



**Moving Public Transportation
Into the Future**

Common D&A Review Findings and How to Fix Them!

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RLS & Associates, Inc.

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Mistakes Happen!

Identify Problem

- Be Aware
- Investigate
- Don't Panic

Acknowledge

- Do Not Attempt to Hide Or Alter
- Identify Timeline
- Who was impacted

Act



What Do I Do Next?

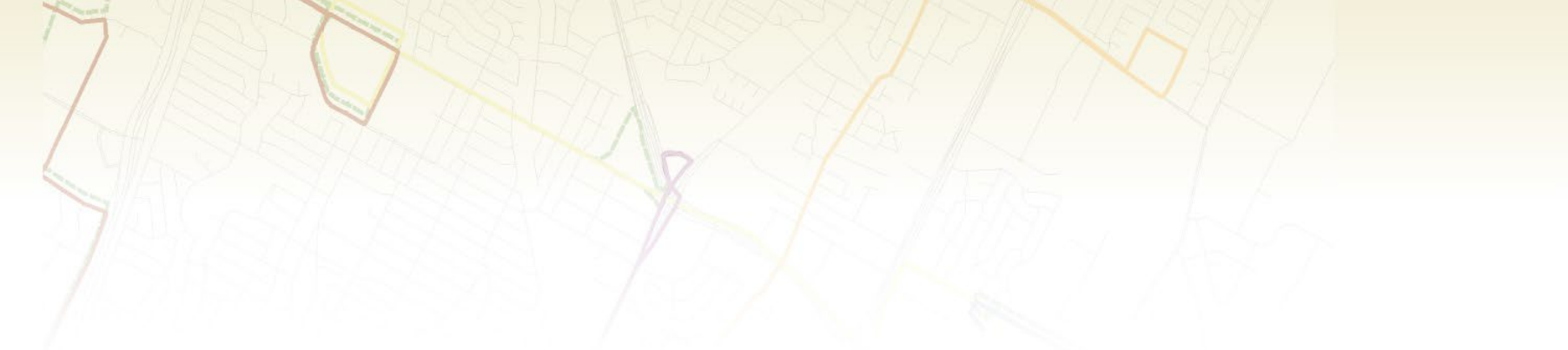
Corrective Action

- If, Possible—Most Problems Can Be Fixed

Document, Document, Document

Avoid Same Mistake in the Future

- Identify Root of the Problem
- Create/Revise Standard Operating Procedure
- Train Staff
- Monitor



COMMON MISTAKES

D&A POLICY



Policy Applicability

Identify the Authority for Each Provision

- Distinguish the authority of NON-DOT provisions in policy by choice of words, format, etc.
- Example: *“Any provisions set forth in this policy which are not included under the following federal rules, regulations, and/or laws, and which are under the sole authority of the EMPLOYER are underlined”*
- Train staff accordingly; Create/Revise forms, SOPs, etc.



Policy Out-Of-Date

Your D&A Policy is a “Living” Document

- It will NEVER be “finished”
- It will ALWAYS need updating

Remove/Generalize Provisions Likely to Change

- Lab cut-off levels (remove)
- Random testing percentages (generalize)

See Expert Review Regularly

- FTA or State DOT



AUDIT FINDINGS: POLICY

Removing Employee from SS Functions

- 0.04 vs. 0.02
- 0.04 = Regulatory Violation → SAP Referral → RTD Process
- 0.02 = No “official violation” → No SAP → No RTD

Don't Use “Undefined” Language

- “Fail” vs. “Refusal” vs. “Positive”

SAP Language

- Requirement for a “list” of SAPs, not just 1 (when terminating employee/not hiring applicant)

Governing Authority Approval

- Must approve EVERY TIME policy is revised
- Some exceptions may exist



AUDIT FINDINGS: POLICY

Policy Consequences

- Zero Tolerance vs. 2nd Chance
- Determination to terminate or not is 100% outside of the requirements of the federal regulations
- Each employer must make a determination on discipline from DOT test results; list this in their policy; be consistent
- **YOU MUST FOLLOW YOUR POLICY!**



Policy Resources

[FTA Policy Requirements Checklist](#)

- Beware of tuna in your chocolate chip cookies!

