

PART 40 QUESTIONS AND ANSWERS

The Office of General Counsel and Office of Drug and Alcohol Policy and Compliance of the Department of Transportation are providing this question and answer. It constitutes an official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5).

This Question and Answer is dated 07/12.

QUESTION:

How does the Department's Public Interest Exclusion (PIE) process work when a service agent has been convicted for an offense related to non-compliance with Part 40 or DOT Agency drug and alcohol testing rules?

ANSWER:

- When there is a judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction against the service agent, whether entered upon a verdict or plea, including a plea of nolo contendere; or any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution, the PIE process works as explained below:
 - A DOT official can initiate a PIE against the service agent based solely on the conviction.
 - The conviction means that the standard of proof for issuing the PIE has been met.
 - Therefore, when the DOT initiating official issues the service agent a Notice of Proposed Exclusion recommending a PIE, the service agent will not be able to contest the facts of the non-compliance or the issuance of the PIE.
 - The service agent would be afforded only an opportunity to contest the proposed length of time the PIE would be in place.