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 pro-
cess for random testing).

§ 40.367 Who initiates a PIE pro-
ceeding?
The following DOT officials may ini-
tiate 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 offi-
cials.

§ 40.369 What is the discretion of an
initiating official in starting a PIE pro-
ceeding?
(a) Initiating officials have broad dis-
cretion in deciding whether to start a
PIE proceeding.
(b) In exercising this discretion, the
initiating official must consider the
Department’s policy regarding the seri-
ousness of the service agent’s conduct
(see §40.365) and all information he or
she has obtained to this point con-
cerning the facts of the case. The initi-
ating official may also consider the
availability of the resources needed to
pursue a PIE proceeding.

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

§ 40.373 Before starting a PIE pro-
ceeding, does the initiating official
give the service agent an oppor-
tunity to correct problems?
(a) If you are a service agent, the ini-
tiating official must send you a correc-
tion notice before starting a PIE pro-
ceeding.
(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 compli-
ance in the areas listed in the correc-
tion notice to the satisfaction of the
initiating official within 60 days of the
date you receive the notice, the initi-
ating official does not start a PIE pro-
ceeding. The initiating official may
conduct appropriate fact finding to
verify that you have made and main-
tained satisfactory corrections. When
he or she is satisfied that you are in
compliance, the initiating official
sends you a notice that the matter is
concluded.

§ 40.375 How does the initiating offi-
cial start a PIE proceeding?
(a) As a service agent, if your compli-
ance matter is not correctable (see
§40.373(a)), or if have not resolved com-
pliance matters as provided in
§40.373(c), the initiating official starts
a PIE proceeding by sending you a no-
tice of proposed exclusion (NOPE). The
NOPE contains the initiating official’s
recommendations concerning the
issuance of a PIE, but it is not a deci-
sion by the Department to issue a PIE.
(b) The NOPE includes the following
information: