

§ 40.375

§ 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

49 CFR Subtitle A (10–1–12 Edition)

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, in person, and/or through a representative. To contest the proposed PIE, you must take one or more of the steps listed in this paragraph (b) within 30 days after you receive the NOPE.

(1) You may request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.

(2) You may present written information and arguments, consistent with the provisions of § 40.381, contesting the proposed PIE.

(3) You may arrange with the Director for an informal meeting to present your information and arguments.

(c) If you do not take any of the actions listed in paragraph (b) of this section within 30 days after you receive the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (*i.e.*, the NOPE and any supporting information or testimony) and any additional information the Director obtains.

§ 40.381 What information do you present to contest the proposed issuance of a PIE?

(a) As a service agent who wants to contest a proposed PIE, you must present at least the following information to the Director:

(1) Specific facts that contradict the statements contained in the NOPE (see § 40.375(b)(2) and (3)). A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;