Seek Expert Review on Regular Basis

- SO NICE WE PUT IT IN HERE TWICE!!
- FTA or State DOT



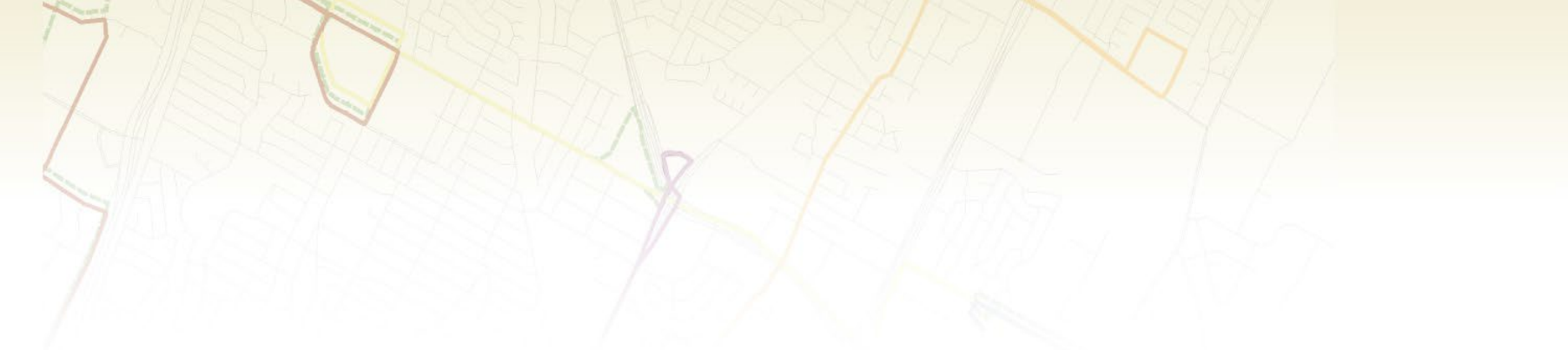
Policy Resources

[FTA Policy Builder](#)

- Concise and purely compliance oriented

Other Templates

- Often more “comprehensive” & include more employer specifics
- Make sure you still show due diligence to ensure current compliance



COMMON MISTAKES

PRE-EMPLOYMENT TESTING



PRE-EMPLOYMENT

Scenario 1 – Applicant/New Employee

Scenario 2 – Employee Transfer → SS Duty

Scenario 3 – Employee Returns from
Extended Leave

- No SS duties for 90+ days, AND removal from random testing pool

REMEMBER!

- Pre-Employment = Clearance to Perform SS Duty
- Return-to-Duty Test = Only done after a positive test/refusal (always directly observed)
- DO NOT CONFUSE PRE-EMPLOYMENT WITH RETURN-TO-DUTY



USDOT D&A History Checks

“Two Branches – Same Tree”

Previous DOT
Employer
D&A Check



- Conditional based on employment history
- FTA DOESN'T USE “FMCSA CLEARINGHOUSE”

Positive P.E.
Test Question



- Must do for ALL applicants
- Consider adding to application



PREVIOUS EMPLOYER RECORDS CHECK

As A Potential Employer, You Must:

- Contact previous employer – written release from applicant must accompany request
- Previous 2 years
- No “Blanket” Releases
- All DOT employers, not just TRANSIT



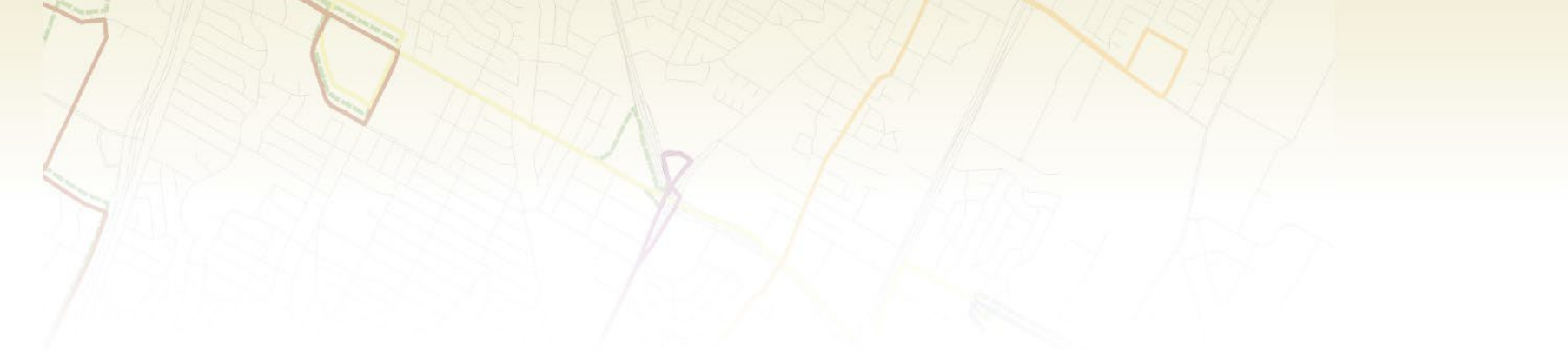
PREVIOUS EMPLOYER RECORDS CHECK

Getting the Info Back

- Use “standard” uniform letter containing applicant’s consent and questions posed to previous employer
- Document your “good faith effort”

