

4 Administrative Enforcement Processes

This section describes the enforcement processes to use each type of administrative enforcement tool listed in the Table of Contents on the following page.

Administrative Enforcement Procedures are intended to improve the internal management of PHMSA. As such, it is for the use of PHMSA personnel only and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, officers, or any person.

This section uses cross-functional diagrams as its structure to provide a reference to each process step and decision point as a case proceeds from initiation to closure. The diagrams identify individual responsibilities for completing each step, and how documents and information flow between different individuals and organizations in processing cases. These cross-functional diagrams and accompanying narrative address the actions associated with the most common enforcement cases. They do not attempt to cover every possible enforcement situation. Enforcement cases are sometimes quite complex and may involve actions not depicted in this section.

The diagrams also provide the structure to locate a narrative description of some key process steps. The steps with **bold borders** in the diagrams (see illustration below) contain a reference to subsection numbers where additional narrative description is provided.

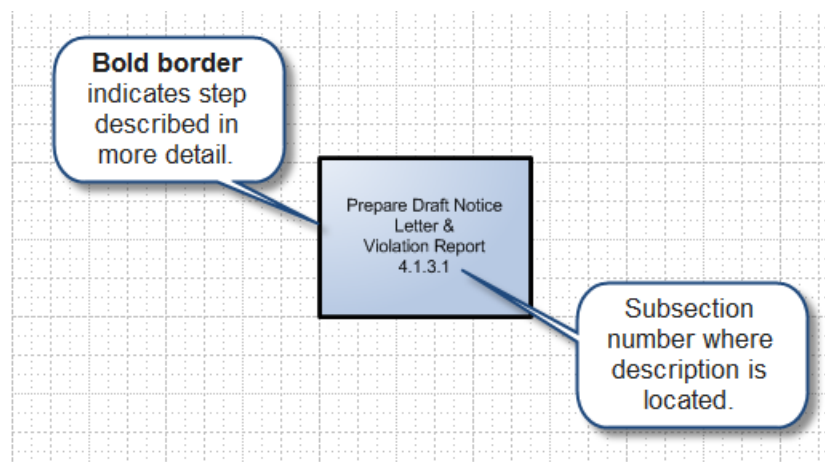


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¹ Table 4-A provides a summary for the selection of enforcement documents, including references to templates.

² Table 4-B provides a matrix for the minimum required distribution for each enforcement document.

4.1 Probable Violations (including Warning Items)

This subsection describes the process used to develop and process cases when probable violations are identified. The cross functional diagram for processing probable violations (which includes warning letters) is organized into 11 major activities, each shown on a separate sheet in Figure 4.1, as follows:

1. Document Inspection/Investigation (Fig. 4.1, Sheet 1 – page 5)
2. Process Information Request (Fig. 4.1, Sheet 2 – page 6)
3. Prepare Notice of Probable Violation Letter (Fig. 4.1, Sheet 3 – page 7)
4. Issue Notice Letter to Operator (Fig. 4.1, Sheet 4 – page 8)
5. Process Operator Response to Warning Letter (Fig. 4.1, Sheet 5 – page 9)
6. Process Operator Response to Notice of Probable Violation Letter (Fig. 4.1, Sheet 6 – page 10)
7. Conduct Hearing (Fig. 4.1, Sheet 7 – page 11)
8. Process Final Order (Fig. 4.1, Sheet 8 – page 12)
9. Close Case (Fig. 4.1, Sheet 9 – page 13)
10. Petition for Reconsideration (Fig. 4.1, Sheet 10 – page 14)
11. Refer Case to DOJ or other Agency (Fig. 4.1, Sheet 11, page 15)

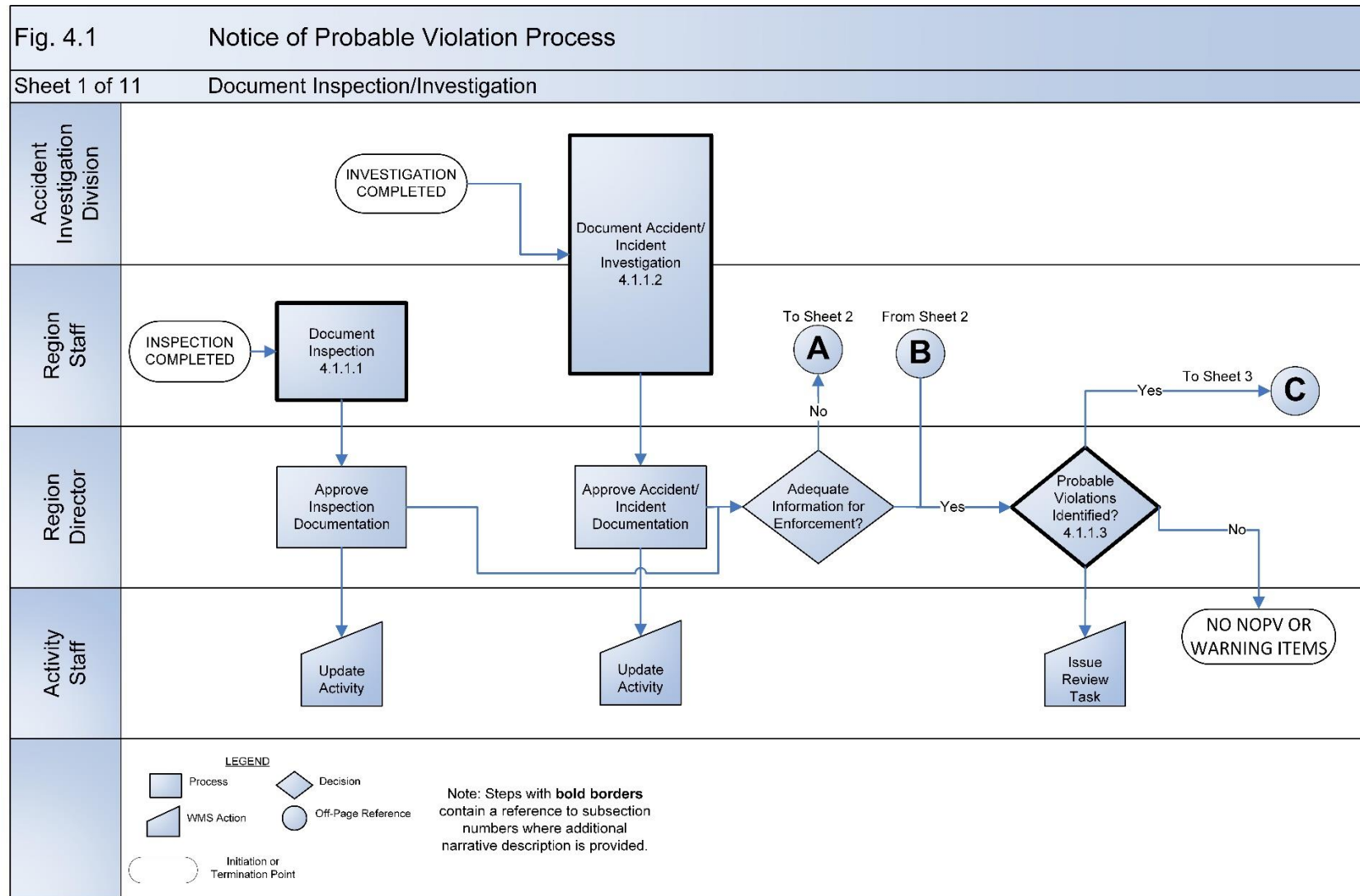
The following diagram and accompanying process descriptions identify the Region Director as responsible for certain steps in the enforcement process. Many of these responsibilities can be delegated to Region staff at the Region Director's discretion. However, the Region Director is ultimately responsible for the correct and timely completion of these steps.

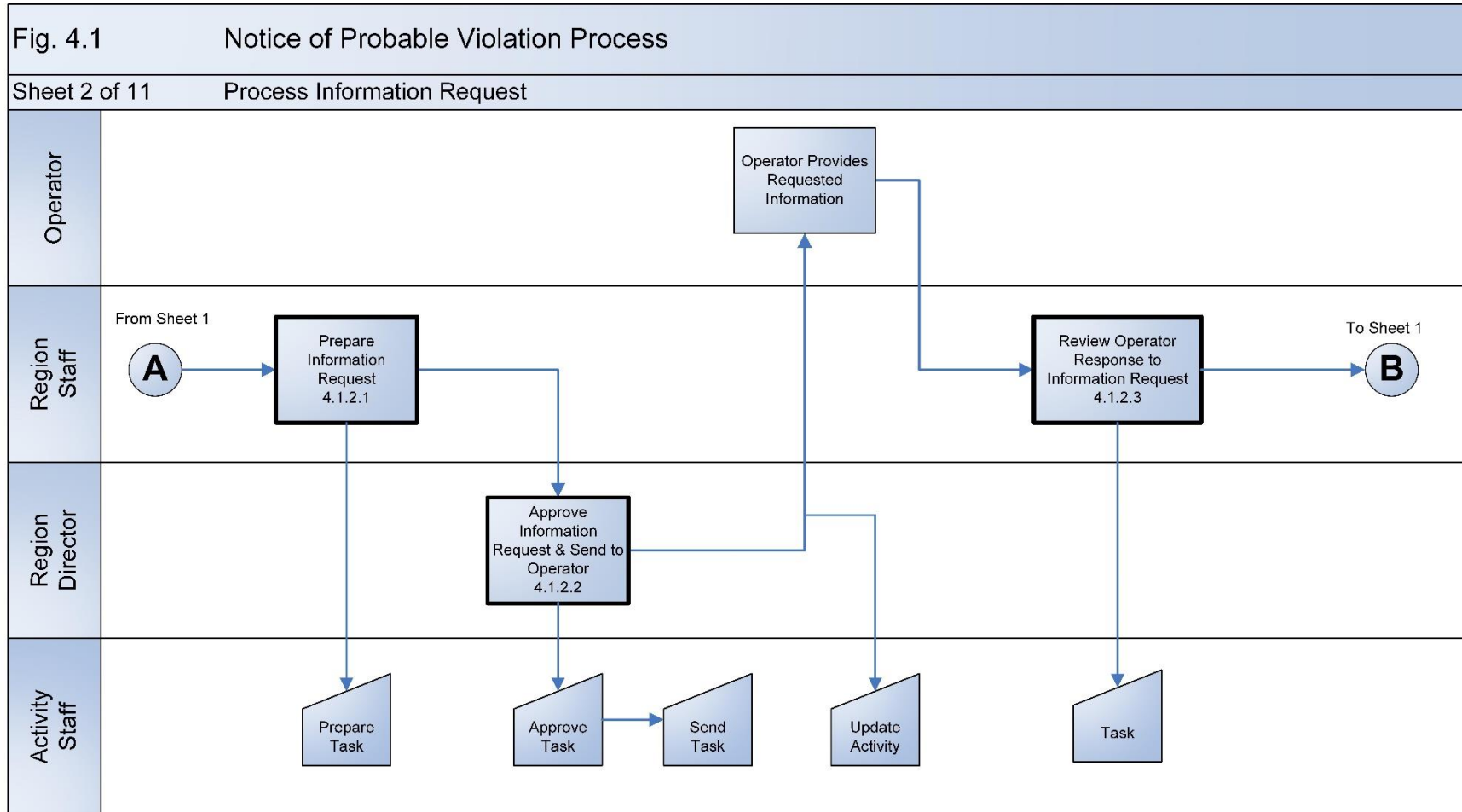
Figure 4.1

Notice of Probable Violation Process

(Including Warning Items)

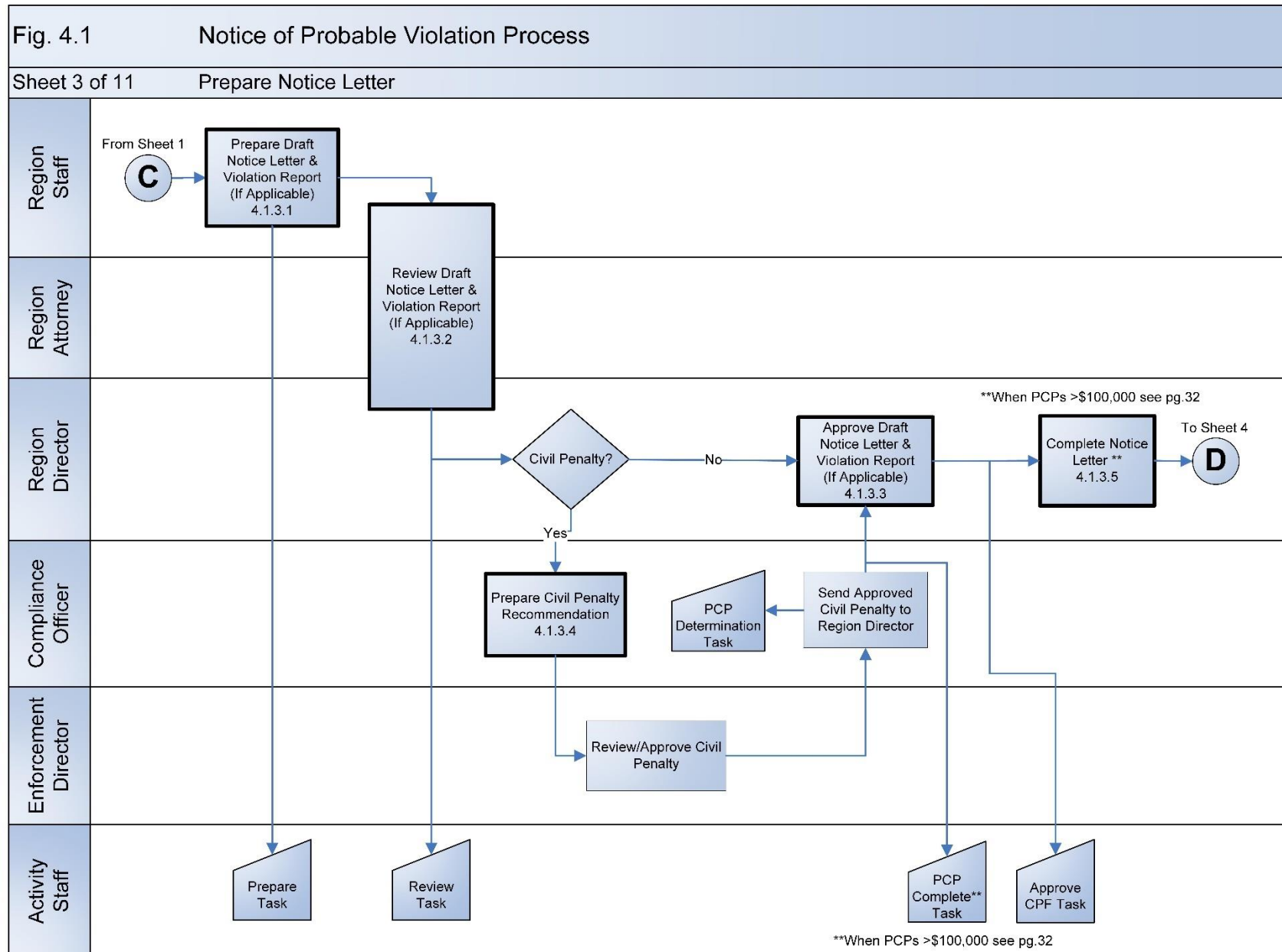
Cross Functional Diagram





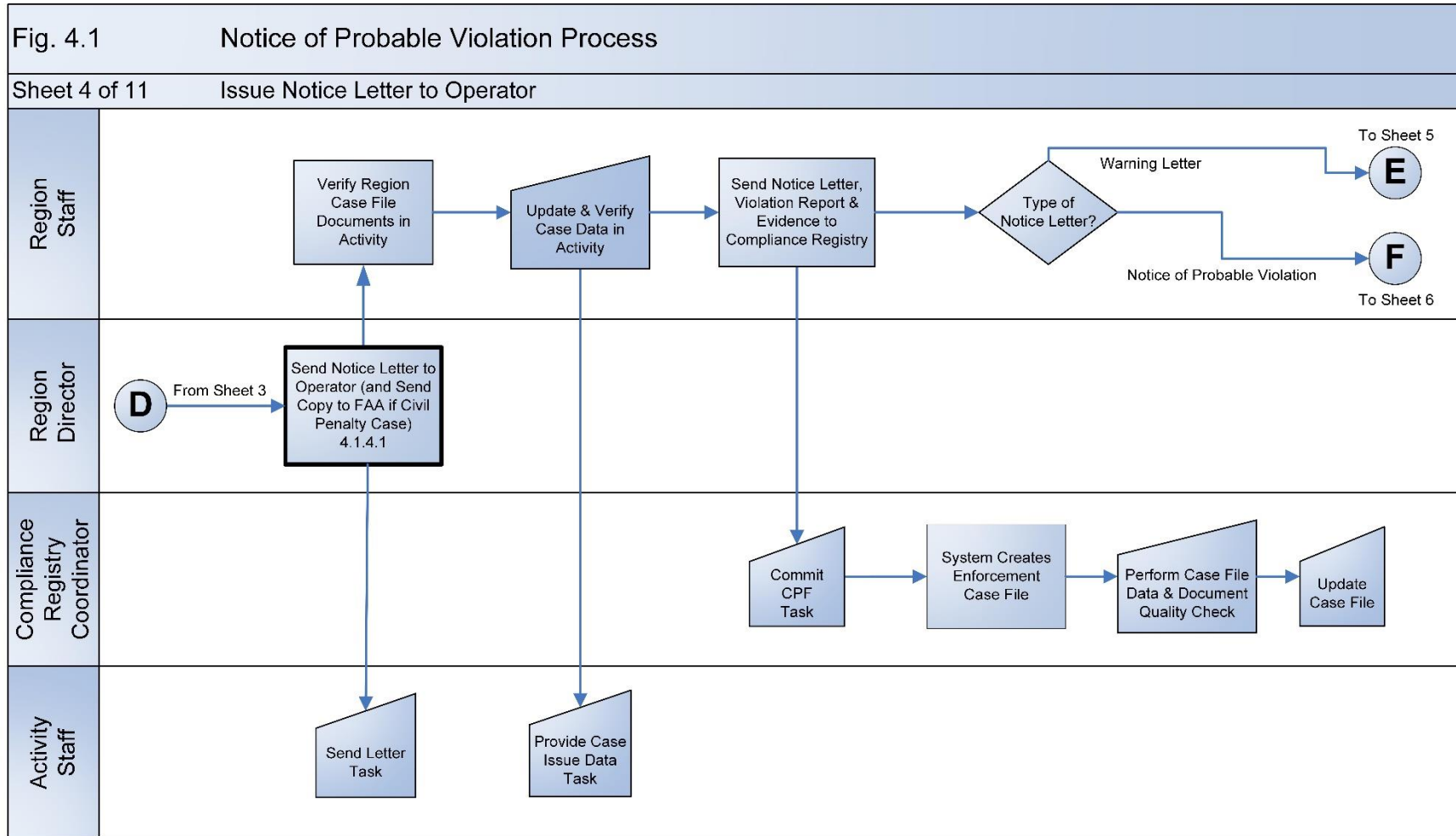
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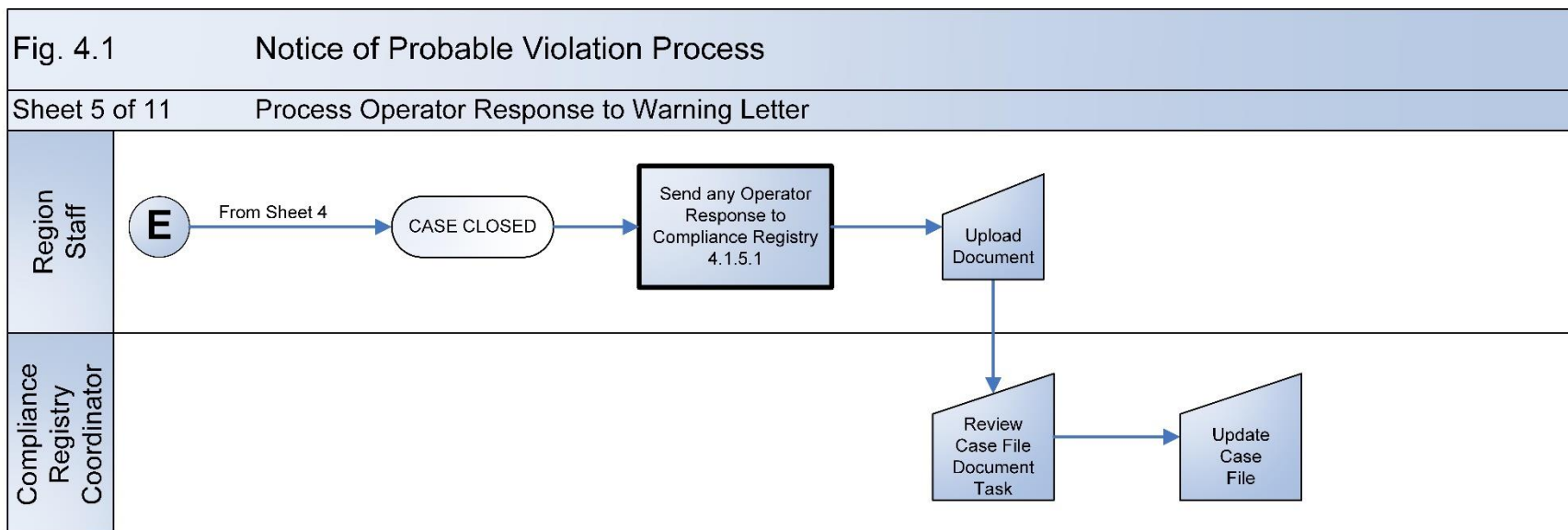
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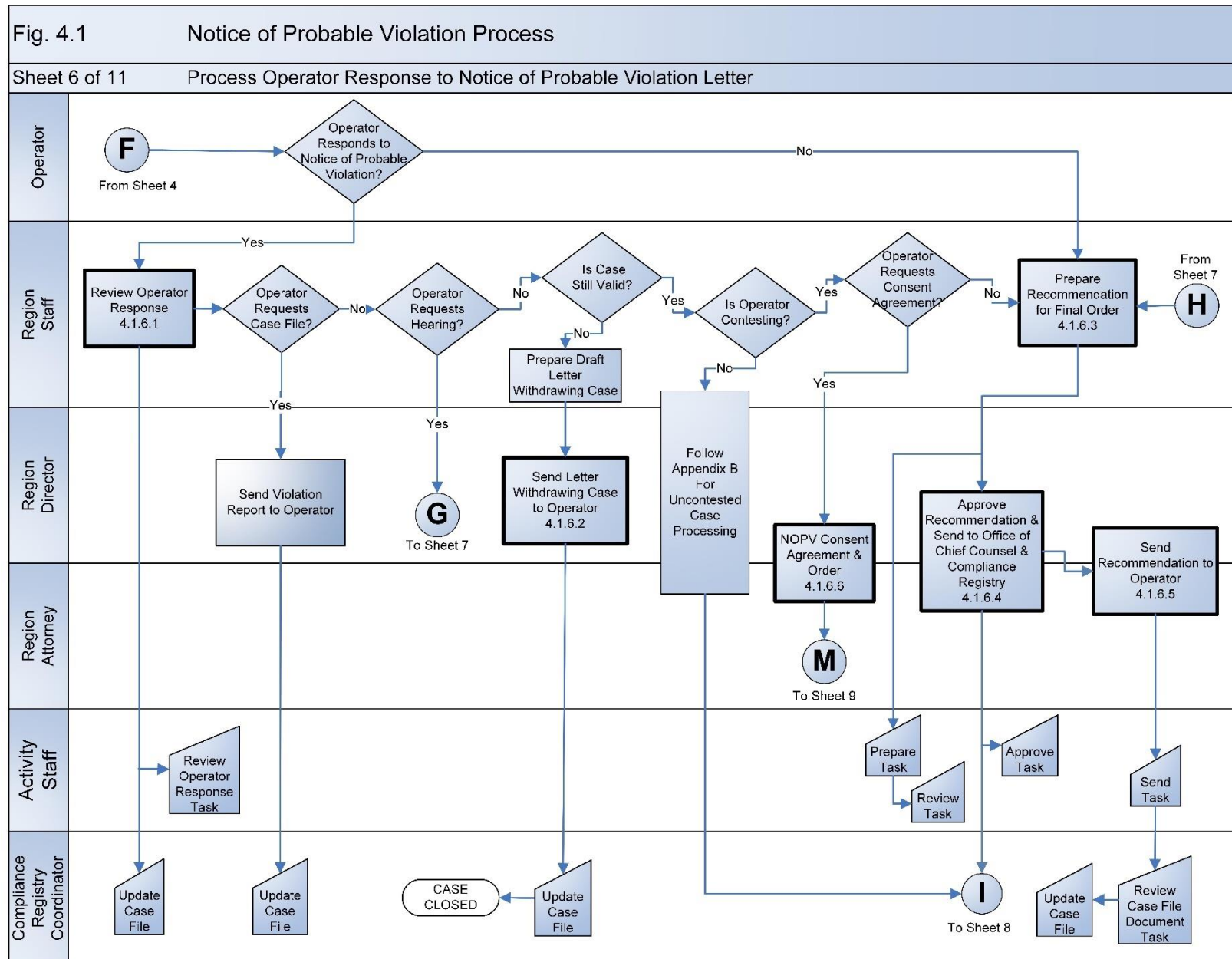
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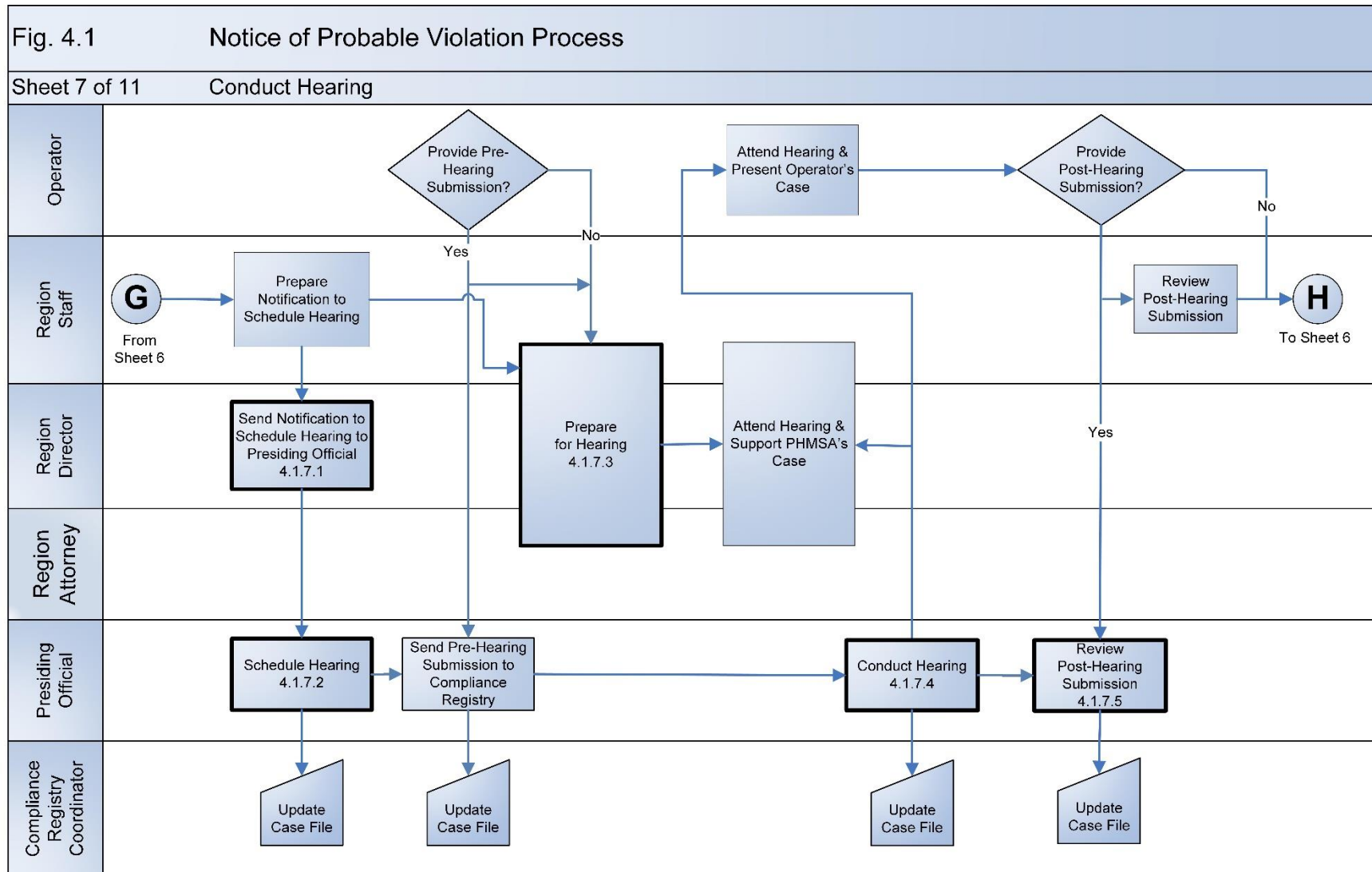




