



**April 8, 2015**

**To:** Finance and Administration Committee

**From:** Darrell 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 MV Transit and Yellow Cab of Greater Orange County. Management has addressed all deficiencies, and the audit is now closed.

### **Recommendations**

Receive and file the Federal Transit Administration Drug and Alcohol Compliance Audit.

### **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 December 2, 2014 to December 5, 2014, of the Orange County Transportation Authority (OCTA) and contractors MV Transit (MV) and Yellow Cab of Greater Orange County (Yellow Cab).

***Discussion***

Results of the FTA audit were discussed with management on December 5, 2014. Responses to the deficiencies identified, along with evidence of corrective action, were submitted on March 3, 2014, and the FTA issued a letter closing the audit on March 6, 2015.

OCTA was found fully compliant in two of the seven areas reviewed. Eight reported deficiencies were resolved through updates and revisions to the Drug and Alcohol Policy Manual which was adopted by the Board of Directors on February 9, 2015. The remaining nine deficiencies were addressed through revisions to the training program, updates to procedures, and affirmation from applicable personnel that requirements have been reviewed and are in place.

MV was found compliant in four of the five areas reviewed. Two deficiencies were identified that related to the process for urine collection, and these were addressed by obtaining affirmation from applicable personnel that the cited requirements are in place.

Fourteen deficiencies were identified related to Yellow Cab. Two of the deficiencies were resolved through updates to the Drug and Alcohol Policy Manual, and the remaining twelve were resolved through updates to procedures, training, and affirmations from applicable personnel that the cited requirements are in place.

***Summary***

The FTA has completed a Drug and Alcohol Compliance audit of OCTA and contractors MV and Yellow Cab. All deficiencies identified during the review have been adequately addressed.

***Attachments***

- A. Letter to Darrell Johnson, Chief Executive Officer, from Lyon Rosario, Federal Transit Administration, Dated March 6, 2015
- B. Finding Response Report, Drug and Alcohol Compliance Audit, 12/2/2014 to 12/4/2014, Orange County Transportation Authority

**Prepared by:**



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



U.S. Department  
of Transportation

Headquarters

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

Federal Transit  
Administration

March 6, 2015  
Electronic, Portable Document

Mr. Derrell Johnson  
Chief Executive Officer  
Orange County Transportation Authority  
550 South Main Street  
P.O. Box 14184  
Orange, CA 92863-1584

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 to the formally-submitted findings of the Drug and Alcohol Compliance Audit Team. Based on the information provided, the Federal Transit Administration has found the Orange County Transportation Authority 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 that all will remain in compliance in the future.

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

Sincerely,

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

Lyon Rosario

Electronic cc:

Alyssa Vanesler, Associate Human Resources Representative and DAPM  
Jennifer Cahill, Senior Manager, Human Resources  
Janet Sutter, Executive Director, Internal Audit  
Curt Burlingame, Department Manager, Contracted Services  
Leslie Rogers, Administrator, FTA Region IX  
Bernardo Bustamente, Oversight Manager, FTA Region IX  
Ray Tellis, LA Metro Office  
Lori DeCoste, USDOT/Volpe Center  
Joseph Lofgren, Cahill Swift, LLC



Federal Transit  
Administration

**Finding Response Report  
Drug and Alcohol Compliance Audit  
12/2/2014 to 12/4/2014**

**Orange County Transportation Authority**

**Compliance Date**

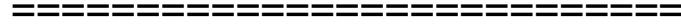
**3/6/2015**



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

# Orange County Transportation Authority

## There are no open items for Orange County Transportation Authority



### Policy Manual Review Interview

#### Policy Manual Review Interview-1

Ques. #	Action Date:	Item closed	<u>Resolved Date:</u>	<u>3/4/2015</u>
<b>14</b>	Question:	ALCOHOL USAGE: Does the policy indicate that alcohol use is impermissible for 4 hours prior to performing a safety-sensitive duty, while on-call to perform a safety-sensitive duty and while performing a safety-sensitive duty?		
	Answer:	Other.		
	Supplemental Answer:	The Working Copy, Section 3.1 at page 17, requires an employee to refrain from consuming alcohol for "a minimum of eight (8) hours of reporting to work or during the hours that he/she is subject to duty and must be clear of the effects of alcohol." The sentence is not bolded, indicating that OCTA considers the wording is per FTA requirement. As seen in the citation below, the federal requirement prohibits alcohol consumption "within four hours of performing a safety-sensitive function" and during the "specified on-call hours." In response to this audit finding, in the revised and final revision of the Policy Manual submitted with the audit response, either bold this sentence to indicate that the requirement reflects OCTA policy rather than a federal requirement, or revise the language for conformance with the federal requirement and print it in normal font.		
	FTA Rule Requirement:	Section 655.33(a) states: "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." Section 655.33(b) states: "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 [and] (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." Section 655.32 states: "Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions."		
	Corrective action taken:	As per the recommendation, the sentence has been put in bold font (and is included in the Policy Manual, Section 3.1, pg. 17) to indicate that the requirement reflects OCTA policy. See Attachment B.		
	FTA finding on review:	Adequate documentation provided.		

#### Policy Manual Review Interview-2

Ques. #	Action Date:	Item closed	<u>Resolved Date:</u>	<u>3/4/2015</u>
<b>15</b>	Question:	ALCOHOL TESTING: Does the policy indicate that alcohol use by any covered employee required to take a post-accident alcohol test is prohibited for 8 hours following the accident or until the alcohol test is performed, whichever occurs first?		
	Answer:	No.		
	Supplemental Answer:	The Working Copy, in the section titled "POST ACCIDENT/NON-DOT POST		

**Orange County Transportation Authority**

ACCIDENT", has not included a critical paragraph that is present in the 2009 Policy Manual. That paragraph is found at page 25 of the 2009 version of the Policy Manual and includes the required 8-hour rule. Reinstate this paragraph in the final revisions to the 2014 version of the Policy Manual.

FTA Rule Requirement: Section 655.34 states: "Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under Section 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first."

Corrective action taken: As per the recommendation, the paragraph from the 2009 version of the Policy Manual has been reinstated and appears on page 31 of the current Policy Manual. See Attachment B.

FTA finding on review: Adequate documentation provided.

**Policy Manual Review Interview-3**

**Ques. #**      **Action Date:**      **Item closed**      **Resolved Date:**      **3/4/2015**

**29**      Question: WHO MUST BE TESTED: FATALITY? Does the policy state that, in a fatality, the following individuals must be tested: All surviving covered employees operating the mass transit vehicle at the time of the accident; and All other covered employees whose performance could have contributed to the accident?

Answer: Other.

Supplemental Answer: The Working Copy, at page 30, does not include the requirement to test all other covered employees whose performance could have contributed to the fatal accident. Include that requirement in the revised Policy Manual.

FTA Rule Requirement: Section 655.44(a)(1)(i) states: "As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1)." Section 655.44(a)(1)(ii) states: "The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision."

Corrective action taken: An additional sentence has been added to the Policy Manual at page 30. The sentence reads, Any other employee whose performance could have contributed to the accident will also be required to submit to a drug and alcohol test. See Attachment B.

FTA finding on review: Adequate documentation provided.

**Policy Manual Review Interview-4**

**Ques. #**      **Action Date:**      **Item closed**      **Resolved Date:**      **3/4/2015**

**31**      Question: REQUIREMENT TO REMAIN "READILY AVAILABLE" FOR TESTING: Does the policy state that a covered employee subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing?

Answer: No.

Supplemental Answer: The Working Copy, at page 30-31, neglects to include a critical paragraph defining Post-Accident testing requirements that is included in the 2009 policy. That paragraph, on page 25 in the 2009 policy, begins "A decision as to whether to administer a drug and

**Orange County Transportation Authority**

alcohol test after an accident ...". The requirement to remain "readily available" is at the end of that paragraph and needs to be carried into the 2014 policy manual. In response to this audit finding, submit a revised policy that includes the necessary language.

FTA Rule Requirement: Section 655.44(c) states: "A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing."

Corrective action taken: Additional information has been added to page 31 of the Policy Manual. The Policy Manual now states, Any employee subject to post-accident testing who fails to remain readily available for such testing, or who leaves the scene of the accident without prior authorization will be considered to have refused to submit to the test and will be subject to disciplinary action up to and including employee termination. See Attachment B.

FTA finding on review: Adequate documentation provided.

**Policy Manual Review Interview-5**

**Ques. #**      **Action Date:**      **Item closed**      **Resolved Date:**      **3/4/2015**

**32**      Question: REQUIREMENT TO REMAIN "READILY AVAILABLE" FOR TESTING: Does the policy state that accident testing is stayed while employee assists in resolution of the accident or receives medical attention following the accident?  
Answer: No.

Supplemental Answer: This requirement is in the missing post-accident paragraph of the Working Copy and must be included in the revised Policy Manual. Also, the revised Policy Manual must include the time limits for post-accident alcohol and drug testing, included in the missing paragraph from the 2009 Policy Manual.

FTA Rule Requirement: Section 655.44(e) states: "Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care."

Corrective action taken: Additional information has been added to page 31 of the Policy Manual. The Policy Manual now reads, Accident testing is delayed while the employee assists in the resolution of the accident or receives medical attention following the accident. See Attachment B.

FTA finding on review: Adequate documentation provided.

**Policy Manual Review Interview-6**

**Ques. #**      **Action Date:**      **Item closed**      **Resolved Date:**      **3/4/2015**

**1**      Question: LOCAL BOARD ADOPTION: Has the policy, as most recently revised, been adopted by the local governing board of the employer or operator, or other responsible individual with appropriate delegation of authority?  
Answer: Other.

Supplemental Answer: In addition to OCTA's official 2009 Policy Manual, OCTA provided the auditors with a document entitled "OCTA Drug and Alcohol Policy Manual-Working Copy-2014 Version" (hereinafter "Working Copy"). The Working Copy has not yet been adopted by the governing body. In response to the findings in this review, revise the "OCTA Drug and Alcohol Policy Manual - Working Copy" to address the issues identified. In response to this audit finding, submit a revised and adopted "Drug and Alcohol Policy Manual" (hereinafter Policy Manual) with the 90-day audit response.

FTA Rule Section 655.12, Required Elements of an anti-drug use and alcohol misuse program



**Orange County Transportation Authority**

Requirement: states: "(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in section 655.15 of this subpart. Each employer shall disseminate the policy consistent with the provisions of section 655.16 of this subpart." Section 655.16 states: "Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures."

Corrective action taken: The Board adopted the Drug and Alcohol Policy Manual (Policy Manual) on February 9, 2014. See the attached agenda item (Attachment A).

FTA finding on review: Adequate documentation provided.

