

§ 40.367

(7) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a “litigation package”;

(8) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without face-to-face interviews;

(9) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (*e.g.*, a laboratory that derives a financial benefit from having an employer use a specific MRO);

(10) For any service agent, representing falsely that the service agent or its activities is approved or certified by the Department or a DOT agency;

(11) For any service agent, disclosing an employee’s test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a “blanket” consent from employees or by creating a data base from which employers or others can retrieve an employee’s DOT test results without the specific consent of the employee;

(12) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;

(13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or

(14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (*e.g.*, failure to properly conduct the selection process for random testing).

§ 40.367 Who initiates a PIE proceeding?

The following DOT officials may initiate a PIE proceeding:

(a) The drug and alcohol program manager of a DOT agency;

(b) An official of ODAPC, other than the Director; or

(c) The designee of any of these officials.

49 CFR Subtitle A (10–1–07 Edition)

§ 40.369 What is the discretion of an initiating official in starting a PIE proceeding?

(a) Initiating officials have broad discretion in deciding whether to start a PIE proceeding.

(b) In exercising this discretion, the initiating official must consider the Department’s policy regarding the seriousness of the service agent’s conduct (see § 40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.

(c) A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of non-compliance.

§ 40.371 On what information does an initiating official rely in deciding whether to start a PIE proceeding?

(a) An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.

(b) Before sending a correction notice (see § 40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official’s determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

§ 40.373 Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?

(a) If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.

(b) The correction notice identifies the specific areas in which you must come into compliance in order to avoid being subject to a PIE proceeding.

(c) If you make and document changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the