcohol technicians (BATs) affirming their understanding to mark Yes/No in this section only when a confirmation test is conducted which would require the observation of the 15-minute waiting period.		
	FTA Rule Requirement:	Section 40.247(a) states: "If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following: (1) Sign and date Step 3 of the ATF; and (2) Transmit the result to the DER in a confidential manner, as provided in 40.255."		

Keolis Transit America - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	40
2	Question:	Fatal or correctable flaw: You use a non-DOT ATF for a DOT test?		
	Answer:	That is a fatal flaw.		
	Supplemental Answer:	In response to this finding, submit to FTA a statement signed by all DOT BATs certifying they have reviewed and will comply with the requirements of section 40.269(c).		
	FTA Rule Requirement:	Section 40.269 states: "As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are: (c) The BAT or STT uses a non-DOT form for the test (see 40.225(a))."		

Keolis Transit America - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	44
3	Question:	Fatal or correctable flaw: The printer fails to print the confirmation test result?		
	Answer:	That is a correctable flaw.		
	Supplemental Answer:	In response to this finding, submit to FTA a statement signed by all DOT BATs certifying they have reviewed and will comply with the requirements of section 40.267(c)(4).		
	FTA Rule Requirement:	Section 40.267 states: "As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the		

DER that the test was cancelled and must be treated as if the test never occurred. These problems are: (c) In the case of a confirmation test: (4) The EBT does not print the result (see 40.253(f))."

Keolis Transit America - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	45
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4	<p>Question: Fatal or correctable flaw: The sequential test number printed by the EBT did not match the test number displayed on the device?</p> <p>Answer: That is a correctable flaw.</p>
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Supplemental Answer: In response to this finding, submit to FTA a statement signed by all DOT BATs certifying they have reviewed and will comply with the requirements of section 40.267(b).

FTA Rule Requirement:	<p>Section 40.267 states: "As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are: (b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see 40.253(c), (e) and (f))."</p>
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Urine Collections Interview

Concentra Anaheim

Interview Date: 4/30/2024

Keolis Transit America - Urine Collections Interview

Item **Action Date:** **8/1/2024** **Question #:** **4**

1

Question: Did the collector use the Federal Drug Testing Custody and Control Form?

Answer: Other. The collector used an expired Federal CCF.

Supplemental Answer: In response to this finding, submit a statement affirming that all expired Federal CCFs have been discarded.

FTA Rule Requirement: Section 40.45(a) states: "The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program."

Keolis Transit America - Urine Collections Interview

Item **Action Date:** **8/1/2024** **Question #:** **64**

2

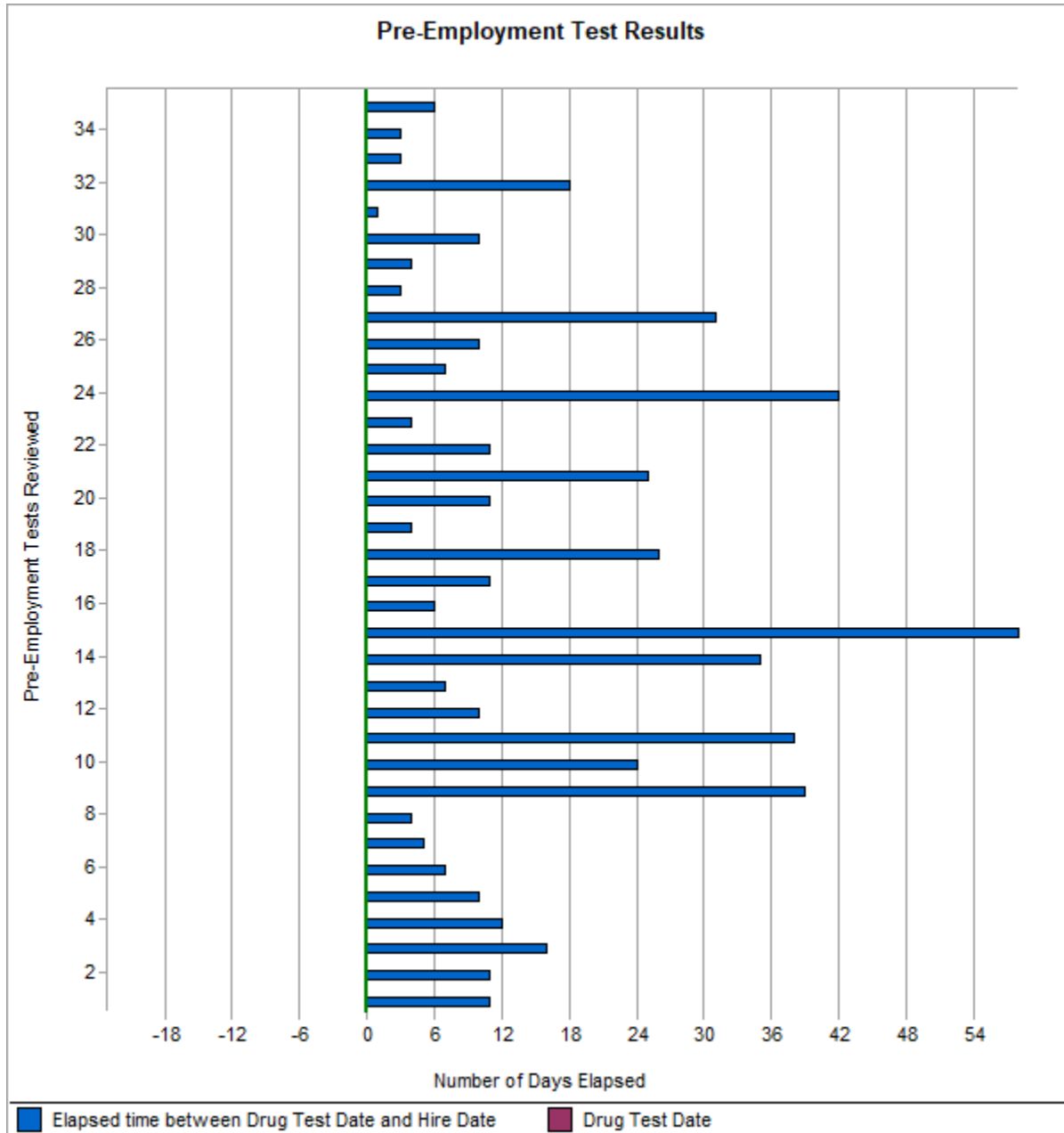
Question: What would you do if the employee admits to adulterating or substituting their specimen?