**Policy Manual Review Interview-7**

<b>Ques. #</b>	<b>Action Date:</b>	<b>Item closed</b>	<b><u>Resolved Date:</u></b>	<b><u>3/4/2015</u></b>
<b>51</b>	Question:	REFUSALS: Does the policy state that that the MROs verification of a test as adulterated or substituted constitutes a refusal?		
	Answer:	No.		
	Supplemental Answer:	The Working Copy includes all of the refusal behaviors listed in section 40.191(a) but neglects to include the refusal listed in section 40.191(b), namely, that an MRO verified adulterated or substituted specimen will be reported as a refusal to test. In response to this audit finding, include this in the listing of refusals in drug testing.		
	FTA Rule Requirement:	Section 40.191(b) states: "As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test."		
	Corrective action taken:	The Policy Manual now includes a bullet under the statement The following behaviors constitute a test refusal: which reads, The MRO reports that an employee has a verified adulterated or substituted test result. See page 31 of the Policy Manual at Attachment B.		
	FTA finding on review:	Adequate documentation provided.		

**Policy Manual Review Interview-8**

<b>Ques. #</b>	<b>Action Date:</b>	<b>Item closed</b>	<b><u>Resolved Date:</u></b>	<b><u>3/4/2015</u></b>
<b>55</b>	Question:	EMPLOYER SPECIFIC ELEMENTS: If the employer implements elements of an anti-drug program and alcohol misuse prevention program that are in addition to those required by Section 655, does the policy give covered employees specific information concerning which provisions are mandated by the FTA rules and which are not? Are any such additional policies or consequences clearly and obviously described as being based on independent authority?		
	Answer:	Other. There are four items to review and revise.		
	Supplemental Answer:	1) Section 6.3A of the Working Copy provides a brief explanation of the process for determining whether an employee who is unable to provide a urine specimen within three (3) hours of the initial attempt will be evaluated to determine if there is a medical explanation. However, the paragraph on "shy lung" immediately above the "shy bladder" discussion does not provide a brief description of the medical process for determining whether an employee has refused to be tested after a breath test with no valid sample. That procedure is found at section 40.265(c). Since the employer makes the ultimate determination whether the "shy lung" test is a refusal, in response to this audit finding, include a short description of the process in this section of the revised Policy Manual.  2) The Working Copy, at page 43, states, in bolded text, "Any employee who tests positive for the presence of alcohol or illegal drugs at or above the DOT-established cut off levels shall be referred by Labor and Employee Relations to OCTA's EAP for an evaluation by an SAP." The term "DOT-established cut off levels" applies only to the		

cutoff levels for the specified drugs found at section 40.87. OCTA's policy uses the term "illegal drugs" to include drugs that are not tested for under Part 40. If OCTA's non-DOT testing protocol analyzes urine specimens for drugs that are in addition to the drugs tested for in a DOT-required test, in response to this audit finding, identify the additional drugs screened for in the OCTA-required test for "illegal drugs" in the revised Policy Manual.

3) Those persons, including FTA-regulated safety-sensitive employees who test positive for a drug not listed in section 40.87, would be referred to a substance abuse counselor, rather than a SAP, for evaluation. According to Part 40, the definition of Substance Abuse Professional is 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." In response to this audit finding, throughout the revised Policy Manual, make the distinction between the duties of a SAP for a safety-sensitive employee who has failed a DOT-required drug or alcohol test, and the duties of a substance abuse counselor for any employee who fails or refuses a non-DOT drug or alcohol test. Make that distinction, for instance, in the second paragraph on page 38.

Section 6.2A, page 37, states that an applicant who has previously failed an OCTA-required pre-employment test, and is given a SAP referral, "must present evidence of a completion of a drug and/or alcohol Substance Abuse Program, which meets Authority standards, before he/she is eligible for employment consideration." The clause "which meets Authority standards" is in bold, indicating OCTA authority. According to Part 40, OCTA may not impose additional conditions on the SAP's professional qualifications or follow-up testing requirements (see 40.297(a)). However, in compliance with the requirements of section 40.287, OCTA, in making the SAP referral, must make the referral to a SAP "acceptable" to the employer. This section 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." Either revise the clause "which meets Authority standards" to "from a SAP acceptable to the Authority", or drop the bolded clause.

4) Sections 6.1C and 6.2C of the Working Copy, discussing the OCTA Attachment B used for reporting prescription and OTC medications, both imply that OCTA may gain knowledge of an employee's contemporaneous use of legal and/or illegal (prescription and non-prescription) drugs from DOT tests and from non-DOT tests.

If OCTA desires access to information gathered by the MRO reviewing non-DOT test results, the Policy Manual must state that such a release of private information is not required by the DOT or Part 40.

Additionally, the older version of the OCTA Drug and Alcohol Testing Authorization Form, which requires employees to list all medications they are taking at the time they are notified of the test, may not be used for DOT-required testing. This form informs the collection site and collector of medications the employee is currently taking, which is information the collector and others are prohibited from having (see section 40.61(g)). In response to this audit finding, affirm that the version of the Drug and Alcohol Testing Notification Form, that requires the employee to list medication currently being taken, is no longer used.

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."

Corrective action taken: Per the recommendation, four items required revision The following actions have been taken on each of these recommendations:

(1) Additional information on the medical process for determining whether an employee has refused to be tested after a breath test with no valid sample has been added to the Policy Manual at page 39. See Attachment

B.

(2) The reference to illegal drugs has been dropped from the sentence Any employee who tests positive for the presence of alcohol or drugs at or above the DOT-established cut off levels shall be referred by Labor and Employee Relations to OCTAs EAP for an evaluation by a SAP for DOT-required tests, or an evaluation by a Substance Abuse Counselor for non-DOT required tests. See page 43 of the Policy Manual at Attachment B.

(3) The Policy Manual has been updated to make the distinction between the duties of a SAP for a safety-sensitive employee who failed a DOT-required drug or alcohol test, and the duties of a substance abuse counselor for any employee who fails or refuses a non-DOT drug or alcohol test. See pages 38 and 43 of the Policy Manual at Attachment B. Also, updated the Policy Manual to ensure compliance with section 40.287 in regards to OCTA making the SAP referral to a SAP acceptable to OCTA. See page 37 of the Policy Manual at Attachment B.

(4) In regards to OCTA gaining access to information gathered by the MRO, OCTA does not attempt to obtain information gathered by the MRO reviewing non-DOT test results. In regards to the use of the old authorization form, which required employees to list all medications, OCTA affirms that this form is no longer used.

FTA finding on review:

- Adequate documentation provided for (1).
- Adequate documentation provided for (2).
- Adequate documentation provided for (3).
- Adequate documentation provided for (4).

## Drug and Alcohol Program Manager Interview

### Drug and Alcohol Program Manager Interview-1

Ques. #	Action Date:	Item closed	<u>Resolved Date:</u>	<u>3/4/2015</u>
<b>17</b>	Question:	Have all safety-sensitive employees received at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?		
	Answer:	The training conducted is not 60 minutes in length.		
	Supplemental Answer:	In response to this audit finding, submit to FTA a statement affirming that all future training will include at least 60 minutes on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.		
	FTA Rule Requirement:	Section 655.14(b)(1) states: "Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. "		
	Corrective action taken:	Drug and alcohol training classes have been modified to include at least 60 minutes on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. The classes are now scheduled for 75 minutes to accommodate this, as evidenced in the training schedule at Attachment C.		
	FTA finding on review:	Adequate documentation provided.		

### Drug and Alcohol Program Manager Interview-2

Ques. #	Action Date:	Item closed	<u>Resolved Date:</u>	<u>3/4/2015</u>
<b>26</b>	Question:	At what point in the hiring process do you ask the applicant or transferee whether or not they have failed or refused a DOT pre-employment test in the previous two years?		
	Answer:	We do not currently ask that question.		
	Supplemental Answer:	In response to this audit finding, submit to FTA a description of the procedure that has been implemented to ensure this question is asked, per section 40.25(j). If this procedure includes the use of a new form, provide a copy with 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)."		
	Corrective action taken:	A new procedure has been implemented to ask applicants or transferees applying for a safety sensitive job whether or not they have failed or refused a DOT pre-employment test in the previous two years. The applicant or transferee, as part of the background check process, will be asked additional questions, as indicated on the new form (see Attachment D).		
	FTA finding on review:	Adequate documentation provided.		

## Records Management Interview

### Records Management Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>63</b>	Question:	Do the records indicate that the employer or other person administering the drug and alcohol testing process reviews CCFs and identifies and corrects any errors in the testing process of which they become aware, even if they are not considered problems that will cause a test to be cancelled?		
	Answer:	The auditors observed flawed tests which have not been identified and cancelled or corrected.		
	Supplemental Answer:	Examples of uncorrected errors observed on Pre-Employment CCFs (tests not conducted at the primary collection site) include the following: * Almost all CCFs had carbon date shadows. * Nearly all CCFs simply listed "Courier" in Step 4; in fact, "Courier" was pre-printed on those forms. * On all ATFs, the "15 Minute wait/No" box was checked.  In response to this audit finding, establish a procedure for reviewing the Employer Copy of CCFs and ATFs for errors, for requiring the collection site to generate an affidavit to remedy the error, and for affirming that the collection site has corrected the systematic error through training and retraining. Describe that procedure in the 90-day response.		
	FTA Rule Requirement:	Section 40.209(a) states: "As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph b of this section [40.209(b)]." Section 40.275(a) states: "As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not fatal flaws or correctable flaws."		
	Corrective action taken:	The following is the process established for OCTA to review the Employer Copy of the Federal Drug Testing Custody and Control Form (CCF) and DOT Alcohol Testing Form (ATF) for errors:  1. The collection site sends the Employer Copy of the CCFs and ATFs for DOT-required tests to OCTAs DER. OCTA date stamps the forms to indicate when they are received. 2. Within 2 business days of receipt of the Employer Copies of the CCFs and ATFs, the DER will review the documents for any errors. 3. The DER will call the collection site as well as send a follow-up email to the collection site representative regarding any errors that have been identified on the CCFs and/or ATFs. 4. The DER will require the collection site to generate an affidavit to remedy the identified errors; the affidavit will then be attached to the Employer Copies for documentation purposes. 5. The DER will get confirmation from the collections site that the collectors have been trained and retrained to ensure that future errors are avoided.		
	FTA finding on review:	Adequate documentation provided.		

### Records Management Interview-2

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
---------	--------------	-------------	----------------	----------

Orange County Transportation Authority

**31** Question: If a post-accident alcohol test is not administered within two hours following the accident, does the employer prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered?

Answer: Other.

Supplemental Answer: As the "Post Accident Test Results" chart indicates, three of the post-accident alcohol tests were delayed beyond two hours. The auditor was able to read the accident reports to determine the cause of the delay, and the associated email chains indicate that the DAPM was aware contemporaneously that there was a delay in accomplishing the alcohol testing and was requesting from the supervisor an explanation for the delay. However, the employer does not then "prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered" as required by section 655.44(a)(2)(ii). In response to this audit finding, affirm that OCTA now includes the reason for a delay in the summary of the post-accident testing record.