Pipeline Safety Enforcement Procedures

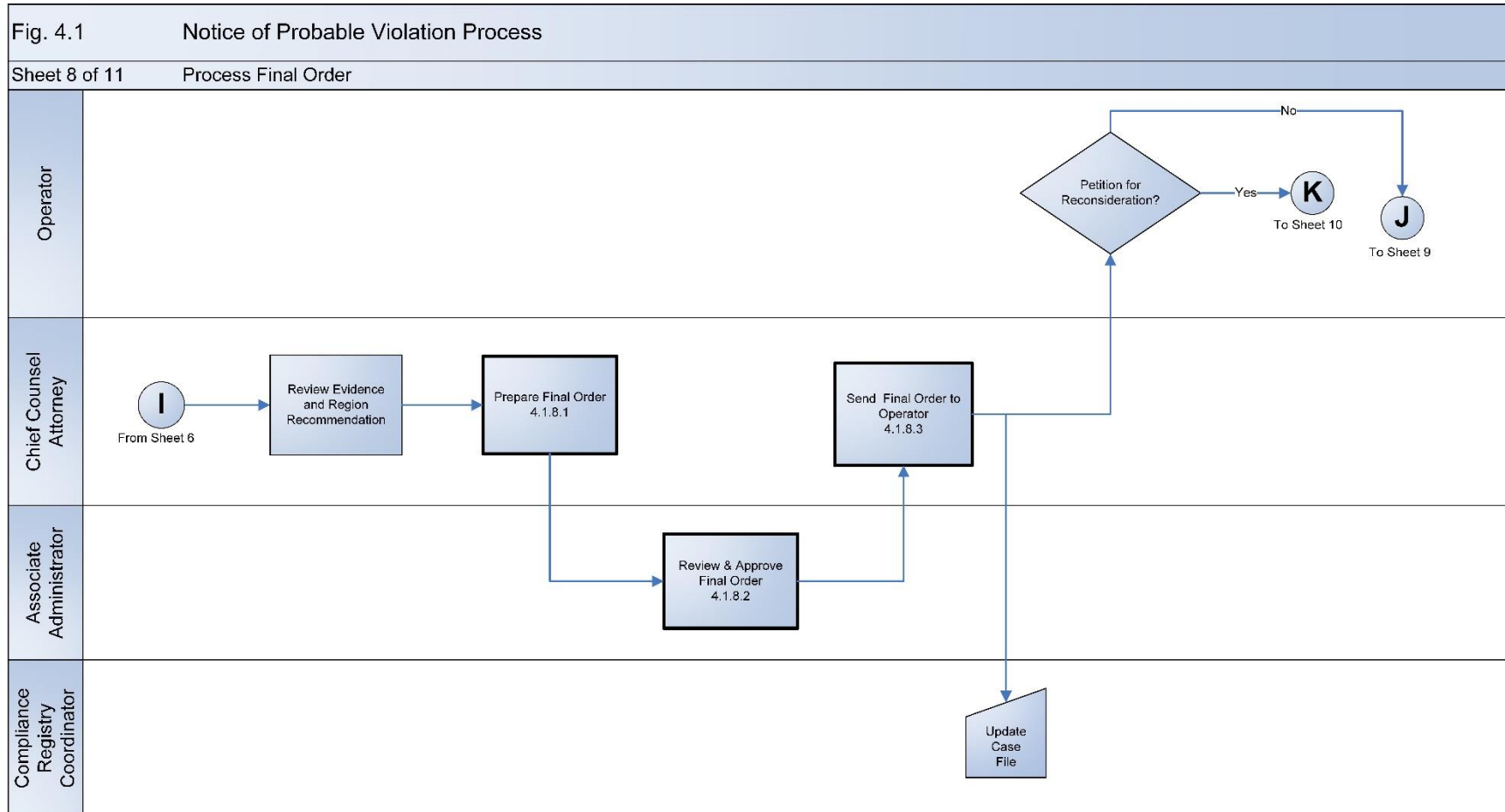
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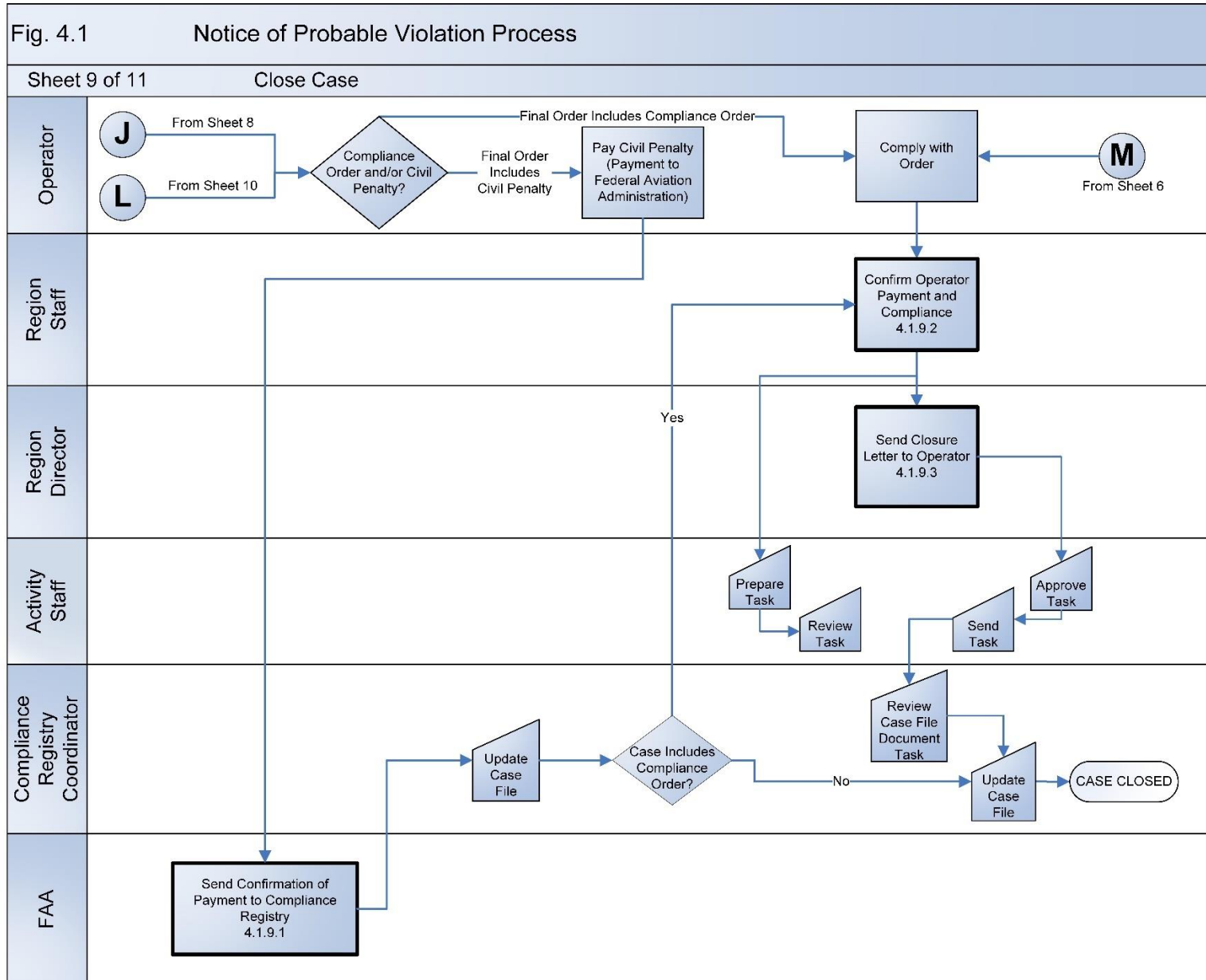




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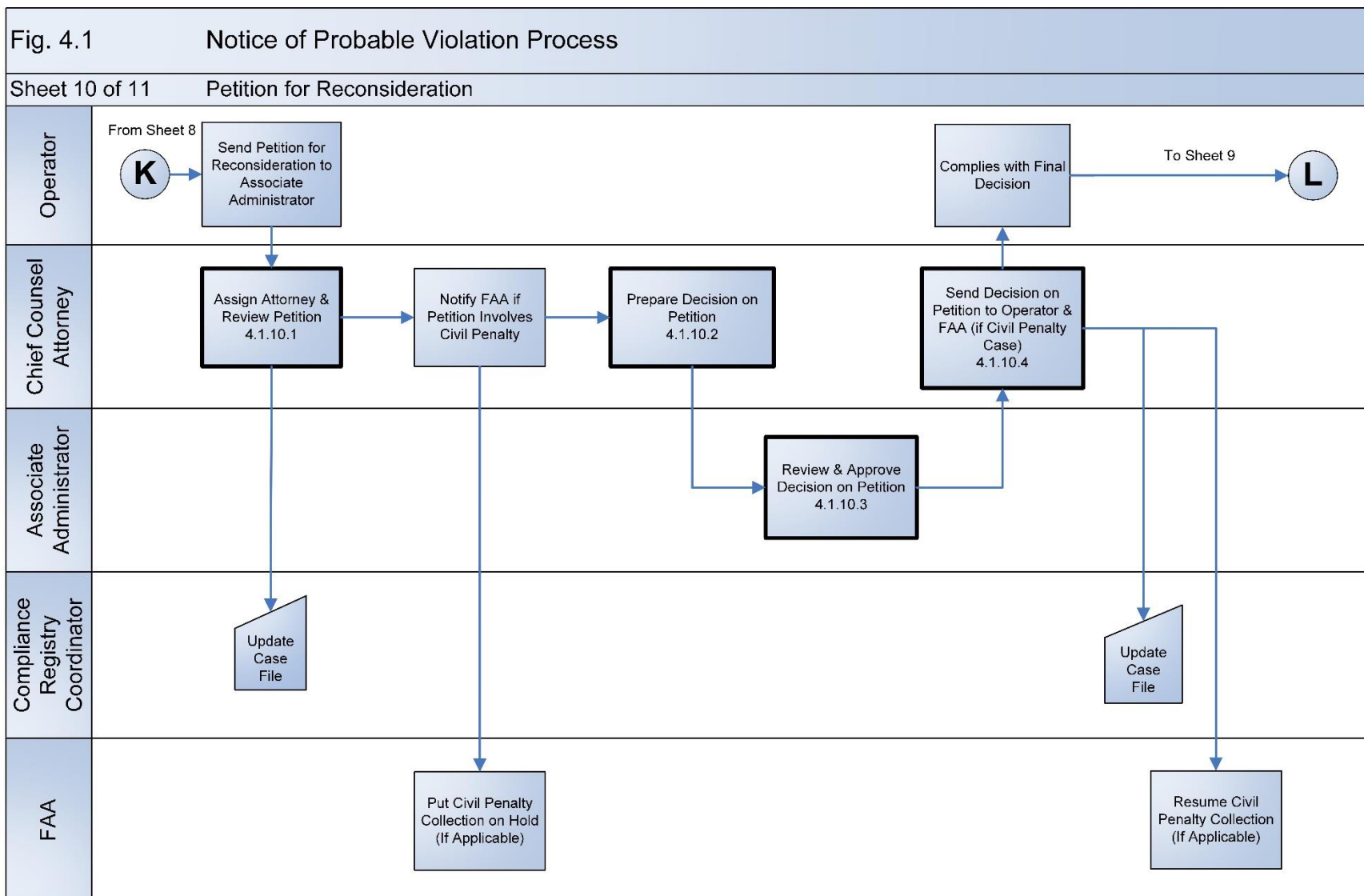
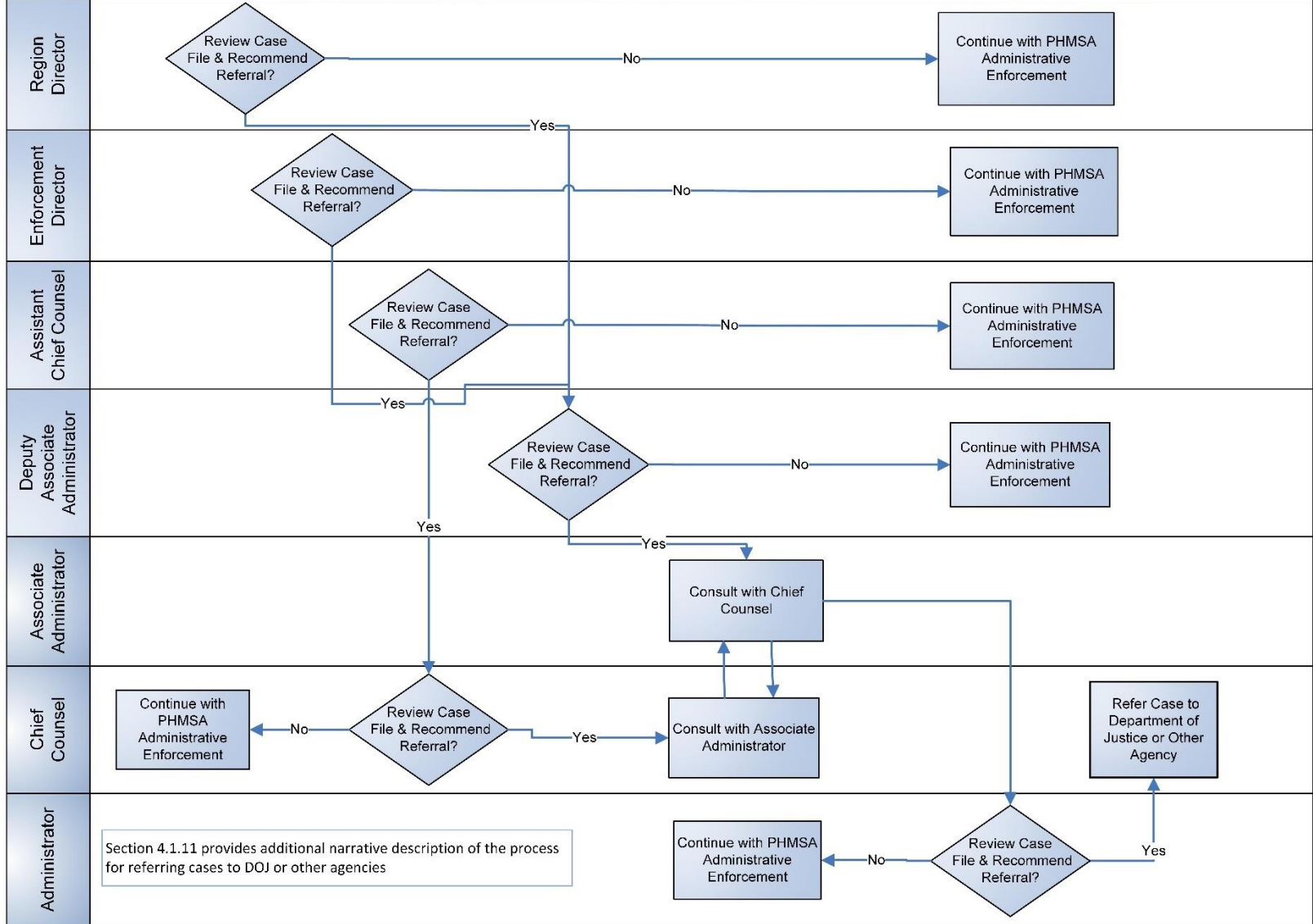


Fig. 4.1 Notice of Probable Violation Process

Sheet 11 of 11 Refer Case to DOJ or Other Agency



4.1.1 Document Inspection/Investigation

Inspections or investigations are documented in accordance with Region practices. Inspections are documented using different forms, checklists, and other inspection help tools including the Inspection Assistant (IA) software.

Many accident/incident investigations are documented using the Pipeline Failure Investigation Report as well as other forms, memoranda, and investigation help tools. An accident/incident investigation is documented with a variety of documents depending on the Region and circumstance.

Figure 4.1, Sheet 1, “Document Inspection/Investigation” Illustrates the overall process steps and individual responsibilities as they pertain to enforcement. The following discussion provides further explanation of steps identified by bold borders in the cross functional diagram.

4.1.1.1 Document Inspection

Input: The inspection documentation package can include, but is not limited to, the following:

- Evidence files,
- Inspector notes (including interview notes) – typically documented in the IA software,
- Responses to the inspection questions – typically documented in the IA software,
- Completed inspection checklists/forms,
- Operator documentation retained by Region staff,
- Photographs,
- Relevant in-place Special Permit, Corrective Action Order, Compliance Order, Order Directing Amendment, Consent Order, or Safety Order requirements issued to the operator, and
- Any other material generated or obtained by the Region that is material to the determination of compliance or non-compliance with pipeline safety regulations.

Output: Draft Inspection Output Report, Inspection Results Report, and/or other post-inspection documentation to conform with Region practices.

Responsibility: Region staff.

Description: Region staff review all the input associated with the inspection observations and draft an Inspection Output Report. The Inspection Output Report documents all the issues and/or potential non-compliances observed during the inspection.

Region staff submit the final draft Inspection Output Report, Inspection Results Report, and/or any other Region-required inspection documentation to the Region Director for approval.

4.1.1.2 Document Accident/Incident Investigation

Input: Input for documenting an accident or incident include:

- Evidence files,
- Inspector notes (including interview notes),
- Completed investigation checklists/forms,
- Operator documentation retained by Region staff,
- Photographs,
- Root cause analysis,
- Metallurgical examination reports,
- Relevant in-place Special Permit, Corrective Action Order, Compliance Order, Order Directing Amendment, Consent Order, or Safety Order requirements issued to the operator, and
- Any other material generated or obtained by Region/Accident Investigation Division staff that is relevant to the determination of compliance or non-compliance with pipeline safety regulations.

Output: Completed draft accident/incident documentation and accompanying evidence.

Responsibility: Region staff/Accident Investigation Division.

Description: Document probable violations that have been discovered and collect the evidence required to support these allegations.

While gathering evidence, it's important for the Accident Investigation Division (AID) and Region staff to coordinate to determine if any probable violations occurred that were causal factors and/or increased the severity of the accident/incident. There may be multiple probable violations that were causal factors or that increased the severity of the accident/incident. It's important to identify these probable violations since these will be among the most serious violations. Moreover, the Enforcement Division tracks and analyzes these violations as part of the effort to help prevent and mitigate accidents/incidents.

One of the areas that AID and Region staff examine for potential violation(s) is whether the operator met the requirements for telephonic and 30-day written incident/accident reporting (and required supplements).

4.1.1.3 Probable Violations Identified?

Input: Approved inspection/accident/incident documentation and associated evidence.

Output: Which (if any) issues/observations will be prosecuted as enforcement cases.

Responsibility: Region Director.

Description: When all available information has been obtained and reviewed, the Region Director decides which, if any, issue(s) identified during the inspection or accident investigation warrant

enforcement action and decides which type of enforcement tool to apply for each issue. The Region Director follows the criteria in Section 3 to select the type of enforcement tool to use for each issue. The decision to pursue an enforcement action should generally be made within 30 days of the completion of the review of all available information.

If the time between the date that the probable violation occurred and the date of the anticipated notice letter exceeds five years, the Region Director consults with the Region Attorney³ to ensure that the statute of limitations will not be an issue. For example, if an ongoing violation was not cured until a later date, it may be the case that the violation last occurred within the five-year period preceding issuance of the Notice (even though the first instance of the violation exceeds five years before the Notice).

If no enforcement action is needed, or if the Region Director decides there is not enough information/evidence to successfully allege a violation, Region staff complete the inspection/investigation tasking and data entry in their respective WMS Activity per the WMS User Guide. If the 90-day written preliminary findings report identified a potential violation, but the Region Director does not issue a Notice, prepare a Termination of Inspection/Investigation letter to be sent to the operator. A Termination of Inspection/Investigation letter is not necessary if the 90-day written preliminary findings report did not identify any potential violations.

If issues are identified during the inspection, region staff will conduct review of all issues with their respective Operations Supervisor and Region Director in accordance with regional procedures. When enforcement action is taken to address probable violations, a notice letter is prepared per Subsection 4.1.3, "Prepare Notice Letter".

Sometimes, the Region Director may not have enough information/evidence to (1) successfully allege a violation, (2) determine which enforcement tool should be used, or (3) determine if enforcement action is appropriate. In these circumstances, the Region Director or Region staff may work with the operator informally to obtain additional documentation, evidence, or information needed to proceed with effective enforcement. If the operator does not voluntarily provide the needed information, the Region Director may compel the operator to provide the needed information via a Request for Specific Information. (See Subsection 4.1.2, "Process Information Request.") Alternatively, the Region Director or Region staff may skip any informal steps and compel the operator to provide the needed information via a Request for Specific Information. (See Subsection 4.1.2, "Process Information Request.") An inspection/investigation is complete only after all Requests for Specific information have been received and appropriately reviewed.

³ In this document, "Region Attorney" means an attorney in PHMSA's Office of Chief Counsel who advises a PHMSA Region on legal matters, including enforcement cases and may include a Region Attorney's supervisor. A "Presiding Official" or "Adjudicating Attorney" means an attorney from that office who is assigned to preside over an informal hearing, or who prepares a recommended final order or decision in the case to be issued by the Associate Administrator.

Once these steps have been completed if the Region Director determines that there is insufficient evidence to allege a violation, or enforcement action is otherwise inappropriate, the Region Director will issue a Termination of Inspection/Investigation letter.

4.1.2 *Process Information Request*

Information requests are initiated any time PHMSA needs information to identify or allege a violation, or to determine appropriate action following an inspection, accident, or incident. In addition, PHMSA may request information at any other time, if the request is related to determining an operator's compliance with pipeline safety laws, regulations, or orders. Templates for each type of information request are located on the PHP-60 SharePoint site. Figure 4.1, Sheet 2, "Process Information Request" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.2.1 Prepare Information Request

Input: Inspection Report and evidence files, or accident/incident documentation and associated evidence.

Output: Draft information request.

Responsibility: Region staff.

Description: Region staff prepare a draft information request using the appropriate template. The document will be titled either a Request for Specific Information or a Request for Information, depending on which template is used. The required letter content is described in the instructions provided in the template. Region staff can consult with the Region Attorney, particularly if the request is related to a significant accident or incident, or where a large civil penalty may be anticipated. Region staff provide the draft request to the Region Director for review and approval.

4.1.2.2 Approve Information Request and Send to Operator

Input: Draft information request.

Output: Approved information request sent to operator.

Responsibility: Region Director.

Description: The Region Director reviews the draft information request and discusses any comments, changes, or corrections with Region staff. If required, Region staff revise the draft request. When the information request is satisfactory, the Region Director signs the request, and sends it to the operator, and includes the letter in the Region case file.

4.1.2.3 Review Operator Response to Information Request

Input: Operator's reply to information request.

Output: Updated case file.

Responsibility: Region staff.

Description: Region staff review the material provided by the operator in response to information requests. The information is included in the Region case file. The new information is reviewed with the Region Director to determine if there are any probable violations.

The operator is required to respond to an information request within 30 days of receiving the Request for Specific Information or a Request for Information, unless otherwise specified in the request. Operators may request an extension of time to respond by providing a written justification and proposing an alternate submission date. If the operator does not reply to a Request for Specific Information, or if the operator's reply was not responsive to the request, the matter is referred to the Office of Chief Counsel.

Once all responses from information requests have been received and reviewed and the inspection/investigation is determined closed, the Region Director will issue a Termination of Inspection/Investigation letter.

4.1.3 Prepare Notice Letter

The notice letter process for a probable violation is initiated when the Region Director, based on the criteria within Section 3, determines there is a probable or potential violation. The notice letter and Violation Report preparation are very important in the development and prosecution of enforcement cases and in meeting PHMSA's oversight program objectives. Figure 4.1, Sheet 3, "Prepare Notice Letter" illustrates the overall process steps and individual responsibilities. The notice is the central legal document in issuing a Notice of Probable Violation and must satisfy the constitutional test of due process. The core principle of "due process" is that a respondent must receive fair notice of the legal and factual basis of the alleged violation and must be able to discern what conduct is expected from such person or company. The following discussion provides further explanation of the key steps in this process. Cross functional diagrams included in this subsection provide the outline of key steps in bold borders, document recording and WMS case development tasking associations.

4.1.3.1 Prepare Draft Notice Letter and Violation Report

Input: Input needed:

1. Inspection Output Report,
2. Inspection results documented in IA, or other completed forms,
3. Accident/incident documentation including the Failure Investigation Report (if applicable),
4. Evidence files,
5. Inspector notes,
6. Operator response to information request (if applicable), and
7. Region Director decisions on the type of enforcement action for each issue.

Output: Draft notice letter and accompanying Violation Report (if applicable).

Responsibility: Region staff.

Description: If the Region Director determines, based on the criteria in Section 3, that a proposed compliance order and/or a proposed civil penalty are appropriate for one or more probable violations, a Notice of Probable Violation Letter is drafted. A Violation Report is required for Notice letters containing one or more probable violation items with a proposed compliance order and/or proposed civil penalty. The Violation Report documents the technical justification and evidence that supports the decision to proceed with the proposed actions included in the Notice of Probable Violation letter. PHMSA has the burden of proof in pipeline safety enforcement cases and must prove its case by a preponderance of the evidence; therefore, it is essential that cases be fully developed and well documented. The PHP-60 SharePoint site contains templates to create a draft notice letter and violation report. The chart in Table 4-A identifies the appropriate notice letter template for each circumstance. Specific instructions in each notice letter template provide direction for completing each portion of the letter. The preparation of notice of probable violation cases is recorded in the WMS Case Development tasking. The drafting/preparing of the notice letter and violation report is captured in the Prepare Task and when generated will auto-assign a CPF number to the draft case. For additional information regarding this tasking, see the WMS Enforcement Module User Guide.

Probable violations for which a warning is the appropriate enforcement action may be included in the same notice letter as other violations for which a civil penalty and/or a compliance order is proposed and must be included in the Violation Report. However, if all the probable violations within the notice letter are warning items, then a Warning Letter is written – not a Notice of Probable Violation letter. While Warning Letters do not require Violation Reports, these public allegations of non-compliance should be supported with evidence collected during inspections (where appropriate). At the Region Director's option, draft warning letters may be sent to the Region Attorney for review prior to approval and issuance by the Region Director.

If an inspection or investigation identifies both probable violations and inadequate plans/procedures, based on the criteria in Section 3, the latter must be documented in a separate Notice of Amendment. Inadequate procedure items and probable violations are not to be combined in the same letter.

To improve enforcement case quality and expedite case processing, the following recommendations are provided to assist in preparing of notice letters.

Addressing Notice Letters

- Make sure that the name of the operator is correct. Each entity should end in "Corporation," "Company," "L.P." or other indication of the business entity. If in doubt, contact the company or the Region Attorney to obtain the specific legal name of the operator. This name should generally match the name of the operator shown on the operator's current Annual Report.

- The WMS Enforcement module is designed to assign a case to only one operator/respondent and one OPID. If there is a need to address the letter to multiple entities (e.g., multiple companies share the same safety program, or the notice names the pipeline owner as well as the operator), consult with the Region Attorney and Enforcement Division.
- Enforcement letters must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer, not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) Use whatever method of research necessary to determine who is the most senior company official of the pipeline operating company. Call the pipeline operating company to verify the identity of the most senior company official before sending the enforcement letter.

Notice Letter Item Structure

Notice letters should be brief, concise and in plain language while still communicating the issue(s) clearly. A description of the evidence used to substantiate each probable violation must also be included in the notice letter. For each probable violation keep the structure simple, using plain language and use the following logical order and sequence:

1) Regulation Citation:

Cite and quote the regulation violated in bold type at the beginning of each allegation. PHMSA provides fair notice of an alleged violation through the actual text of a statute or regulation, as clearly articulated in the provision(s) cited. Each allegation of violation should normally be cited as a single regulation, however, there will be circumstances where more than one regulation will be cited in bold. (this is recorded as the “Cited Regulation” in WMS.)