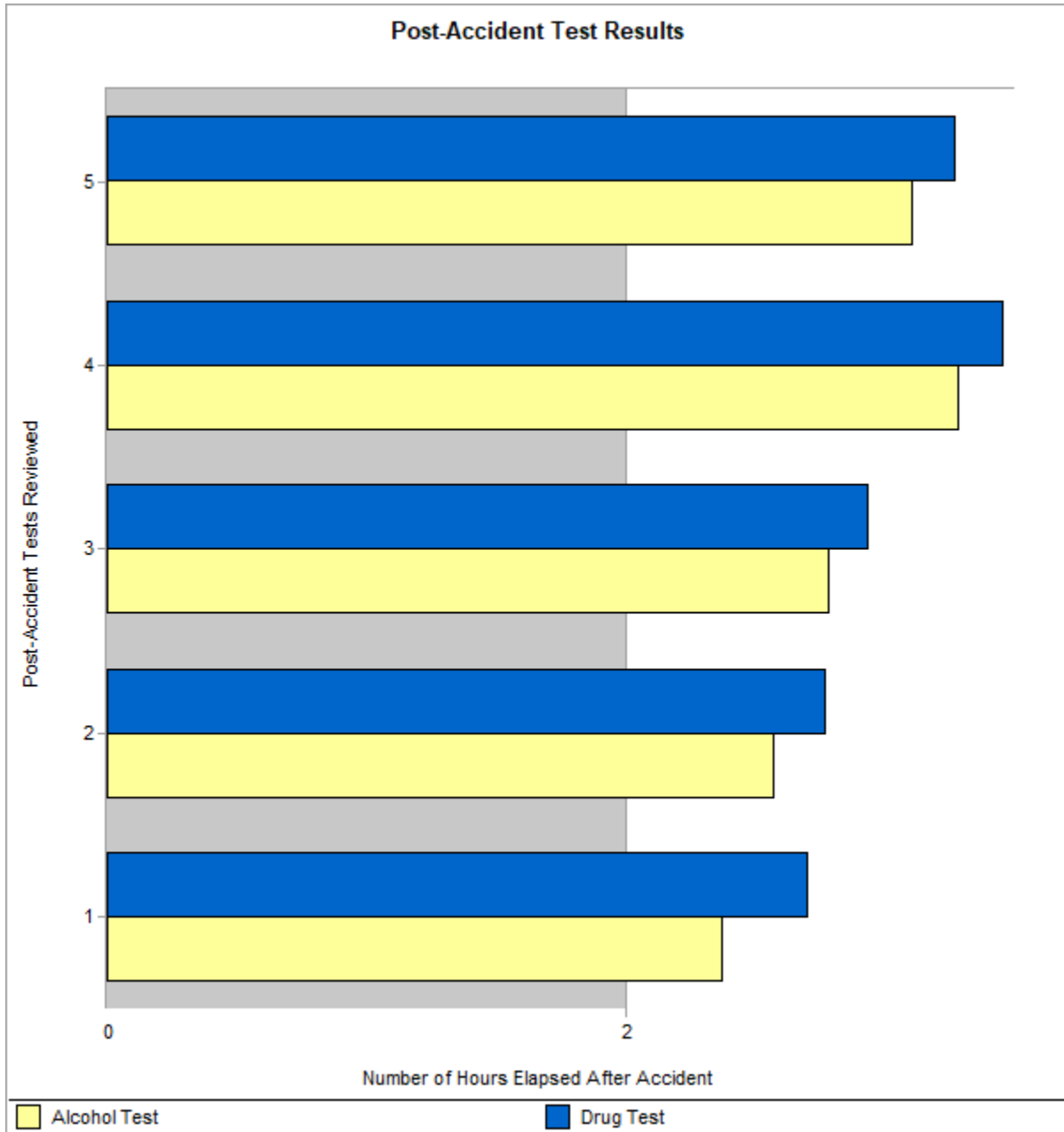
Answer: Conduct a directly observed collection.

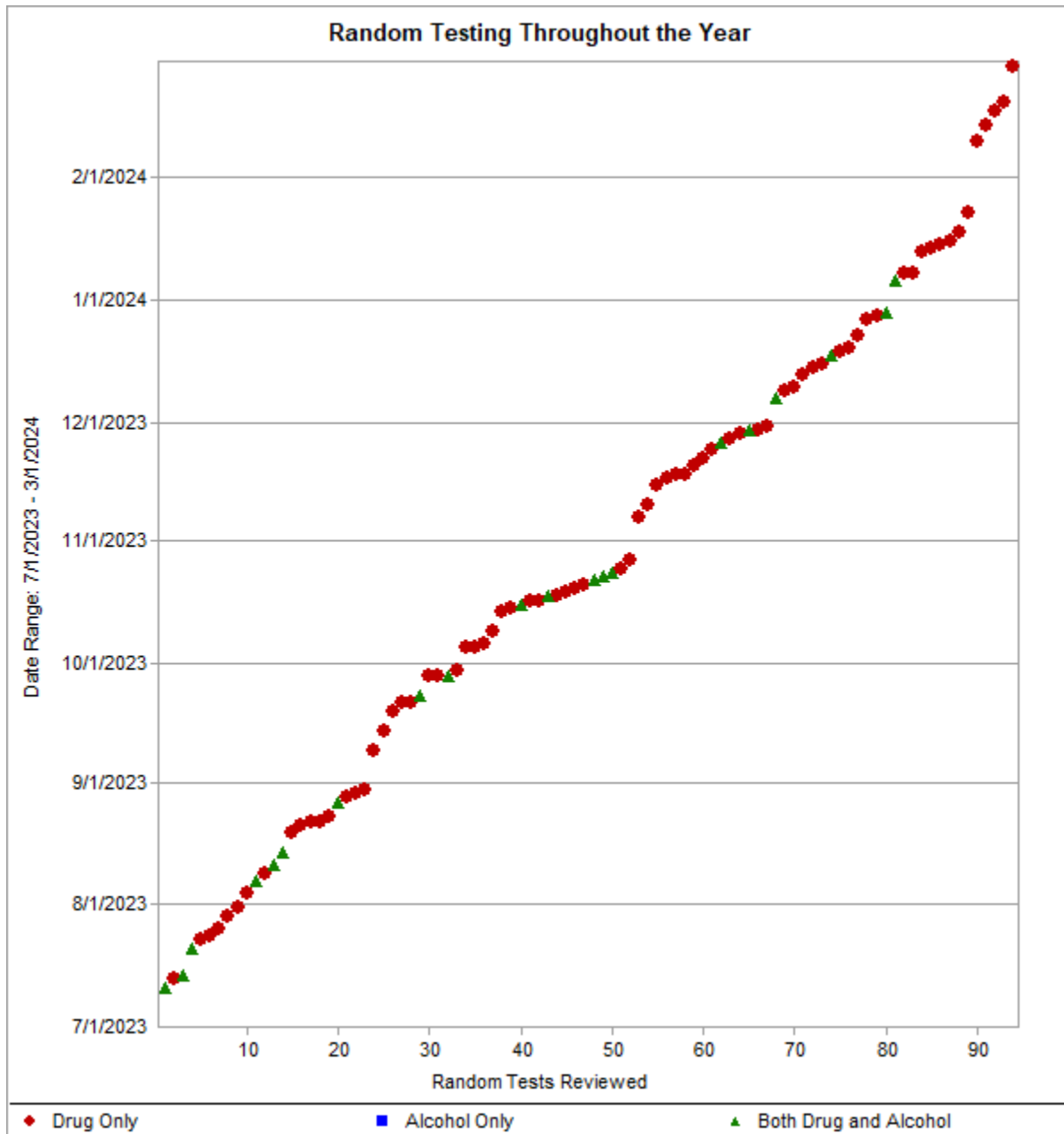
Supplemental Answer: In response to this finding, submit to FTA a statement signed by all DOT collectors certifying they have reviewed and will comply with the requirements of sections 40.191(a)(11) and 40.191(d)(1).

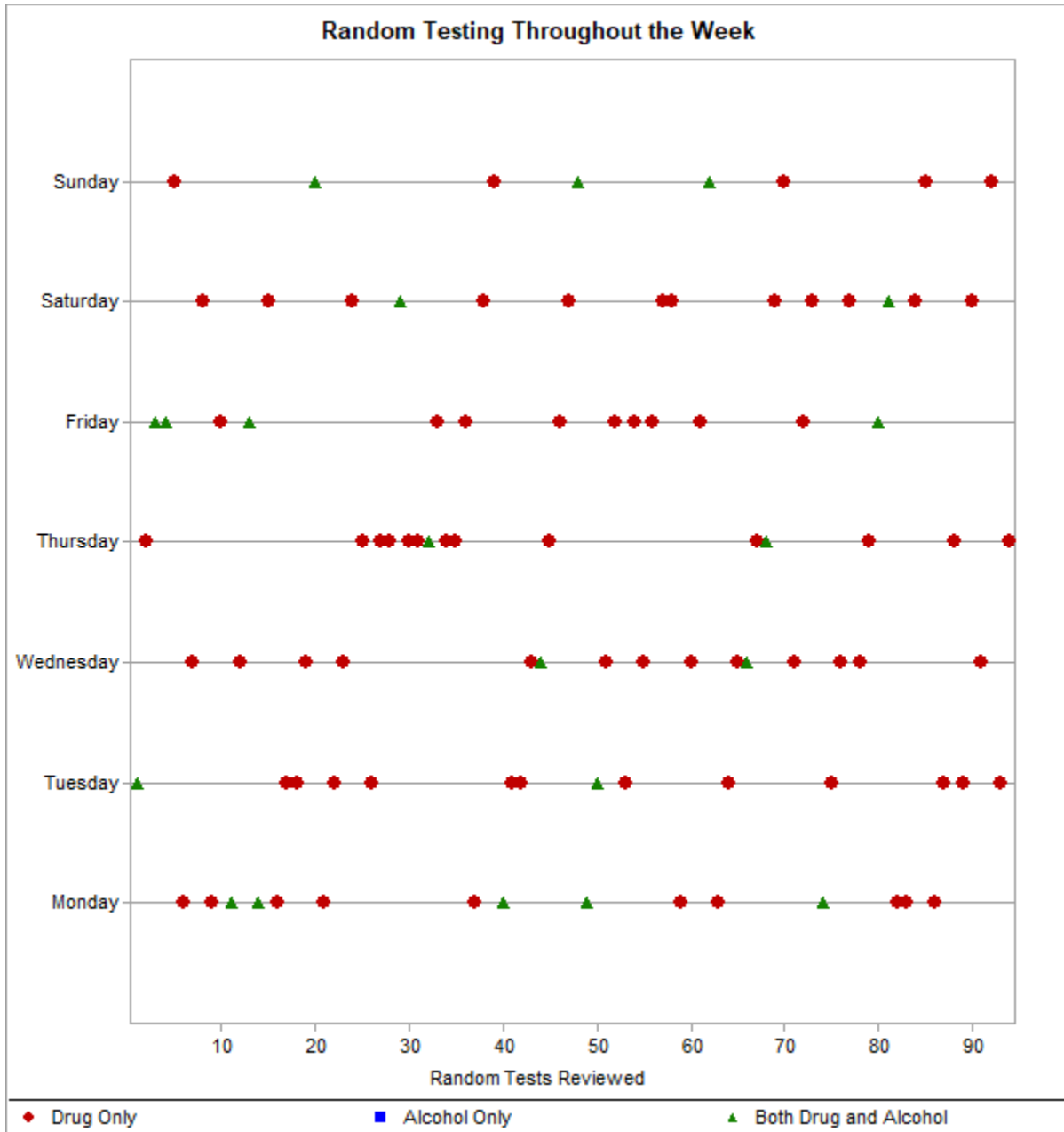
FTA Rule Requirement: Section 40.191(a) states: "As an employee, you have refused to take a drug test if you: (11) Admit to the collector or MRO that you adulterated or substituted the specimen."

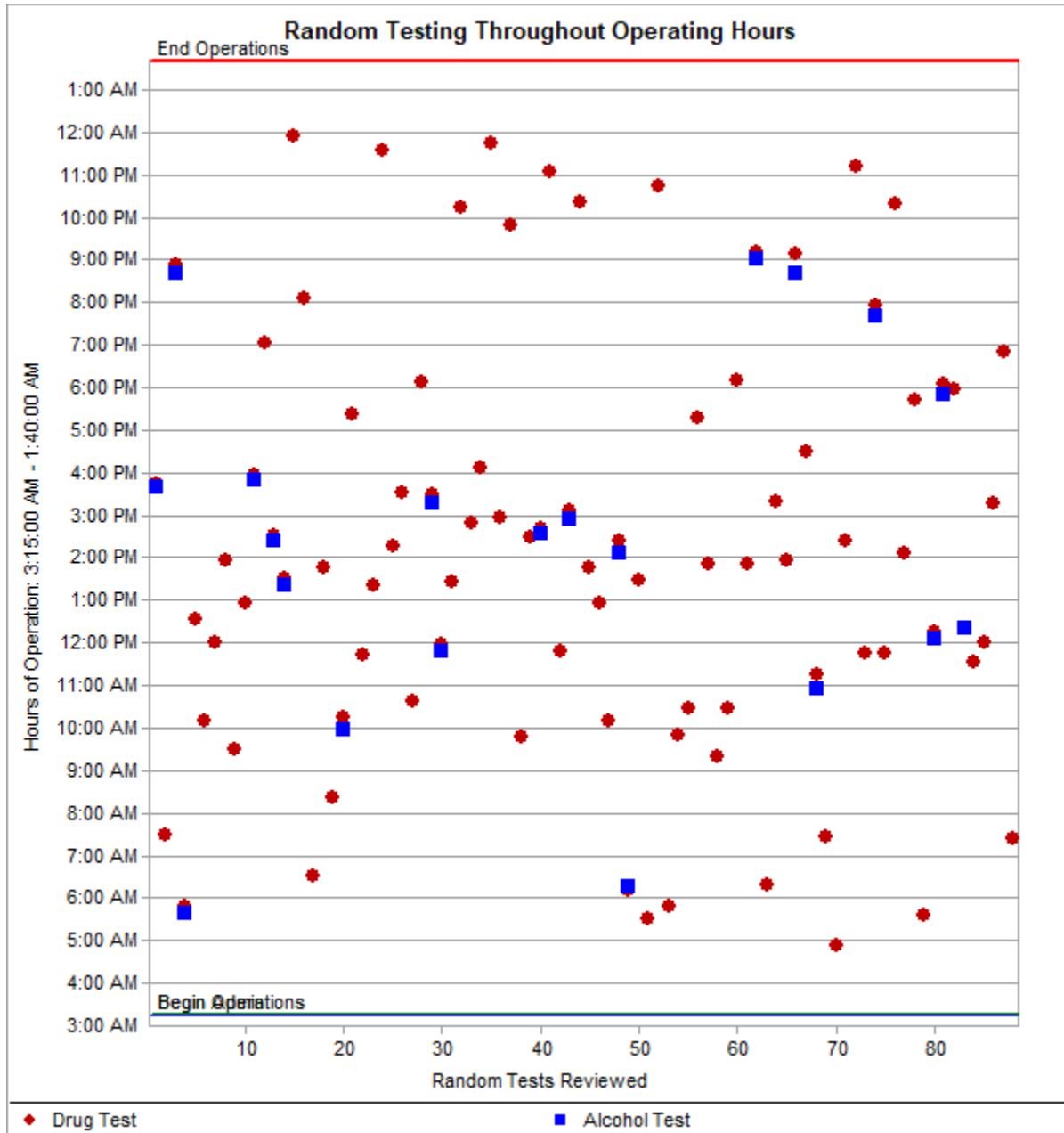
Section 40.191(d)(1) states: "As the collector, you must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF."











Transdev

Policy Manual Review Interview

Transdev

Interview Date: 04/15/2024

Finding: Not deficient with FTA requirements.

Drug and Alcohol Program Manager Interview

Transdev

Interview Date: 5/1/2024

Transdev - Drug and Alcohol Program Manager Interview

Item	Action Date:	8/1/2024	Question #:	29
1	Question:	When a safety-sensitive employee is to be on extended leave (90 or more consecutive days) and will not be performing safety-sensitive functions, how do you handle their placement in the random pool? Do you conduct any testing upon their return and prior to their performance of safety-sensitive functions?		
	Answer:	Other. In eight records reviewed, employees were tested after being out of the random pool for less than 90 days.		
	Supplemental Answer:	Pre-employment testing is not authorized unless the employee has been removed from the random pool for a minimum of 90 days.		
		In response to this finding, submit to FTA a signed statement affirming that you have reviewed and understand section 655.41(d). Additionally, describe the procedure implemented to be in compliance with section 655.41(d).		
	FTA Rule Requirement:	Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."		

Transdev - Drug and Alcohol Program Manager Interview

Item	Action Date:	8/1/2024	Question #:	64
2	Question:	What is the consequence when an employee has an alcohol test result greater than or equal to 0.02, but less than 0.04?		
	Answer:	Other. The DAPM was aware there are consequences but did not know the specifics of the consequences.		
	Supplemental Answer:	The DAPM stated the employee must be removed from safety-sensitive duties for 32 hours. Section 655.35(a) mandates removal for at least eight hours.		
		In response to this finding, provide a statement affirming that the DAPM has reviewed and now fully understands the requirement to remove an employee from safety-sensitive functions for a minimum of eight hours following an alcohol confirmation test result of 0.02 or greater but less than 0.04.		
	FTA Rule Requirement:	Section 655.35(a) states: "No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until: (1) The employee's alcohol concentration measures less than 0.02; or (2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test."		
		Section 655.62 states: "If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs."		

Records Management Interview

Transdev

Interview Date: 5/1/2024

Transdev - Records Management Interview

Item	Action Date:	5/10/2024	Question #:	15
1	Question:	Do the records indicate that no more than 90 days elapse between the receipt of the negative pre-employment test result and the date the employee first performs a safety-sensitive function and is placed into the random testing pool?		
	Answer:	Other. In one case reviewed, 91 days elapsed between the receipt of the negative pre-employment test result and the employee's first performance of a safety-sensitive function.		
	Supplemental Answer:	In response to this finding, immediately send the employee for a pre-employment drug test. Submit to FTA a copy of the CCF and MRO-verified result for this test by 5/10/2024.		
	FTA Rule Requirement:	Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."		

Transdev - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	41
2	Question:	Is random testing conducted at all times of the day when safety-sensitive functions are performed?		
	Answer:	Other. During the records-review period, no random testing was performed after 10 p.m. or before 6 a.m.		
	Supplemental Answer:	In response to this finding, submit to FTA documentation (notification form, ATF/CCF, MRO verification) of one random test during the response period where the notification takes place between 11 p.m. and 5 a.m. If no employees selected are scheduled for work during these hours, provide evidence in support of that circumstance.		
	FTA Rule Requirement:	Section 655.45(g) states: "Random testing must be conducted at all times of day when safety-sensitive functions are performed."		

Transdev - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	42
3	Question:	Do the records indicate that employees proceed immediately to the collection site upon notification for random testing?		
	Answer:	Other. The notification form includes an expected time of arrival at the collection site.		
	Supplemental Answer:	This procedure negates the immediacy requirement of random testing. In response to this finding, submit to FTA a statement signed by all pertinent staff (those who inform employees of random testing) affirming an understanding that, once notified of random selection, employees are to proceed immediately as required by section 655.45(h). Furthermore, submit to FTA a new or updated notification form.		
	FTA Rule	Section 655.45(h) states: "Each employer shall require that each covered employee who		

Orange County Transportation Authority

Requirement: is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately."

Transdev - Records Management Interview

Item	Action Date:	8/1/2024	Question #:	49
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Question: Do the records show the employer has made a DOT SAP referral after an employee provided a confirmation alcohol result of less than 0.04, after a DOT drug or alcohol test was cancelled, or after the employee failed or refused a non-DOT test?

Answer: Yes.

Supplemental Answer: In one case reviewed, an employee had a confirmed result of 0.02 on a DOT alcohol test. This employee was told the test was "positive" and was referred to a list of Substance Abuse Professionals (SAPs). Results of less than 0.04 are not DOT violations. Employees may not be told that such results are positive DOT tests nor may they be referred to SAPs.

In response to this finding, submit a statement affirming that employees with confirmed alcohol results of less than 0.04 will not be told they have a DOT violation and will not be referred to a SAP.

FTA Rule Requirement: Section 40.3 defines a "substance abuse professional (SAP)" as "a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare."

Section 40.287 states: "As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent."

Breath Alcohol Technician Interview

Pacific Medical Clinic

Interview Date: 5/1/2024

Transdev - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	24
1	Question:	What do you do if the employee does not follow your instructions concerning the waiting period?		
	Answer:	Discontinue the test.		
Supplemental Answer:		In response to this finding, submit to FTA a statement signed by all DOT BATs certifying they have reviewed and will comply with the requirements of sections 40.251(a)(2)(iv) and 40.251(a)(3).		
FTA Rule Requirement:		Section 40.251(a)(2)(iv) states that the BAT must tell the employee: "That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed." Section 40.251(a)(3) states: "If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF."		

Transdev - Breath Alcohol Technician Interview

Item	Action Date:	8/1/2024	Question #:	40
2	Question:	Fatal or correctable flaw: You use a non-DOT ATF for a DOT test?		
	Answer:	That is a fatal flaw.		
Supplemental Answer:		In response to this finding, submit to FTA a statement signed by all DOT BATs certifying they have reviewed and will comply with the requirements of section 40.269(c).		
FTA Rule Requirement:		Section 40.269 states: "As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are: (c) The BAT or STT uses a non-DOT form for the test (see 40.225(a))."		

Transdev - Breath Alcohol Technician Interview

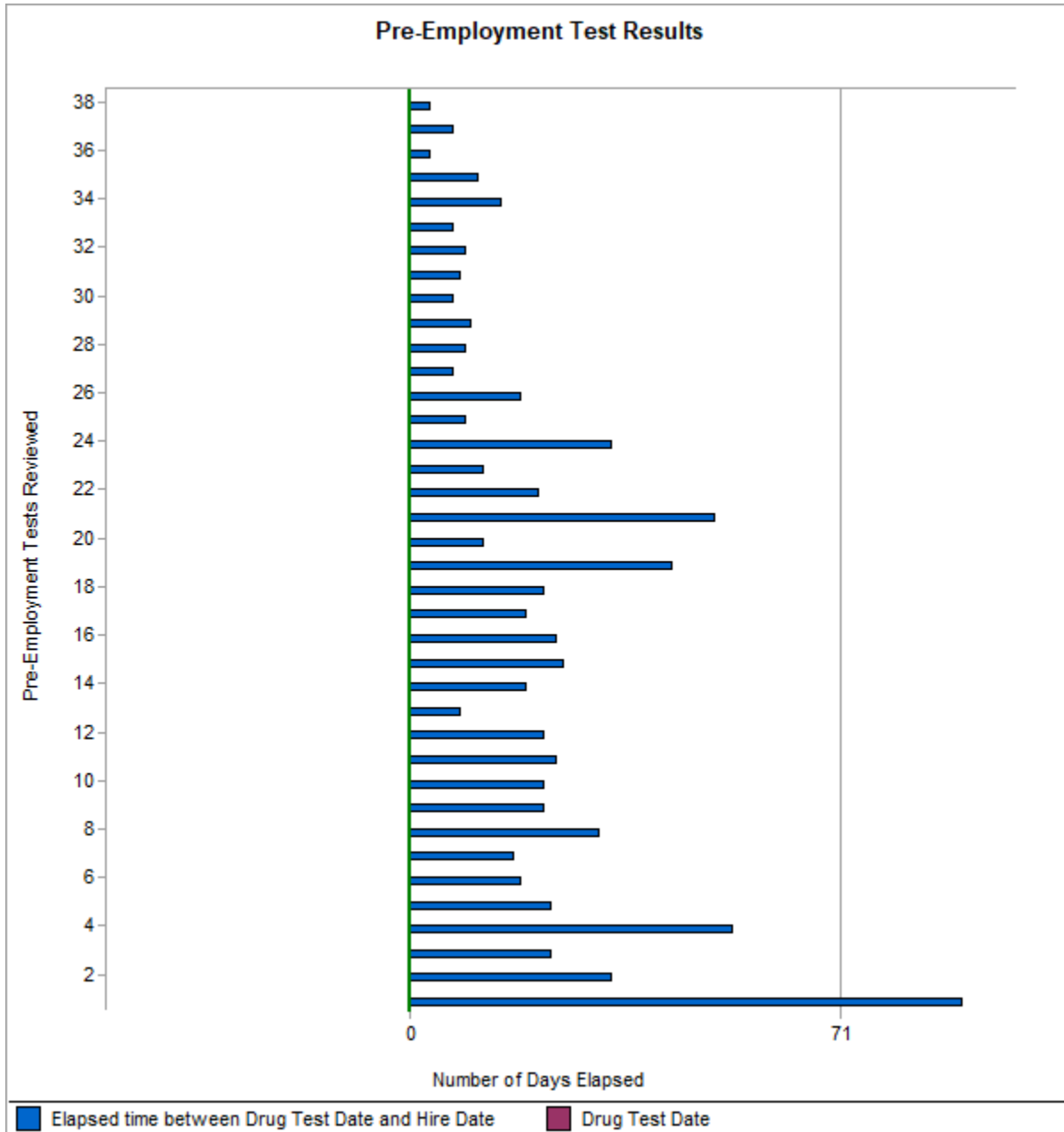
Item	Action Date:	8/1/2024	Question #:	41
3	Question:	Fatal or correctable flaw: You do not sign the ATF?		
	Answer:	That is a fatal flaw.		
Supplemental Answer:		In response to this finding, submit to FTA a statement signed by all DOT BATs certifying they have reviewed and will comply with the requirements of section 40.269(a).		
FTA Rule Requirement:		Section 40.269 states: "As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are: (a) The BAT or STT does not sign the ATF (see 40.247(a)(1) and 40.255(a)(1))."		

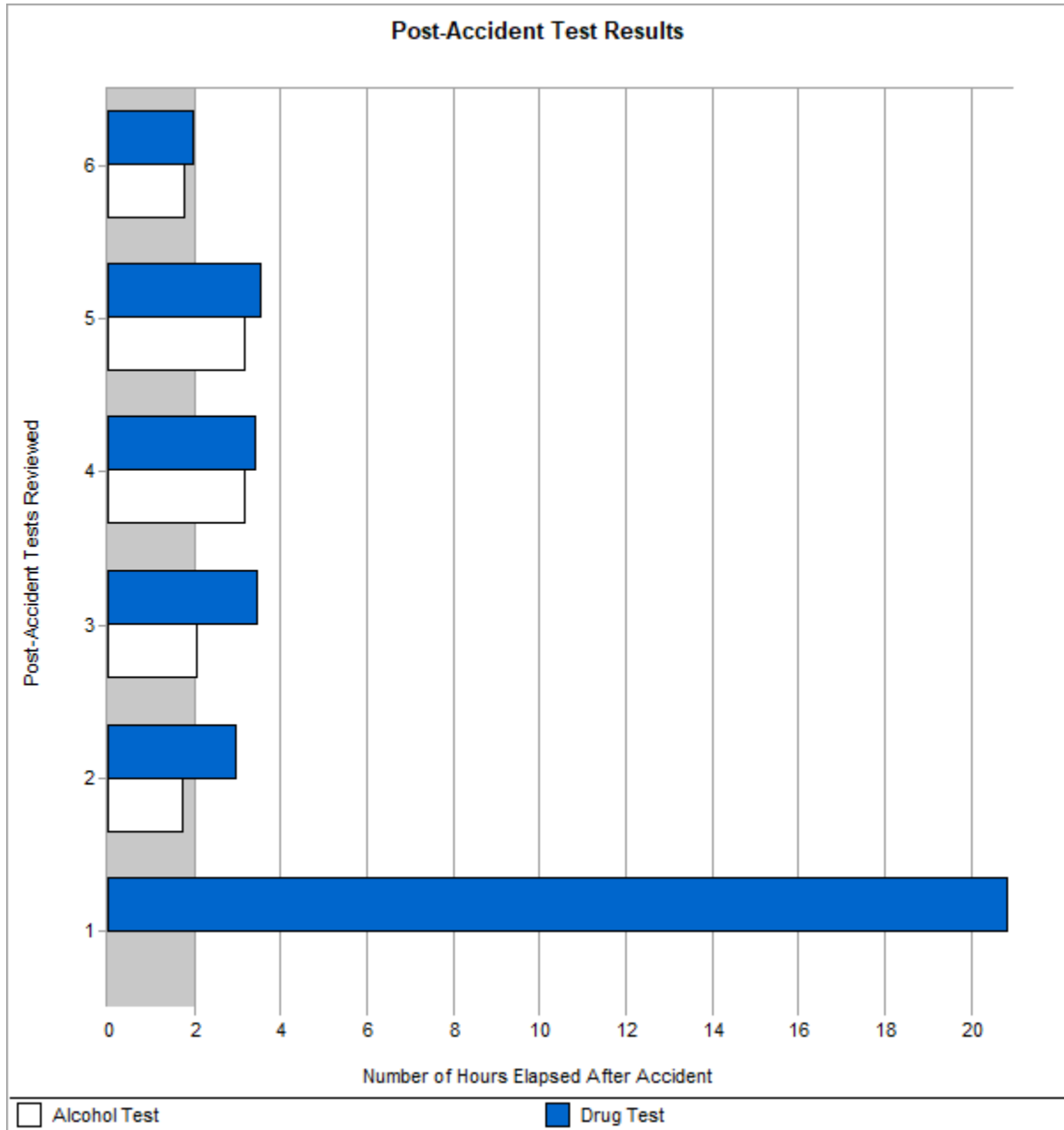
Urine Collections Interview

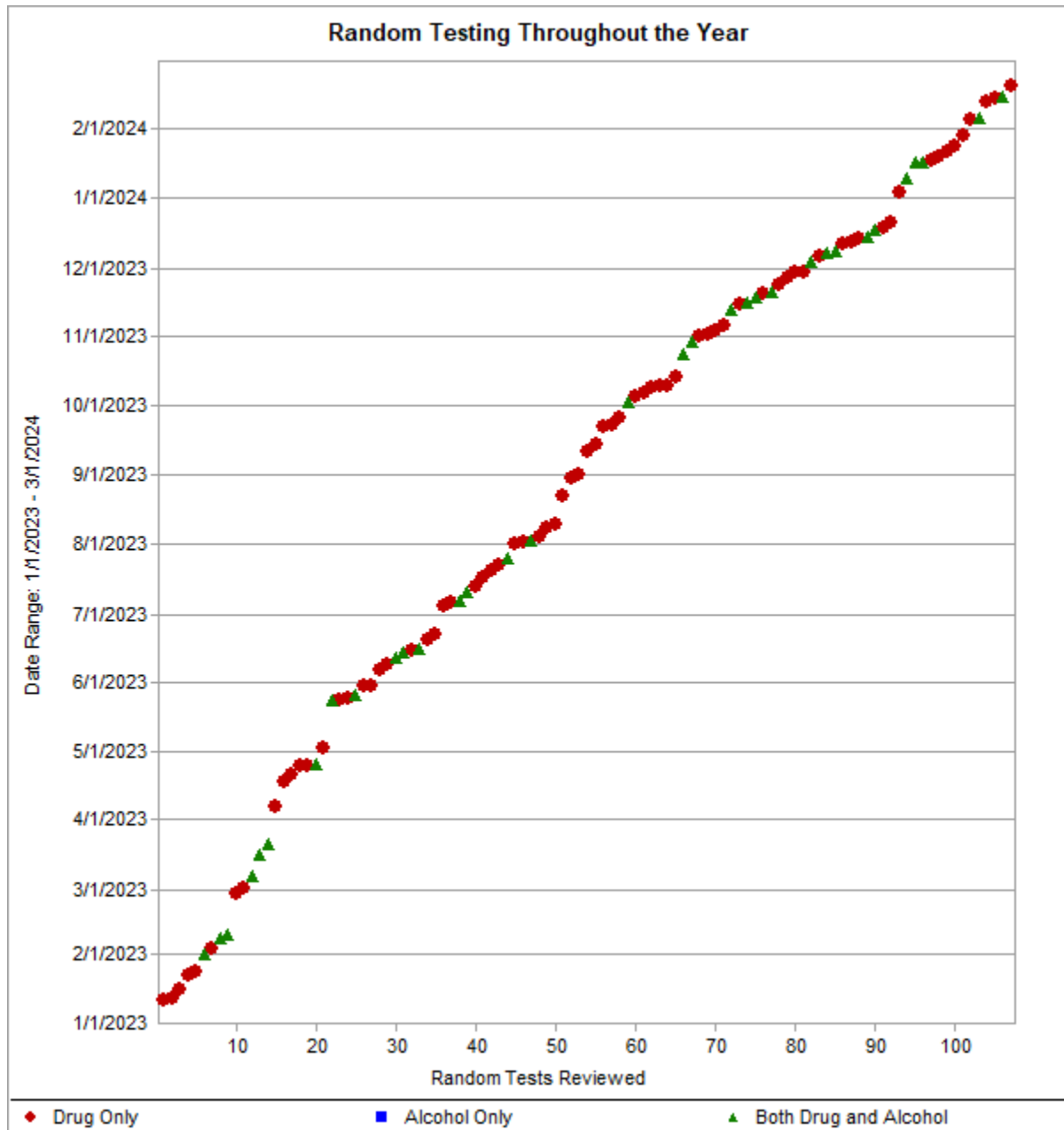
Pacific Medical Clinic

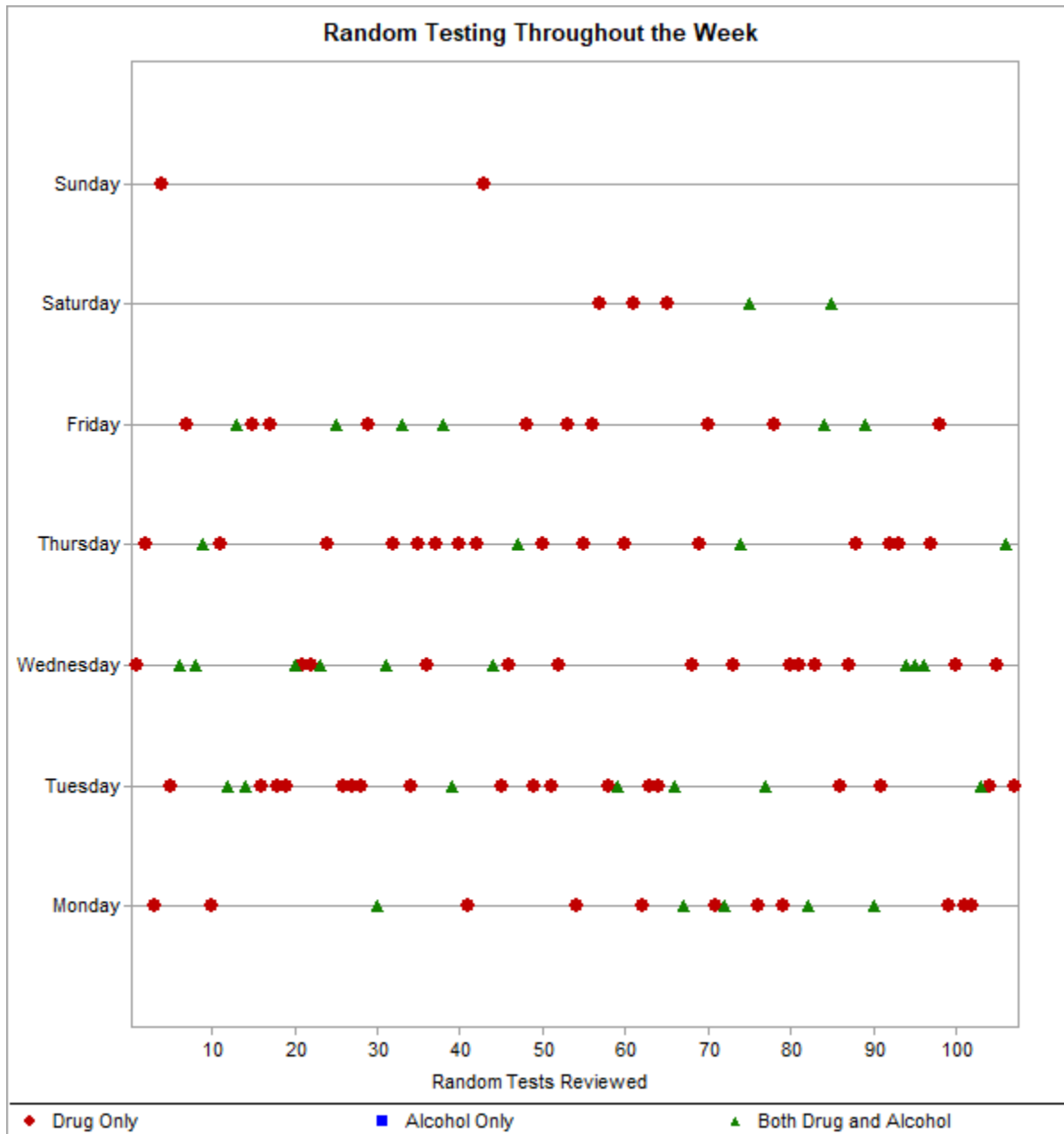
Interview Date: 05/01/2024

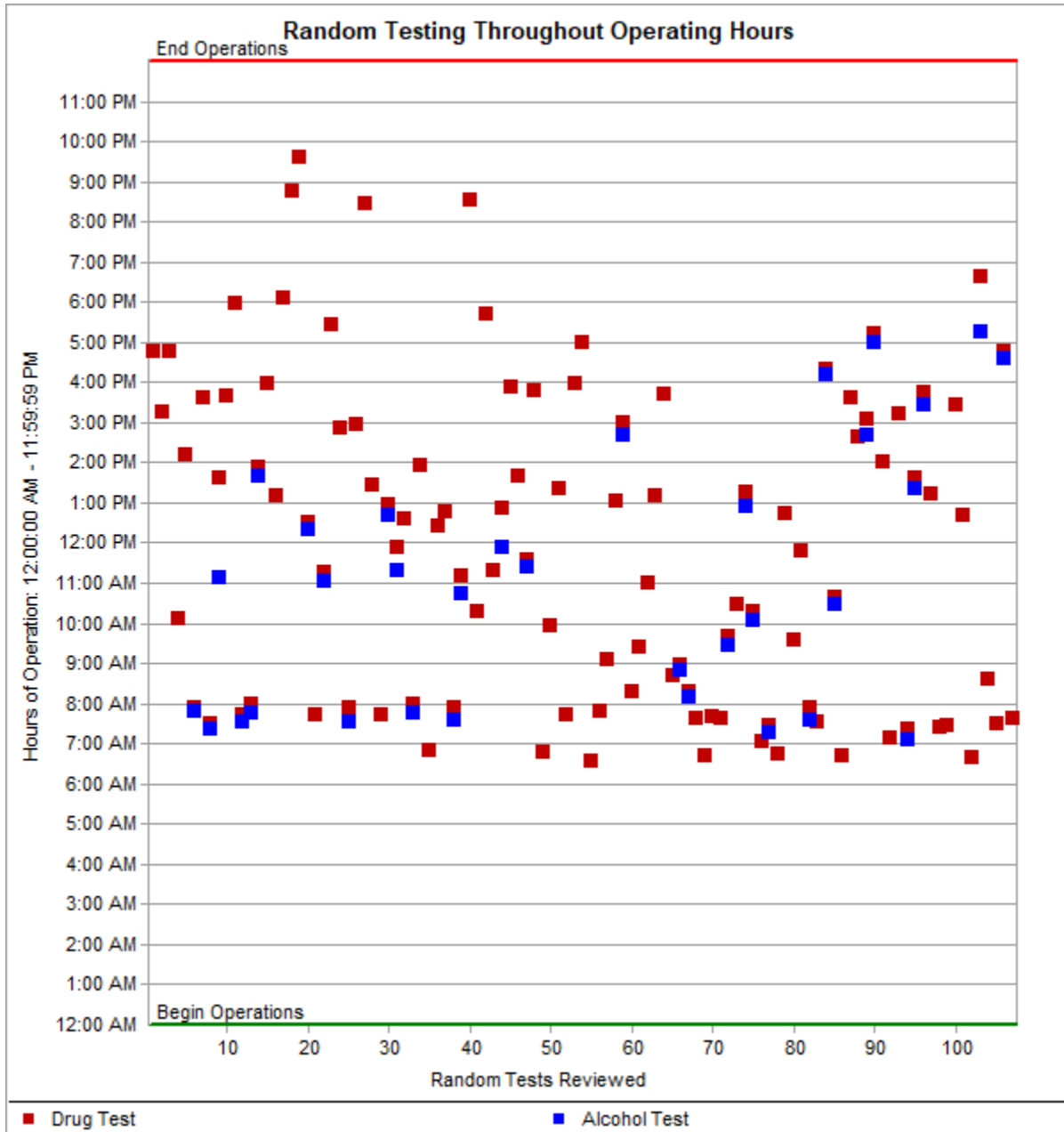
Finding: Not deficient with FTA requirements.













U.S. Department
of Transportation

Federal Transit
Administration

Headquarters

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

10/8/2024

Presented Electronically

Darrell E. Johnson
Chief Executive Officer
Orange County Transportation Authority
550 S Main St
Orange, CA 92868

RE: FTA Drug and Alcohol Compliance Auditing Program

Dear Mr. Johnson,