Also, the drug test was completed before the alcohol test in seven of the twenty-five Post-Accident drug and alcohol tests reviewed. In response to this finding, affirm that you have reminded the collection site that the alcohol test is required to be completed first whenever possible.

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..."

Corrective action taken: For all Post-Accidents, OCTA will prepare and maintain a record of the Accident Time and the Testing Time in our Occurrence Tracking System (OTS). If the post-accident alcohol test is delayed beyond two hours, the supervisor at the scene of the accident will provide an explanation for the delay and document this in the summary of the post-accident testing record. The collections sites have also been reminded that the alcohol test is required to be completed first whenever possible.

FTA finding on review: Adequate documentation provided.

**Records Management Interview-3**

Ques. #      Action Date:      Item closed      Resolved Date:      3/4/2015

**18** Question: Do the records indicate that no more than 90 days elapse between the receipt of the negative pre-employment test and the date the employee first performs a safety-sensitive duty and is placed into the random testing pool?

Answer: Other.

Supplemental Answer: In one case reviewed, the employee began safety-sensitive duty 97 days after the verified negative pre-employment test result was received from the MRO. A new pre-employment test should have been conducted once 90 days had elapsed. In response to this audit finding, provide a statement affirming an understanding of section 655.41(d) below.

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."

Corrective action taken: OCTA understands and will follow a pre-employment drug testing process that complies with the requirements set forth in section 655.41 of the FTA regulation. When a safety sensitive employee or a safety sensitive applicant has not performed a safety sensitive job function for 90 consecutive calendar days, and the employee has not been in the OCTA random selection pool during that time, OCTA will send the employee or applicant to take a pre-employment drug test. The employee will not begin performing

## Orange County Transportation Authority

safety sensitive job functions until OCTA has a verified negative result.

FTA finding on review: Adequate documentation provided.

### Records Management Interview-4

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>20</b>	Question:	If the employer chooses to conduct pre-employment alcohol testing, does the employer conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40?		
	Answer:	Other. The employer uses non-DOT breath testing forms.		
	Supplemental Answer:	In seven of the 26 cases reviewed, the pre-employment alcohol tests were conducted using non-DOT forms. In response to this audit finding, provide a statement affirming an understanding of section 655.42(d) below.		
	FTA Rule Requirement:	Section 655.42(d) states: "The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40."		
	Corrective action taken:	OCTA understands the requirement to conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40, including the use of the DOT Alcohol Testing Form (ATF) for every DOT alcohol test. OCTA has reminded the collection site to use DOT Alcohol Testing Forms when conducting pre-employment alcohol testing.		
	FTA finding on review:	Adequate documentation provided.		

## Breath Alcohol Technician Interview

### Breath Alcohol Technician Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>40</b>	Question:	What would you do if the printer failed to print the confirmation test result?		
	Answer:	I would write the result in Step 3 of the ATF.		
	Supplemental Answer:	In response to this audit finding, provide on collection site letterhead a statement signed by all DOT BATs at the site affirming an understanding of section 40.267(c)(4) 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 Section 40.253(f))."		
	Corrective action taken:	OCTA has obtained a letter from Golden West, signed by all DOT BATs, that affirms understanding of this section. See Attachment E		
	FTA finding on review:	Adequate documentation provided.		

## Medical Review Officer Interview

### Medical Review Officer Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/6/2015
<b>17</b>	Question:	When you report positive test results to the employer or C/TPA, do you report the drug (or drugs) found?		

**Orange County Transportation Authority**

Answer: Other. The MRO stated that he reports positives on the Employer Copy of the Custody and Control Form, not on a separate MRO report.

Supplemental Answer: The auditors observed that the MRO reports DOT drug test results to OCTA on the Employer Copy (Copy 4) of the Custody and Control Form. Section 40.73(a)(9) instructs the collector to "Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. "

In response to this audit finding, affirm that the clinic promptly transmits Copy 4 to OCTA.

FTA Rule Requirement: Section 40.129(c) states: "With respect to verified positive test results, place a check mark in the "Positive" box (Step 6) on Copy 2 of the CCF, indicate the drug(s)/metabolite(s) detected on the "Remarks" line, sign and date the verification statement." Section 40.163(c) states: "If you [the MRO] do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information: ... (6) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive ..."

Corrective action taken: OCTA has obtained a letter from the MRO affirming that results will be promptly forwarded. See Attachment F.

FTA finding on review: Auditors DRAFT review of March 5, 2015 as transmitted to OCTA.

In Attachment F, the MRO stated that he would continue to report test results to the employer using Copy 4 of the Custody and Control Form, the Employer Copy. He stated that test results would be provided within 24 hours of the test result being verified.

The audit finding was that the collection site was not always reliably sending the Employer's Copy, Copy 4, of the Custody and Control Form (CCF) to OCTA "within 24 hours or during the next business day", as required by section 40.73(a)(9). The Employer Copy is not being promptly sent because the MRO is requiring the collection site to retain Copy 4 so that he may use it as the method of reporting the test results.

However, Part 40 does not give the MRO the option of reporting drug test results on Copy 4, the Employer Copy of the CCF. Rather, section 40.163 states:

- (a) As the MRO, it is your responsibility to report all drug test results to the employer.
- (b) You may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.
- (c) If you do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information:  
.....
- (d) As an exception to the reporting requirements of paragraph (b) and (c) of this section, the MRO may report negative results using an electronic data file.

Copy 4, the Employer Copy, must be transmitted to the employer promptly so that the employer has actual knowledge of whether the collection was completed, discontinued or refused, and so the employer may take prompt actions to require corrective actions if the collection procedure appears to be flawed based on the paperwork. The drug test result will be reported on Copy 2, the MRO copy, or a separate report, and is provided to the employer somewhat later, as soon as the results have been verified.