Record Retention

- Must maintain this info for at least 3 years



COMMON MISTAKES

POST-ACCIDENT TESTING



POST-ACCIDENT

An Occurrence Associated w/ Operation of Vehicle (whether or not in revenue service) and one or more of following occur:

1. Human Fatality

2. Individual suffers bodily injury and immediately transported away from scene for medical treatment

3. One or more vehicles incurs disabling damage

4. Rail car, trolley car, trolley bus, or vessel is removed from operation

#4 is only applicable to fixed guideway transit vehicles and ferry vessels



POST-ACCIDENT

FATALITY: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident; and
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

NON-FATAL: WHO TO TEST?

- Surviving covered employee(s) operating vehicle at time of accident, UNLESS their performance can be completely discounted as contributing factor (**different from fault**)
- Any other covered employee who may have contributed to accident (mechanic, dispatcher)

Who NOT to Test?

- Employee must be able to give consent
- Cannot test dead or unconscious employee



POST-ACCIDENT DOCUMENTATION

Decision to Test

- Made by employer at the time of the accident
- Use best information available AT TIME OF ACCIDENT
- Decisions should not be reversed based on facts learned later on

MUST DOCUMENT DECISION

- Best practice is to use a sample form that is standard for each use and is specific to the D/A Decision

POST ACCIDENT TESTING DECISION REPORT

****A separate sheet must be filled out for each covered employee that contributed to the accident****

System Name: _____ Date of Accident: _____

Time of Accident: _____ Time Employer was notified: _____

Location of Accident: _____

Safety-Sensitive Employee: _____ ID # and Position: _____

i.e. Driver, Dispatcher, etc.

- 1. Did the accident involve a public transit vehicle? Yes No
- 2. Did the accident involve the operation of the vehicle? Yes No
- 3. Was there loss of life as a result of the accident? * Yes No
- 4. Did an individual suffer a bodily injury and immediately receive medical treatment away from the scene? * Yes No
- 5. Was there disabling damage to any of the involved vehicles? * Yes No
- 6. a) Did you perform a drug and/or alcohol test?
(Use Decision Tree on back of this form) Yes FTA Authority Yes Comp No
- b) If no, why not? _____
- c) For a non-fatal accident, can the covered employee(s) performance be completely discounted as a contributing factor to the accident? Yes No
- 7. a) Was an alcohol test performed within 2 hours? N/A Yes No
- b) If no, why: _____
- 8. If no alcohol test occurred, and more than 8 hours elapsed from the time of the accident, please explain: _____
- 9. a) Was a drug test performed within 32 hours? N/A Yes No
- b) If no, why: _____
- 10. a) Did the employee leave the scene of the accident without a reasonable explanation? Yes No
- b) If Yes, please explain: _____

If you check this box, you MUST NOT conduct a USDOT post-accident test

Test Determination:

Name of supervisor making determination: _____

Time employee was informed of determination: _____

Signature & Title _____

Date _____

POST-ACCIDENT

Common Problems

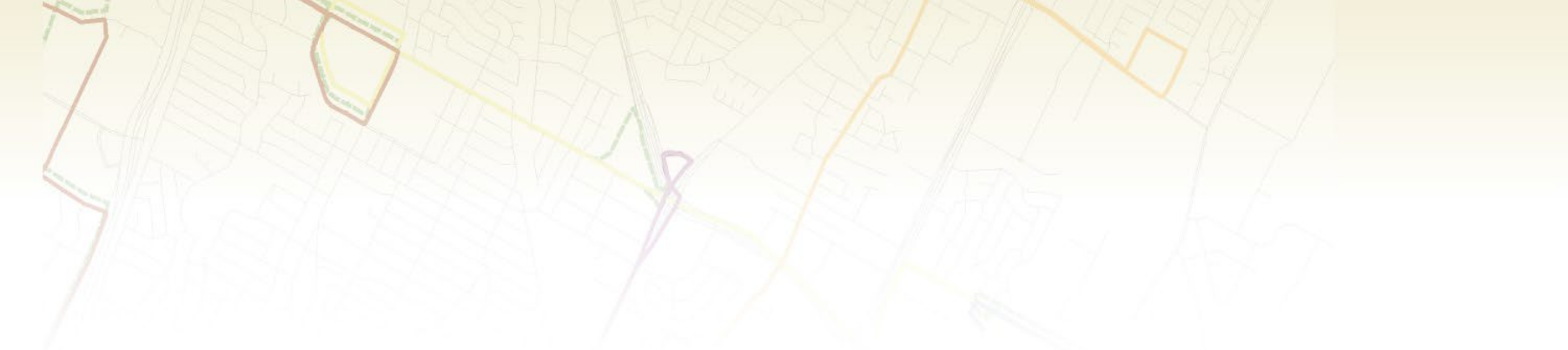
- Ordering USDOT-FTA tests when not required
- The following factors have **NO IMPACT** making your determination for USDOT-FTA post-accident testing:



- Testing just to be safe
- Dollar damage
- Preventability
- **Reasonable Suspicion Implications**
- Citation vs. No Citation

You are prohibited from conducting a DOT-FTA post-accident test if the DOT-FTA thresholds **are not** met.