- If the relevant requirement is in a subsection of a regulatory section, include both the introductory text and the subsection in the citation and quotation.
- As noted in the Violation Report template, identify the regulation violated with the part, section, and most specific paragraph of Title 49. For example, cite 195.452(e)(1)(iii) instead of just 195.452(e) for failure of including leak history within an operator’s integrity management plan’s risk factors for HCAs.
- For letters that identify multiple probable violations, each probable violation must be uniquely numbered. In the portions of the notice letter where civil penalties are proposed and in any Proposed Compliance Order, these probable violations must be referenced by these unique item numbers, so it is clear to which items civil penalties are proposed and the amount for each item; and to which items Compliance Order requirements are proposed. Likewise, any warning items must also be uniquely numbered.

- Example: citation for 195.252(b)

1. **§ 195.252 Backfilling.**
When a ditch for a pipeline is backfilled, it must be backfilled in a manner that:
(a)...
(b) Prevents damage to the pipe and pipe coating from equipment or from the backfilled material.

2) Allegation:

Most regulations either require something to be done or prohibit something from being done. The first sentence following the bolded regulatory citation should describe the probable violation by stating what the operator did that failed to comply with the regulation cited using the same language and terminology as the regulation. When describing the operator's conduct, use the past tense to relate actions that occurred prior to the notice letter being issued.

3) Statement of the Evidence:

State the specific evidence and facts upon which the probable violation is based and that demonstrated why this conduct constitutes a violation. It is very important to explain *why* the operator's action or inaction constituted a violation.

- When other regulatory sections are used to help specify the requirement, these regulations should be included in the text of the allegation. This is particularly important for procedural violations (so the WMS case will record what the procedural violation was about). Provide the excerpt of an incorporated industry standard/reference regulation to the cited regulation to show the applicable criteria identifying the non-compliance. (These are recorded as "Additional Referenced Code/IBRs" in the WMS.) No regulations will be included in the WMS Enforcement Case that are not included in the notice letter (or Final Order).
- When describing the operator's conduct, use the past tense. Then, describe the specific facts and circumstances that you intend to rely upon as proof of the alleged violation. Finally, describe with sufficient detail how these facts become a violation of the regulation using plain language.

Additional Guidance:

- In exercising discretion to initiate a Notice of Probable Violation, PHMSA should ensure each alleged violation is based on an applicable regulation or statute and is

supported by evidence. Region staff and the Region Attorney should work together in drafting the Notice.

- Guidance documents can be used to *support* an allegation of violation by explaining how PHMSA has publicly articulated to the regulated community the agency's understanding of how a statute or regulation applies to particular circumstances. These guidance documents are intended to assist operators and PHMSA in understanding regulations that are sometimes complex and interrelated and show the agency's "track record" in applying its regulations. Guidance documents do not create binding requirements that are not otherwise required by statute or regulation. Examples of useful guidance documents that may be used to support an allegation of violation include:
 - OPS published "Enforcement Guidance" on various technical subjects, such topics as corrosion, integrity management, operations and maintenance, and operator qualification.
 - The preamble of final rules.
 - Advisory bulletins, FAQs, and similar notices published in the Federal Register or on the PHMSA website.⁴
- PHMSA may also refer to Final Orders and Decisions on Petitions for Reconsideration that adjudicate findings of violation, and judicial orders that make conclusions of law, to support a future allegation if they articulate how a statute or regulation applies to particular circumstances.
- If PHMSA has never decided an issue, or has changed its position on an issue, bringing the item as a probable violation may not be advisable. It might involve making a new or different interpretation of the regulation, rulemaking, and there may be differing opinions within PHMSA about whether the conduct should be a violation. The Region staff must review any novel, different, or new issues with the Region Attorney and Assistant Chief Counsel.
- Use caution before citing the same code section or subsection for more than one item in a Notice of Probable Violation letter because if the items are based on the same evidence, it may result in a single violation being inappropriately alleged as multiple violations:
 - The Operations and Maintenance sections of the regulations require an operator to prepare and follow written procedures (192.605 and 195.402). If there is more than one procedure that was not prepared or followed, these instances may either be 1) grouped together to form a single violation

⁴ For further information on DOT guidance procedures, see DOT Order 2100.6B (March 14, 2025).

or 2) cited repeatedly, each as separate violations, but each violation item must then be based on separate evidence and should reference a different section or subsection of the operator's Operations and Maintenance manual.

- If an operator allegedly violated both a code section and its written Operations and Maintenance procedure covering the same requirement with the same act (supporting evidence), both would be based on the same requirement and evidence. Therefore, this would be one violation item, not two.

See Section 3 for Proposed Compliance Order considerations. The notice letter templates contain structure for proposed compliance orders and are available on the PHP-60 SharePoint site.

The Notice of Probable Violation template letter is illustrated below:

As a result of the inspection, it appears that you have committed [insert: a probable violation or probable violations] of the Pipeline Safety Regulations, Title 49, Code of Federal Regulations. The items inspected and the probable violation(s) are:

1. [cite the regulation and title]

[quote the regulation]

[describe the probable violation]

The first sentence in this section should describe the allegation by using the same language and terminology from the regulation. Phrase the allegation in terms of the operator's failure to take a required action, or in terms of the operator doing something that was prohibited. When describing the operator's conduct, use the past tense to relate actions that occurred prior to the Notice Letter being issued. For example, a probable violation of 192.74(a) would be stated "ACME Gas Company failed to inspect and partially operate transmission line valves that might be required during an emergency at intervals not exceeding 15 months, but at least once per calendar year." Then, describe the specific facts and circumstances that you intend to rely upon as proof of the alleged violation. Finally, briefly describe how these facts become a violation of the regulation.

[state the specific evidence upon which the probable violation is based]

Or, a description of the evidence may be included in the paragraph(s) above.

2. [cite the regulation and title]

[quote the regulation]

[describe the probable violation]

The first sentence in this section should describe the allegation by using the same language and terminology from the regulation. Phrase the allegation in terms of the operator's failure to take a required action, or in terms of the operator doing something that was prohibited. When describing the operator's conduct, use the past tense to relate actions that occurred prior to the Notice Letter being issued. For example, a probable violation of 192.74(a) would be stated "ACME Gas Company failed to inspect and partially operate transmission line valves that might be required during an emergency at intervals not exceeding 15 months, but at least once per calendar year." Then, describe the specific facts and circumstances that you intend to rely upon as proof of the alleged violation. Finally, briefly describe how these facts become a violation of the regulation.

[state the specific evidence upon which the probable violation is based]

Or, a description of the evidence may be included in the paragraph(s) above.

The following examples may be useful:

Example 1: More than one regulation potentially applies.

Suppose an operator has written procedures for continuing surveillance, but not one dealing specifically with changes in cathodic protection conditions and reacting to them despite a foreseeable change (e.g. new foreign structures). Code sections 192.605(a), 192.605(e) and 192.613(a) all seem to require that the operator have these written procedures. Which regulation should you cite?

In making such a choice, select the level of generality that best fits the situation. In this case, 192.605(a) describes the procedural requirement generally (“Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response”); 192.605(e) describes where the continuing surveillance procedures are to be retained (“The procedures required by 192.613(a) must be included in the manual required by paragraph (a) of this section”); and 192.613(a) specifically requires the continuing surveillance procedures to include certain things (“Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions”). Thus, 192.613(a) is the best choice in this case because cathodic protection is specifically included.

Example 2: Citing multiple Operations and Maintenance sections.

Suppose in connection with a pipeline accident an operator fails to follow two procedures: Procedure A for monitoring and recognizing an abnormal operating condition; and Procedure B for reacting to the abnormal operating condition. Should the Notice of Probable Violation letter allege two separate violations, or should the conduct be combined into a single violation?

In determining whether violation items are so closely connected that they overlap, ask yourself whether a single act occurred or whether two different acts occurred. This determination can sometimes be difficult, but in this example, the operator’s procedures required it to take two different actions: monitoring and responding. Therefore, two separate items are permissible because the violations are based on two separate acts, i.e. the operator’s failure to follow Procedure A and Procedure B. Also, since the procedures required different actions, the violations are probably based on at least some different evidence. The fact that the operator’s failures resulted in a single accident does not make the separate violations one violation.

Example 3: Operator allegedly violates both a code section and its Operations and Maintenance procedure.

Suppose an operator fails to operate a mainline valve during an annual inspection and that the operator’s failure is both a violation of one of its own procedures and a regulatory requirement. Should the Notice of Probable Violation letter have two separate items with separate proposed penalties for the code violation and the operator’s failure to follow its written procedures?

In determining whether violation item(s) are so closely connected that they overlap, ask yourself whether a single act occurred, or whether two different acts occurred. In this case, only a single act

(actually an omission) occurred despite the fact that the operator's failure to operate the valve is prohibited by two different sources (its procedures and the regulation). Also, the evidence for both is likely to consist of the same information about when the act or omission occurred, who was involved, etc. Thus, the best choice would be to have only one alleged violation item.

Example 4: Citing Record Keeping and Substantive violations.

In some instances, there could be both recordkeeping and substantive violations arising out of the same conduct. For example, 192.705 requires operators to patrol gas transmission lines at certain frequencies, and 192.709 requires operators to maintain records of each patrol. If the inspection appeared to indicate a violation of the patrol requirement and there are no records of the patrol, it's generally better to allege that the operator committed the substantive violation. Evidence might include the lack of records for a certain period of time, plus witness statements by the operator that it had not performed the activity. However, if Region staff were only able to obtain information that shows the records were not kept, it may be better to just pursue the recordkeeping violation. If the violation is for the substantive violation, a separate probable violation for records should not be issued.

Violation Report

The Violation Report template, along with "Pipeline Safety Violation Report User instructions" includes detailed instructions and guidance on providing information for each probable violation enforcement action and to support the determination of proposed civil penalties. See Section 3 for when to use a proposed civil penalty. Below is additional information regarding the preparation of a Violation Report.

- While the case must be assigned to one pipeline operator/owner and one OPID, the Region may use multiple OPIDs to fill out the "History of Prior Offenses" report where appropriate, such as, where multiple OPIDS fall under the same Safety Program Relationship (e.g. use the same operating procedures or employees). Region Staff must retrieve the History of Prior Offenses table using the WMS History report for inclusion in the Violation Report. The Region Attorney and Region Director must verify the operator/owner/respondent history for applicability.
- Describe the factors or actions within specific evidence included that the allegation relies upon as proof. Records, photographs, maps, documents, interview notes, and other evidence, if required to support the statements in the Violation Report, must be attached to the report.
- The interview summary should briefly highlight important details from interviews conducted during an inspection or investigation that contribute to the establishment of

the violation. It is important to note that this section within the Violation Report does not replace interview notes established as evidence.

- If any probable violation (s) relate to an accident/incident, and PHMSA conducts an investigation, appropriate accident/incident documentation is attached to the Violation Report. If available, a copy of PHMSA's Pipeline Failure Investigation Report and the operator's investigation report are attached. The operator's "30-day" accident report required by Part 191.9 and Part 195.54 for gas and hazardous liquid pipelines, respectively, are also attached to the Violation Report.
- If any probable violation occurred that is identified as a causal factor in an accident/incident or increased its severity, it is important to include these probable violations and supporting evidence since these will be among the most serious violations.
- If the alleged violation involves a failure of operator personnel to perform a given task at a particular location or on multiple occasions, and a failure to perform that same task at a different location or on multiple occasions, these generally should be grouped together into one violation item.
 - For example, a failure to inspect 25 main line valves should be 25 instances of one violation item. In the Violation Report under "Gravity", enter 25 instances.
- If evidence that supports the identification of economic benefit or additional considerations is available and obtained during inspection/investigation, these details should be included in a brief summary within these sections.
- If the Violation Report contains multiple evidentiary documents for a probable violation, insert a single numbered cover page or tab between each document when multiple documents are combined into one exhibit. List each document within an exhibit in the index of exhibits and indicate to which probable violation it relates.
- If PHMSA is in possession of any evidence, which the operator is not aware of or possesses, and which would diminish or negate a finding of violation or an accompanying penalty, Region staff must make an appropriate mark in the Violation Report that such evidence exists and will be shared with the operator. The Region must also make sure that evidence is added to the case file.
- These Enforcement Procedures do not require a Violation Report for a warning item; however, Regions may still prepare one.

Region staff may seek input or assistance from the Region Attorney in drafting the notice letter and in preparing the Violation Report. The Region Attorney will be useful in identifying the best regulatory citation, formulating the legal and evidentiary arguments into a strong case, and in presenting the evidence in complicated enforcement cases. The Enforcement Division may also be useful in addressing these enforcement issues.

Region staff or the Region Director sends the draft notice letter and violation report (if applicable) to the Region Attorney for review prior to submitting the final draft notice letter to the Region Director for approval.

4.1.3.2 Review Draft Notice Letter and Violation Report

Input: Draft notice letter, draft Violation Report.

Output: Reviewed notice letter and Violation Report.

Responsibility: Region Attorney (and, where appropriate, the Assistant Chief Counsel) and Region Staff (and/or the Region Director).

Description: Region staff, Region Supervisors, Region Attorneys and/or the Region Director will perform reviews of the draft notice letter and violation report. During this review period, the draft notice letter and violation report is sent between staff and two reviews are recorded in WMS Case Development Tasking, see WMS Enforcement Module User Guide for additional tasking information. The first is a supervisory review that may be completed by either Region Supervisors or Region Director and is conducted following Region procedures/practices to ensure the allegations in the draft notice letter and violation report are technically sufficient with evidentiary support. The second is the legal review completed by the assigned Region Attorney for review of the draft notice letter and violation report and ensures a clear legal foundation and legal sufficiency. The Region Attorney's review includes, but is not limited to, ensuring each alleged violation is based on an applicable regulation or statute, that the alleged violation is not based on an overly broad or unduly expansive interpretation of the law, the alleged conduct is supported by evidence gathered during the inspection/investigation, the alleged conduct constitutes a violation of cited regulation or statute, and the alleged violation is not otherwise barred by statute of limitations, and any exculpatory evidence is properly included and does not eliminate the justification for bringing the violation.

Region staff should alert the Region Attorney of any cases that may result in a high penalty. After the Region Attorney's review, the Region Attorney will send draft cases that he/she believes will likely result in a high penalty, or cases that might require extra attention/review, to the Assistant Chief Counsel⁵ for review. The Assistant Chief Counsel may also provide the draft to the Chief Counsel for review. Cases with the following characteristics are likely to have high civil penalties:

- A violation alleged to be a casual factor to an incident/accident.
- A violation alleged to be a factor that increased the severity of an incident/accident.
- A violation alleged to be egregious or willful.
- Numerous violation items with civil penalties.
- Many instances of a violation.

⁵ In this document, references to Assistant Chief Counsel include the Deputy Assistant Chief Counsel.

- A repeat violation.

The Region Attorney (and, if applicable, the Chief Counsel or Assistant Chief Counsel) will provide any comments, changes, or corrections to the Region staff and/or Region Director. When the notice letter and Violation Report are satisfactory to PHC and the Region, the Region staff forward the draft case to the next appropriate step.

If no civil penalty is proposed, the Region staff submit the final draft notice letter and Violation Report to the Region Director for approval as described in Subsection 4.1.3.3, “Approve Draft Notice Letter and Violation Report.”

4.1.3.3 Approve Draft Notice Letter and Violation Report

Input: Final draft notice letter, final draft Violation Report.

Output: Approved notice letter and Violation Report.

Responsibility: Region Director and Region Attorney.

Description: The Region Director reviews the final draft notice letter and Violation Report (if applicable) and discusses any comments, changes, or corrections with Region staff and the Region Attorney (and, if applicable, the Assistant Chief Counsel). The Deputy Associate Administrator for Field Operations (DAAFO), at their discretion, may also request review of the draft by either them or their designee prior to Region Director approval. When the notice letter and Violation Report are satisfactory to PHC, the Region Director, and, if applicable, the DAAFO (or their designee) the Region Director approves them. The Violation Report must be signed by the Region Director and Region staff preparing the report. The approval of the notice letter and violation report are recorded in WMS Case Development Tasking, see WMS Enforcement Module User Guide for additional information.

If no civil penalty is proposed, the Violation Report is signed by the Region Director and Region staff preparing the report. The Region Director signs and sends the Notice of Probable Violation and Violation Report to the Region Paralegal to issue the case as described in Subsection 4.1.4, “Issue Notice Letter to Operator.”

If a civil penalty is proposed, the Region Director requests determination of proposed civil penalty amount(s) from the Enforcement Division as described in Subsection 4.1.3.4, “Prepare Civil Penalty Recommendation.”

4.1.3.4 Prepare Civil Penalty Recommendation

Input: Final Draft Notice letter and Violation Report reviewed by Region Director and Region Attorney (signature ready documents).

Output: Amount of proposed civil penalty.

Responsibility: Compliance Officer and Enforcement Director.

Description: The Enforcement Director receives a request for a proposed civil penalty determination that includes the final draft Notice Letter and Violation Report from the Region Director or Region Staff. The Enforcement Director assigns the request to a Compliance Officer, who then reviews the information provided in the Violation Report for each item where a proposed civil penalty is the recommended enforcement action. The Compliance Officer prepares a proposed civil penalty recommendation and submits to the Enforcement Director for approval. The Enforcement Director reviews and approves the proposed civil penalty recommendation. A Compliance Officer or Enforcement Director provides the proposed civil penalty amount and the completed excel worksheet for each item requested to the Region Director and Region Attorney and provides a detailed explanation for any unrestricted (i.e., discretionary) inputs, including relevant mathematical reasoning. The proposed civil penalty determination is recorded in the WMS Case Development Tasking, see WMS Enforcement Module User guide for additional information.

Proposed civil penalties are developed and determined in the Civil Penalty Excel worksheet and approved by the Enforcement Director. Proposed civil penalties utilize criteria from the version of the worksheet in effect on the date that the alleged violation occurred (“Date the violation ended” per the violation report). If the violation end date is unknown, which may occur if the violation was not remedied before the end of inspection activities, the last known date of the violation (*e.g.*, the last date of the inspection) will be used to determine the worksheet criteria.

4.1.3.5 Complete Notice Letter

Input: Proposed civil penalty from Enforcement Division and any recommended changes to the notice letter or Violation Report from case reviews.

Output: Completed notice letter.

Responsibility: Region Director.

Description: Upon notification of the proposed civil penalty, the Region Director completes the notice letter by:

- Including the proposed civil penalty for each item,
- Making modifications resulting from the case review process and resolving any additional substantive changes (includes updates to History of Prior Offenses from current history report) with the Region Attorney, and

After all modifications are satisfactory, the Region Director approves and signs the notice letter and violation report.

For any draft case in which the Enforcement Division recommends a proposed civil penalty equal to or greater than \$300,000, or provides/introduces a new, novel, or different enforcement interpretation:

- The Region Attorney will send the notice letter, Violation Report, and proposed civil penalty excel worksheet to the Assistant Chief Counsel.
- The Assistant Chief Counsel will have three days to perform a final check of the notice letter that is complete with the proposed civil penalties and the Violation Report. If more than three days are needed, the Assistant Chief Council will notify the Region Director. Questions or comments regarding the proposed penalties will be resolved with the Region, the Region Attorney, the Assistant Chief Counsel, and Enforcement Director, with the aim of identifying potential improvements to the penalty structure.

If the Region or PHC changes the notice letter or Violation Report from the version used by the Enforcement Division to calculate the proposed penalty, in a way that might affect the proposed penalty, the Region must send the revised case documents back to the Enforcement Division for a proposed penalty recalculation.

For any case involving a Proposed Civil Penalty calculation or recalculation equal to or more than \$100,000, for a single violation item or for a sum of violation items:

- The Region Director will prepare a one-page summary providing notification of the enforcement action prior to issuance, which will be forwarded by e-mail to the Deputy Associate Administrator for Field Operations (DAAFO) and the Director of Field Operations (DFO). In the e-mail, the Regional Director will discuss key aspects of the inspection or investigation leading to the enforcement action and briefly describe each probable violation and proposed remediation.
- The DAAFO, or DFO will e-mail the one-page summary notification to PHMSA senior leadership and Region Director(s) (additional background materials and other communications should not be delivered to the Associate Administrator due to separation of functions, see 49 CFR § 190.210), along with any requested clarification and background information about the case, advising the Region plans to issue the case one week later barring objections.
- One week later, the DAAFO or DFO will confirm with PHMSA senior leadership to verify the one-page summary was received and that there are no objections.
- The DAAFO or DFO will notify the Region Director when the Notice letter may be sent to the operator.

The Region Director then issues the notice letter to the operator, as described in Subsection 4.1.4, “Issue Notice Letter to Operator.”

4.1.4 Issue Notice Letter to Operator

When approved, the notice letter is officially sent to the operator. Figure 4.1, Sheet 4, “Issue Notice Letter to Operator,” illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

The issuance of the notice letter constitutes a critical legal step in the enforcement process: It triggers certain “due process” rights that a respondent enjoys and which PHMSA must protect. Due process includes:

- Fair notice of the allegations against a respondent.
- The right to an impartial and unbiased⁶ decision-maker.
- The right to be represented by counsel.
- The right to be informed of any exculpatory evidence in the agency’s possession.
- Final agency action that is rationally based and not arbitrary or capricious.

These due process rights are legal in nature and must be safeguarded throughout the enforcement process. In informal adjudications, agencies must pay particular attention to separating the roles played by agency officials who prosecute enforcement cases from those who decide them. A party to an enforcement proceeding, including the operator, its representative, or PHMSA employees having served in an investigative or prosecutorial capacity in the proceeding, may not communicate privately with the Associate Administrator, Presiding Official, or Adjudicating Attorney drafting the recommended decision, concerning information that is relevant to the questions to be decided in the proceeding, including furnishing ex parte communications or factual materials. A party may communicate with the Presiding Official regarding administrative or procedural issues, such as for scheduling a hearing, but must include the operator and its representative on such communications. For more guidance on this, consult the Region Attorney.

After commencing an enforcement action against an operator, PHMSA should not conduct a new inspection/investigation against the same operator at the same location while the enforcement action is

⁶ Consistent with applicable laws and ethical standards relating to recusals and disqualifications, no Federal employee or contractor may participate in a DOT enforcement action in any capacity, if that person has: (1) a financial or other personal interest that would be affected by the outcome of the enforcement action; (2) a personal animus against a party to the action or against a group to which a party belongs; (3) a prejudgment of the adjudicative facts at issue in the proceeding; or (4) any other prohibited conflict of interest.

ongoing. PHMSA may conduct a new inspection/investigation against the same operator at the same location with a showing of good cause (*e.g.*, new complaints, accidents, or incidents), if the additional inspection/investigation is prompted by facts uncovered in the initial inspection/investigation, or if the enforcement action is closed. For more information as to what constitutes a showing of good cause or whether the facts uncovered are sufficient to prompt a new inspection/investigation, consult the Region Attorney.

4.1.4.1 Send Notice Letter to Operator (and Send Copy to FAA if Civil Penalty Case)

Input: Final notice letter ready for sending to operator.

Output: Signed notice letter, case information entered into WMS, associated case development tasking workflow completed in WMS and Region/enforcement case files created.

Responsibility: Region Director and Region Staff.

Description: The Region Director signs the notice letter and assures that it is sent to the operator using the method described in Section 5.1.

Upon issuance, the Region Paralegal performs the following:

- Create a Region case file.
- Enter and verify case information into the WMS Activity, which documents the inspection/investigation results and proposed enforcement actions. Ensure the WMS Issues Tab and issue data accurately reflects the notice letter issued to the operator/respondent. Ensure all evidence files, including any exculpatory evidence, and the civil penalty worksheet, as well as all other documents included in the case file corresponding to the case are uploaded, properly named, and associated to the appropriate issues/items in the case. For more information or detail relating to this topic see the WMS Enforcement Module User Guide (Send Letter and Provide Case Issue Data Tasks).
- Completion of the case development tasking workflow is required to send the case data to the Compliance Registry.
 - This step is crucial to prompt the accurate creation of an enforcement case record in the Compliance Registry. Region personnel must complete the case development tasking workflow to send the case data to the Compliance Registry for the creation of the official enforcement electronic case file in the WMS.
- Send the notice letter (in PDF and Word file formats) to the PHMSA Pipeline Compliance Registry email distribution list that includes those identified in Table 4-B. Refer to Section 5 for formatting and file naming requirements.

- If the notice letter contains a proposed civil penalty, a copy is provided to the Federal Aviation Administration in the same e-mail used to transmit the notice letter to the Compliance Registry.
- Send the Violation Report, evidence files (in PDF and Word file formats), and confirmation of delivery (in accordance with 49 CFR § 190.5 Service) to the Compliance Registry, Region Attorney, and CPF Lead assigned to the case.
- The Compliance Registry is the official record for all case files, anything that the Region believes is needed to be documented in the case file should be sent to the Compliance Registry throughout the enforcement process.

When a new case is created in the WMS and the case files are received from the Region, the Compliance Registry Coordinator:

- Reviews case data and case file documents in WMS,
- Generates the electronic case file,
- When a case includes a proposed civil penalty:
 - Requests Proposed Civil Penalty Worksheet from the Compliance Officers,
 - Uploads the Proposed Civil Penalty Worksheet in PDF format to the Notice Sent Event, and
- Performs electronic enforcement case file data and document quality checks.

4.1.5 *Process the Operator Response to Warning Letter*

Upon execution and delivery of a Warning Letter, the case is closed, and “closed” status is automatically assigned in the electronic case file. Operators are not required to submit a reply in response to a Warning Letter, but sometimes choose to do so. Figure 4.1, Sheet 5, “Process Operator Response to Warning Letter” Illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.5.1 *Send Any Operator Response to Compliance Registry*

Input: Operator response to Warning Letter (if a response is received).

Output: Operator response to Warning Letter sent to Compliance Registry.

Responsibility: Region staff.

Description: Operators are not required to submit a written response to a Warning Letter. However, sometimes operators voluntarily submit formal correspondence on Warning Letter cases. In this circumstance, the Region Paralegal includes the operator response in the Region case file, uploads the

documents in the WMS case file, and sends the operator response to the Compliance Registry so the electronic case file can be updated. While PHMSA does not adjudicate Warning Items,⁷ Region staff may also review the operator's response to determine what, if any, action or reply the Region may elect to take. Region staff obtain the Region Director's concurrence on what, if any, action should be taken as a result of the operator's response. Depending on the outcome of this review, the Region may elect to withdraw the Warning Letter, or recommend the withdrawal of individual Warning Items in an NOPV letter.

4.1.6 *Process Operator Response to Notice of Probable Violation Letter*

Operators have 30 days of receipt of a Notice of Probable Violation to respond to PHMSA. The document "Response Options for Pipeline Operators & Excavators in Compliance Proceedings" describes the different operator response options. An operator must respond according to the response options. An operator may include in its response a request to meet with the Regional Director for clarification of the issues or to discuss the potential for use of a consent agreement. While PHMSA must allow the parties the opportunity to meet, the Region is not obligated to enter into a consent agreement.

Failure of the operator to respond to the notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the notice. It also authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the notice without further notice to the respondent and to issue a Final Order.

Figure 4.1, Sheet 6, "Process Operator Response to Notice of Probable Violation Letter" illustrates the overall process steps and individual responsibilities involved in processing operator responses to notices of probable violation. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.6.1 *Review Operator Response*

Input: Operator response to Notice of Probable Violation.

Output: Draft notification to schedule hearing, draft Recommendation for a Final Order (if appropriate), or draft letter withdrawing case.

Responsibility: Region staff, Region Attorney, and Region Director.

Description: The Region Paralegal will review the operator response for the initial screening of "contest" or "no contest" case processing, to help ensure that all the operator's responses receive the attention they should. The Region Attorney and Region Director must be consulted during the initial processing classification for the case. If the operator does not provide electronic copies of its response,

⁷ From the preamble in the Federal Register, Vol. 78, No. 186, page 58900 issued on September 23, 2013.

the documents are scanned to create these files.⁸ The Region Paralegal will upload the Operator Response to Notice (includes a redacted⁹ operator response letter where provided, and any attachments) to the electronic case file in WMS and identify the processing classification within 3 business days of receiving the Operator Response to Notice. See Table 4-B for a complete list of PHMSA recipients of operator responses to Notices of Probable Violation.

A case is processed as “contest” when:

- An operator submits a timely response that challenges or requests modification to an alleged item, proposed compliance term, or the proposed civil penalty, including requests to withdraw violations, reduce or withdraw a proposed civil penalty, or change or withdraw the proposed compliance order (but not if the only requested modification is more time to complete the proposed compliance order, see below).
- An operator submits a timely response requesting a hearing to challenge an alleged item, a proposed compliance term, or a proposed civil penalty.
- An operator submits a response requesting informal consultation or a consent agreement and order under 49 CFR § 190.219.

A case is processed as “no contest” when:

- No response is received from the operator.
- An operator failed to respond in 30 days or by the extended response date (if timely requested and granted by the Region Director).
- An operator did not contest any of the alleged items, proposed compliance items, or proposed civil penalty, but only requested an extension for time to complete the proposed compliance items and the Region Director agrees.
- An operator response did not challenge or request for modification of any alleged items, proposed compliance actions, or proposed civil penalties.

Region staff review the operator response letter and any associated information. If the operator requests the Violation Report, civil penalty worksheet, or case file, the Region Director ensures this information is provided within five business days. The production of requested case file documents, including the Violation Report, and civil penalty worksheet is sent by email or by mail, with an electronic or printed copy, respectively. Effective October 15, 2024, the civil penalty worksheet is provided in both Excel and PDF formats (when and if sent to the operator). The operator’s request, as well as a record of the Region’s formal transmittal, is sent to the Region Paralegal for uploading in the electronic case file in WMS (includes confirmation of delivery in accordance with 49 CFR § 190.5 Service). The Compliance Registry will review and confirm the updated electronic case file in WMS.

⁸ In situations where operators provide voluminous responses such as manuals and procedures, these documents may be sent to the Compliance Registry for scanning. Difficult-to-scan items like large maps and drawings should be retained in the Region case files.

⁹ In the notice letter, operators are advised that their response may be made available to the public. As such, they can provide a redacted copy of their response if it qualifies as sensitive or privacy protected material. See Section 5 for assigning file names to sensitive or privacy protected operator response documents.

If the operator requests additional agency records at any time after receiving the case file and the civil penalty worksheet, the Region Attorney will request that Region staff and, if applicable, AID investigators, involved in the enforcement action to search for agency records pertinent to the matters of fact and law asserted that are not already included in the case file and not in the operators' possession.¹⁰ As part of this search, Region staff must download the result notes, issue summary, attachments, and standard issues for any "UNSAT" question in the Inspection Assistant software. Region staff should also provide any photos taken during the inspection not already included in the case file. If the Region did not use the Inspection Assistant software for a particular inspection, Region staff will inform the Region Attorney to determine what, if any, additional steps should be taken. The Region Attorney and Region Paralegal will review this additional information to determine if it can be disclosed. Following this review, the Region Director or Region Attorney will send the additional information to the operator.¹¹ Generally, the Region should respond to the additional document request within 60 days, unless otherwise required by law.

If the Region staff's review of the additional information results in the Region not wishing to proceed with the case, Region staff draft a letter withdrawing the entire case. (See Subsection 4.1.6.2, "Send Letter Withdrawing Case to Operator.")

If the Region staff's review of the operator-provided information concludes that a portion or all of the case is still valid, and the operator has requested a hearing, the paralegal will notify the Region Director and prepare a draft notification that a hearing be scheduled. (Some operators may tentatively request a hearing or "reserve" their right to request a hearing in the future. All such statements should be treated as requests for hearings.) These steps are described in Subsection 4.1.7, "Conduct Hearing."

If Region staff believe the case is still valid and the case is identified for processing as "no contest", the Region Director and Region Attorney may prepare a recommendation for final order if desired (optional). After the Region Paralegal sends notification to the Compliance Registry of the "no contest" case processing classification, the Compliance Registry will continue the case processing for Final Order preparation. The Enforcement Data Team provides a weekly report to the Office of Chief Counsel Administrative Assistant (PHC Admin) identifying "no contest" cases ready for Final Order preparation.

If the Region believes the case is still valid, the case is processed as "contest", and the operator did not request a hearing or consent agreement/ order, the Region Attorney, Region Staff, and Region Director prepare a draft Recommendation for Final Order using the template provided. (See Subsection 4.1.6.3, "Prepare Recommendation for Final Order.") Instructions for the content of the draft Recommendation are contained in the template.

¹⁰ See 49 U.S.C. § 60117(b)(1)(C).

¹¹ Given the aggregate file size, it may be necessary to transfer the files to the operator using DOT's Secure Large File Transfer Solution.

For cases with only a proposed civil penalty, the operator's response to the notice letter may be to pay the penalty amount in full and notify the Region Director of this action. Once the Federal Aviation Administration receives and processes the payment, they notify the Compliance Registry Coordinator, who enters the proof of payment in the electronic case file. Using this payment confirmation, the Region Recommendation for the case is to prepare the Final Order and close the case upon issuance of the order.

4.1.6.2 Send Letter Withdrawing Case to Operator

Input: Draft letter to operator withdrawing case.

Output: Signed letter to operator withdrawing case.

Responsibility: Region Director.

Description: Normally cases are not withdrawn in their entirety, rather notice items are withdrawn individually if appropriate. However, in the unusual circumstance where an entire case is being withdrawn, the Region Director reviews the final draft letter to withdraw the entire case and discusses any comments, changes, or corrections with Region staff. If required, Region staff revise the final draft withdrawal letter. When the letter is satisfactory, and after obtaining concurrence from the Region Attorney, the Region Director approves and signs the letter.

The Region Director assures that the letter is sent to the operator (return receipt requested), the Federal Aviation Administration (if a civil penalty was proposed), and the Compliance Registry. To ensure these documents are added to the case file, the Region Director also sends a copy of the Case Withdrawal Letter to the Region Paralegal for uploading to the electronic case file in WMS. The Compliance Registry will review and confirm the updated electronic case file. Copies of the letter are also sent to the individuals identified in Table 4-B.

4.1.6.3 Prepare Recommendation for Final Order

Input: Information in case file, and information provided by the operator during or after the hearing (if applicable).

Output: Draft Recommendation for Final Order.

Responsibility: Region staff and Region Attorney.

Description: A Recommendation for Final Order is issued when any of these conditions occur:

- The case is processed as "contest" per Subsection 4.1.6.1 Review Operator Response or where appropriate processing identified below has concluded.

- If the operator's reply is non-responsive to the Notice of Probable Violation, or insufficient to resolve the alleged items, proposed compliance terms, or proposed civil penalties; or
- If the operator requested a consent agreement, after the informal consultation for potential consent agreement where the Region Director, Region Attorney, and operator do not agree, or the proposed terms of the consent agreement are insufficient to resolve the case; or
- If the operator requested a hearing, when a withdrawal of hearing requested is received or after conclusion of a hearing.

Region staff assigned to the case review the information provided by the operator, including additional information provided at the hearing, and in any post-hearing submissions (if applicable). This information is evaluated along with the facts and evidence of the case previously documented in the Notice of Probable Violation and the Violation Report. If there are substantial factual issues or any legal issues, Region staff work with the Region Attorney to address them in the Recommendation. Region staff determine whether the noncompliance issue(s) that originally motivated the Notice of Probable Violation are still valid and still merits PHMSA enforcement action. The Region staff prepares a draft Recommendation for a Final Order using the Recommendation template. The Recommendation should detail whether the evidence as presented in the Notice of Probable Violation and/or the Violation Report should be presented differently or revised. The original Violation Report cannot be changed, but the Recommendation can bring forth new information or legal arguments, but only after consultation with the Region Attorney to ensure that the respondent is afforded due process and an opportunity to respond.

If the Notice of Probable Violation included a proposed civil penalty for one or more of the probable violations, Region staff confirm that the allegations are still valid. If the operator provided new information that may warrant reduction of the penalty amount, this evidence is documented and discussed in the Recommendation. This includes if the operator made a request for the civil penalty to be modified pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). If the operator makes a claim that the penalty should be reduced in accordance with the SBREFA, the Region staff will consult with the Region Attorney to comply with the terms of the SBREFA. If Region staff determine that a civil penalty reduction may be warranted, this conclusion is thoroughly explained with reference to facts, arguments, and evidence in the Recommendation, along with any supporting evidence. This information is documented for each item for which a civil penalty reduction is recommended.

If the operator has raised challenges to the way PHMSA calculates civil penalties beyond the selections made in the Violation Report, the Region Attorney and Region must consult with the Enforcement

Division to address them appropriately in the Recommendation. The Enforcement Division, Region Director, and Region Attorney must all concur with the response.

If the Notice of Probable Violation included a proposed compliance order for any of the probable violations, Region staff must confirm that the allegations are still valid.

- If a compliance order is still required, the Recommendation clearly documents these corrective measures and recommends that a Final Order be issued to require the operator to complete the corrective actions.
- When the operator proposed modification of the corrective actions in the proposed compliance order, explain whether such changes are warranted or not.
- For the determination of any changes of the corrective actions, there should be a thorough explanation for why it is necessary to achieve compliance with referenced supporting evidence in the Recommendation.

If the operator does not contest any part of the case and the Region has no additional information beyond that presented in the Notice of Probable Violation Letter and the Violation Report, Region staff can alternatively draft a simple email (same distribution as a Recommendation) that says the Region has no recommendation. Preparation of the recommendation for final order is recorded in the WMS Post CPF tasking. The drafting/reviewing of the recommendation is captured in the Recommendation – Prepare and Review Tasks. For additional information regarding this tasking see the WMS Enforcement Module User Guide.

4.1.6.4 Approve Recommendation and Send to Office of Chief Counsel, and Compliance Registry

Input: Draft Recommendation for Final Order or Draft No Recommendation.

Output: Approved Recommendation for Final Order or No Recommendation.

Responsibility: Region Director.

Description: The Region Director reviews the draft Recommendation and discusses any comments, changes, or corrections with Region staff. If the operator has provided information that supports mitigation of any proposed civil penalties, the Region Director reviews this material to determine if there is good cause to consider reducing or eliminating a proposed civil penalty for any of the alleged noncompliance items. Likewise, if the operator has provided information that might change the terms of the Proposed Compliance Order, this information is also reviewed to see if changes are warranted.

If required, Region staff revise the draft Recommendation. The Region should consult with the Region Attorney to finalize the Recommendation, and if there are further thoughts on challenges raised by the operator regarding the way PHMSA calculates civil penalties refer to subsection 4.1.6.3 for gaining concurrence from the Enforcement Division and Region Attorney. When the Recommendation is satisfactory, the Region Director approves and sends it to the Region Paralegal for distribution and

recording on the case file. The approval of the recommendation for final order is recorded in WMS Post CPF Tasking, see WMS Enforcement Module User Guide for additional information. The Region Paralegal sends the Recommendation to the Region Attorney, Presiding Official (for cases with hearing cases), Compliance Registry, Operator, and other individuals as identified in Table 4-B.

If the operator does not contest the case and if the Region has no additional information beyond that presented in the Notice of Probable Violation Letter and the Violation Report, the Region Director can alternatively send a simple email saying the Region has no Recommendation. In this event, the Region Director sends it to the Region Paralegal for the same distribution as for a Recommendation.

If an operator submits a rebuttal to the Region Recommendation, the Region will normally not provide anything further.

4.1.6.5 Send Recommendation to Operator

Input: Region Recommendation for Final Order.

Output: Region Recommendation for Final Order sent to Operator.

Responsibility: Region Attorney and Region Paralegal.

Description:

In all cases where prepared, the Region Recommendation is sent to the Operator by the Region Attorney or Region Paralegal. The Region Paralegal completes the Post CPF Recommendation for Final Order – Send Task, see WMS Enforcement Module User Guide for additional information. To ensure these documents are added to the case file, the Region Paralegal sends a copy of the Region Recommendation that has been sent to the operator to the Compliance Registry and uploads it to the electronic case file in WMS (includes confirmation of delivery in accordance with 49 CFR § 190.5 Service). The Compliance Registry reviews and confirms the updated electronic case file.

4.1.6.6 Notice of Probable Violation Resolution by Consent Agreement & Order

Input: Operator Request Consent Agreement & Order with Region Director.

Output: Draft Consent Agreement and Order.

Responsibility: Region Director and Region Attorney.

Description: Under 49 U.S.C. § 60117(b)(1), PHMSA is required to allow a respondent to request the use of a consent agreement/order and allow one or more meetings for the settlement, simplification, or to aid in the disposition of issues.

The Enforcement Procedure for resolving Notices of Probable Violation by Consent Agreements and Orders is still under development, but until it is finalized, the following outlined steps should be

followed in the resolution of Notices of Probable Violation (these are similar to procedures in Subsection 4.4.4 *Issue Consent Order* process).

When a respondent requests to resolve a Notice of Probable Violation by Consent Agreement and Order, the informal consultation process provides the Region and Operator opportunity to conduct one or more meetings to evaluate the issues for simplification or potential settlement. The Region Director and Region Attorney will ensure to record the following steps similar to procedures in Subsection 4.4.3 Conduct Informal Consultation: scheduling correspondence for any informal consultation meeting(s) and attendance sheets for any informal consultation meetings held.

The following documents are sent to the Compliance Registry by Region Paralegals and uploaded in the WMS:

- Scheduling correspondence for informal consultation meetings (includes rescheduling correspondence if appropriate), and
- General attendance details for any informal consultation meetings held between the Region and operator (time, date, and attendees present for region/operator).
-

As noted in Subsection 4.4.4 *Issue Consent Order*, the Region Director obtains approval of the draft Consent Agreement from the Deputy Associate Administrator for Field Operations and the Assistant Chief Counsel for Pipeline Safety (or their deputy) prior to sending the Consent Agreement to the operator for signature. Once the Consent Agreement has been approved and signed by the operator, the Office of Chief Counsel sends the settlement package to the Associate Administrator for final approval and signature. If a proposed settlement agreement would impose behavioral commitments or obligations on a regulated entity that go beyond the requirements of relevant statutes and regulations, including the appointment of an independent monitor or the imposition of novel, unprecedented, or extraordinary obligations, the Assistant Chief Counsel will obtain the approval of DOT's Office of General Counsel prior to the Consent Agreement being sent to the Associate Administrator.

DOT encourages the use of alternative dispute resolution (ADR) to resolve enforcement cases where appropriate. The Department's ADR policy describes a variety of problem-solving processes that can be used in lieu of litigation or other adversarial proceedings to resolve disputes over compliance.¹²

After the Consent Order is signed by the Associated Administrator, the Region Attorney will ensure the following steps, similar to procedures in Subsection 4.4.4.6 Send Consent Order and Agreement to Operator, record the issuance of the consent order and signed consent agreement to the operator. The following documents are sent to the Compliance Registry by PHC administrative staff and uploaded in the WMS:

¹² See Statement of Policy on Alternative Dispute Resolution, 67 Fed. Reg. 40,367 (June 12,2002).

- Consent Order, signed consent agreement, and transmission of these documents to the operator by certified mail, overnight courier, or electronic transmission that includes reliable acknowledgement of actual receipt.

In the circumstance where not all terms contained in the notice are agreed upon, the Region Director and Region Attorney will continue the processing track to attain resolution for the case. For cases where a hearing has been requested, the Region will send notification to the Presiding Official to schedule the hearing, as identified in 4.1.7.1 Notification to Schedule Hearing. For cases where a hearing was not requested the Region will draft the Recommendation for Final Order, see 4.1.6.3 Prepare Recommendation for Final Order.

4.1.7 *Conduct Hearing*

If an operator contests allegations of violations or inadequacies of plans/procedures, the operator may request an administrative hearing to present its case. An operator may request that a hearing be held, and an order be issued, on an expedited basis. The Office of Chief Counsel's Presiding Official conducts the hearing as described in 49 CFR §§ 190.211 and 190.212. Figure 4.1, Sheet 7, "Conduct Hearing" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.7.1 *Send Notification to Schedule Hearing to Presiding Official*

Input: Letter from operator requesting a hearing.

Output: Notification to schedule a hearing.

Responsibility: Region Director.

Description: Upon receipt of a response to a Notice of Probable Violation, in which the operator requests a hearing, the Region Director or Region Attorney prepares and sends a notification to the Presiding Official with a copy to the Region Paralegal for uploading to the electronic case file in WMS. The Region Director or Region Attorney should send the hearing notification to the Presiding Official within 3 business days of receiving the hearing request. The Compliance Registry will review and confirm the updated electronic case file. Additional recipients of the notification to schedule a hearing are identified in Table 4-B.

Hearing scheduling notifications are created for electronic record-keeping purposes and to notify the Presiding Official of a hearing request. If an operator requests a hearing, one must be held, unless the case is withdrawn, or the operator withdraws its request for a hearing.

4.1.7.2 *Schedule Hearing*

Input: Notification to schedule a hearing.

Output: Hearing scheduled.

Responsibility: Presiding Official.

Description: After receiving a notification to schedule a hearing from the Region, the Presiding Official assumes authority over the proceeding. At his or her discretion, the Presiding Official will engage with the Region and the operator and will select a hearing date and location. The hearing is held in-person, by teleconference, or video conferencing at the discretion of the Presiding Official.

When the hearing has been scheduled, the Presiding Official documents the arrangements in a letter addressed to the operator and the Region Director. The Presiding Official sends the letter to the PHC Admin for issuance and recording of the electronic case file in WMS (includes confirmation of delivery in accordance with 49 CFR § 190.5 Service). PHC Admin sends the scheduling letter to Operator, Region Attorney, Region Director, and Compliance Registry. Additional recipients of the letter scheduling a hearing may be identified by the Presiding Official. The Compliance Registry will review and confirm the updated electronic case file.

If the operator withdraws its request for a hearing, the Presiding Official sends the withdrawal to the Region Director and the PHC Admin for uploading to the electronic case file in WMS. When a request for hearing is withdrawn, the Presiding Official ensures an official letter of record for the withdrawal/cancellation of hearing addressed to the operator and Region Director. The Presiding Official sends the letter to the PHC Admin for issuance and recording of the electronic case file in WMS (includes confirmation of delivery in accordance with 49 CFR § 190.5 Service). PHC Admin sends the cancellation of hearing letter to the Operator, Region Attorney, Region Director, and Compliance Registry. The Compliance Registry will review and confirm the updated electronic case file. If the operator withdraws a hearing request but still contest the Notice, Region staff then prepare a draft Recommendation for Final Order (See Subsection 4.1.6.3, "Prepare Recommendation for Final Order.")

4.1.7.3 Pre-Hearing Proceedings

Input: Operator response to the Notice of Probable Violation.

Output: Depending on the specifics of the case, submission of pre-hearing briefs or additional materials, including if appropriate issuance of subpoenas.

Responsibility: Region Director, Region staff, and Region Attorney.

Description: Upon receipt of the operator's letter requesting a hearing, the Region Director and staff evaluate the basis for the operator's position in contesting the alleged violation, the proposed civil penalty amount (if any), and/or the terms of the any Proposed Compliance Order. Region Director and staff review evidence from the case file, as appropriate. If the Region intends to introduce new material that is not currently in the case file during the hearing, the Region provides this information to the operator and the Presiding Official as soon as practicable, but at least 10 days prior to the hearing date,

unless the Presiding Official specifies a different deadline. This gives the operator the opportunity to review and respond to the new materials. Examples of such material include any presentations, maps, or other information that the Region may want to use in rebutting an operator's arguments or explaining issues to the Presiding Official.

Likewise, if the operator intends to introduce materials at the hearing that are not already in the case file, the operator provides this material to the Region Director and the Presiding Official at least 10 days prior to the hearing date, unless the Presiding Official specifies a different deadline. 49 CFR §190.211(d). This provides the Region Director and Region staff an opportunity to review and prepare responses to this new material before the hearing. Requests for additional time to provide information should be addressed to, and handled by, the Presiding Official.

In addition, pursuant to 49 CFR § 190.212(c), the Presiding Official may require the submission of documents and other information in the pre-hearing submission.

Upon submission of pre-hearing materials, the Presiding Official sends the materials and associated correspondence to the PHC Admin for uploading to the electronic case file in WMS. The Compliance Registry may assist with uploading voluminous submission and will review/confirm all documents are contained within the electronic case file.

Pursuant to 49 CFR § 190.7, the Presiding Official may issue a subpoena to require attendance of a witness or production of evidence. The subpoena may be issued on the Presiding Official's own initiative or upon request by either the respondent or Regional Attorney. A request for a subpoena must demonstrate the information sought "will materially advance the proceeding." Refer to 49 CFR § 190.7(c)-(h) for methods of service of a subpoena, including when applicable, payment of fees and mileage. A person to whom a subpoena is directed may, prior to the deadline specified in the subpoena for compliance, but no more than 10 days after service, apply to the Presiding Official to quash or modify the subpoena. The application to quash or modify must contain a statement of the reasons for the requested action. The Presiding Official may: deny the application; quash or modify the subpoena; or condition a grant or denial upon satisfaction of certain requirements. The denial may be summary. If a person refuses to obey a subpoena, PHMSA may request the Attorney General file in the appropriate U.S. District Court to compel that person to comply.

An operator's request for a hearing must be accompanied by a statement of the issues it intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount. An operator's failure to specify an issue may result in waiver of the operator's right to raise that issue at the hearing.

The Region Attorney provides guidance and assistance in preparing to present the case at the hearing.

Pursuant to 49 CFR § 190.210(b)'s prohibition on ex parte communications, the Region Director and Region staff assigned to the case cannot discuss the case with the Presiding Official outside of the

hearing process, including furnishing ex parte communications or factual materials. This assures that the Presiding Official is not influenced by information that is not presented at the hearing or in pre- or post-hearing statements requested from both parties by the Presiding Official. The Region Attorney should be consulted if there are any questions about communication with the Presiding Official prior to the hearing.

4.1.7.4 Conduct Hearing

Input: Materials developed or collected in preparation for the hearing.

Output: A fair hearing in which both sides have had the opportunity to present their positions. Any documents and other evidence presented at the hearing become part of the case file. A written notification that the hearing was held is provided to the Compliance Registry.

Responsibility: Presiding Official.

Description: During the hearing, the operator is typically represented by staff members knowledgeable with the alleged violations, its regulatory compliance personnel, and perhaps company management. Operators may also rely on outside consultants for technical support, and in-house or outside counsel for legal support. The Region is represented by the Region Attorney and Region Director during the hearing. The Region Staff and Region Director may be witnesses. Other PHMSA personnel involved in the enforcement action may also be witnesses.

All PHMSA hearings are considered “informal adjudications,” meaning that they do not adhere to the formal procedures used by courts or strict rules of evidence. However, they must still meet all statutory, regulatory, and constitutional requirements for informal hearings. Both the operator and Region are provided an opportunity to present evidence supporting their respective positions. The Region has the burden of proof to prove its case by a preponderance of the evidence. The operator may present facts, statements, explanations, documents, testimony, or other items relevant to the issues under consideration. Each side is allowed to respond to information the other party presents.

After the hearing is finished, the Presiding Official provides written notification that the hearing has been held to the Compliance Registry so the electronic case file can be updated. An e-mail message indicating the hearing date and a list of the participants, or a copy of the attendance sheet is satisfactory documentation of the event. If the operator has provided additional evidence at the hearing, these documents are also provided to the Compliance Registry to update the electronic case file. Additional recipients of this material are listed in Table 4-B.

While there are no transcripts or official minutes recorded for a hearing, an operator may elect to have a hearing transcribed, and the Presiding Official generally recommends this. In these situations, the operator must notify the Presiding Official in advance of its intent, and it must arrange for a court reporter to transcribe the session at its own cost. The operator must provide copies of the transcript to PHMSA for the case file.

4.1.7.5 Review Post-Hearing Submission

Input: Additional evidence submitted by the operator after the hearing.

Output: Updated case file with additional information and evidence.

Responsibility: Presiding Official.

Description: If requested, the Presiding Official allows the operator to submit additional evidence supporting its case following the conclusion of the hearing. The operator sends this post-hearing submission to the Presiding Official and the Region for review. Unless otherwise noted by the Presiding Official, the operator sends its post-hearing submission within 30 days of the conclusion of the hearing.

If the operator only sends its post-hearing submission to either the Presiding Official or the Region, the recipient sends a copy of this material to the other so that everyone has the same information. The Presiding Official sends the post-hearing submission to the PHC Admin for uploading to the electronic case file. The Compliance Registry will review and confirm the updated electronic case file. If the contents of the post-hearing submission are not in electronic format, the Presiding Official may send the documents to the PHC Admin or Compliance Registry for scanning. Oversize drawings and documents are sent to the Region for retention in its case files.

The Region is required to file any post-hearing recommendation no later than 30 days after the deadline for any post-hearing submission by an operator. The operator may reply to any post-hearing submission by the Region. The Presiding Official will set any deadlines with respect to post-hearing submissions.

4.1.8 *Process Final Order*

Figure 4.1, Sheet 8, "Process Final Order" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.8.1 Prepare Final Order

Input: Evidence in Case File, including Operator Submissions, Region Recommendation, and any accompanying evidence or exhibits.

Output: Draft Final Order, in a fully edited proof-read and signature-ready format.

Responsibility: Presiding Official or other Office of Chief Counsel Attorney

Description: Based on all the evidence in the record, an Office of Chief Counsel attorney who was not involved in any way in the development of the previous stages of the case independently drafts a Final Order that contains findings of fact and law on all material issues. The Final Order must contain findings and determinations on all material issues related to the adjudication, including determinations of relevant factual and legal issues. The attorney should consult the Region's Recommendation but is not bound by it. The attorney may also consult with impartial technical personnel and resources at

headquarters or in the Regions who were not involved in any way in the development of the case. Region Director, Region Attorney, Region staff, or Enforcement Division staff who were involved in developing and prosecuting the case may not furnish *ex parte* communications or factual materials to the attorney preparing or reviewing a final order, or any person reviewing or providing advice to the Associate Administrator on the substance of a draft final order.

If an operator is issued a Notice of Probable Violation that contains only a proposed civil penalty (no Compliance Order), and the operator has paid (or will pay) the civil penalty without asking for a hearing, the attorney will still prepare a Final Order so that there is a record of a finding of violation. If the penalty has been paid at the time the Final Order is written, the order will also declare that the case is closed. If the penalty has not been paid at the time the Final Order is written, it will state that the case will be closed upon receipt of payment.

If the attorney determines that the evidence may support an assessed penalty reduced from the proposed, the attorney will obtain the proposed civil penalty worksheet from the Enforcement Division. The attorney will use the same consistent methodology that was previously applied to determine the proposed penalty, to calculate and provide a revised recommended civil penalty.

If a violation is a repeat violation, a causal factor in an accident/incident, increased the severity of consequences of an accident/incident, or egregious or more willful (see Culpability section in Violation Report), this should be stated in the Final Order.

PHMSA does not adjudicate Warning Items. If the original Notice of Probable Violation letter contained Warning Items, and if the operator responded to those Warning Items in one of its submissions, the Final Order would often note the operator's comments in the order.¹³

Before the order is sent to the Associate Administrator, the attorney confirms that the company name and address are correct and current. The attorney also confirms the name and title of the company official to whom the Final Order is addressed. The Final Order must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer, not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.)

PHC may implement its own internal draft review procedures, provided the reviewers were not involved in any way in the development of the previous stages of the case. This may include review by the Chief Counsel in certain circumstances, under the same limitation.

¹³ Pipeline Safety: Administrative Procedures; Updates and Technical Corrections, 78 Fed. Reg. 58,897, 58,900 (Sept. 25, 2013).

4.1.8.2 Review and Approve Final Order

Input: Draft Final Order.

Output: Approved and signed Final Order.

Responsibility: Associate Administrator.

Description: The Associate Administrator, or Deputy Associate Administrator, reviews the draft Final Order. When the Associate Administrator, or Deputy Associate Administrator, determines the Final Order to be satisfactory, the Associate Administrator or Deputy Associate Administrator approves and signs the order.

4.1.8.3 Send Final Order to Operator

Input: Approved Final Order signed by the Associate Administrator or Deputy Associate Administrator.

Output: Order sent to operator and updated case file.

Responsibility: Office of Chief Counsel.

Description: The Office of Chief Counsel sends the approved and signed order to the operator. The order is sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the order (e.g., the US Postal Service return receipt signed by the operator).

The Office of Chief Counsel sends a copy of the order and the confirmation of receipt by the operator to the Compliance Registry and uploads the documents to the WMS electronic case file. If the case involved a proposed civil penalty, the Office of Chief Counsel also sends a copy of the Final Order to the Federal Aviation Administration in the same e-mail that transmits the order to the Compliance Registry. Additional recipients of the Final Order are listed in Table 4-B. The Compliance Registry reviews and confirms the updated electronic case file.

4.1.9 *Close Case*

A case is closed upon confirmation that the operator complied with all the terms of the Final Order and, if applicable, the Decision on Petition for Reconsideration.

Figure 4.1, Sheet 9, “Close Case” illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.9.1 Send Confirmation of Payment to Compliance Registry

Input: Receipts of funds from operator in payment of civil penalty.

Output: Confirmation of payment of civil penalty.

Responsibility: Federal Aviation Administration.