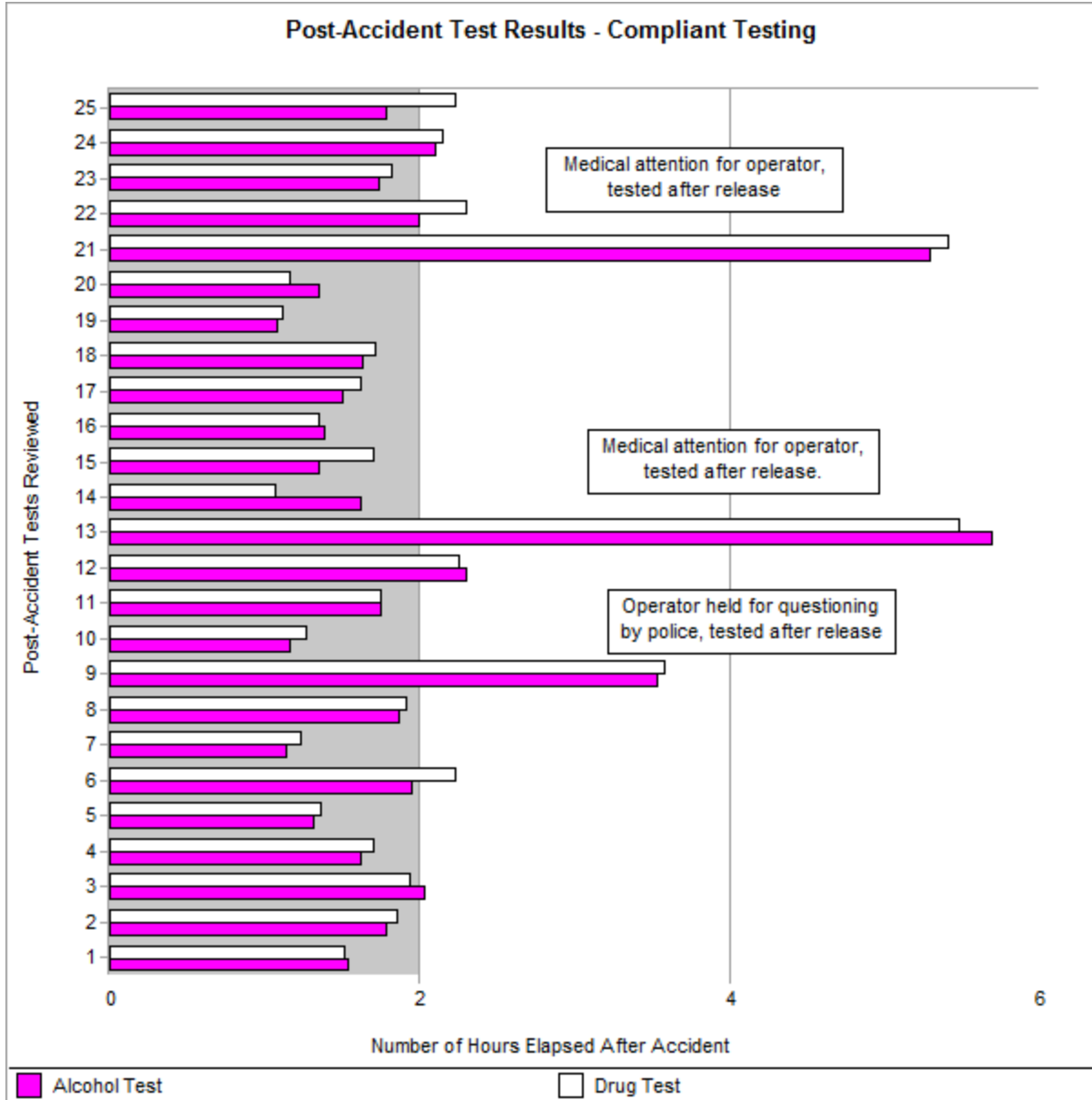


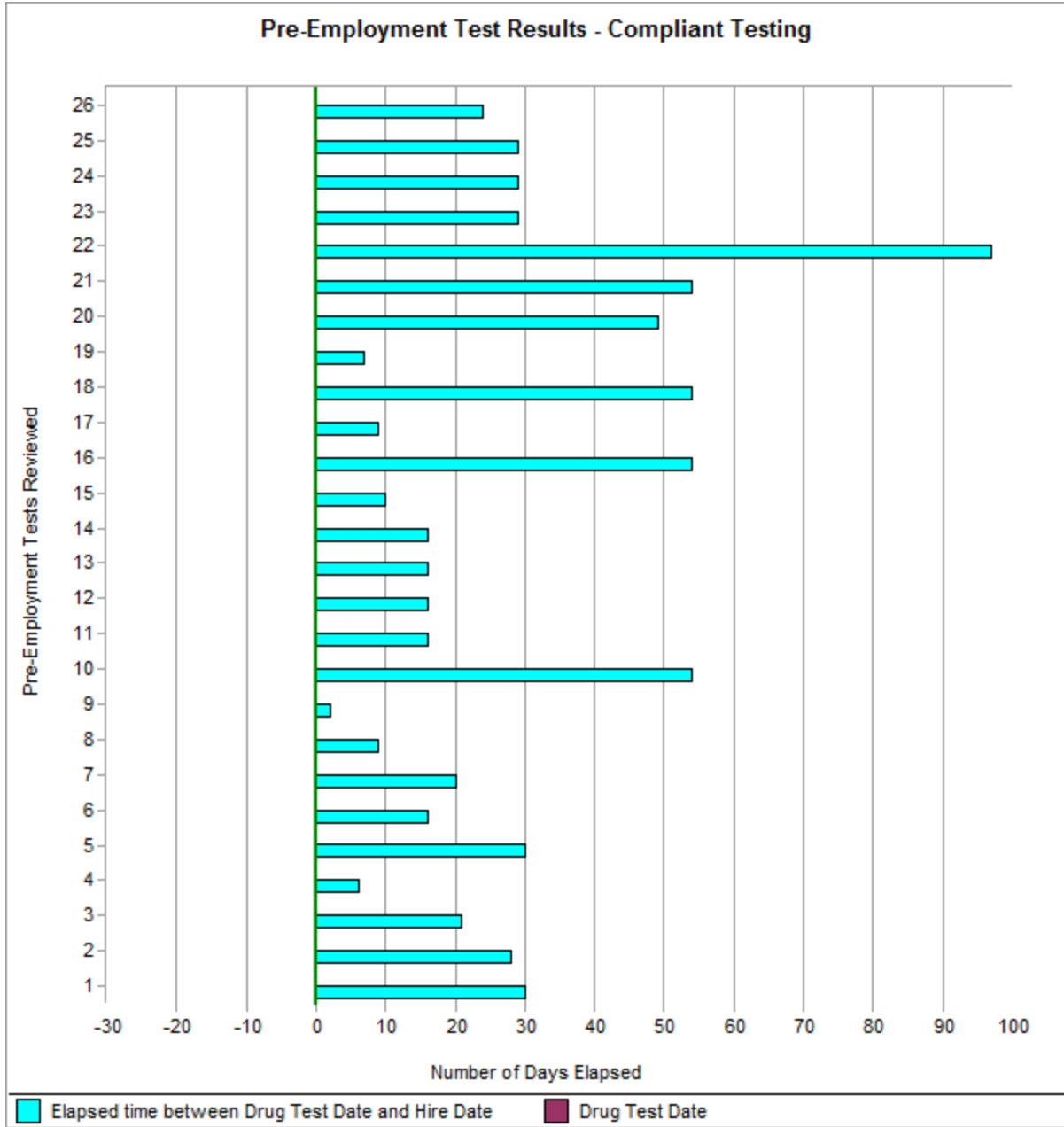
In response to this continuing finding, obtain assurance from the MRO and from the collection site that the collection is no longer retaining Copy 4 of the CCF, but is transmitting Copy 4 to the employer on the same day as the test or within 24 hours.

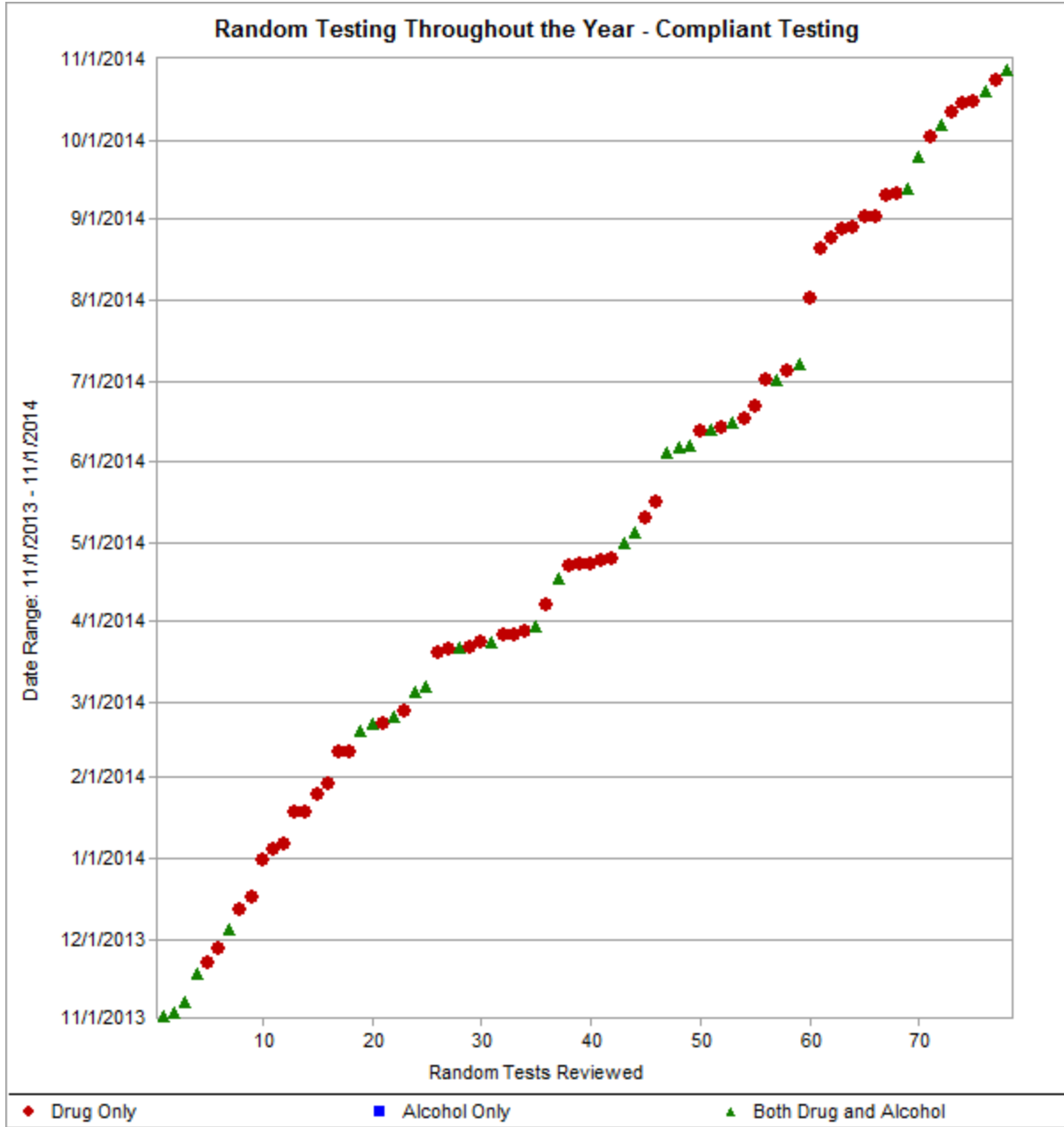
March 6, 2015 - OCTA transmitted a new letter from the MRO affirming that the MRO and collection site will transmit Copy 2 to OCTA within 24 hours of the specimen collection and will transmit test results on Copy 4, the MRO copy, in a separate transmission within 24 hours of test verification. Adequate documentation provided.