- ◆ Serious implications if result comes back positive



COMMON MISTAKES

RANDOM TESTING



Random Selection Lists

Your List is a “CHECKS & BALANCE” Tool

- 1 selection = 1 test
- “Scale must be balanced”

Employee(s) Selected Unavailable?

- Will they be back before end of testing period?
- If unavailable for WHOLE testing period, you must DOCUMENT
- “Keep the scale balanced”
- You can ONLY test someone in period for which they were selected



RANDOM TESTING

Using Alternate Selection

- **ONLY** if employee **ORIGINALLY** selected is unavailable for the **ENTIRE** testing period, may you use an alternate selection
- Must document why original selection was unavailable (operational difficulties is NOT legitimate reason)

Alternate(s) Must Be Selected At Same Time as Original List Was Generated

- You **CANNOT** make an alternate selection as a separate draw later on during the testing period
- The alternate must be identified as an alternate

RANDOM TESTING

Testing Spread/When to Test



- Very important for deterrence and detection of drug/alcohol use (it is more than a compliance issue)
- Testing must be unannounced and unpredictable
- Must be reasonable spread throughout the times of day, days of week, weeks of month, months of quarter
- Testing must be conducted on all days and times when safety-sensitive functions are performed
- NO BATCH TESTING



RANDOM TESTING

BEST PRACTICE

- The VERY BEST practice is for the DAPM to use some type of “random spread tracker” to visually represent the pattern of random testing
- As a DAPM, if you just send people for random testing “whenever,” it will probably become predictable!
- **“Whenever” = “Convenient” ...**
- **“Convenient” = “Predictable” ...**
- **“Predictable” = “Lowered Deterrence & Detection” ...**
- Tools are available to assist in this effort

RANDOM TESTING

Challenges in Conducting Tests During All Hours/Days

- Sometimes transit systems are restricted on when they can conduct tests based on the hours and days of business of their COLLECTION SITE
- Remember, the only thing that is random about random testing is the selection!
- This allows you to work with your collection site in advance to schedule early morning/late evening tests
- May even try making agreement with individual collectors/technicians

RANDOM TESTING SPREADSHEET

Transit System Name: ACME Transit		
EMPLOYEE NAME OR ID	TEST DATE	TEST TIME
Employee 1	1/16/2016	6:32:00 AM
Employee 2	1/25/2016	1:45:00 PM
Employee 3	2/10/2016	6:45:00 PM
Employee 4	2/23/2016	9:22:00 AM
Employee 5	3/17/2016	3:05:00 PM
Employee 6	3/30/2016	11:24:00 AM
Employee 7	4/8/2016	10:40:00 AM
Employee 8	4/21/2016	2:20:00 PM
Employee 9	5/2/2016	10:39:00 AM
Employee 10	5/24/2016	8:00:00 AM
Employee 11	6/8/2016	9:45:00 PM
Employee 12	6/16/2016	11:45:00 AM
Employee 13	7/4/2016	6:00:00 AM
Employee 14	7/10/2016	12:00:00 PM
Employee 15	8/15/2016	11:15:00 AM
Employee 16	8/30/2016	4:30:00 PM
Employee 17	9/2/2016	3:15:00 PM
Employee 18	9/12/2016	10:34:00 AM
Employee 19	10/13/2016	3:00:00 PM
Employee 20	10/22/2016	10:00:00 AM
Employee 21	11/4/2016	2:24:00 PM
Employee 22	11/23/2016	9:09:00 AM
Employee 23	12/8/2016	4:05:00 PM
Employee 24	12/30/2016	10:12:00 AM