Description: Upon receipt of civil penalty payment, the Federal Aviation Administration representative responsible for processing PHMSA civil penalties sends written confirmation of payment to the Compliance Registry so the electronic case file can be updated. The payment amount includes any applicable penalties and interest that have accrued since the civil penalty was ordered.

If a case has not received a confirmation for payment of civil penalty within 90 days, the Compliance Registry Coordinator will send a notification to the Region Director and Region Attorney.

4.1.9.2 Confirm Operator Payment and Compliance

Input: Operator performance of Compliance Order and payment of civil penalty.

Output: Draft letter to close case.

Responsibility: Region staff.

Description: Region staff verify that the operator completed the terms of the Compliance Order, and if a civil penalty was assessed, paid the penalty.

Payment of a civil penalty assessed in a Final Order or affirmed in a Decision on Petition for Reconsideration must be made within 20 days after receipt of the Final Order or decision. If the operator fails to pay the civil penalty, the Federal Aviation Administration refers the case to the Treasury Department for collection.¹⁴ Upon receipt of the confirmation of payment from the Federal Aviation Administration, the Compliance Registry Coordinator will update this payment information in the electronic case file, as noted in subsection 4.1.9.1, and advise the designated Region contacts by e-mail that payment was made. The list of designated Region contacts will be updated as desired by the Region Directors and maintained in the Compliance Registry Coordinator Instructions. Of course, the Region can also verify if the payment was made by checking the electronic case file. Claims by operators, whether written or verbal, that payment of civil penalty has been made are not accepted for proof of payment. For example, a letter from the operator or copies of checks or money orders, are not accepted for case closure.

Region staff verify that the terms of the Compliance Order have been met and the operator provides evidence or documentation that establishes the basis for closure. This could take the form of additional evidence gathered on subsequent follow-up inspections. In the case of verification by direct observation on the part of Region staff, compliance can be documented in an Inspection Report. If the operator fails

¹⁴ Failure to make payment results in the initiation of collection action by the Federal Aviation Administration, including the accrual of interest and penalties, in accordance with 31 U.S.C. § 3717 and 49 CFR part 89 (49 CFR § 190.227). In addition, PHMSA may request that the Department of Justice bring a civil action for collection, in accordance with 49 U.S.C. § 60122(c).

to comply with the Compliance Order, or the final Decision on Petition for Reconsideration, in a timely manner, Region staff inform the Region Director for consideration of additional administrative enforcement action. Options for addressing non-compliance with the terms of a Compliance Order may be discussed with the Region Attorney.

Region staff prepare an official letter of record (with identification of completed/satisfied/no further action required status for all items) to the operator closing the case using the appropriate closure letter template. Emails do not meet the requirements for official letters of record and will not be recorded on the case file as a closure letter. Instructions for the content of the case closure letter are contained in the template. Region staff submit the draft closure letter to the Region Director for approval. Preparation of the closure letter is recorded in the WMS Post CPF tasking. The preparation, review, and approval of the closure letter is captured in the Closure - Prepare, Review, and Approve Tasks. For additional information regarding this tasking see the WMS Enforcement Module User Guide.

The Region will not prepare a closure letter for a case that includes only a civil penalty. In these situations, the Final Order already stated that the case closes automatically upon payment. (The Enforcement Division directly closes those cases without involvement from the Region.)

If the Region receives a notification from the Compliance Registry Coordinator, the Region attorney will send a letter to the assigned bankruptcy attorney from the Office of Chief Counsel requesting a bankruptcy review. The bankruptcy attorney will then follow the PHC process to evaluate the case.

4.1.9.3 Send Closure Letter to Operator

Input: Draft closure letter.

Output: Signed closure letter sent to operator.

Responsibility: Region Director.

Description: The Region Director reviews the draft closure letter and discusses any comments, changes, or corrections with Region staff. If required, Region staff revise the final draft letter. When the letter is satisfactory, the Region Director approves, signs, and sends the letter to the Region Paralegal for issuance. Region Paralegal sends the letter to the operator and completes the Post CPF Closure – Send Task, see WMS Enforcement Module User Guide for additional information. The closure letter along with evidence (or documentation) of compliance is sent to the Compliance Registry and uploaded to the electronic case file. The Compliance Registry reviews and updates the electronic case file and closes the case. If the case includes a civil penalty, an electronic copy of the closure letter is also sent to the Federal Aviation Administration in the same e-mail that transmits the Closure Letter to the Compliance Registry. Additional recipients of Closure Letters are listed in Table 4-B.

4.1.10 *Petition for Reconsideration*

After receipt of a Final Order, operators have the right to petition the Associate Administrator to reconsider the ruling. A Petition for Reconsideration must be received by PHMSA no later than 20 days after the operator's receipt of the Final Order unless an extension is granted. The petition must contain a brief explanation of the operator's objection and an explanation why the Final Order should be modified. PHMSA is required to issue an order on a petition for reconsideration no later than 120 days after the date on which the petition is filed. Figure 4.1, Sheet 10, "Petition for Reconsideration" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.1.10.1 *Assign Attorney and Review Petition*

Input: Petition for Reconsideration submitted by the operator.

Output: Updated case file and stay of civil penalty.

Responsibility: Office of Chief Counsel Attorney.

Description: Operators may petition the Associate Administrator for reconsideration of a Final Order. Upon receipt of a Petition for Reconsideration, the Office of Chief Counsel assigns an attorney to the case to review the petition. The attorney reviews the operator's petition and determines the appropriate initial course of action on the petition.

The Office of Chief Counsel also uploads the petition to the electronic case file and sends a copy of the petition to the Compliance Registry, Region Director, and Region Attorney. The Compliance Registry will review the uploaded case file document (s) and commit them to the electronic case file.

If the case involves a civil penalty, the Office of Chief Counsel also sends a copy of the petition to the Federal Aviation Administration in the same e-mail that transmits the petition to the Compliance Registry. The Federal Aviation Administration places the collection of the civil penalty on hold until a decision on the petition is rendered. Additional copies of the petition are sent to the individuals listed in Table 4-B.

4.1.10.2 *Prepare Decision on Petition*

Input: Petition for Reconsideration.

Output: Draft Decision on Petition for Reconsideration in a fully edited proof-read and signature-ready format.

Responsibility: Office of Chief Counsel Attorney.

Description: The Office of Chief Counsel attorney assigned to the case prepares a draft Decision on Petition for Reconsideration.

If a review of the evidence suggests a revised civil penalty, the attorney obtains the proposed civil penalty worksheet from the Enforcement Division. The attorney uses the same consistent methodology that was previously applied to determine the proposed penalty, to calculate and provide a revised recommended civil penalty.

The attorney may also consult with impartial technical resources at headquarters or in the Regions, if these individuals have had no previous involvement with this case. In certain circumstances, the Chief Counsel may review the draft Decision on Petition for Reconsideration before it is sent to the Associate Administrator for approval.

4.1.10.3 Review and Approve Decision on Petition

Input: Draft Decision on Petition for Reconsideration.

Output: Approved and signed Decision on Petition for Reconsideration.

Responsibility: Associate Administrator.

Description: The Associate Administrator, or Deputy Associate Administrator, reviews the draft Decision on Petition for Reconsideration. When the Associate Administrator, or Deputy Associate Administrator, finds the draft Decision on Petition for Reconsideration to be acceptable, the Associate Administrator or Deputy Associate Administrator approves and signs the decision.

4.1.10.4 Send Decision on Petition to Operator and FAA (if Civil Penalty Case)

Input: Approved and signed Decision on Petition for Reconsideration.

Output: Decision on Petition for Reconsideration sent to operator.

Responsibility: Office of Chief Counsel.

Description: The Office of Chief Counsel sends the approved and signed Decision on Petition for Reconsideration to the operator. The decision is sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the decision (e.g., the US Postal Service return receipt signed by the operator).

The Office of Chief Counsel sends a copy of the decision and the confirmation of receipt by the operator to the Compliance Registry and uploads these documents to the electronic case file. The Compliance Registry reviews and confirms the updated electronic case file. If the case involves a civil penalty, the Office of Chief Counsel also provides a copy of the Decision on Petition for Reconsideration to the Federal Aviation Administration in the same e-mail that transmits the decision to the Compliance Registry. The Federal Aviation Administration either resumes collection of the civil penalty or cancels/modifies it as described in the final decision. Additional copies of the decision are sent to individuals identified in Table 4-B.

4.1.11 *Refer Case to DOJ or Other Agency*

If the nature of probable violations warrants, the case may be referred to DOJ for civil judicial enforcement. In considering whether to refer a matter for judicial enforcement by the Department of Justice, DOT attorneys should consult the applicable procedures set forth by the General Counsel, including in the document entitled "Partnering for Excellence: Coordination of Legal Work Within the U.S. Department of Transportation," and any update or supplement to such document issued hereafter by the General Counsel. If DOJ is already pursuing a case against the operator on behalf of another federal agency (e.g., EPA or USCG), the cases may be pursued jointly. Figure 4.1, Sheet 11, "Refer Case to DOJ or Other Agency" illustrates the overall process steps and individual responsibilities associated with referring cases outside PHMSA. This subsection does not apply to criminal enforcement. For criminal enforcement, see Subsection 4.1.1 and Section 2 Criminal Enforcement and OIG Coordination.

A decision to refer a case can be made at any time but would most commonly occur before a notice letter is sent. When deciding whether a case should be referred to DOJ, one or more of the following should be considered:

- Does the statutory limit on administrative penalties unduly restrict the penalty PHMSA believes is appropriate?
- Is there a chance the case may be referred criminally?
- Did the violation result in an accident or incident involving a fatality, injuries, significant environmental harm, or significant property damage?
- Does the operator have a poor history of compliance?
- Can corrective action be facilitated better with a referral than using PHMSA's administrative tools, such as a Corrective Action Order, Safety Order or Notice of Probable Violation?
- Are there other appropriate considerations that might weigh in favor or against DOJ referral?

If the Enforcement Director, Region Attorney, or Region Director believes the probable violations would warrant referral of the case to DOJ or should be pursued jointly with another federal agency (e.g., EPA or USCG), he/she will notify their management up their chain of command to the Chief Counsel or one of the Deputy Associate Administrators.

If the Chief Counsel or a Deputy Associate Administrator believe the probable violations would warrant referral of the case to DOJ or should be pursued jointly with another federal agency (e.g., EPA or USCG), he/she will notify the Associate Administrator. The Associate Administrator will discuss this option with the PHMSA Administrator, including the Chief Counsel, before any commitments are made or PHMSA opinions/positions are relayed to those agencies.

If the PHMSA Administrator then decides the case would warrant referral to DOJ, the Office of Chief Counsel will handle the referral.

4.2 Notices of Amendment

The cross functional diagram for the developing and processing Notice of Amendment cases is illustrated in Figure 4.2. The diagram is organized into nine major activities, as follows:

1. Document Inspection/Investigation (Fig. 4.2, Sheet 1 – page 48)
2. Process Information Request (Fig. 4.2, Sheet 2 – page 49)
3. Prepare Notice of Amendment (Fig. 4.2, Sheet 3 – page 50)
4. Issue Notice of Amendment (Fig. 4.2, Sheet 4 – page 51)
5. Process Operator Response to Notice of Amendment (Fig. 4.2, Sheet 5 – page 52)
6. Conduct Hearing (Fig. 4.2, Sheet 6 – page 53)
7. Process Order Directing Amendment (Fig. 4.2, Sheet 7 – page 54)
8. Close Case (Fig. 4.2, Sheet 8 – page 55)
9. Petition for Reconsideration (Fig. 4.2, Sheet 9 – page 56)

The following diagram and accompanying process descriptions identify the Region Director as responsible for certain steps in the enforcement process. Many of these responsibilities can be delegated to Region staff at the Region Director's discretion. However, the Region Director is ultimately responsible for the correct and timely completion of these steps.

Figure 4.2

Notice of Amendment Process

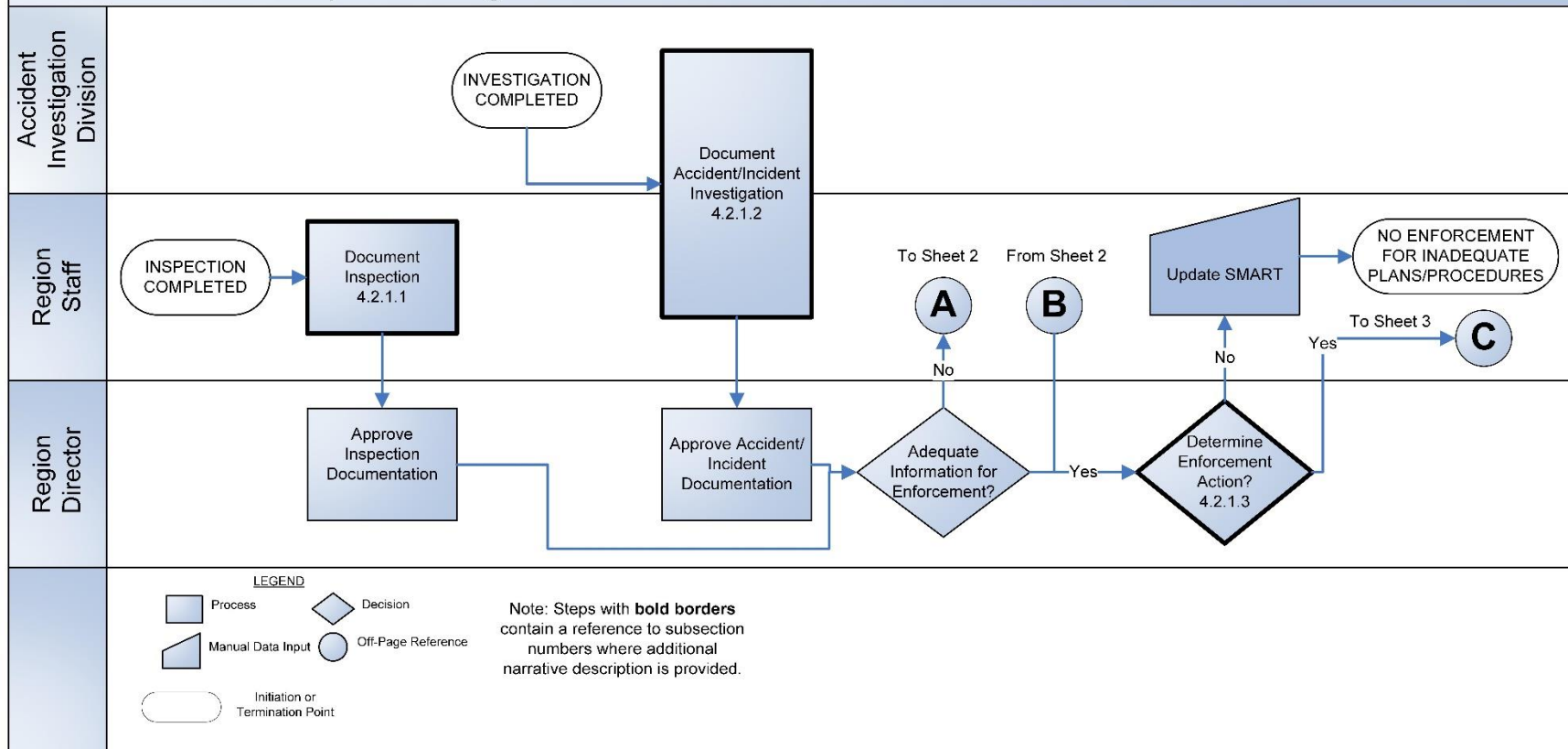
Cross Functional Diagram

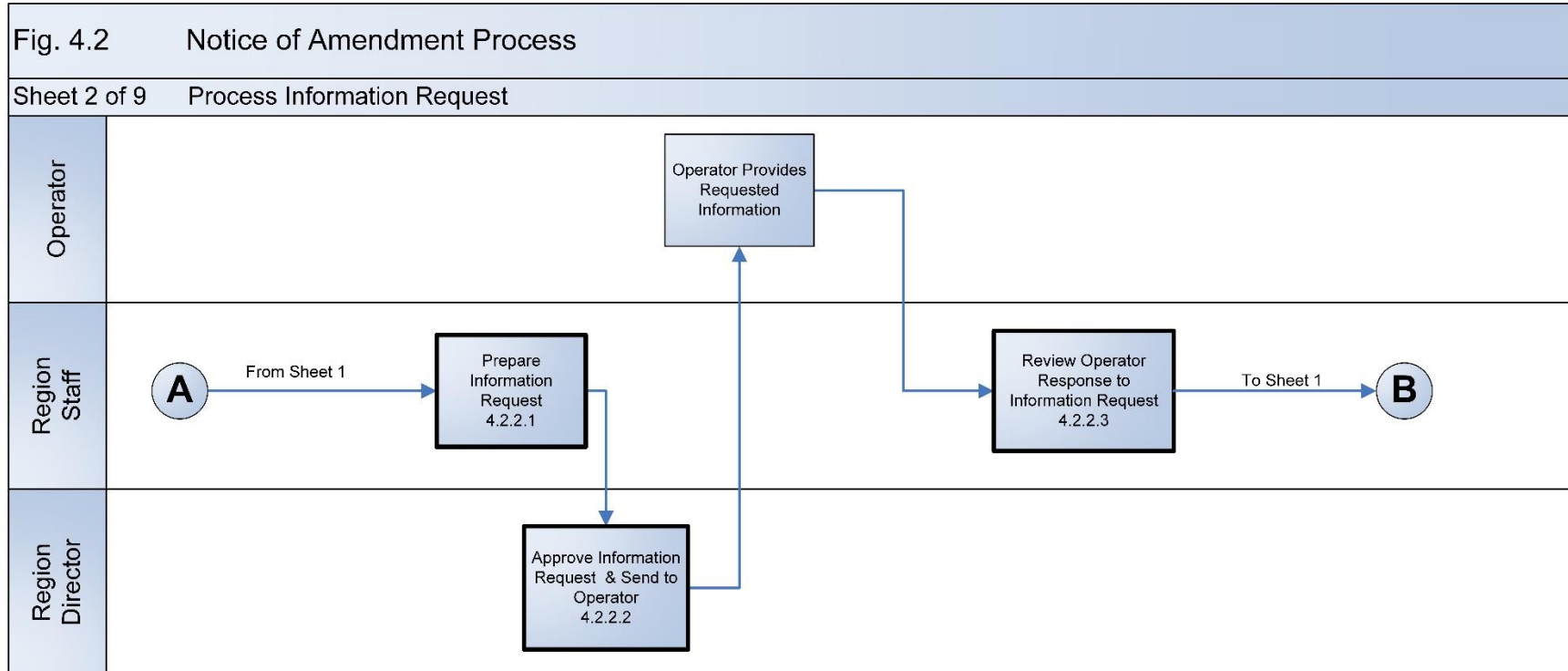
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Fig. 4.2 Notice of Amendment Process

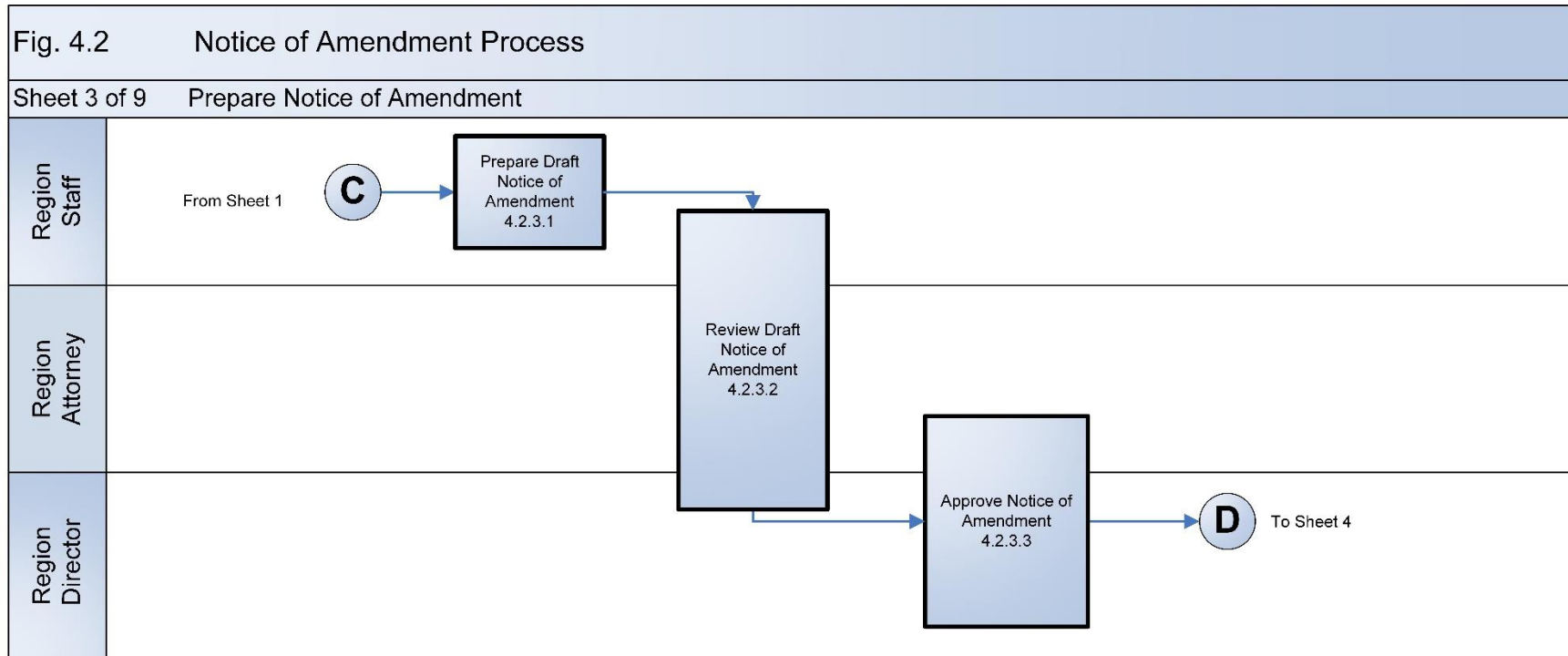
Sheet 1 of 9 Document Inspection/Investigation

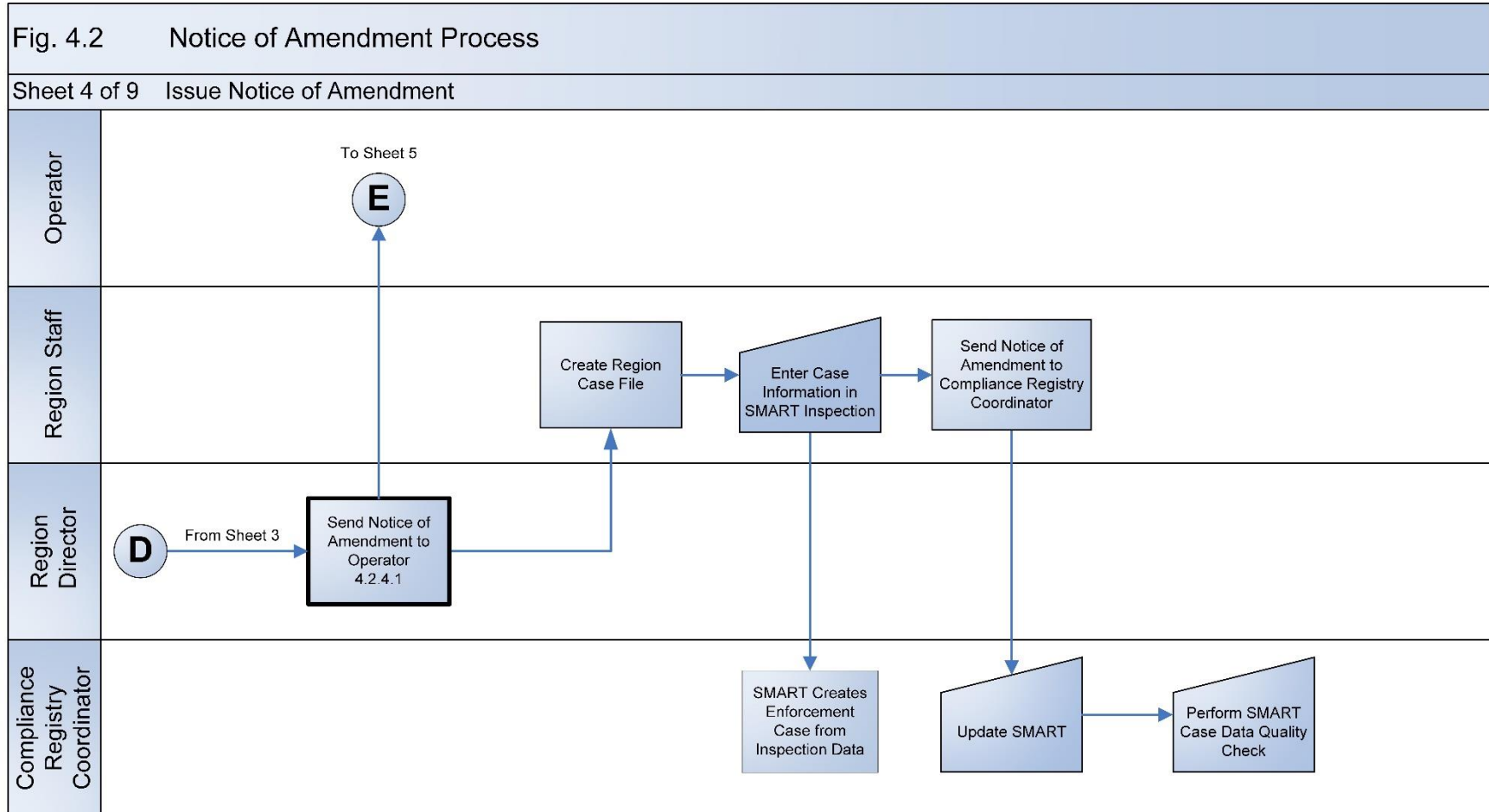




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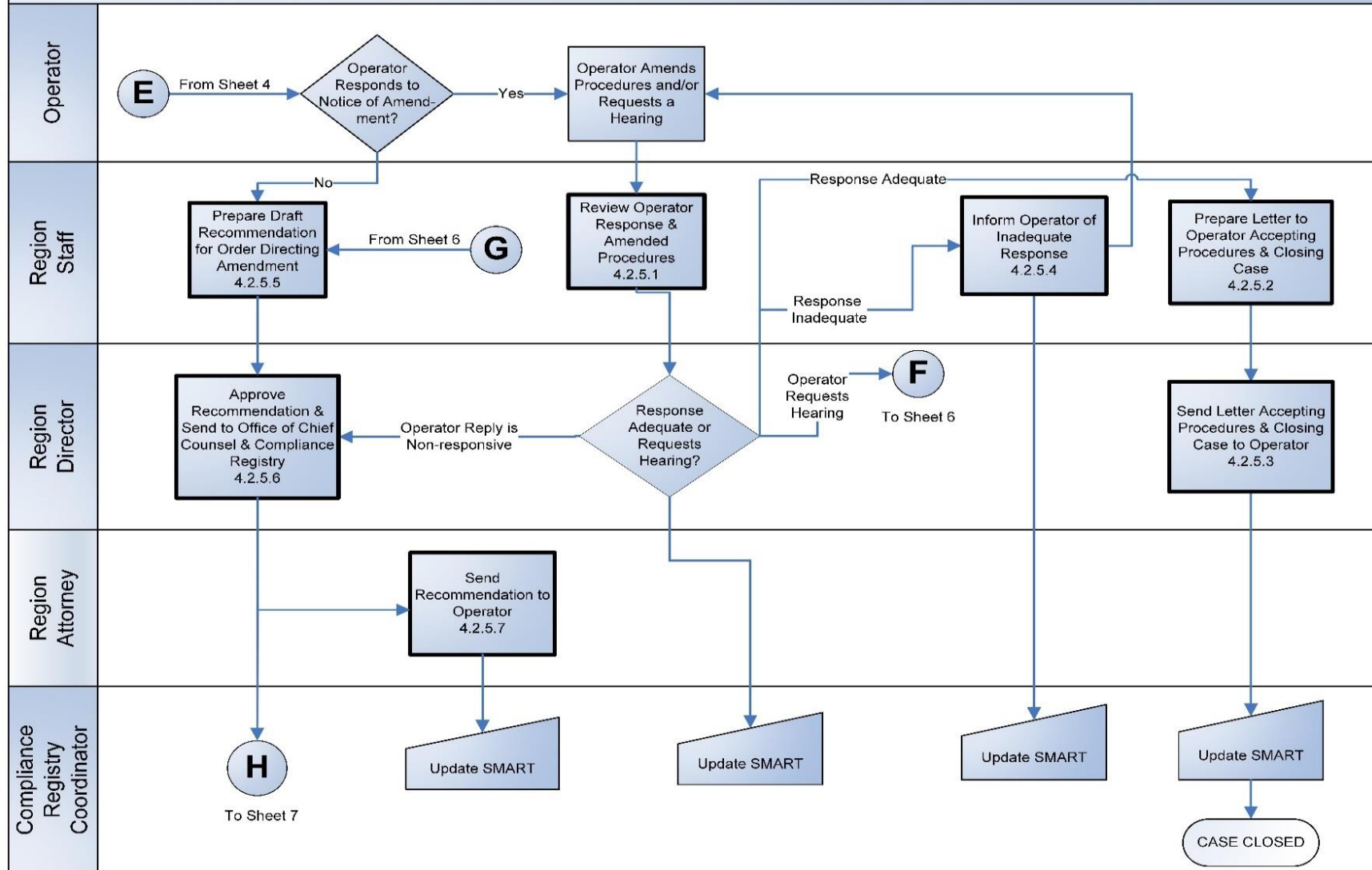