The Federal Transit Administration has reviewed the responses of the Orange County Transportation Authority (OCTA) to the formally-submitted findings of the Drug and Alcohol Compliance Audit Team. Provided that all policies and procedures implemented in response to the audit are fully adopted, the Federal Transit Administration finds OCTA to currently be in compliance with the federally-mandated Drug and Alcohol Testing Program.

It is important for you and your organization to diligently maintain all aspects of the drug and alcohol testing program so all will remain in compliance in the future.

Thank you for your cooperation and for being prompt in your response. Please let me know at any time if I can be of further service to you.

Sincerely,

A handwritten signature in black ink that reads "Lyon Rosario".

Lyon Rosario
Sr. Drug and Alcohol Program Manager
FTA Office of Transit Safety and Oversight

Electronic cc:

Steve Elkins, Orange County Transportation Authority
Janet Sutter, Orange County Transportation Authority
Matthew DesRosier, Orange County Transportation Authority
Tinu Vu, Orange County Transportation Authority
Ray Tellis, FTA Region IX Administrator
Charlene Lee Lorenzo, FTA Region IX
Casey Goldin, FTA Office of Transit Safety & Oversight
Melonie Barrington, FTA Office of Transit Safety & Oversight
Mike Redington, USDOT/Volpe Center
Lori DeCoste, USDOT/Volpe Center
John Spelman, Cahill Swift, LLC