TESTING PREDICTABILITY – BATTLE ROYAL

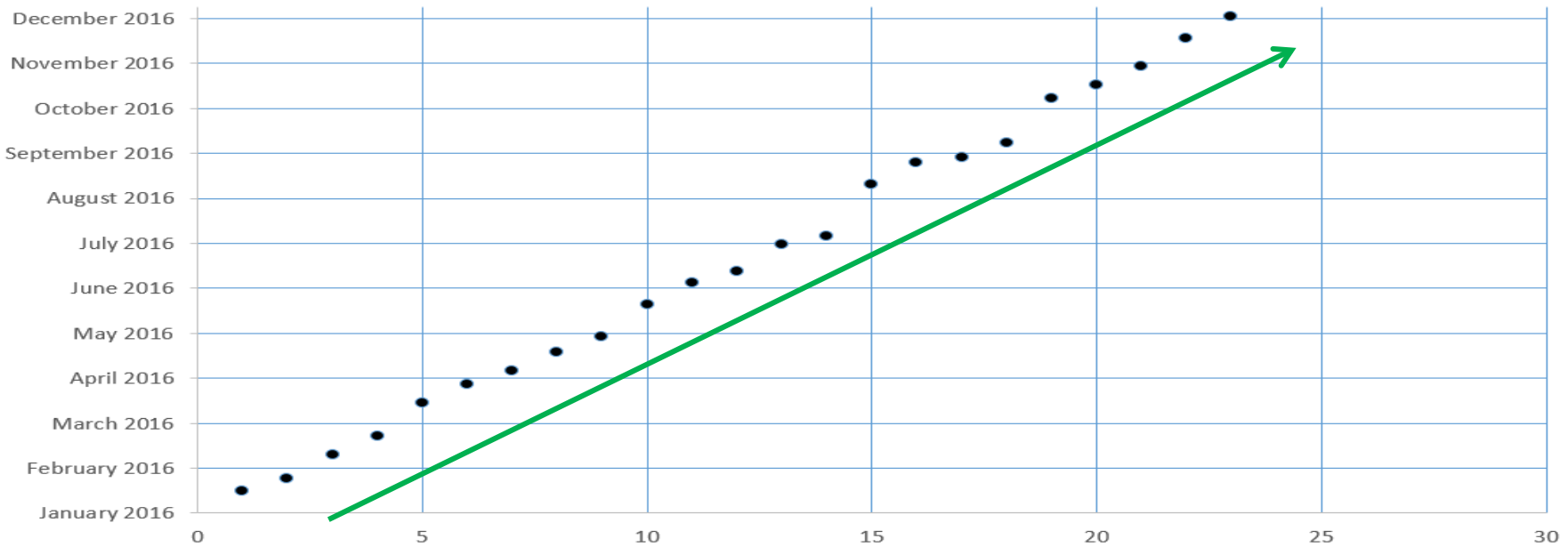
ACME Transit

Vs.

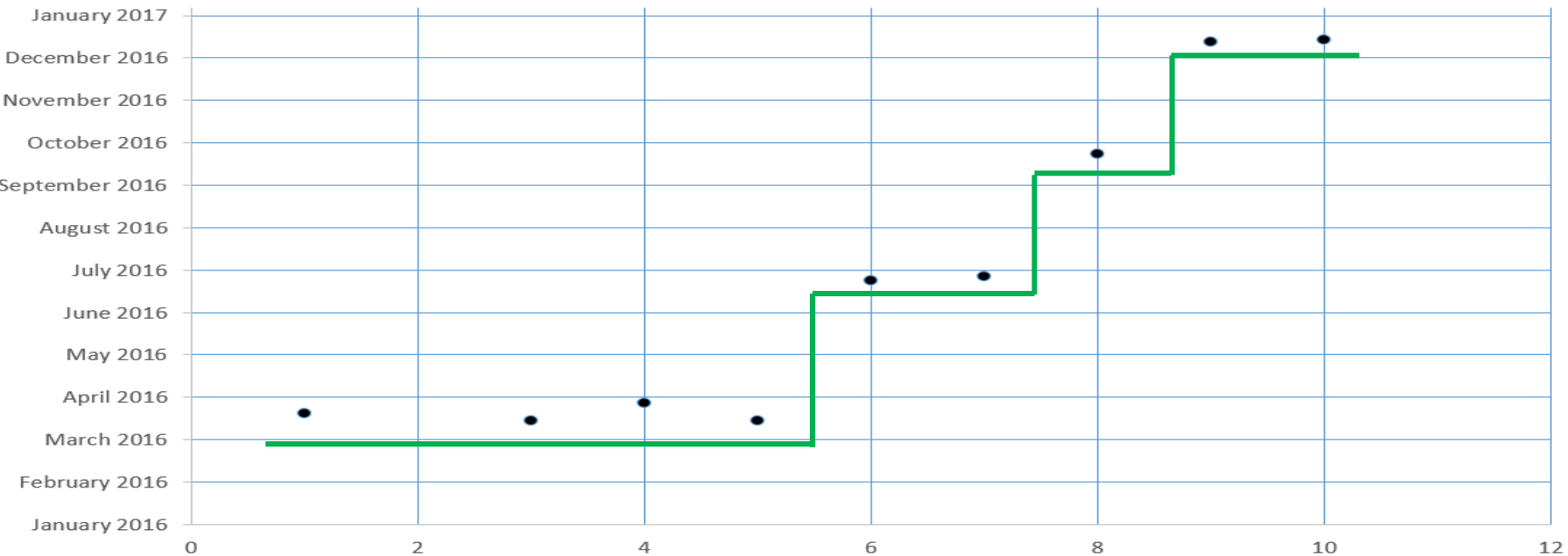
SUNRAY Transit

WHO WILL BE THE VICTOR?