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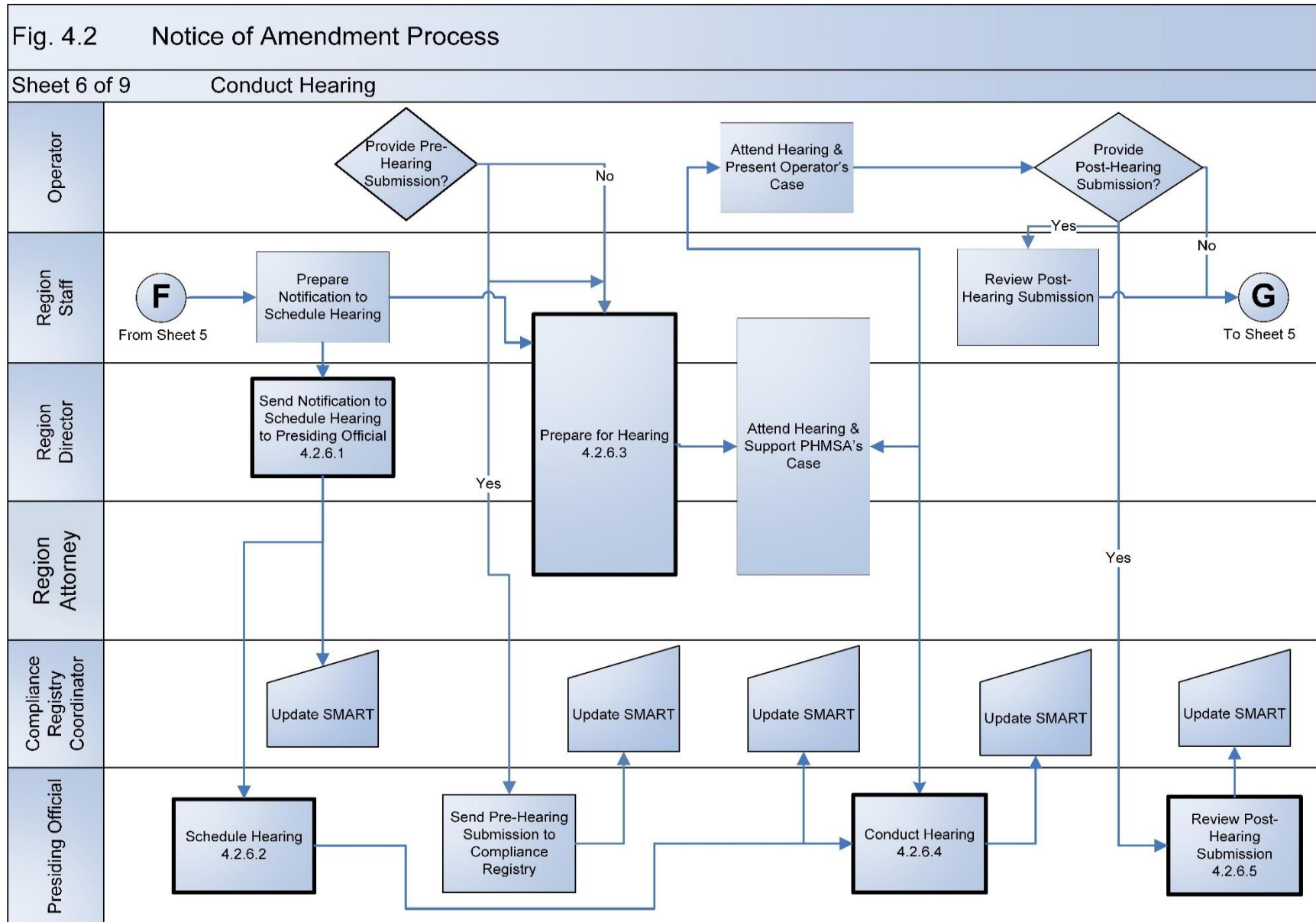
Fig. 4.2 Notice of Amendment Process

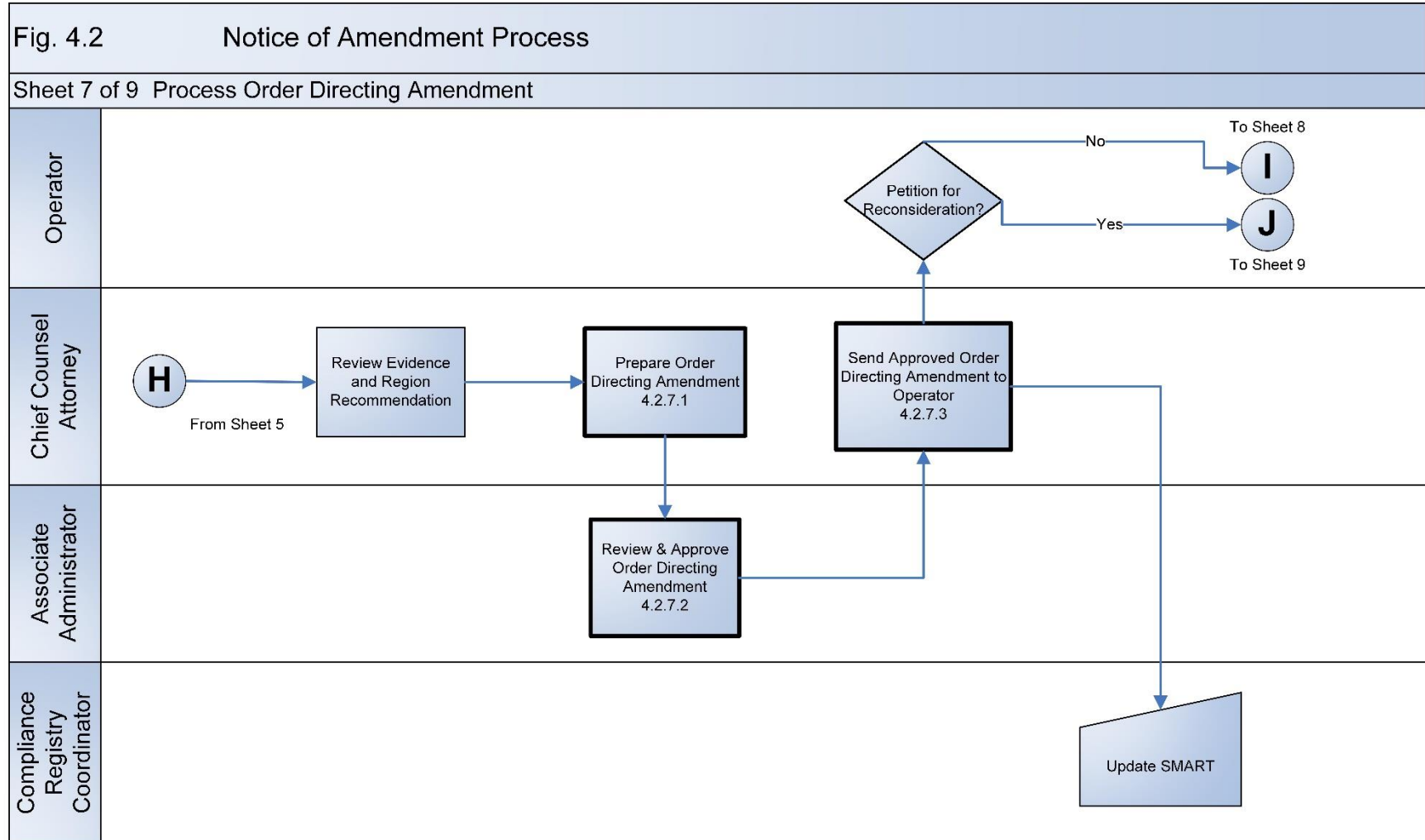
Sheet 5 of 9 Process Operator Response to Notice of Amendment

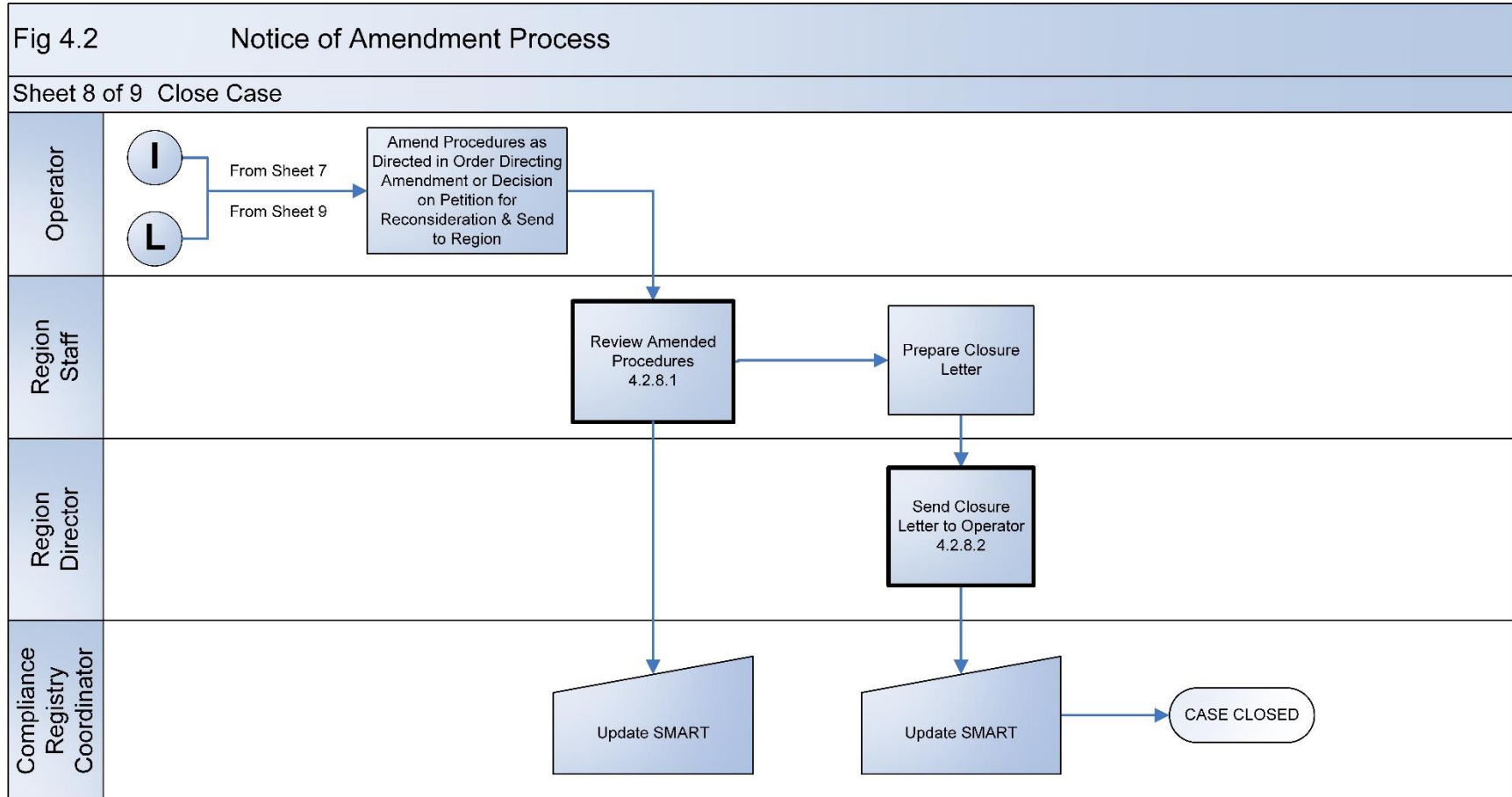


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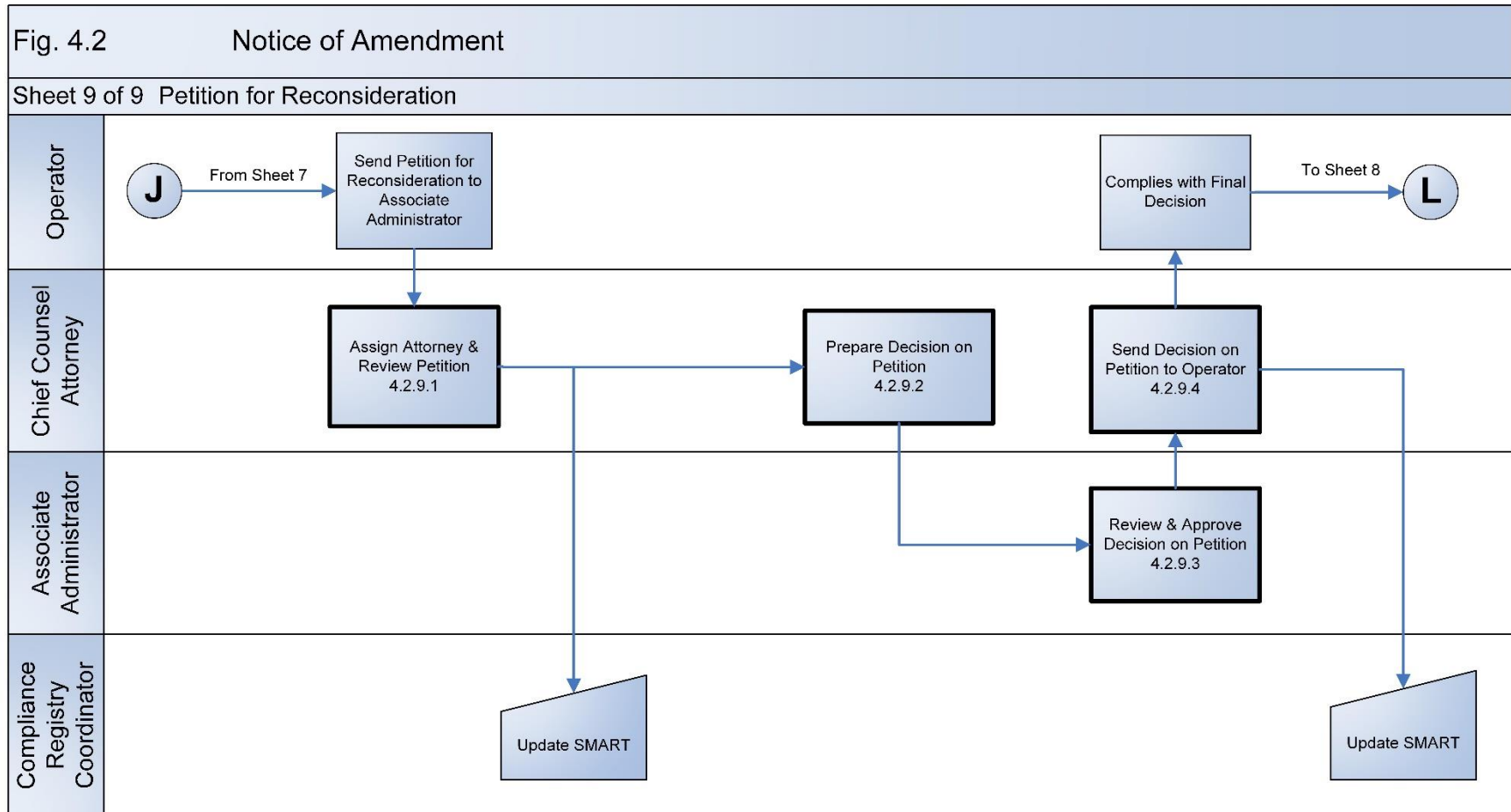






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4.2.1 Document Inspection/Investigation

Inspections or investigations are documented in accordance with Region practices. Inspections are documented using different forms, checklists, and other inspection help tools, including the Inspection Assistant (IA) Software.

Many accident/incident investigations are documented using the Pipeline Failure Investigation Report as well as other forms, memoranda, and investigation help tools. An accident/incident investigation is documented for the purpose of enforcement with a variety of documents depending on the Region and circumstance. Figure 4.2, Sheet 1, "Document Inspection" illustrates the overall process steps and individual responsibilities as they pertain to enforcement. The following discussion provides further explanation of steps identified by bold borders in the cross functional diagram.

4.2.1.1 Document Inspection

Input: The inspection documentation package can include, but is not limited to, the following:

- Evidence files,
- Inspector notes (including interview notes) - typically documented in the IA software,
- Responses to the inspection questions – typically documented in the IA software,
- Completed inspection checklists/forms,
- Operator documentation retained by Region staff,
- Photographs,
- Relevant in-place Special Permit, Corrective Action Order, Compliance Order, Order Directing Amendment, Consent Order, or Safety Order requirements issued to the operator, and
- Any other material generated or obtained by Region staff that is material to the determination of inadequate plans or procedures.

Output: Draft Inspection Output Report, Inspection Results Report, and/or other post-inspection documentation to conform with Region practices.

Responsibility: Region staff.

Description: Region staff review all the input associated with the inspection observations and draft an Inspection Report. The Inspection Output Report documents all the issues, potentially inadequate plans and/or procedures, and/or potential non-compliances observed during the inspection.

Region staff submit the final draft Inspection Output Report, Inspection Results Report, and any other Region-required documentation to the Region Director for approval.

4.2.1.2 Document Accident/Incident Investigation

Input: Input for documenting an accident or incident include:

- Evidence files,
- Inspector notes (including interview notes),
- Completed investigation checklists/forms,
- Operator documentation retained by Region staff,
- Photographs,
- Root cause analysis,
- Metallurgical examination reports,
- Relevant in-place Special Permit, Corrective Action Order, Compliance Order, Order Directing Amendment, Consent Order, or Safety Order requirements issued to the operator, and
- Any other material generated or obtained by Region staff that is relevant to the determination of compliance or non-compliance with pipeline safety regulations and inadequacies in plans or procedures.

Output: Completed draft accident/incident documentation and accompanying evidence.

Responsibility: Region staff/Accident Investigation Division.

Description: Region staff and the Accident Investigation Division will coordinate to document any inadequate plans and procedures that have been discovered and collect the evidence required to support these allegations.

4.2.1.3 Inadequate Plans and/or Procedures Identified?

Input: Approved inspection/accident/incident documentation and associated evidence.

Output: Which (if any) issues/observations will be prosecuted as enforcement cases.

Responsibility: Region Director.

Description: When all available information has been obtained, the Region Director decides which, if any, issue(s) identified during the inspection or accident investigation warrant enforcement action and decides which type of enforcement tool to apply for each issue. The Region Director follows the criteria in Section 3 to select the type of enforcement tool to use for each issue.

If the time between the date that the apparent inadequacies occurred and the date of the anticipated notice letter exceeds five years, the Region Director consults with the Region Attorney to ensure that the statute of limitations will not be an issue.

If no enforcement action is needed, or if the Region Director decides there is not enough information/evidence to successfully prosecute a case, Region staff complete the data entry in SMART and update the status of the inspection/investigation as complete with no enforcement action taken. If enforcement action is taken to address inadequate plans or procedures, a notice letter is prepared per Subsection 4.2.3, "Prepare Notice of Amendment."

Sometimes, the Region Director may not have enough information/evidence to (1) successfully prosecute a case, or (2) determine which enforcement tool should be used, or (3) determine if enforcement action is appropriate. In these circumstances, the Region Director or Region staff may work with the operator informally to obtain additional documentation, evidence, or information needed to proceed with effective enforcement. If the operator does not voluntarily provide the needed information, the Region Director may compel the operator to provide the needed information via a Request for Specific Information. (See Subsection 4.2.2, “Process Information Request.”) Alternatively, the Region Director or Region staff may skip any informal steps, and compel the operator to provide the needed information via a Request for Specific Information. (See Subsection 4.2.2, “Process Information Request.”)

4.2.2 *Process Information Request*

Information requests are initiated any time PHMSA needs information to identify or prosecute a potential violation or to determine appropriate action following an inspection, accident, or incident. In addition, PHMSA may request information at any other time, as long as the request is related to determining an operator’s compliance with pipeline safety laws, regulations, or orders. Templates for each type of information request are located on the PHP-60 SharePoint site. Figure 4.1, Sheet 2, “Process Information Request” illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.2.1 Prepare Information Request

Input: Inspection Report and evidence files, or accident/incident documentation and associated evidence.

Output: Draft information request.

Responsibility: Region staff.

Description: Region staff (in coordination with the Accident Investigation Division as appropriate) develop a draft information request using the appropriate template. The document will be titled either a Request for Specific Information or a Request for Information, depending on which template is used. The required letter content is described in the instructions provided in the template. Region staff can consult with the Region Attorney, particularly if the request is related to a significant accident or incident. Region staff provide the draft request to the Region Director for review and approval.

4.2.2.2 Approve Information Request and Send to Operator

Input: Draft information request.

Output: Approved information request sent to operator.

Responsibility: Region Director.

Description: The Region Director reviews the draft information request and discusses any comments, changes, or corrections with Region staff. If required, Region staff revise the draft request. When the information request is satisfactory, the Region Director signs the request, and sends it to the operator, and includes the letter in the Region case file.

4.2.2.3 Review Operator Response to Information Request

Input: Operator's reply to information request.

Output: Updated case file.

Responsibility: Region staff.

Description: Region staff review the material provided by the operator in response to the information request. The information is included in the Region case file. The new information is reviewed with the Region Director to determine if there are any inadequate plans or procedures.

The operator is required to respond to an information request within 30 days of receiving the Request for Specific Information or a Request for Information, unless otherwise specified in the request. Operators may request an extension of time to respond by providing a written justification and proposing an alternate submission date. If the operator does not reply to a Request for Specific Information, or if the operator's reply was not responsive to the request, the matter is referred to the Office of Chief Counsel.

4.2.3 *Prepare Notice of Amendment*

The Notice of Amendment letter process is initiated when the Region Director, based on the criteria in Section 3, determines the operator's plans or procedures are inadequate to assure safe operation of a pipeline facility as described in Subsection 4.2.1.5. Figure 4.2, Sheet 3, "Prepare Notice of Amendment" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.3.1 Prepare Draft Notice of Amendment

Input: Input needed

1. Inspection Output Report,
2. Inspection results as documented in IA, or on other completed forms,
3. Accident/incident documentation including the Failure Investigation Report (if applicable)
4. Evidence files,
5. Inspector notes,
6. Operator response to information request (if applicable), and
7. Region Director decision on type of enforcement for each issue

Output: Draft Notice of Amendment.

Responsibility: Region staff.

Description: Using the appropriate template (see Table 4-A), Region staff prepare a draft notice letter in plain language that addresses each procedural inadequacy.

If an inspection or investigation identifies both probable violations and inadequate plans/procedures, based on the criteria in Section 3, the former must be documented in a separate Notice of Probable Violation or Warning Letter. Inadequate procedure items and probable violations are not combined in the same letter.

To improve enforcement case quality and expedite case processing, the following recommendations are provided to assist in preparing of Notices of Amendment.

- Make sure that the name of the operator is correct. Each entity should end in “Corporation,” “Company,” “L.P.” or other indication of the business entity. If in doubt, contact the company to obtain the specific legal name of the operator. This name should generally match the name of the operator shown on the operator’s current Annual Report.
- SMART is set up to assign a case to one operator and one OPID. If there is a need to address the letter to multiple entities (e.g. the pipeline owner as well as the operator), consult with the Region Attorney and Enforcement Division.
- The Notice of Amendment must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) Use whatever method of research necessary to determine who is the most senior company official of the pipeline operating company. Call the pipeline operating company to verify the identity of the most senior company official before sending the letter.
- For each amendment item, keep the structure simple using plain language, and use the following logical order and sequence:
 - Cite and quote the applicable regulation that requires the procedure or plan in bold at the beginning of each allegation, with the part, section, and most specific paragraph of Title 49. If the relevant requirement is a subsection of a regulatory section, include both the introductory text and the subsection in the citation and quotation.
 - Most regulations either require something to be done or prohibit something from being done. The first sentence following the bolded regulatory citation should state the inadequate procedure that the regulation *requires* using the specific language and terminology directly from the regulation being cited. Identify the procedure in question

as specifically as possible. Describe the procedures in a manner that makes clear what was found to be inadequate and explain why. It is not sufficient to only state that “the operator’s procedures for xxx were inadequate.” Do not advise the operator regarding how the procedures should be revised. Use the past tense since the Notice of Amendment will describe what was found prior to the Notice being sent.

- State the specific evidence and facts upon which the amendment item is based. Again, use the past tense when describing evidence that was found.
- Each amended item should normally have one cited regulation and will often have referenced regulations as well. Refer to the guidance below to properly cite and reference these regulations (in notice letters and in SMART):
 - Each allegation of inadequacy should normally be cited as a single regulation, cited in bold at the top of the notice letter. Since Notices of Amendment relate directly to the operator’s plans or procedures, cited regulations must state that there is a requirement to have a manual or written procedure. These regulations will be recorded as “Cited Regulations” in SMART Enforcement.
 - When other regulatory sections are used to help specify the requirement, these regulations should be included in the text of the allegation. These regulations will often be the ones that contain more specific requirements but do not directly state the need for manuals or written procedures. These regulations will all be recorded as “Additional Referenced Regulations” in SMART Enforcement.
 - No regulations will be included in SMART, as cited or referenced, that are not included in the notice letter (or the Order Directing Amendment).
 - The following examples may be useful:

Example One:

To cite an operator of a hazardous liquid pipeline for inadequate procedures related to communications, 195.408(b) is the most specific regulation. However, 195.408(b) does not specifically state a requirement to have a manual or written procedure for communication systems. It simply states that the communications systems discussed in the regulation are needed to operate the pipeline. 195.402(a) does require the pipeline operator to have manuals of written procedures for conducting pipeline operations. So, 195.402(a) is the primary regulation that the operator violated, since their manuals do not cover everything needed to conduct operations. It should be cited in bold at the beginning of this enforcement item in the notice letter and recorded as the Cited Regulation in SMART. 195.408(b) explains how the operator failed to meet the requirements of 195.402(a), so it

should be discussed in the non-bold text of the enforcement item in the notice letter and will be recorded as a Referenced Regulation in SMART.

Example Two:

To cite a hazardous liquid pipeline operator for inadequate procedures that lack guidance for how the operator's work will be reviewed, 195.402(c)(13) is the most specific regulation. In addition, since 195.402(c) refers to the requirement to address this in the operator's manual, 195.402(c)(13) can stand alone as the primary regulation without any additional regulations mentioned. Any other regulations that may prove useful to explain the inadequacy in the operator's manuals can be mentioned in the text and recorded in SMART as referenced regulations, but 195.402(c)(13) should be the only regulation in bold for this item on the notice letter and the only regulation recorded as the Cited Regulation in SMART.

Example Three:

To cite a gas pipeline operator for inadequate procedures related to filing supplemental incident reports, 191.15(b) is the most specific regulation. However, 191.15(b) does not specifically state a requirement to have a manual or written procedure for submitting supplemental incident reports, it just states that they must be submitted as soon as practicable. 192.605(b)(4) requires the operator to have procedures detailing the gathering of data needed for reporting incidents under 191. So 192(605)(b) is the primary regulation that the operator violated, since their manuals do not cover the gathering of data needed for reporting incidents under 191. Therefore, 192.605(b)(4) should be cited in bold at the beginning of this enforcement item in the notice letter and recorded as the Cited Regulation in SMART. 191.15(b) explains how the operator failed to meet the requirements of 192.605(b)(4), so 191.15(b) should be discussed in the non-bold text of the enforcement item in the notice letter and will be recorded as a Referenced Regulation in SMART.

- Do not label Notice of Amendment letter items as 1(a), 1(b), 1(c), etc. See illustration below from a Notice of Amendment template letter.

