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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 initiating official within 60 days of the date you receive the notice, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that you have made and maintained 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 official start a PIE proceeding?

(a) As a service agent, if your compliance matter is not correctable (see § 40.373(a)), or if have not resolved compliance matters as provided in § 40.373(c), the initiating official starts a PIE proceeding by sending you a notice of proposed exclusion (NOPE). The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.

(b) The NOPE includes the following information:

(1) A statement that the initiating official is recommending that the Department issue a PIE concerning you;

(2) The factual basis for the initiating official's belief that you are not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;

(3) The factual basis for the initiating official's belief that your noncompliance has not been or cannot be corrected;

(4) The initiating official's recommendation for the scope of the PIE;

(5) The initiating official's recommendation for the duration of the PIE; and

(6) A statement that you may contest the issuance of the proposed PIE, as provided in § 40.379.

(c) The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to you.

§ 40.377 Who decides whether to issue a PIE?

(a) The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decisionmaker, all references in this subpart to the Director refer to the designee.

(b) To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.

(c) There is a ''firewall'' between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

§ 40.379 How do you contest the issuance of a PIE?

(a) If you receive a NOPE, you may contest the issuance of the PIE.

(b) If you want to contest the proposed PIE, you must provide the Director information and argument in opposition to the proposed PIE in writing,