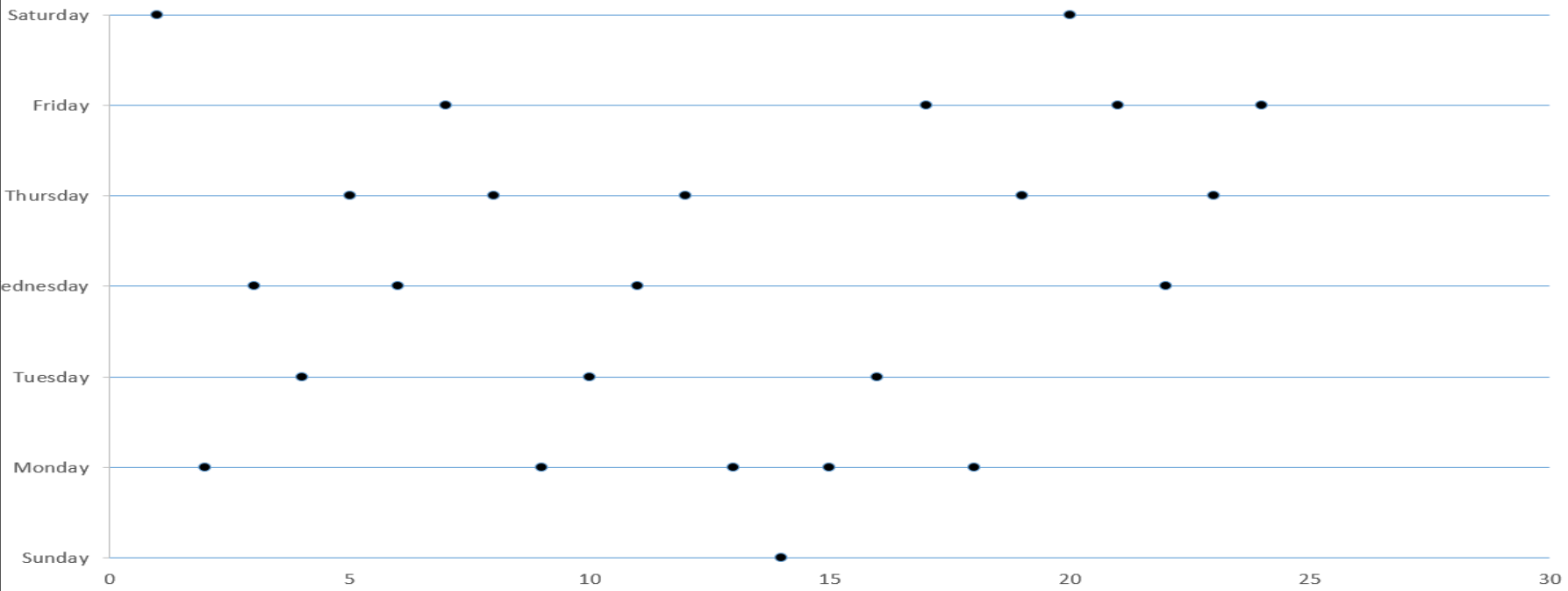
ACME TRANSIT - Random Testing Throughout The Year