On the basis of the inspection, PHMSA has identified the apparent [insert: inadequacy or inadequacies] found within [Company's] plans or procedures, as described below:

1. [cite the regulation and title]

[quote the regulation]

[describe the procedures in a manner that makes clear what is inadequate]

2. [cite the regulation and title]

[quote the regulation]

[describe the procedures in a manner that makes clear what is inadequate]

In preparing the draft Notice of Amendment, Region staff may consult with the Region Attorney to assist in identifying the regulatory citations, formulating the logical arguments into a strong case, and otherwise ensuring the legal sufficiency of the document. Region staff or the Region Director sends the draft Notice of Amendment to the Region Attorney for review prior to submitting the final draft Notice of Amendment to the Region Director for approval.

4.2.3.2 Review Draft Notice of Amendment

Input: Draft Notice of Amendment.

Output: Reviewed Draft Notice of Amendment.

Responsibility: Region Attorney and Region Staff (and/or Region Director).

NOTE: THE PHC REVIEW/APPROVAL OF ALL NOAs IS UNRESOLVED AT THIS TIME.

Description: The Region staff or the Region Director sends the draft Notice of Amendment to the Region Attorney for review. The Region Attorney reviews the draft Notice of Amendment and ensures a clear legal foundation and legal sufficiency. The Region Attorney reviews includes, but is not limited to, ensuring each alleged inadequacy is properly supported. Region staff and/or Region Director discusses any comments, changes, or corrections with the Region Attorney. If required, Region staff revise the final draft documents. When the draft Notice of Amendment is satisfactory to the Region Attorney and the Region, the Region staff submit the final draft Notice of Amendment to the Region Director for approval.

4.2.3.3 Approve Notice of Amendment

Input: Final Draft Notice of Amendment.

Output: Approved Notice of Amendment.

Responsibility: Region Director and Region Attorney.

NOTE: THE PHC REVIEW/APPROVAL OF ALL NOAs IS UNRESOLVED AT THIS TIME.

Description: The Region Director reviews the final draft Notice of Amendment and discusses any comments, changes, or corrections with Region staff and the Region Attorney. If required, Region staff revise the final draft documents. When the notice letter is satisfactory to the Region Attorney and the Region Director, a Compliance Progress File (CPF) number is assigned to the case according to the nomenclature provided in Section 5.2, and the Region Director approves and signs the letter. When the letter is completed, the Region Director sends the Notice of Amendment to the operator, per Subsection 4.2.4, "Issue Notice of Amendment."

4.2.4 *Issue Notice of Amendment*

After Region Director approval, the Notice of Amendment is officially sent to the operator. Figure 4.2, Sheet 4 “Issue Notice of Amendment” illustrates the process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

Sometimes inspections/investigations result in multiples types of enforcement actions. For example, a single inspection could result in the identification of multiple issues, some of which will be enforced using a Notice of Amendment and some using a Notice of Probable Violation depending on the specific circumstances and nature of each issue. This often occurs for major programmatic type inspections such as Integrity Management inspections. In this case, the Notice of Amendment may be issued to the operator without waiting for approval of a Notice of Probable Violation, which may take longer to process.

4.2.4.1 *Send Notice of Amendment to Operator*

Input: Final Notice of Amendment.

Output: Notice of Amendment sent to operator and Compliance Registry, and completion of SMART Inspection entry.

Responsibility: Region Director.

Description: The Region Director signs the Notice of Amendment and assures that it is sent using the method described in Section 5.1 and the necessary SMART Inspection process is complete.

Upon issuance, the Region Director assures that Region staff or other members of Region staff:

- Create a Region case file
- Enter case information into SMART Inspection, which documents the inspection/investigation results and proposed enforcement actions. Ensure the SMART Inspection data accurately reflects the notice letter with the Letter Sent (LS) items in SMART Activities. For more information or detail relating to this topic see the SMART Inspection Policy; and
- Send the case data to the Compliance Registry

This step is crucial to the prompt and accurate creation of an enforcement case record in the Compliance Registry. Region staff send the case data from SMART Inspection to the Compliance Registry (see illustration below) to create the case in SMART Enforcement. The Compliance Progress File number and date of the notice letter are needed before this action can be completed.

The screenshot displays the 'Activity Detail' page for Activity ID 120445. The interface includes tabs for Activity, Assignments(1), LS Items(2), Comments, Portion Insp., and Summary. The activity details show: Activity Type: I01, Operator: 26041 KINDER MORGAN LIQUID TERMINALS, LLC, Status: Complete, From Date: 05/27/2008, To Date: 05/30/2008, AFO Total Days: 4.0, and Activity Total Days: 4.0. A callout box with an arrow points to the 'Compliance Registry' button, containing the text 'click to open the "Send to CR" window'. Other fields include Lead Person: ARCHULETTA, PHILLIP N, Added By: ARCHULETTA, PHIL, Date Added: 01/09/2008, Person Region: 3 - CENTRAL, Updated By: ARCHULETTA, PHIL, and Date Updated: 12/03/2008. Navigation buttons (First, Previous, Next, Last) are visible at the top and bottom.

- Send the two electronic copies of the notice letter to the PHMSA Pipeline Compliance Registry email distribution list that includes those identified in Table 4-B. Refer to Section 5 for formatting requirements.
- Anything that the Region believes is needed to be documented in the case file should be sent to the Compliance Registry throughout the enforcement process.

When a new case transfers into SMART Enforcement and the case files are received from the Region, the Compliance Registry Coordinator:

- Uploads case files into SMART, and
- Performs SMART case data quality check.

4.2.5 *Process Operator Response to Notice of Amendment*

Operators have 30 days of receipt of a Notice of Amendment to respond to PHMSA. See the “Response Options for Pipeline Operators in Compliance Proceedings” document. An operator must respond according to the response options. An operator may include in its response a request to meet with the Regional Director for clarification of the issues or to discuss the potential for use of a consent agreement.¹⁵ While PHMSA must allow the parties the opportunity to meet, the Region is not obligated to enter into a consent agreement.

Failure of the operator to respond to the notice within 30 days of receipt constitutes a waiver of the right to contest the allegations in the notice and authorizes the Associate Administrator for Pipeline Safety to find facts as alleged in the notice without further notice to the respondent and to issue an Order Directing Amendment.

Figure 4.2, Sheet 5 “Process Operator Response to Notice of Amendment” illustrates the process steps and individual responsibilities in addressing operator response to Notices of Amendment. The following

¹⁵ If an operator requests a declaratory order under 5 U.S.C. § 554(e). PHMSA will refer the operator to submit a request for a written interpretation. See 49 CFR § 190.11(b).

discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.5.1 Review Operator Response and Amended Procedures

Input: Operator response and amended plans/procedures.

Output: Determination if the operator's response is adequate to resolve the issue and close the case.

Responsibility: Region Staff/Region Director.

Description: Region staff review the submitted information to determine if it completely corrects the inadequacies identified in the Notice of Amendment. After consulting with the Region Director, if the operator's response is adequate, the response is accepted and the case is closed per Subsection 4.2.5.2, "Prepare Letter to Operator Accepting Procedures and Closing Case."

If the operator response is not adequate to resolve the deficiencies identified in the Notice of Amendment, the operator is informed as described in Subsection 4.2.5.4, "Inform Operator of Inadequate Response."

If the operator reply was non-responsive, or the operator failed to respond, an Order Directing Amendment should be recommended per Subsection 4.2.5.6, "Send Recommendation for Order Directing Amendment to Office of Chief Counsel."

If the operator requests a hearing, Subsection 4.2.6, "Conduct Hearing" describes that process. (Some operators may tentatively request a hearing or "reserve" their right to request a hearing in the future. All such statements should be treated as requests for hearings.)

Upon receipt and review of the operator's response and revised procedures, Region staff send electronic files of the operator response, along with the revised procedures¹⁶, to the Compliance Registry, so the SMART case file can be updated. If the operator provides a redacted¹⁷ copy of its response, this is provided to the Compliance Registry as well. See Table 4-B for a complete list of PHMSA recipients of operator responses to Notices of Amendment.

4.2.5.2 Prepare Letter to Operator Accepting Procedures and Closing Case

Input: Operator response and amended procedures.

Output: Draft letter to operator accepting the amended procedures and closing case.

Responsibility: Region staff.

Description: Region staff prepare a draft letter using the appropriate template informing the operator that its revised plans/procedures have been accepted and the Notice of Amendment case is closed. Instructions for the content of these letters are contained in the template. The draft closure letter is provided to the Region Director for review.

4.2.5.3 Send Letter Accepting Procedures and Closing Case to Operator

Input: Draft letter to operator accepting the amended procedures and closing case.

Output: Signed letter to operator accepting the amended procedures and closing case.

Responsibility: Region Director.

Description: The Region Director reviews the draft closure letter with Region. If any modifications are required, Region staff make the necessary changes. When satisfactory, the closure letter is signed by the Region Director, and sent to the operator using the method described in Section 5.

Region staff also send the letter to the Compliance Registry so the SMART case file can be updated, and the case closed. In addition, Region staff send a copy of the “accepted” procedures to the Compliance Registry. Additional recipients of the closure letter are specified in Table 4-B.

4.2.5.4 Inform Operator of Inadequate Response

Input: Operator response and amended plan/procedures.

Output: Informal communications and/or letter to operator informing them that the response to the Notice of Amendment was insufficient and additional plan/procedure revisions are needed to resolve the inadequacies.

Responsibility: Region staff.

Description: Region staff assigned to the case review the operator’s response including any amended procedures that are submitted. If the operator’s response is insufficient to resolve the inadequacies identified in the Notice of Amendment, Region staff or the Region Director interact with the operator to discuss the unresolved issues. Record of this feedback is provided to the Compliance Registry so it can be recorded in the SMART case file. This record could include a formal letter to the operator signed by the Region Director, a copy of an e-mail message sent to the operator, or an e-mail message to the Compliance Registry notifying that the operator had been contacted by phone or other informal means and informed that its procedures were inadequate. In some situations, operators may have to submit revisions to its plans or procedures in order to fully address the inadequacies identified in the Notice of Amendment.

4.2.5.5 Prepare Draft Recommendation for Order Directing Amendment

Input: Operator response and amended procedures (if any).

Output: Draft Recommendation to the Office of Chief Counsel to issue an Order Directing Amendment.

Responsibility: Region staff.

Description: An Order Directing Amendment is issued when:

- The operator does not respond to the Notice of Amendment,
- The operator's reply is non-responsive to the Notice of Amendment,
- The operator's proposed plan/procedure revisions are insufficient to resolve the issue, and the Region is unsuccessful at achieving agreement informally, or
- At the conclusion of a hearing (if the operator requested a hearing).

Region staff assigned to the case review the information submitted by the operator, including additional information provided at the hearing, and in any post-hearing submissions (if applicable). This information is evaluated along with the facts and evidence of the case previously documented in the Notice of Amendment and supporting evidence files. Region staff determine whether the operator procedures and plans in question are still inadequate and need modification. Region staff may consult with the Region Director and Region Attorney in arriving at these decisions. After completing this evaluation, Region prepares a draft Recommendation using the appropriate template.

If the procedures are still deemed to be inadequate, the Recommendation clearly documents **which** procedures are inadequate, and the basis for this determination. The Recommendation must explain **why** the procedures remain inadequate. This analysis provides the attorney preparing the order with background information as to why the Region agrees or disagrees with the arguments put forth by the operator. The Recommendation states that an Order Directing Amendment should be issued requiring the operator make the necessary changes to its plans and procedures.

If the Region's analysis of the supporting evidence determines that the operator's original procedures already provided were adequate, then the Recommendation states that the allegations should be withdrawn and the case closed.

If the Region's analysis of the supporting evidence determines that the operator's amended procedures are now adequate, then the Recommendation states that.

4.2.5.6 Approve Recommendation and Send to Office of Chief Counsel and Compliance Registry

Input: Draft Recommendation to prepare an Order Directing Amendment.

Output: Approved Region Recommendation to issue an Order Directing Amendment.

Responsibility: Region Director.

Description: After completing the draft Recommendation, Region staff provides it to the Region Director for review. The Region Director reviews the final draft Recommendation and discusses any comments, changes, or corrections with Region. If required, Region staff revises the final draft documents. Region Director ensures that Recommendation clearly documents **which** procedures are inadequate and **why** they are inadequate. When satisfactory, the Region Director signs the Recommendation and sends it to the Office of Chief Counsel, the Compliance Registry Coordinator, and other individuals as identified in Table 4-B.

If the Region has no additional information beyond that presented in the Notice of Amendment letter, and no explanation is needed to explain why an operator's response is unsatisfactory, Region staff can recommend that an email be sent saying it has no update in lieu of preparing a formal Recommendation.

4.2.5.7 Send Recommendation to Operator

Input: Operator Request for Region Recommendation.

Output: Recommendation to issue an Order Directing Amendment sent to Operator.

Responsibility: Region Attorney.

Description: For non-hearing cases, the Recommendation is sent to the Operator where requested. If the operator requests a copy of the Region's Recommendation, the Region Attorney sends the Recommendation to the operator. The following documents are to be sent to the Compliance Registry Coordinator by the Region Attorney to ensure they are added to the case file: a copy of the operator's request for the Recommendation and record of the Recommendation being sent to the operator.

For hearing cases, the Recommendation is sent to the Operator by the Region Attorney when issued. To ensure these documents are added to the case file, the Region Attorney also sends record of the Recommendation being sent to the operator to the Compliance Registry Coordinator.

If an operator submits a rebuttal to the Region Recommendation, the Region will normally not provide anything further.

4.2.6 Conduct Hearing

If an operator contests allegations of inadequacies of plans/procedures, the operator may request an administrative hearing to present its case. An operator may request that a hearing be held, and an order be issued, on an expedited basis. The Office of Chief Counsel's Presiding Official conducts the hearing as described in 190.211 and 190.212. Figure 4.2, Sheet 6 "Conduct Hearing" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.6.1 Send Notification to Schedule Hearing to Presiding Official

Input: Letter from operator requesting a hearing.

Output: Notification to schedule a hearing.

Responsibility: Region Director.

Description: Upon receipt of a response to a Notice of Amendment in which the operator requests a hearing, the Region prepares and sends the e-mail notification to the Presiding Official and the Compliance Registry so the SMART case file can be updated. Additional recipients of the notification to schedule a hearing are identified in Table 4-B.

Hearing scheduling notifications are created for SMART record-keeping purposes and to notify the Presiding Official of a hearing request. If an operator requests a hearing, one must be held, unless the case is withdrawn for other reasons.

4.2.6.2 Schedule Hearing

Input: Notification to schedule a hearing.

Output: Hearing schedule.

Responsibility: Presiding Official.

Description: After receiving a notification to schedule a hearing from the Region, the Presiding Official works with the Region and the operator to select a hearing date and location. These arrangements are documented in a letter and sent to the operator and the Region Director. For Notice of Amendment cases, the hearing may be conducted by teleconference or video conferencing unless the Presiding Official determines otherwise, or the operator specifically requests a hearing in person.

When the hearing has been scheduled, the Presiding Official sends a copy of the letter scheduling the hearing to the Compliance Registry so the SMART case file can be updated. Additional recipients of the letters scheduling a hearing are listed in Table 4-B.

4.2.6.3 Prepare for Hearing

Input: Operator response to the Notice of Amendment.

Output: Depending on the specifics of the case, additional materials, information, analysis, and evidence to successfully prosecute the case.

Responsibility: Region Director, Region staff, and Region Attorney.

Description: Upon receipt of the operator's letter requesting a hearing, the Region Director and Region evaluate the basis for the operator's position in contesting the alleged inadequate procedures. The Region Director and Region staff assemble evidence from the case file as appropriate to prepare for the hearing.

If the Region intends to introduce new material that is not currently in the case file during the hearing, the Region provides this information to the operator and the Presiding Official at least 10 days prior to the hearing date. This gives the operator the opportunity to review and respond to the new materials. Examples of such material include any presentations, maps, or other information that the Region may want to use in rebutting an operator's arguments or explaining issues to the Presiding Official.

Likewise, if the operator intends to introduce materials at the hearing that are not already in the case file, the operator must provide this material to the Region Director and the Presiding Official at least 10 days prior to the hearing date. This provides the Region Director and Region staff an opportunity to review and prepare responses to this new material before the hearing.

If the operator or the Region is unable to provide its pre-hearing submissions 10 or more days before the hearing, the party must send a request for a waiver to the Presiding Official and the other party. This request must explain the reason for requesting the time extension.

Should the operator or the Region provide pre-hearing submissions or request waivers of the 10-day submission deadline, the Presiding Official sends the pre-hearing submissions and associated correspondence to the Compliance Registry so the SMART case file can be updated.

An operator's request for a hearing must be accompanied by a statement of the issues it intends to raise at the hearing. The issues may relate to the allegations in the notice, or the proposed corrective action. An operator's failure to specify an issue may result in waiver of the operator's right to raise that issue at the hearing.

The Region Attorney may be consulted by the Region Director or Region staff to provide guidance and assistance in preparing to present the case at the hearing. By working together consistently before the hearing, you can ensure that the Region Director, Region staff and the Region Attorney are all fully briefed and aware of the case issues, the basis for the enforcement, and evidence.

Pursuant to 190.210(b)'s prohibition on ex parte communications, the Region Director and Region staff assigned to the case cannot discuss the case with the Presiding Official outside of the hearing including furnishing ex parte advice or factual materials. This assures that the Presiding Official is not influenced by information that is not presented at the hearing. Only procedural and scheduling questions can be addressed with the Presiding Official. The Region Attorney should be consulted if there are any questions about communication with the Presiding Official prior to the hearing.

4.2.6.4 Conduct Hearing

Input: Materials developed or collected in preparation for the hearing.

Output: A fair hearing in which both sides have had the opportunity to present their positions. Any documents and other evidence presented at the hearing become part of the case file. A written notification that the hearing was held is provided to the Compliance Registry.

Responsibility: Presiding Official.

Description: During the hearing, the operator is typically represented by staff members knowledgeable with the alleged plan or procedure inadequacies, its regulatory compliance personnel, and perhaps company management. Operators may also rely on outside consultants for technical support, and in-house or outside counsel for legal support. The Region is represented by the Region Director, Region staff assigned to the case and the Region Attorney.

All PHMSA hearings are considered “informal adjudications,” meaning that they do not adhere to the formal procedures used by courts or strict rules of evidence. However, they must still meet all statutory, regulatory, and constitutional requirements for informal hearings. Both the operator and Region are provided an opportunity to present evidence supporting their respective positions. The operator may present facts, statements, explanations, documents, testimony, or other items relevant to the issues under consideration. Each side is allowed to respond to information the other party presents.

After the hearing is finished, the Presiding Official provides written notification that the hearing has been held to the Compliance Registry so the SMART case file can be updated. An e-mail message indicating the hearing date and the participants is satisfactory documentation of the event. If the operator has provided additional evidence at the hearing, these documents are also provided to the Compliance Registry to update the SMART case file.

There are no transcripts or official minutes of the hearing, unless an operator elects to transcribe a hearing. In these situations, the operator must notify the Presiding Official in advance of its intent, and it must arrange for a court reporter to transcribe the session at its own cost. The operator must provide copies of the transcript to PHMSA for the case file.

4.2.6.5 Review Post-Hearing Submission

Input: Additional evidence submitted by the operator after the hearing.

Output: Updated case file with additional information and evidence.

Responsibility: Presiding Official.

Description: If requested, the Presiding Official allows the operator to submit additional evidence supporting its case following the conclusion of the hearing. The operator sends this post-hearing submission to the Presiding Official for review. Unless otherwise noted, the operator sends its post-hearing submission within 30 days of the conclusion of the hearing.

The Presiding Official sends a copy of this material to the Region for review and possible use in preparing its Recommendation. The Presiding Official also sends the post-hearing submission to the Compliance Registry so the SMART case file can be updated. If the contents of the post-hearing submission are not in electronic format, the Presiding Official may send the documents to the Compliance Registry for scanning. Oversize drawings and documents are sent to the Region for retention in its case files.

The Region is required to file any post-hearing recommendation no later than 30 days after the deadline for any post-hearing submission by an operator. The operator may reply to any post-hearing submission by the Region. The Presiding Official will set any deadlines with respect to post-hearing submissions.

4.2.7 *Process Order Directing Amendment*

Figure 4.2, Sheet 7 “Process Order Directing Amendment” Illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.7.1 Prepare Order Directing Amendment

Input: Evidence in Case File, including operator submissions, and Region Recommendation.

Output: Draft Order Directing Amendment, in a fully edited proof-read and signature-ready format.

Responsibility: Presiding Official or other Office of Chief Counsel attorney.

Description: Based on all the evidence in the record, the Office of Chief Counsel attorney independently drafts an Order Directing Amendment that contains findings and determinations on all material issues regarding adjudication, including determinations of relevant factual and legal issues. The attorney should consult the Region’s Recommendation but is not bound by it. The attorney may also consult with impartial technical resources at headquarters or in the Regions who were not involved in any way in the development of the case. In such proceedings, PHMSA’s personnel must abide by separation of functions and ex parte restrictions in 49 CFR 190.210 (discussed above).

If the attorney determines that the case does not merit modification of plans or procedures, the draft Order Directing Amendment will withdraw the notice and close the case.

Before the order is sent to the Enforcement Division, the attorney confirms that the company name and address are correct and current. The attorney also confirms the name and title of the company official to whom the Order Directing Amendment is addressed. The Order Directing Amendment must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.)

Finally, if the Order Directing Amendment is for a case which involved a hearing, the Deputy Chief Counsel reviews the draft Order prepared by the Presiding Official and resolves any issues with the Presiding Official. If the Order Directing Amendment is for a case without a hearing, the Assistant Chief Counsel for Pipelines reviews the Order and resolves any issues with the attorney who prepared the draft Order.

4.2.7.2 Review and Approve Order Directing Amendment

Input: Draft Order Directing Amendment.

Output: Approved and signed Order Directing Amendment.

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the draft order. When the Associate Administrator, or Deputy Associate Administrator, determines the order to be satisfactory, the Associate Administrator or Deputy Associate Administrator approves and signs the order.

4.2.7.3 Send Approved Order Directing Amendment to Operator

Input: Approved Order Directing Amendment signed by the Associate Administrator or Deputy Associate Administrator.

Output: Order sent to operator and updated case file.

Responsibility: Office of Chief Counsel.

Description: The Office of Chief Counsel sends the approved and signed Order Directing Amendment to the operator. The order is sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the order (e.g., the US Postal Service return receipt signed by the operator).

The Office of Chief Counsel sends a copy of the order and the confirmation of receipt by the operator to the Compliance Registry to update the SMART case file. Additional recipients of the Order Directing Amendment are listed in Table 4-B.

4.2.8 *After Order Directing Amendment or Decision on Petition for Reconsideration-Close Case*

A case involving inadequate plans/procedures is closed upon confirmation that the operator satisfactorily revised its plans/procedures to eliminate the inadequacy identified in the Order Directing Amendment, or, if applicable, the Decision on Petition for Reconsideration. Figure 4.2, Sheet 8 "Close Case" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.8.1 Review Amended Procedures

Input: Revised procedures submitted by the operator.

Output: Draft case closure letter.

Responsibility: Region staff.

Description: Region staff review the operator submittal of revised plans or procedures to confirm that the operator satisfactorily addressed the inadequacies specified in the Order Directing Amendment.

If further changes are required to comply with the order, Region staff communicate the remaining problem areas needing improvement to the operator. If the operator does not effectively modify its plans or procedures, Region staff may recommend additional enforcement action, such as a Notice of Probable Violation for failure to comply with the Order Directing Amendment, or, if applicable, the Decision on Petition for Reconsideration.

After the operator has satisfactorily modified its plans or procedures, Region staff prepare a draft letter to the operator closing the case using the appropriate template. Instructions for the content of the case closure letter are contained in the template. The draft closure letter is provided to the Region Director for approval. Region staff also send the operator's revised, acceptable plans or procedures to the Compliance Registry, so the SMART case file can be updated. Additional recipients for the operator's response to an Order Directing Amendment are listed in Table 4-B.

4.2.8.2 Send Closure Letter to Operator

Input: Draft closure letter.

Output: Approved closure letter.

Responsibility: Region Director.

Description: The Region Director reviews the draft closure letter and discusses any comments, changes, or corrections with Region. If required, Region revises the final draft letter. When the letter is satisfactory, the Region Director approves and signs the letter, and sends it to the operator. The closure letter is sent to the Compliance Registry to update SMART and close the case. Additional recipients of the closure letter are listed in Table 4-B.

4.2.9 *Petition for Reconsideration*

After receipt of an Order Directing Amendment, operators have the right to petition the Associate Administrator to reconsider the ruling. A Petition for Reconsideration must be received by PHMSA no later than 20 days after the operator's receipt of the Order Directing Amendment. The petition must contain a brief explanation of the operator's objection and an explanation why the Order should be modified. PHMSA must issue an order on a petition for reconsideration no later than 120 days after the petition is filed. Figure 4.2, Sheet 9, "Petition for Reconsideration" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.2.9.1 Assign Attorney and Review Petition

Input: Petition for Reconsideration submitted by the operator.

Output: Updated case file.

Responsibility: Office of Chief Counsel Attorney.

Description: Operators may petition the Associate Administrator for reconsideration of an Order Directing Amendment. This petition must be received no more than 20 days after the operator received the Order Directing Amendment. Upon receipt of a Petition for Reconsideration, the Office of Chief Counsel assigns an attorney to the case to review the petition. The attorney reviews the operator's petition and determines the appropriate initial course of action on the petition.

The Office of Chief Counsel attorney also sends a copy of the petition to the Compliance Registry to update the SMART case file. Additional copies of the petition are sent to the individuals listed in Table 4-B.

4.2.9.2 Prepare Decision on Petition

Input: Petition for Reconsideration.

Output: Draft Decision on Petition for Reconsideration in a fully edited proof-read and signature-ready format.

Responsibility: Office of Chief Counsel Attorney.

Description: The Office of Chief Counsel attorney assigned to the case prepares a draft Decision on Petition for Reconsideration. The attorney may also consult with impartial technical resources at headquarters or in the Regions, as long as those individuals have had no previous involvement in prosecuting this case. In such proceedings, PHMSA personnel must abide by separation of functions and ex parte restrictions in 49 CFR 190.210 (discussed above).

4.2.9.3 Review and Approve Decision on Petition

Input: Draft Decision on Petition for Reconsideration.

Output: Approved and signed Decision on Petition for Reconsideration.

Responsibility: Associate Administrator.

Description: The Associate Administrator, or Deputy Associate Administrator, reviews the draft Decision on Petition for Reconsideration. When the Associate Administrator, or Deputy Associate Administrator, finds the draft Decision on Petition for Reconsideration to be acceptable, the Associate Administrator or Deputy Associate Administrator approves and signs the decision.

4.2.9.4 Send Decision on Petition to Operator

Input: Approved and signed Decision on Petition for Reconsideration.

Output: Decision on Petition for Reconsideration sent to operator.

Responsibility: Office of Chief Counsel.

Description: The Office of Chief Counsel sends the approved and signed Decision on Petition for Reconsideration to the operator. The decision is sent by certified mail, overnight courier, or electronic

transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the decision (e.g., the US Postal Service return receipt signed by the operator).

The Office of Chief Counsel sends a copy of the decision and the confirmation of receipt by the operator to the Compliance Registry to update the SMART case file. Additional copies of the decision are sent to individuals identified in Table 4-B.