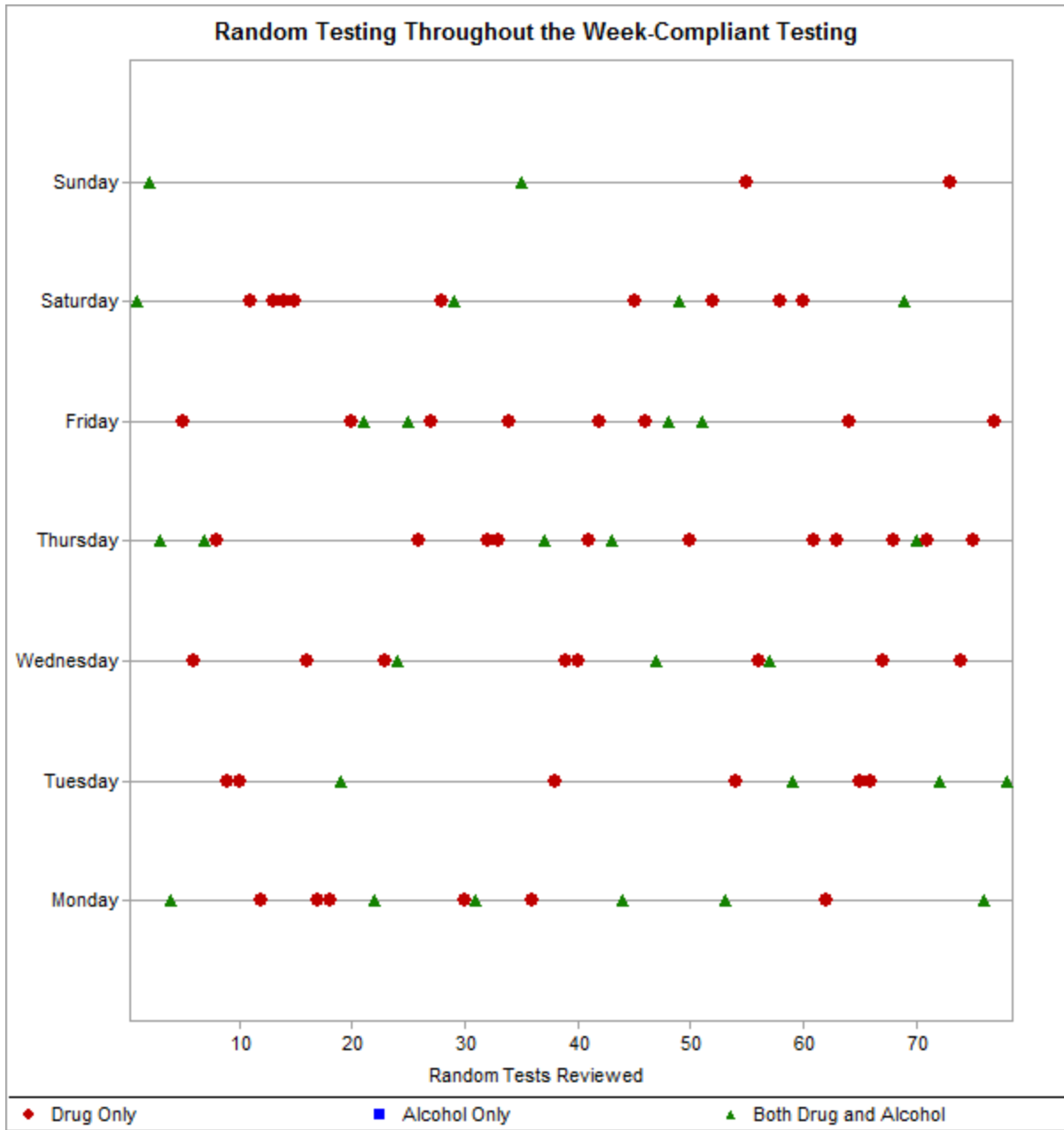
**Medical Review Officer Interview-2**

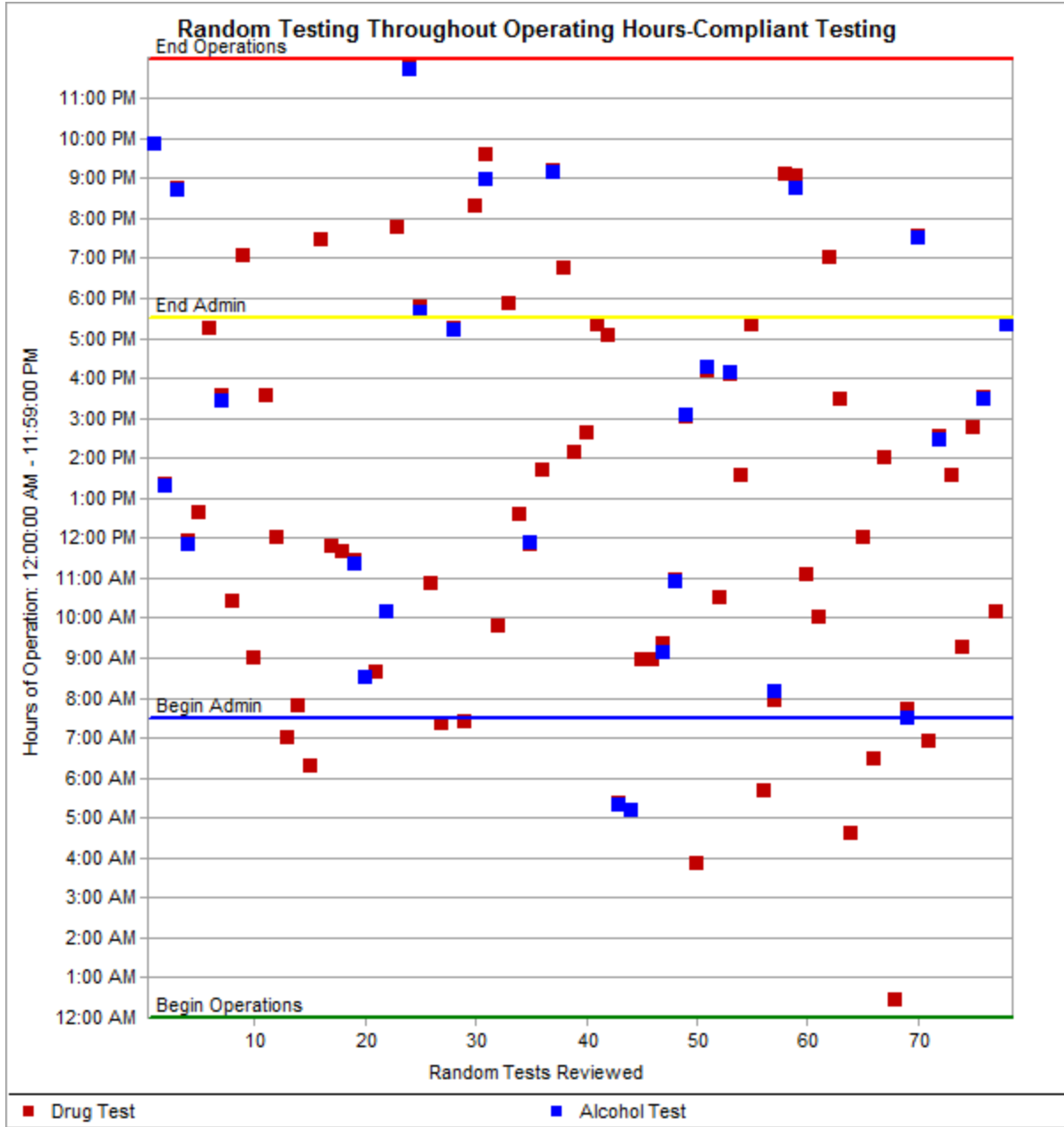
Ques. #	Action Date:	Item closed	<u>Resolved Date:</u>	<u>3/4/2015</u>
<b>27</b>	Question:	Before beginning the verification process, do you warn the employee concerning your obligation to disclose information to third parties?		
	Answer:	Other. The MRO stated that he would not give this warning as a regular practice, but would if the test was a reasonable suspicion test or if he felt there may be an issue.		
	Supplemental Answer:	Section 40.135(d) requires that, before beginning every DOT drug test verification, the MRO must inform the employee that there is a DOT requirement to disclose safety-information gathered by the MRO during the verification to third parties including the employer, without requiring the employee's consent. The circumstances under which you must actually convey this information to third parties are established in section 40.327 and in a 2001 DOT interpretation that the third parties include the employer and any physician responsible for determining the medical qualification of an employee. In response to this audit finding, confirm that you comply with the federal requirements by providing the required warning before beginning all verifications.		
	FTA Rule Requirement:	Section 40.135(d) states: "As the MRO, you must warn an employee who has a confirmed positive, adulterated, substituted or invalid test that you are required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives you in the verification process without the employee's consent (see Section 40.327). (1) You must give this warning to the employee before obtaining any medical information as part of the verification process."		
	Corrective action taken:	OCTA has obtained a letter from the MRO affirming that the required warning will be provided. See Attachment G.		
	FTA finding on review:	Adequate documentation provided.		











## MV Transportation # 167 OCTA

There are no open items for MV Transportation #167 OCTA

=====

## MV Transportation # 167 OCTA

### Policy Manual Review Interview

MV Transportation # 167 OCTA

Interview Date: 11/25/2014

**Finding:** Not deficient with FTA requirements.

### Drug and Alcohol Program Manager Interview

MV Transportation # 167 OCTA

Interview Date: 12/04/2014

**Finding:** Not deficient with FTA requirements.

### Records Management Interview

MV Transportation # 167 OCTA

Interview Date: 12/04/2014

**Finding:** Not deficient with FTA requirements.

### Breath Alcohol Technician Interview

Tustin Irvine Medical Group

Interview Date: 12/03/2014

**Finding:** Not deficient with FTA requirements.

## Urine Collections Interview

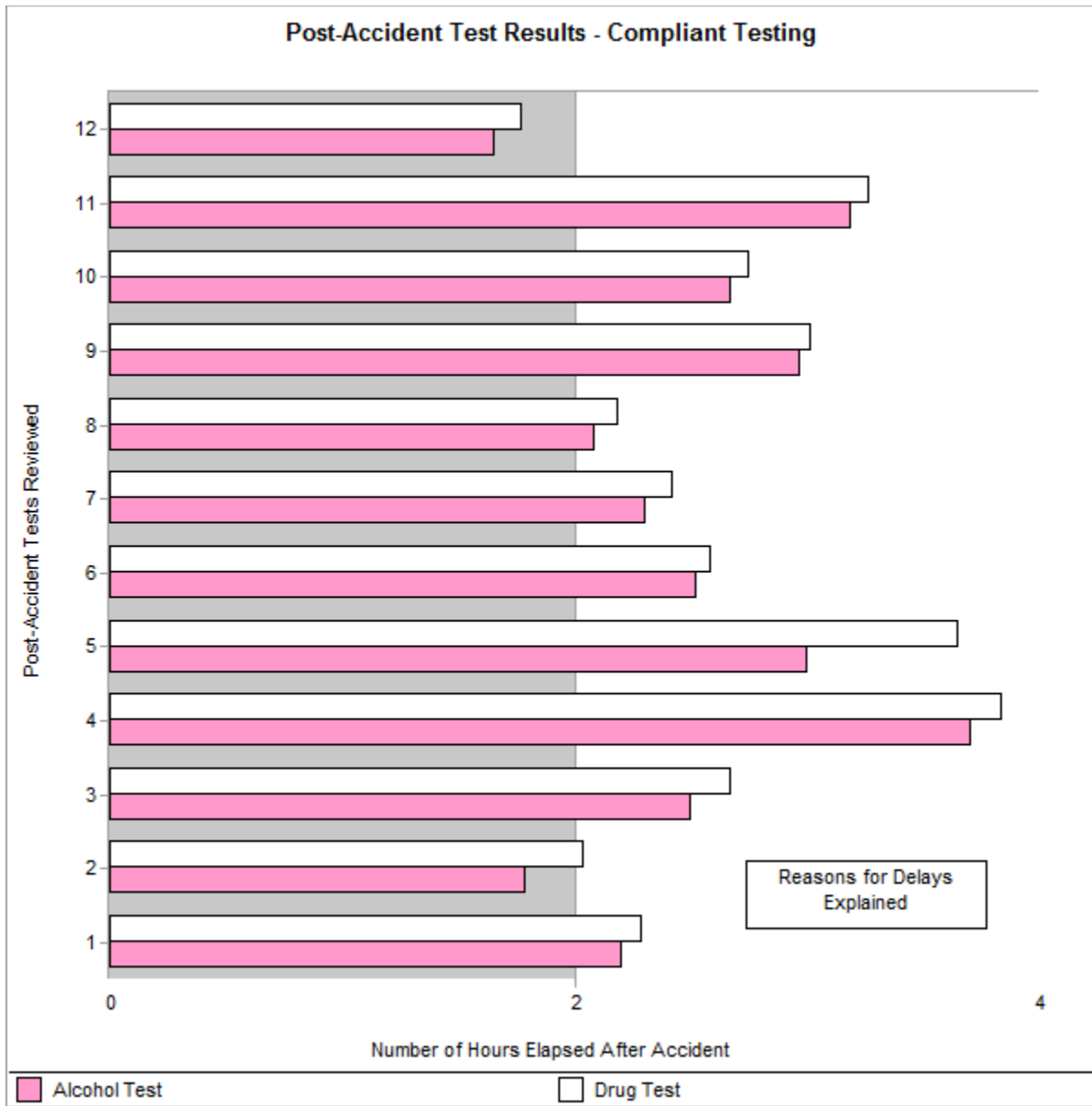
### Urine Collections Interview-1

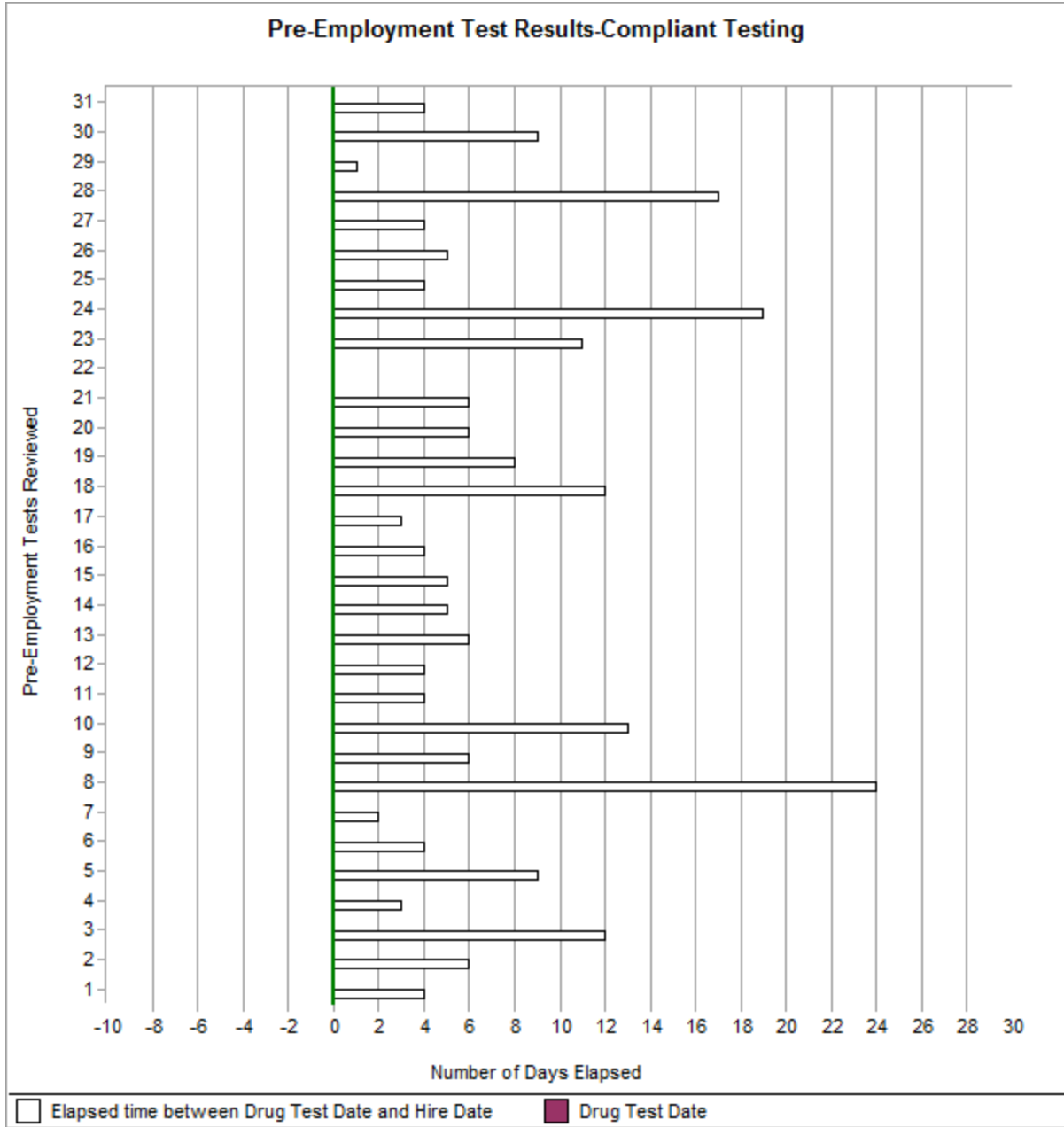
Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>50</b>	Question:	What is done if the employee admits to adulterating or substituting the specimen?		
	Answer:	Conduct a directly observed test.		
	Supplemental Answer:	In response to this audit finding, submit to FTA on collection site letterhead a statement signed by each DOT collector certifying an understanding to report a refusal in this case, per the requirements of section 40.159(c) below.		
	FTA Rule Requirement:	Section 40.159(c) states: "If the employee admits to having adulterated or substituted the specimen, you must, on the same day, write and sign your own statement of what the employee told you. You must then report a refusal to test in accordance with Section 40.163."		
	Corrective action taken:	MV Transportation has provided a letter affirming, if the employee, during the collection process, admits to having tampered with his or her specimen it is a refusal. See Attachment MV-A.		
	FTA finding on review:	Adequate documentation provided.		

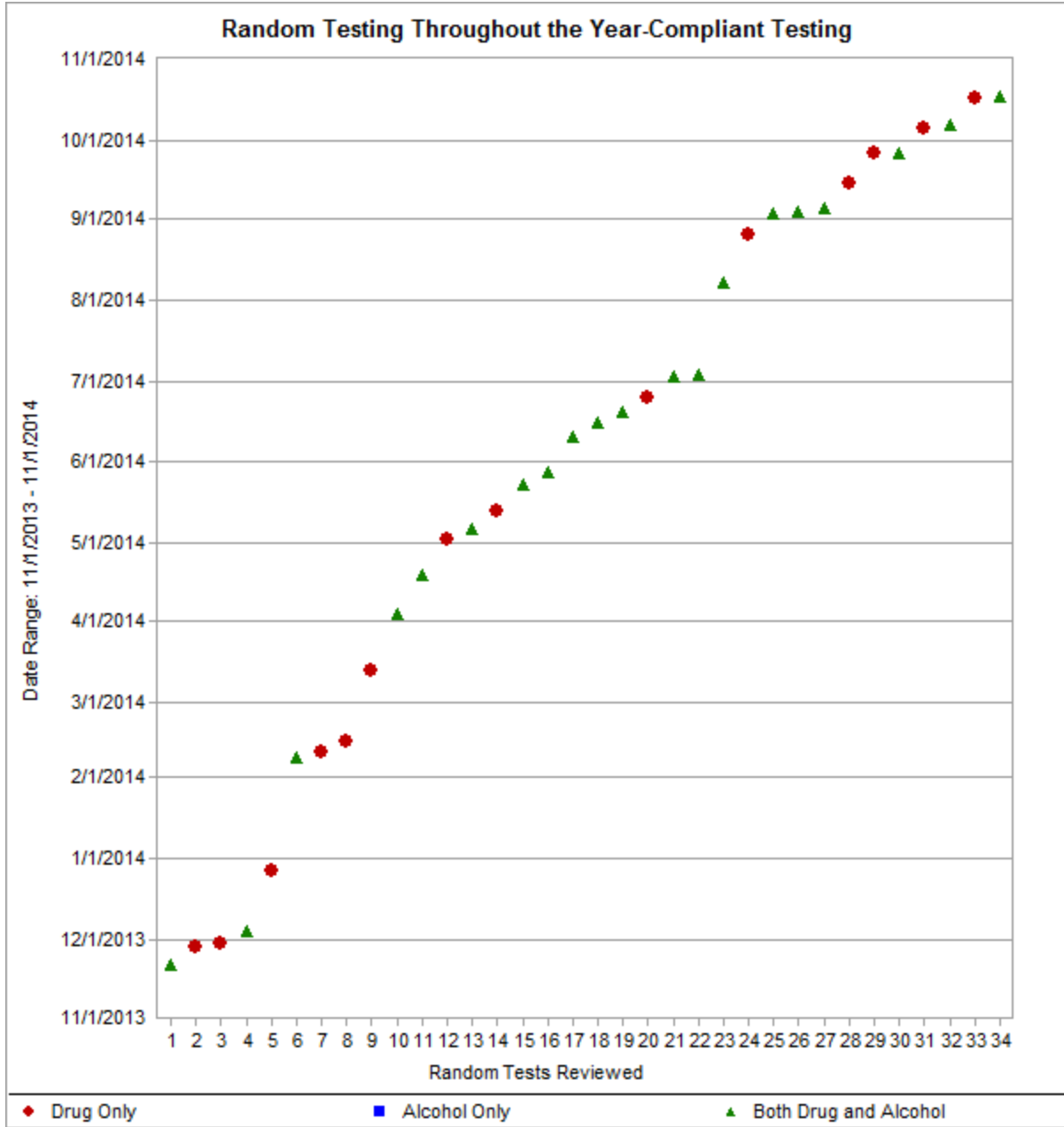
### Urine Collections Interview-2

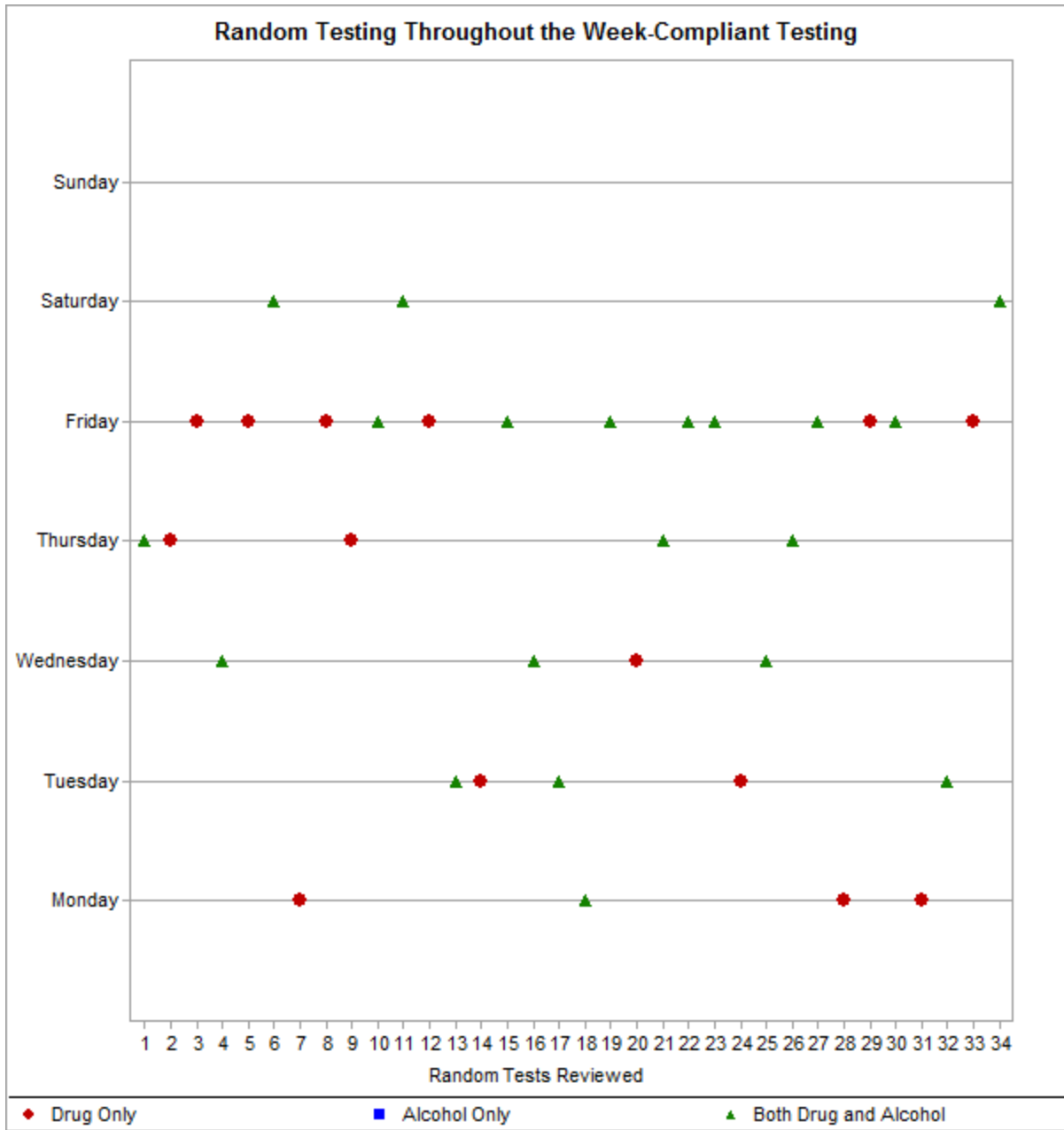
Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>59</b>	Question:	What is done if the employee possesses a prosthetic or other device used to tamper with the collection?		
	Answer:	Other. Conduct a directly observed test.		
	Supplemental Answer:	In response to this audit finding, submit to FTA on collection site letterhead a statement signed by each DOT collector certifying an understanding to report this as a refusal, per the requirements of section 40.191(a)(10) below.		
	FTA Rule Requirement:	Section 40.191(a) states: (a) As an employee, you have refused to take a drug test if you: (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.		
	Corrective action taken:	MV Transportation has provided a letter stating that if the employee is found to have or wear a prosthetic device designed to carry clean urine or urine substitute, it is a refusal. See Attachment MV-A.		
	FTA finding on review:	Adequate documentation provided.		