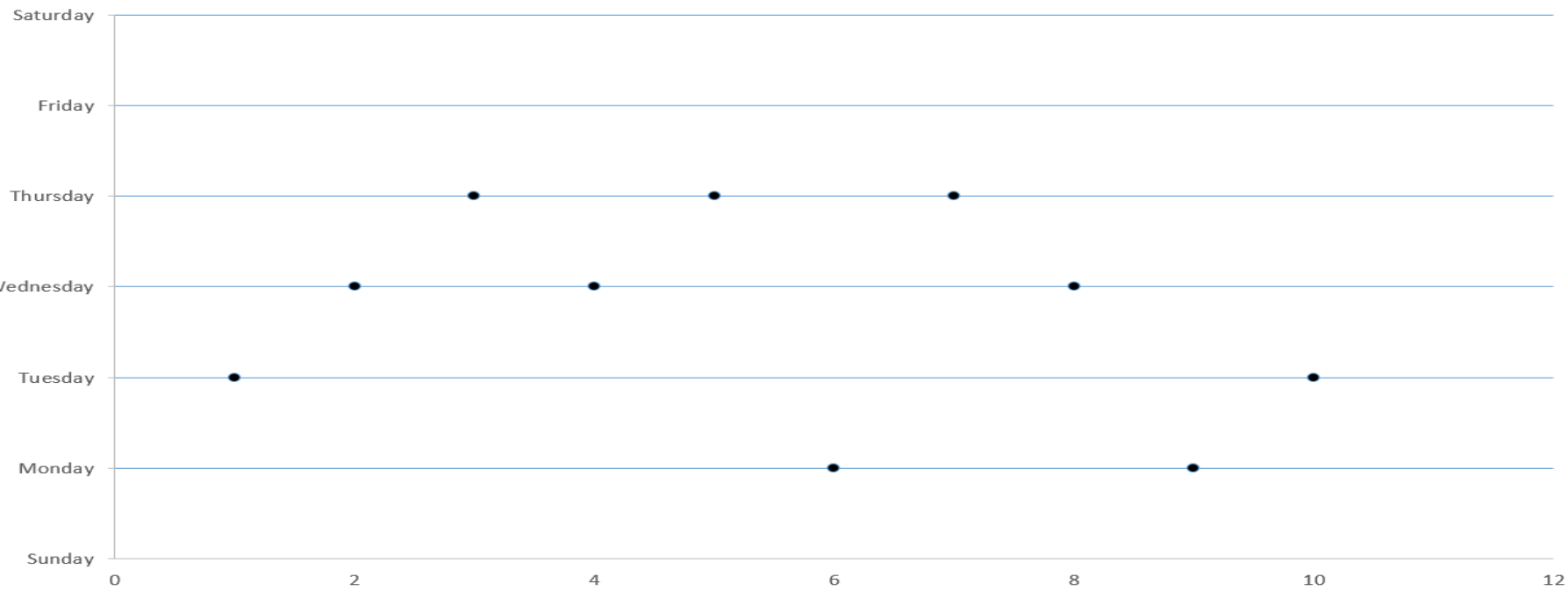
SUNRAY TRANSIT - Random Testing Throughout The Year



ACME TRANSIT - Random Testing Throughout The Week



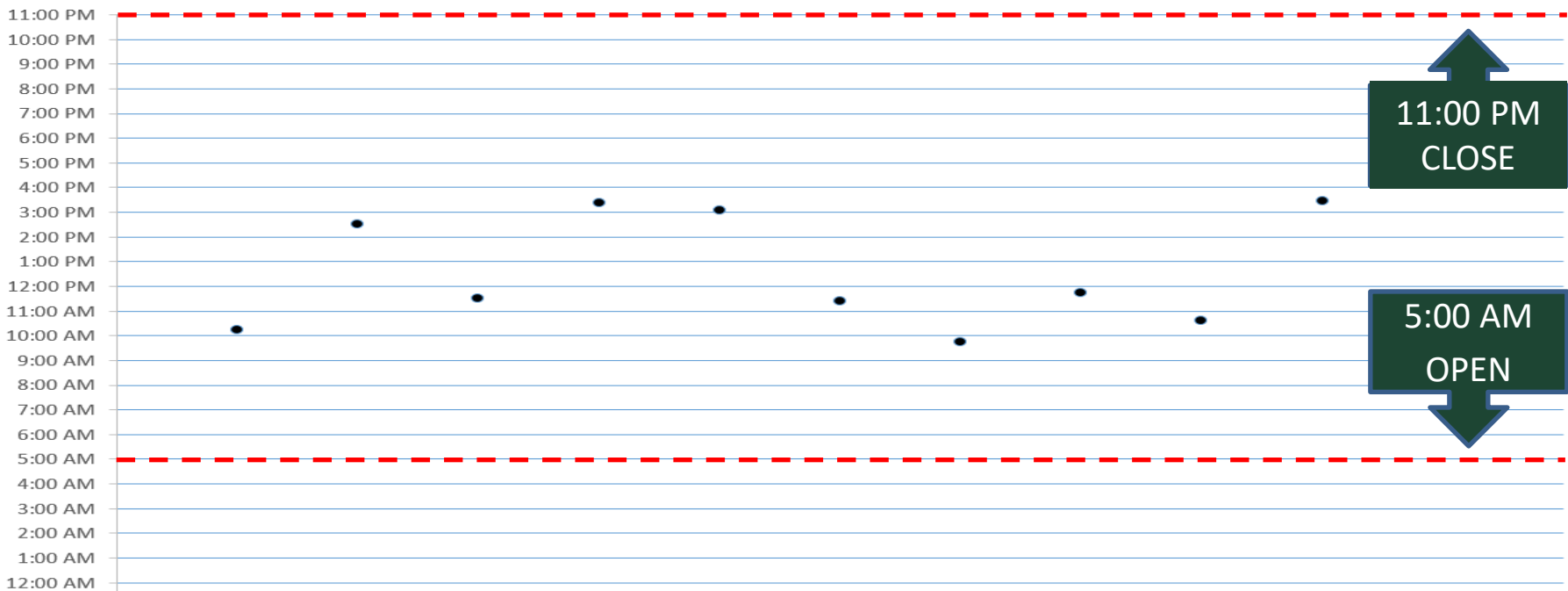
SUNRAY TRANSIT - Random Testing Throughout The Week

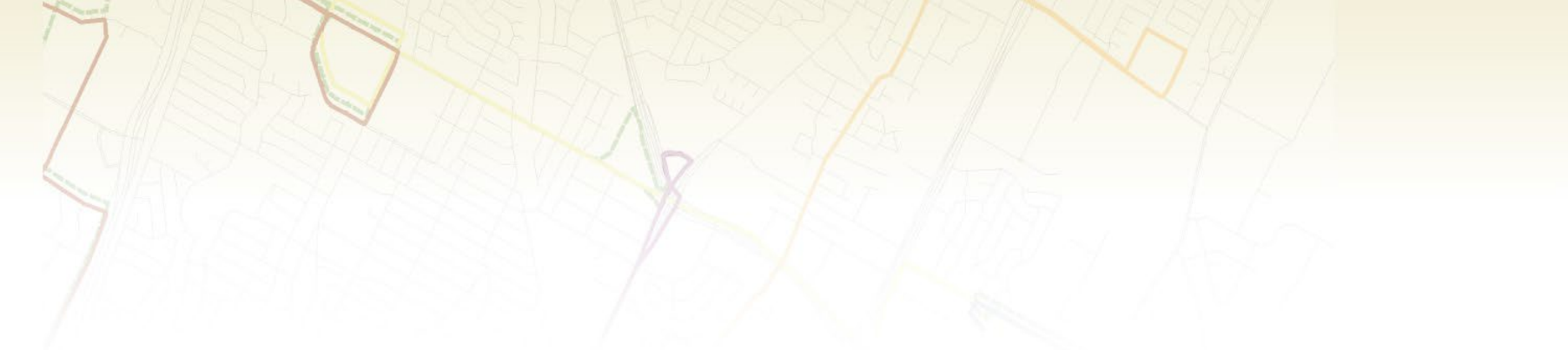


ACME TRANSIT - Random Testing Throughout The Day



SUNRAY TRANSIT - Random Testing Throughout The Day





COMMON MISTAKES

POSITIVES/REFUSALS

Positives / Refusals

Required Action NO MATTER YOUR POLICY:

- Immediate removal from SS duty
- Referral to SAP

Referral to SAP

- Even if the employee is being terminated
- Even if the positive/refusal to test was a Pre-employment test
- Zero-Tolerance employer not required to follow-up with SAP and ensure individual actually completes the process (unless they return to duty)

Positives/Refusals

Following Positive/Refusal - Returning to Safety-Sensitive Duties

- USDOT positive drug test, alcohol test 0.04 or above, or refusal to test = **NO SAFETY-SENSITIVE FUNCTIONS**
- Individual is prohibited from performing safety-sensitive functions for ALL USDOT-covered employers in the nation
- Positive tests/refusals don't expire; they follow the individual (they aren't employer-specific)
- The only path that allows them to return to safety-sensitive functions is through Return-to-Duty process under 49 CFR Part 40, Subpart O



Resources

1. Sample D&A program management forms
2. USDOT – Office of Drug & Alcohol Policy & Compliance (ODAPC) – GREAT RESOURCE
 - www.transportation.gov/odapc
3. ODAPC “List Serv”
 - www.transportation.gov/odapc/get-odapc/email-updates
4. FTA Drug & Alcohol Newsletter
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Newsletters/Topics.aspx>
5. FTA Policy Requirements Checklist
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Checklist/PolicyReqsChecklist.doc>
6. FTA D&A Policy Builder
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/PolicyBuilder/CreatePolicy.aspx>
7. Random Testing Chart Generator
 - https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/RandomCharts_v2.xls
8. MIS Report Submission Instructional Video:
 - <https://www.youtube.com/watch?v=Csbh9hY6mv0>
9. MRO/TPA Results Review Checklist
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DAPMForms/Checklists/MRO%20and%20TPA%20Results%20Review.docx>



Questions?

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