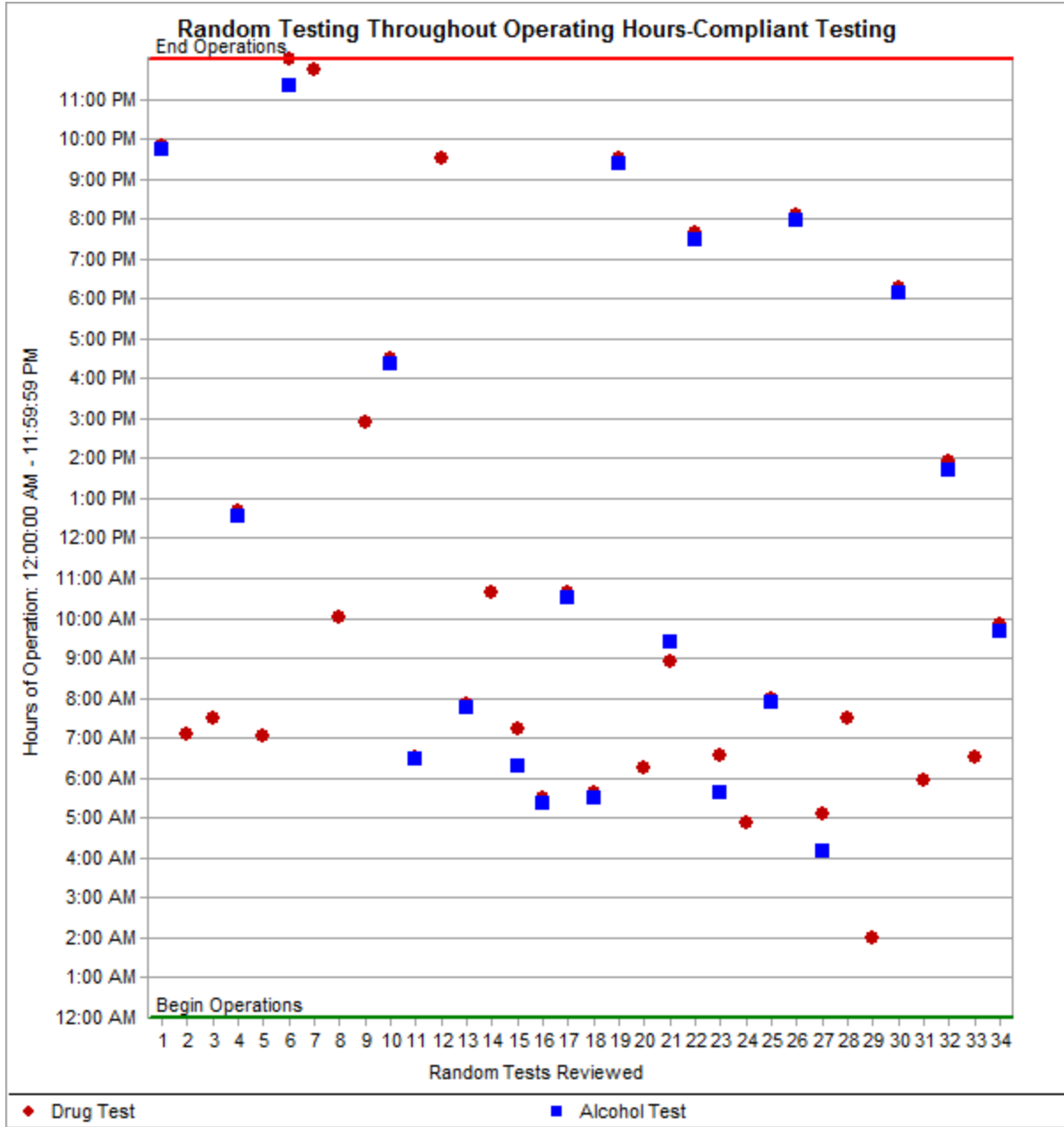












## Yellow Cab of Greater Orange County

There are no open items for Yellow Cab of Greater Orange County

=====

### Policy Manual Review Interview

#### Policy Manual Review Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>33</b>	Question:	CIRCUMSTANCES: REASONABLE SUSPICION: Does the policy state that reasonable suspicion testing is required when: One or more trained supervisors or company officials can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech or body odors of the covered employee?		
	Answer:	Other.		
	Supplemental Answer:	Page 8 Section D: Definitions has a definition that states "REASONABLE CAUSE: means Yellow Cab believed the actions or appearance of a safety-sensitive employee/contractor who is on duty as defined above, is indicative of the use of a controlled substance or alcohol." The term "Reasonable Cause" is usually used to identify non-DOT Reasonable Suspicion testing, i.e. testing when suspicion is not "based on specific, contemporaneous, articulable observations concerning appearance, behavior, speech or body odor of the safety-sensitive employee/contractor."		
		In response to this finding, either add a definition of REASONABLE SUSPICION and assert Yellow Cab's right to conduct a non-DOT Reasonable Cause test in circumstances of suspicion that do not rise to the Reasonable Suspicion standard, or replace the REASONABLE CAUSE definition with a REASONABLE SUSPICION definition with the specified wording.		
	FTA Rule Requirement:	Section 655.43(b) states: "An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations." Further, Part III, Subpart E, Section C of the preamble to Part 655 states: "FTA also notes that the proposed bar to an employer requiring two or more trained supervisors to make such referrals is not included in the final rule. FTA also agrees that an employer should be permitted to authorize and train other company officers to make reasonable suspicion observations ..."		
	Corrective action taken:	Yellow Cab of Greater Orange County (YCGOC) revised their Drug and Alcohol Policy to include a definition for reasonable suspicion. See Attachment YC-A.		
	FTA finding on review:	Adequate documentation provided.		

#### Policy Manual Review Interview-2

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>55</b>	Question:	EMPLOYER SPECIFIC ELEMENTS: If the employer implements elements of an anti-drug program and alcohol misuse prevention program that are in addition to those required by Section 655, does the policy give covered employees specific information concerning which provisions are mandated by the FTA rules and which are not? Are any such additional policies or consequences clearly and obviously described as being based		

**Orange County Transportation Authority**

**Yellow Cab of Greater Orange County**

on independent authority?  
Answer: Other.

Supplemental Answer: Section III.A.3 Split Sample Testing, states in italicized text, "If an employee/contractor requests a split sample to be tested, the employee/contractor will be responsible for all payments associated with the test of the split specimen, providing that the split test is not cancelled or comes back negative, in which case Yellow Cab will reimburse payment for such test." Part 40 does not allow the employer to require the employee to pay the cost of split sample testing, and requires the MRO to inform the employee that the employer must pay for the split sample test if the employee cannot or will not.

In response to this audit finding, review section 40.173 and state the employer's responsibility to assure that a split-specimen analysis is conducted in Section III.A.3 in the revised policy. Also, review section 40.153 and assure that the MRO provides the correct information to each employee who requests a split-specimen to be analyzed.

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."

Corrective action taken: YCGOC revised their policy to include language which states that they will cover the cost of split sample testing. See Attachment YC-B.

FTA finding on review: Adequate documentation provided.

## Drug and Alcohol Program Manager Interview

### Drug and Alcohol Program Manager Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>23</b>	Question:	Do you perform pre-employment alcohol testing for all/any safety-sensitive positions?		
	Answer:	Other. Pre-employment alcohol testing is conducted for some applicants, but not all.		
	Supplemental Answer:	It is Yellow Cab's practice to only conduct pre-employment alcohol tests on applicants who have no prior cab driving experience.		
		If an employer chooses to conduct pre-employment alcohol testing, it must do so for all applicants for safety-sensitive positions. In response to this audit finding, submit to FTA a statement affirming an understanding of section 655.42(b) below.		
	FTA Rule Requirement:	Section 655.42 states "An employer may, but is not required to, conduct pre-employment alcohol testing under this part." Section 655.42 (d) states "The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40. "		
	Corrective action taken:	YCGOC has provided a letter verifying compliance with pre-employment drug and alcohol testing. See Attachment YC-D.		
	FTA finding on review:	Adequate documentation provided.		

### Drug and Alcohol Program Manager Interview-2

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>38</b>	Question:	Do you use alternates in your random selection process? Under what circumstances would you notify an alternate that they must proceed to the collection site for a random test?		
	Answer:	Other.		
	Supplemental Answer:	The DAPMs at Yellow Cab indicated that if they believed an employee selected for random testing would be out for the remainder of the testing period, an alternate employee would be requested and sent for testing. However, if the original employee selected does, in fact, return before the testing period ends, the original employee is still sent for random testing despite the fact the alternate has already been tested.		
		This practice is noncompliant for two reasons. First, as provided in Issue 55 of the FTA Drug and Alcohol Regulations Updates newsletter (August 2014), if alternates are used they must be drawn at the same time the other employees are selected at the beginning of each testing period. It is not allowable to generate a make-up selection list (for alternates or for additional employees) during an active testing period.		
		Secondly, an alternate may only replace an employee on the original random selection list when it is certain that the original employee selected cannot be tested during the remainder of the selection period. An alternate may not be used if the original employee could possibly return prior to the end of the testing period.		
		In response to this audit finding, submit to FTA a statement affirming an understanding of the requirements of section 655.45(e). In addition, should Yellow Cab choose to continue with the practice of using alternates in the random testing program, submit a description of the procedures by which those names will be selected and used.		
	FTA Rule Requirement:	Section 655.45(e) states: "... Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made."		
	Corrective action	YCGOC has provided a letter verifying compliance with this section. See		



Orange County Transportation Authority

Yellow Cab of Greater Orange County

taken: Attachment

FTA finding on review: Adequate documentation provided.

Drug and Alcohol Program Manager Interview-3

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>17</b>	Question:	Have all safety-sensitive employees received at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?		
	Answer:	The training conducted is not 60 minutes in length.		
	Supplemental Answer:	In response to this audit finding, describe the procedure that has been implemented to ensure that all safety-sensitive employees receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.		
	FTA Rule Requirement:	Section 655.14(b)(1) states: "Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. "		
	Corrective action taken:	YCGOC has provided a letter verifying compliance with this training requirement. See Attachment YC-C.		
	FTA finding on review:	Adequate documentation provided.		

## Records Management Interview

### Records Management Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>18</b>	Question:	Do the records indicate that no more than 90 days elapse between the receipt of the negative pre-employment test and the date the employee first performs a safety-sensitive duty and is placed into the random testing pool?		
	Answer:	No.		
	Supplemental Answer:	In one case reviewed, an employee began safety-sensitive duty 163 days after the verified negative pre-employment test result was received from the MRO. In a second case, an employee began safety-sensitive duty 177 days after the verified negative pre-employment test result was received from the MRO. New pre-employment tests should have been conducted on these employees once 90 days had elapsed. In response to this audit finding, provide a statement affirming an understanding of section 655.41(d) below.		
	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."		
	Corrective action taken:	YCGOC has provided a letter verifying compliance with this section. See Attachment YC-F.		
	FTA finding on review:	Adequate documentation provided.		

### Records Management Interview-2

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>63</b>	Question:	Do the records indicate that the employer or other person administering the drug and alcohol testing process reviews CCFs and identifies and corrects any errors in the testing process of which they become aware, even if they are not considered problems that will cause a test to be cancelled?		
	Answer:	The auditors observed flawed tests which have not been identified and cancelled or corrected.		
	Supplemental Answer:	Examples of uncorrected errors observed on the pre-employment testing forms include the following: + On all but three of the ATFs, the 15 Minute wait/No box was checked. + On several CCFs there was extraneous writing bleeding through onto the form that obscured key information on the CCF. + On one ATF, the nominal test time appeared to be correct but the EBT clock appears to have been set to PM rather than AM at the time of the test. As a result, the test time officially recorded on the ATF was off by 12 hours (i.e., it read 10:50 PM rather than the actual test time of 10:50 AM). + On one CCF, the collector did not indicate whether the test time was AM or PM.  In response to this audit finding, describe the procedure that has been implemented to ensure that all drug and alcohol testing forms are promptly reviewed upon receipt, and that tests containing errors are either corrected or cancelled as appropriate. Identify the individual responsible for performing this function.		
	FTA Rule Requirement:	Section 40.209(a) states: "As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph b of this section [40.209(b)]." Section 40.275(a) states: "As an STT, BAT, employer, or a service agent administering the testing process, you must		

**Orange County Transportation Authority**

**Yellow Cab of Greater Orange County**

document any errors in the testing process of which you become aware, even if they are not fatal flaws or correctable flaws."

Corrective action taken: The Medical Review Officer has provided a letter verifying compliance with this section. YCGOC implemented a process to ensure that Chain of Custody forms and associated documentation concerning all FTA drug and alcohol tests are complete and, finding any errors are directed back to the source for correction. See Attachment YC-K.d

FTA finding on review: Adequate documentation provided.

**Records Management Interview-3**

**Ques. #**      **Action Date:**      **Item closed**      **Resolved Date:**      **3/4/2015**

**31**      Question: If a post-accident alcohol test is not administered within two hours following the accident, does the employer prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered?  
Answer: No.

Supplemental Answer: As the "Post-Accident Test Results" chart indicates, all but one of the post-accident tests examined required more than 2 hours to complete. There was no documentation to explain the delay. On questioning, it appears (anecdotally) that the operator returns to Yellow Cab and completes all accident report forms before being transported to the collection site for testing. This process may take "an hour or more." Yellow Cab management had no understanding of the requirement to document the reason for delays in testing when the alcohol test is not performed within two hours of the accident. It never completes the parts of the Post-Accident Testing Determination Form that are for the recording of that explanation.

In response to this audit finding, develop a time log of the steps leading to post-accident drug and alcohol testing. For each accident that results in testing under FTA authority in the month of December, carefully document the time needed to complete each procedural step, from the time the driver notifies the dispatcher of the accident to the time the DER signs the testing authorization form and the driver is transported to the clinic. Determine the reasons for delays and determine whether a procedure may be established to speed the testing cycle. Use the Post-Accident Testing Determination Form to record the explanation for the delays.

In addition, provide a spreadsheet listing each accident that occurs during the 90-day audit response period requiring DOT post-accident drug and alcohol testing. Include the date and time of the accident, the date and time of the post-accident drug and alcohol tests, and an explanation of any testing delays longer than two hours.

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..."

Corrective action taken: YCGOC conducted a training program for post-accident testing which includes the requirement to test within 2 hours of an accident . See Attachment YC-G.

FTA finding on review: Adequate documentation provided.

Orange County Transportation Authority

Yellow Cab of Greater Orange County

Records Management Interview-4

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>38</b>	Question:	If a C/TPA provides selection lists to the employer, have these lists been provided in a consistent and timely fashion, such that the employer's ability to complete and spread random testing is not hindered?		
	Answer:	No.		
	Supplemental Answer:	The selection lists are provided a week after the start of each month and the testing is completed by the end of the month. Accordingly, there is a one-week gap in testing at the start of each month.		
		In response to this audit finding, document that the C/TPA provides the monthly random list in a timely manner and that there is no resulting gap in the testing program. Provide a spreadsheet with the dates selection lists were provided and the dates each test was conducted for the months of December 2014 and January and February 2015.		
	FTA Rule Requirement:	The preamble to Part 655 states: "FTA believes that requiring random testing to be conducted at least quarterly strikes a reasonable balance while considering the rule's impact on employers in rural areas." 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."		
	Corrective action taken:	YCGOC provided a letter verifying compliance with this section. A spreadsheet for December 2014 and January 2015 is included to show the testing dates for each month. See Attachment YC-H.		
	FTA finding on review:	Adequate documentation provided.		

Records Management Interview-5

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>43</b>	Question:	Are random drug and alcohol tests unpredictable - e. g. , the tests are conducted at all times of the day when safety sensitive functions are performed?		
	Answer:	No.		
	Supplemental Answer:	In the sample of random tests selected there was no testing in the morning, before 8:00 AM. In response to this audit finding, document that Yellow Cab random tests are now reasonably distributed throughout all service hours, including early morning testing.		
	FTA Rule Requirement:	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."		
	Corrective action taken:	YCGOC provided a letter verifying compliance with this section. In addition, a graph has been included which shows the testing distribution for January 2015. See Attachment YC-I.		
	FTA finding on review:	Adequate documentation provided. See graph.		

Orange County Transportation Authority

Yellow Cab of Greater Orange County

Records Management Interview-6

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>45</b>	Question:	Are records of excusals maintained, and do the records indicate that employees are only excused from random testing for legitimate reasons (e.g., on vacation, out sick)?		
	Answer:	Other.		
	Supplemental Answer:	Yellow Cab has not contemporaneously documented the reasons employees randomly selected for testing were not tested. In response to this audit finding, provide a valid explanation for any individual selected for testing in December 2014 or January or February 2015 who could not be tested.		
	FTA Rule Requirement:	Section 655.45(e) states: "Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made."		
	Corrective action taken:	YCGOC provided a spreadsheet from their Third Party Administrator (TPA) Norton Medical Industries, which includes any reason an individual could not be tested for January 2015. See Attachment YC-J.		
	FTA finding on review:	Adequate documentation provided.		

## Medical Review Officer Interview

### Medical Review Officer Interview-1

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>57</b>	Question:	As a MRO, when the laboratory reports that a specimen is adulterated or substituted, are you required to conduct a verification procedure, and if so, what actions are you required to take?		
	Answer:	Other.		
	Supplemental Answer:	The MRO stated that there is no plausible explanation for a specimen reported by the laboratory to be adulterated or substituted, and the employee does not have the right to have the split specimen analyzed. The MRO did not indicate that he would follow the usual verification procedure. In response to this audit finding, affirm on your letterhead that you understand the requirement to comply with section 40.145.		
	FTA Rule Requirement:	Section 40.145 states: "(a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive test for a drug or drug metabolite.(b) You must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite except as otherwise provided in this section." Section 40.145(g) states: "(1) If you determine that the employees explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.(2) If you believe that the employees explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, you must direct the employee to obtain, within the five-day period set forth in paragraph (e)(3) of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to you, with expertise in the medical issues raised by the employees explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)"		
	Corrective action taken:	The MRO has provided a letter verifying compliance with Section 40.145. See Attachment YC-L.		
	FTA finding on review:	Adequate documentation provided.		

### Medical Review Officer Interview-2

Ques. #	Action Date:	Item closed	Resolved Date:	3/4/2015
<b>59</b>	Question:	After you have informed the employee that you will verify the test as positive, adulterated, or substituted, what do you inform the employee concerning his/her rights to have the split specimen analyzed?		
	Answer:	Other.		
	Supplemental Answer:	The MRO correctly stated the requirements cited from section 40.153 below. However, in response to the question of what the MRO would inform the employee about how the split-sample would be analyzed, the MRO stated that the "employee should talk with the employer on that matter". Section 40.153 continues by stating:"(d) You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see 40.173). (e) You must tell the employee that additional tests of the specimen (e.g., DNA tests) are not authorized."		
		In response to this audit finding, affirm that you comply with all of the requirements of section 40.153 in your explanation to an employee of the process for requiring the split-specimen to be analyzed.		
	FTA Rule	Section 40.153 states: "(a) As the MRO, when you have verified a drug test as positive		

**Orange County Transportation Authority**

**Yellow Cab of Greater Orange County**

Requirement: for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, you must notify the employee of his or her right to have the split specimen tested. You must also notify the employee of the procedures for requesting a test of the split specimen.(b) You must inform the employee that he or she has 72 hours from the time you provide this notification to him or her to request a test of the split specimen."

Corrective action taken: The MRO has provided a letter verifying compliance with Section 40.145. See Attachment YC-L.

FTA finding on review: Adequate documentation provided.

**Medical Review Officer Interview-3**

**Ques. #**      **Action Date:**      **Item closed**                      **Resolved Date:**              **3/4/2015**

**63**              Question:      What action would you take if the split specimen is not available for testing?

Answer:      Other.

Supplemental Answer:      The MRO was not sure that the employee would be required to return for a directly observed retest or that the MRO would notify ODAPC of the "specimen unavailable-failure to reconfirm" in this instance. In response to this audit finding, affirm that you understand the requirement to comply with section 40.187(d).

FTA Rule Requirement:      Section 40.187(d) states: "Failed to Reconfirm: Specimen not Available for Testing.(1) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.(2) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.(3) Using the format in Appendix D to this part, notify ODAPC of the failure to reconfirm."

Corrective action taken:      The MRO has provided a letter verifying compliance with Section 40.145. See Attachment YC-L.

FTA finding on review:      Adequate documentation provided.