4.3 Corrective Action Orders

The cross functional diagram for the Corrective Action Order process is provided in Figure 4.3. The diagram is organized into six major activities with a separate sheet for each activity, as follows:

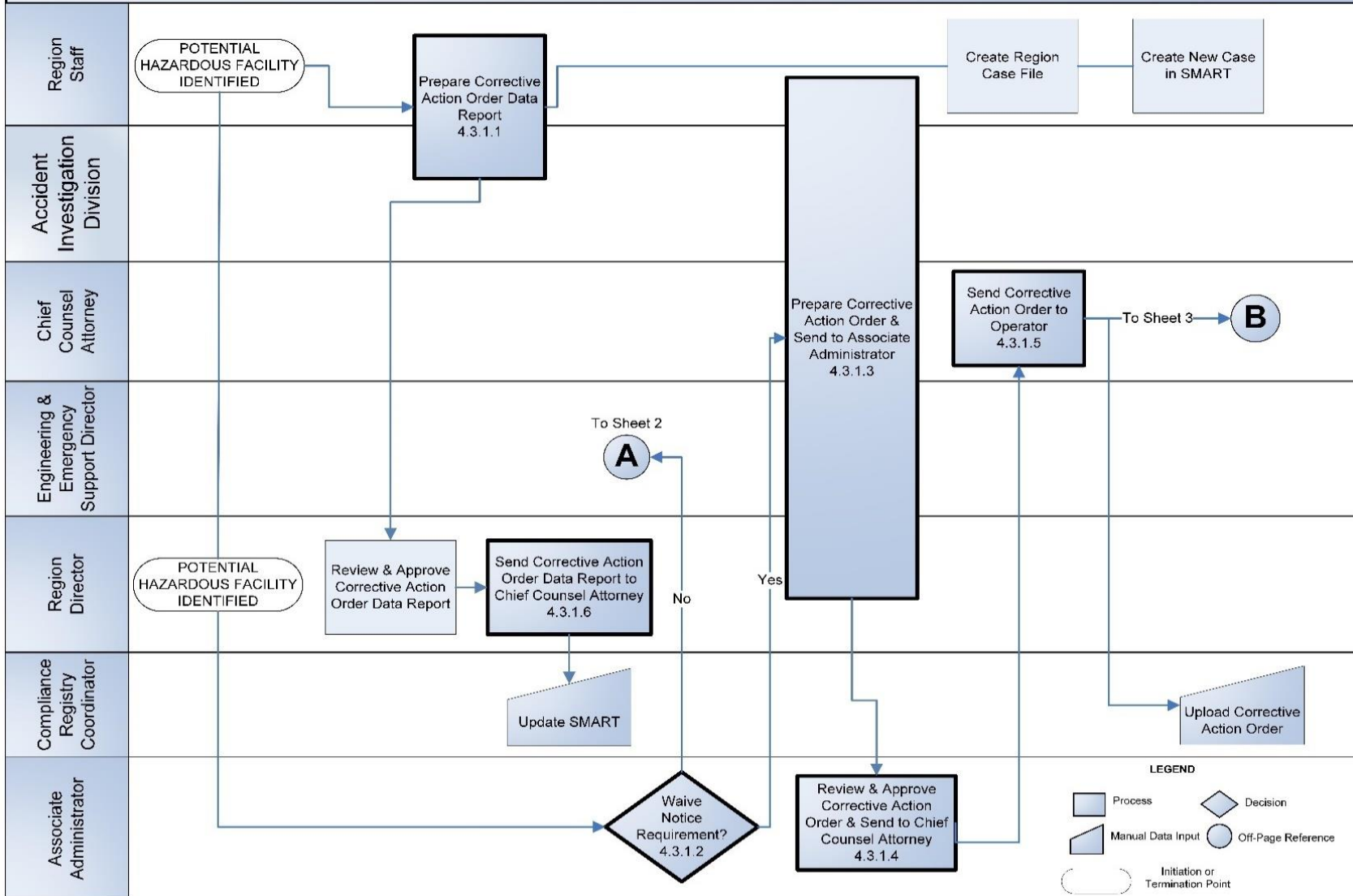
1. Determine Applicability of Notice of Proposed Corrective Action Order or Issue Corrective Action Order (Figure 4.3, Sheet 1 – page 80)
2. Issue Notice of Proposed Corrective Action Order (Figure 4.3, Sheet 2 – page 81)
3. Operator Response to Corrective Action Order (Figure 4.3, Sheet 3 – page 82)
4. Conduct Hearing Following Corrective Action Order (Figure 4.3, Sheet 4 – page 83)
5. Conduct Hearing Following Notice of Proposed Corrective Action Order (Figure 4.3, Sheet 5 – page 84)
6. Close Case (Figure 4.3, Sheet 6 – page 85)

The following diagram and accompanying process descriptions identify the Region Director as responsible for certain steps in the enforcement process. Many of these responsibilities can be delegated to Region staff at the Region Director's discretion. However, the Region Director is ultimately responsible for the correct and timely completion of these steps.

Figure 4.3
Corrective Action Order Process
Cross Functional Diagram

Figure 4.3 Corrective Action Order Process

Sheet 1 of 6 Determine Applicability of Notice of Proposed Corrective Action Order or Issue Corrective Action Order



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Figure 4.3 Corrective Action Order Process

Sheet 2 of 6 Issue Notice of Proposed Corrective Action Order

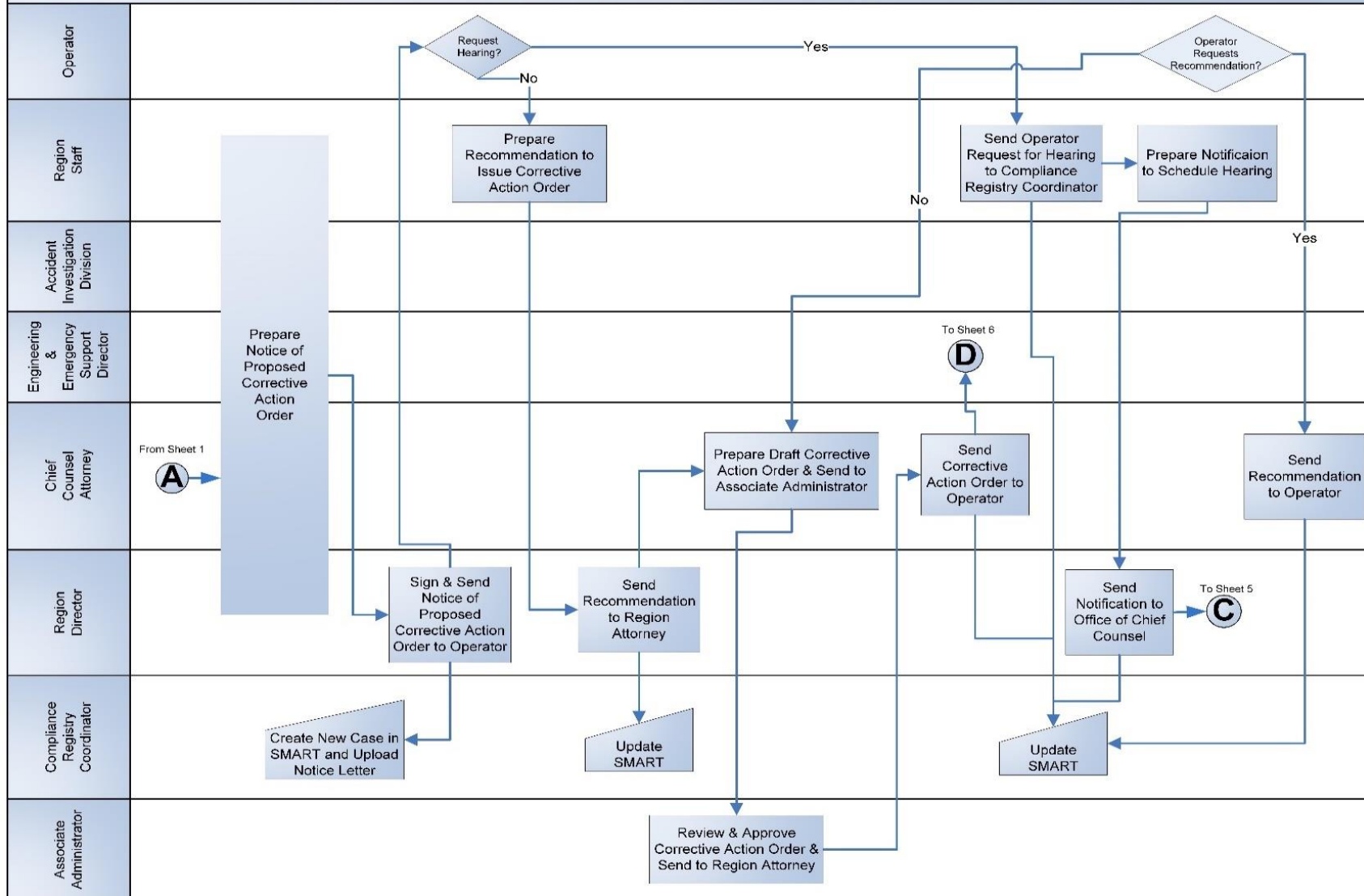


Figure 4.3 Corrective Action Order Process

Sheet 3 of 6 Operator Response to Corrective Action Order

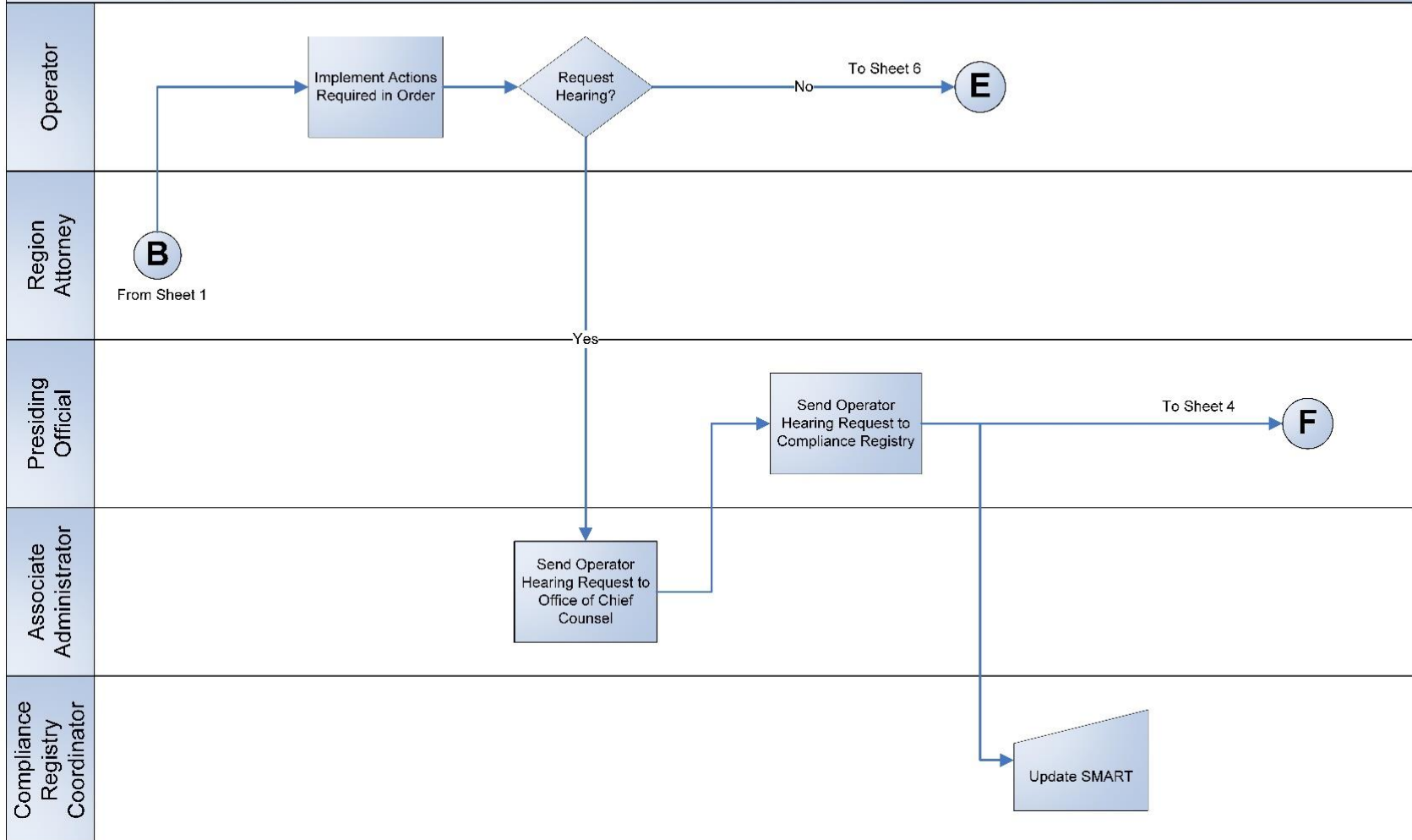


Figure 4.3 Corrective Action Order Process

Sheet 4 of 6 Conduct Hearing Following Corrective Action Order

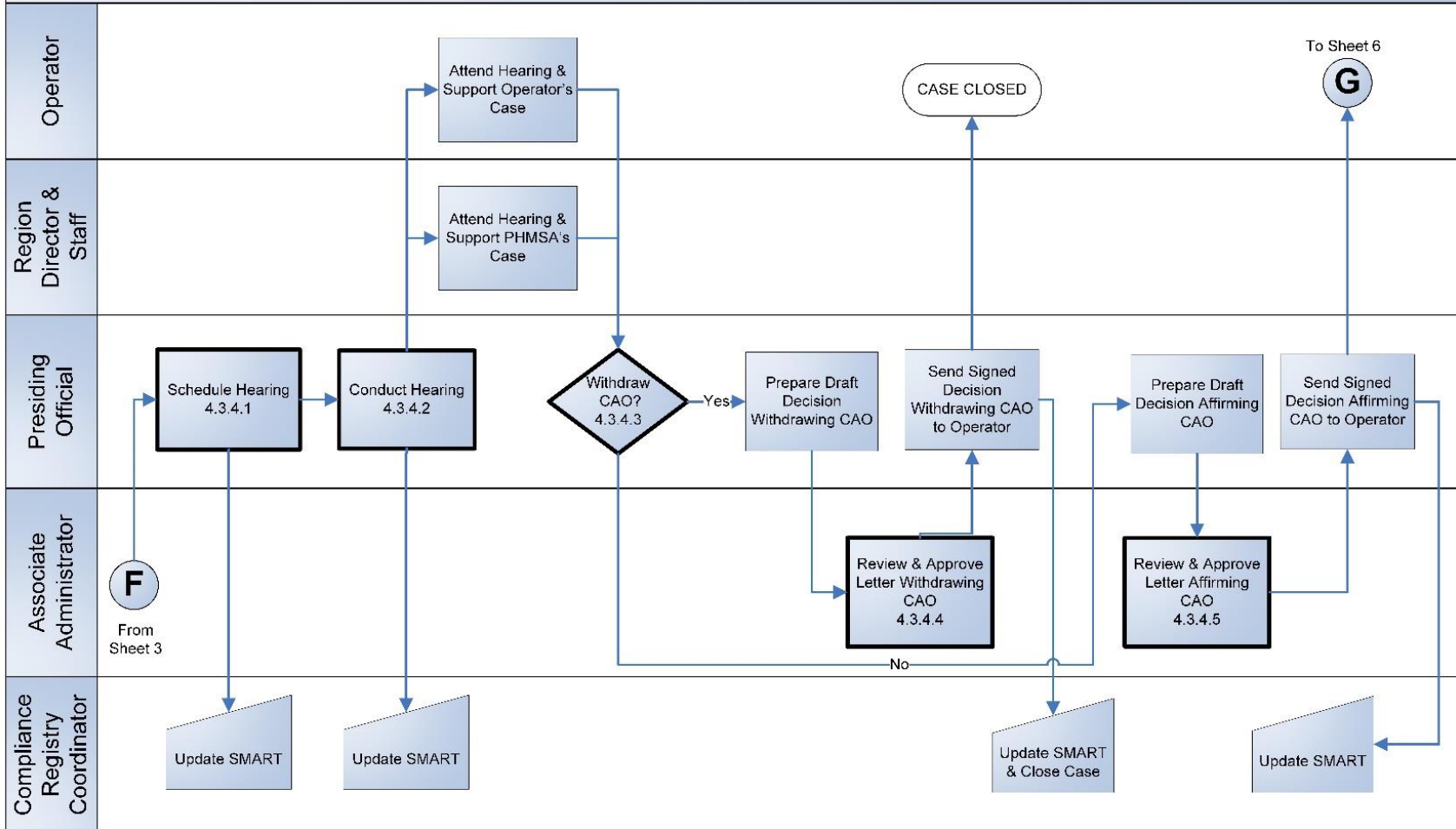


Figure 4.3 Corrective Action Order Process

Sheet 5 of 6 Conduct Hearing Following Notice of Proposed Corrective Action Order

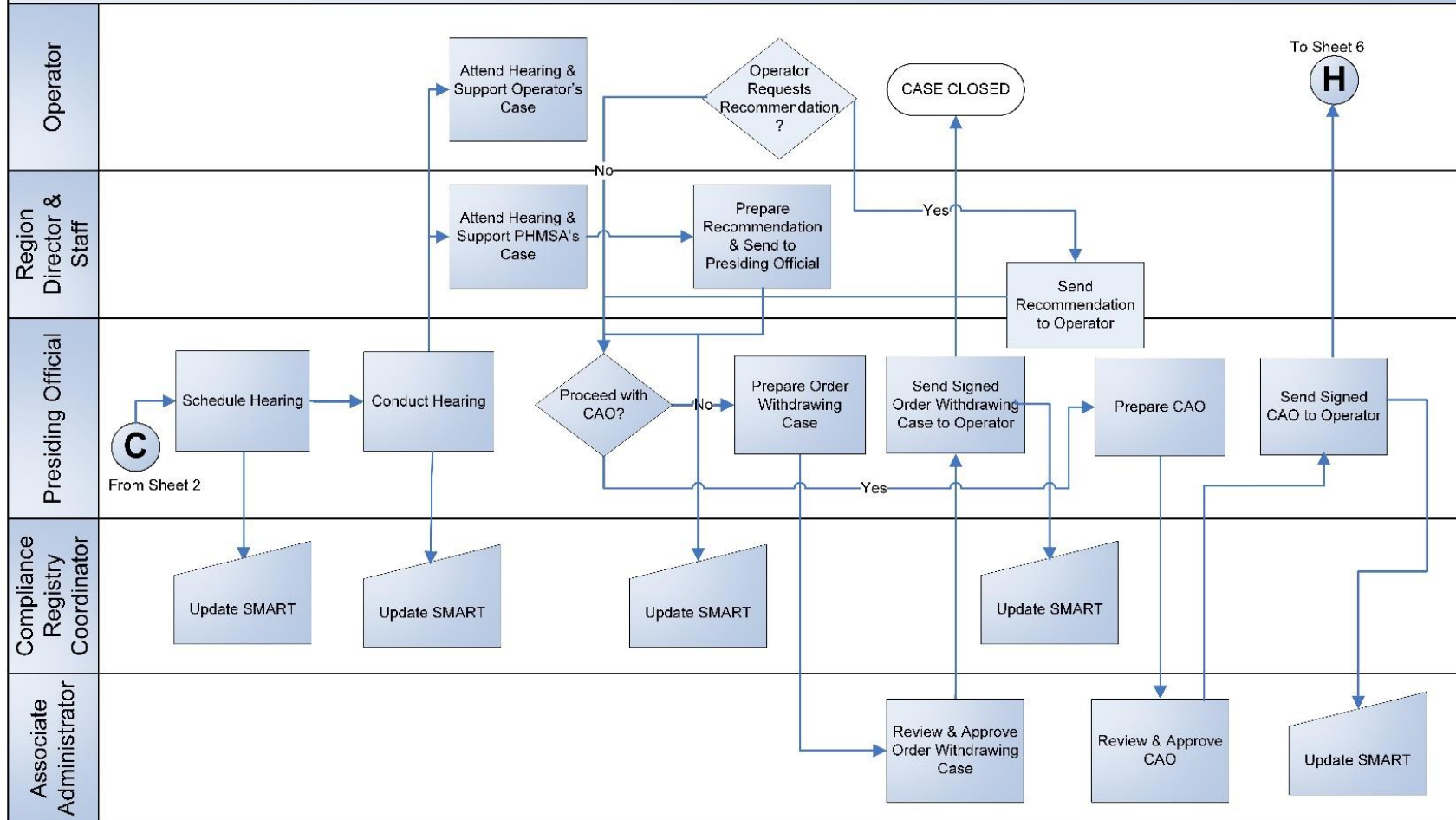
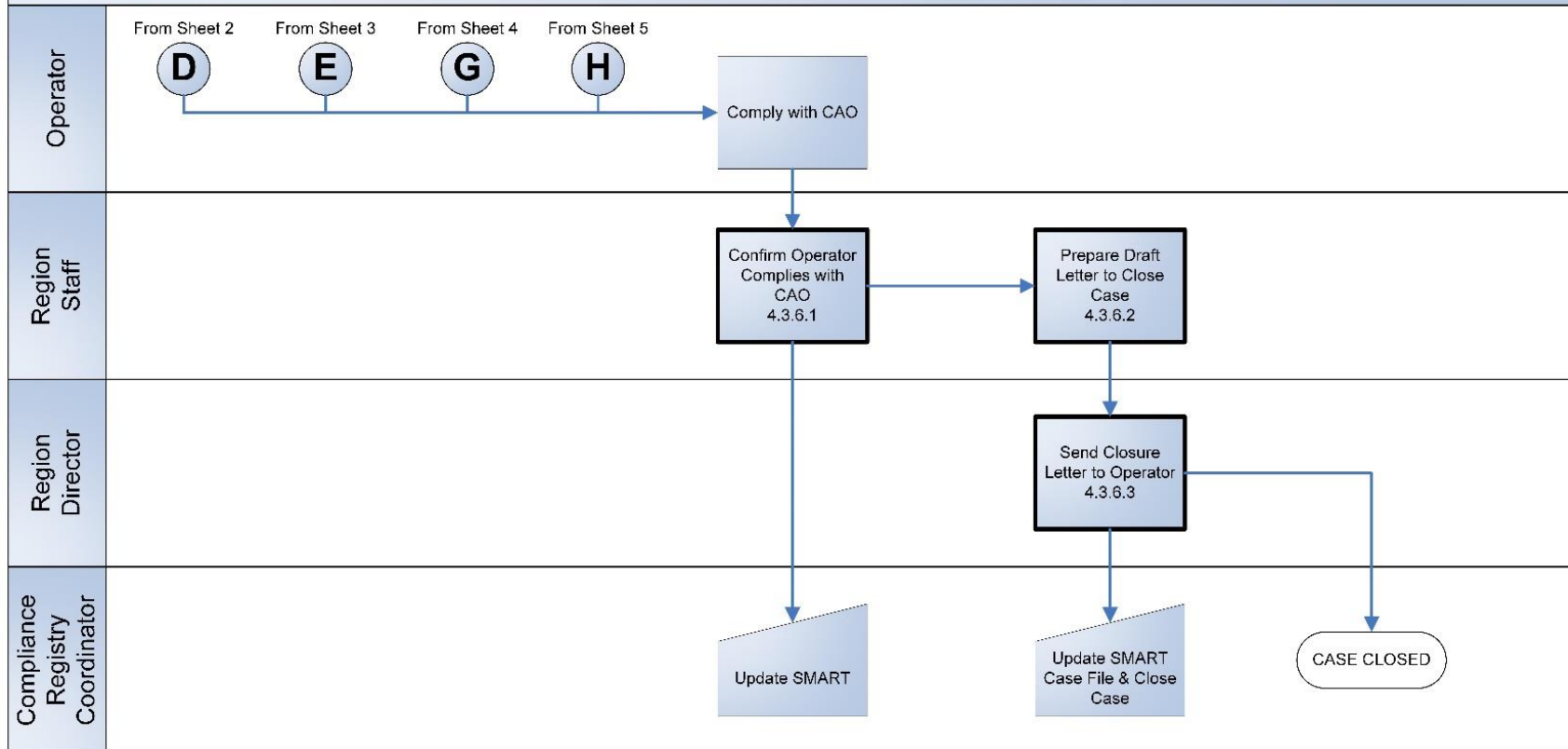


Figure 4.3 Corrective Action Order Process

Sheet 6 of 6 Close Case



4.3.1 *Determine Applicability of a Notice of Proposed Corrective Action Order or Issue Corrective Action Order*

Figure 4.3, Sheet 1 “Issue Notice of Proposed Corrective Action Order or Corrective Action Order” illustrates the steps and individual responsibilities associated with determining the applicability, using the criteria in Section 3, of issuing either a Notice of Proposed Corrective Action Order or a Corrective Action Order. Figure 4.3, Sheet 1 also illustrates the steps and individual responsibilities associated with issuing a Corrective Action Order. The following discussion provides further explanation of the key steps in this process identified by bold borders in the diagram.

4.3.1.1 Prepare Corrective Action Order Data Report

Input: Information and evidence about a potentially hazardous pipeline condition and the affected pipeline facility. In the case of a pipeline release, this information would include the evidence gathered at the accident site and provided by the operator about the failure.

Output: Completed Corrective Action Order Data Report.

Responsibility: Region staff/Accident Investigation Division.

Description: Consult the Standard List of Corrective Actions. The Corrective Action Order Data Report is prepared to document the background information used to determine whether a facility is hazardous to life, property, or the environment. As appropriate, Region staff and the Accident Investigation Division shall coordinate in creating the Corrective Action Order Data Report. Region staff/Accident Investigation Division consult the Standard List of Corrective Actions and compile the information identified in the Corrective Action Order Data Report template.

Because of the need to act promptly after a potentially hazardous condition is identified, some of the information required to complete the Corrective Action Order Data Report may not be available. For example, an accident investigation is often still in progress when the Corrective Action Order is issued. Therefore, some portions of the Corrective Action Order Data Report may need to be updated after the order is issued. In instances where the Corrective Action Order is issued prior to completion of the Corrective Action Order Data Report, the data report is completed as soon as possible.

After the Corrective Action Order Data Report has been completed, the Region/AID staff investigating the accident/incident, or the hazardous condition provide it to the Region Director for review and approval.

4.3.1.2 Waive Notice Requirement?

Input: Information about the hazardous condition and the affected pipeline facility provided by the Region and other PHMSA organizations.

Output: A decision to waive (or not) the notice requirement as provided in 190.233(b).

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the information provided about the potentially hazardous condition from the Region and any other PHMSA or outside organizations that may be involved in the investigation. This includes the information in the Corrective Action Order Data Report. Per 190.233(b), the Associate Administrator may waive the requirement for notice and opportunity for hearing before issuing an order whenever the Associate Administrator determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. Using the criteria in Section 3, the Associate Administrator or Deputy Associate Administrator may direct that a Notice of Proposed Corrective Action Order be prepared, or alternatively waive the notice requirement and direct that a Corrective Action Order be issued immediately.

4.3.1.3 Prepare Corrective Action Order and Send to Associate Administrator

Input: Information about the hazardous condition and the affected pipeline facility provided by the Region and other PHMSA organizations.

Output: Draft Corrective Action Order in a fully edited proof-read and signature-ready format and appropriate SMART Activity.

Responsibility: Office of Chief Counsel Attorney, Region Director, Region staff, the Accident Investigation Division, and the Director of Engineering and Research.

Description: The Region Director and staff, in consultation with the Accident Investigation Division and the Director of Engineering and Research, provide technical and engineering support to the Office of Chief Counsel Attorney preparing the draft order. The information to support the attorney in developing the findings, corrective measures, and other technical content for the order is developed using the Standard List of Corrective Actions and Other Requirements. This information is collected and contained in the Corrective Action Order Data Report.

The Office of Chief Counsel Attorney prepares the draft Corrective Action Order, ensures it has a clear legal foundation and is legally sufficient. The draft Corrective Action Order must be addressed to the most senior pipeline operating company official, such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) Use whatever method of research necessary or contact the pipeline operating company to determine and verify who is the most senior company official. SMART is set up to assign a case to only one operator and one OPID. If there is a need to address the letter to multiple entities (e.g. the pipeline owner as well as the operator), the Region Director and staff consults with the Office of Chief Counsel Attorney.

4.3.1.4 Review and Approve Corrective Action Order and Send to Chief Counsel Attorney

Input: Draft Corrective Action Order prepared by an Attorney in the Office of Chief Counsel.

Output: Approved and Signed Corrective Action Order.

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the Corrective Action Order. If the Associate Administrator or Deputy Associate Administrator has any comments or concerns with the order, they are resolved with the Office of Chief Counsel and the Region Director. The Corrective Action Order itself is signed and returned to the Office of Chief Counsel. (The cover letter transmitting the signed Corrective Action Order does not necessarily have to be from the Associate Administrator).

After the Regional Director and the Office of Chief Counsel have drafted the Corrective Action Order, the Regional Director will send an e-mail to the Associate Administrator, Deputy Associate Administrator for Field Operations, and the Deputy Associated Administrator for Policy and Programs summarizing the issues. One of these individuals forwards the e-mail notification to PHMSA senior leadership, along with any requested clarification and background information about the case. The Office of Chief Counsel will not send the Corrective Action Order to the operator until the Office of Chief Counsel is given clearance by the Associate Administrator, Deputy Associate Administrator for Field Operations, or Deputy Associate Administrator for Policy and Programs to do so.

4.3.1.5 Send Corrective Action Order to Operator

Input: Signed Corrective Action Order.

Output: Signed Corrective Action Order sent to operator.

Responsibility: Office of Chief Counsel.

Description: Upon receiving clearance from the Associate Administrator, Deputy Associate Administrator for Field Operations, or Deputy Associate Administrator for Policy and Programs, the Office of Chief Counsel sends the signed Corrective Action Order to the operator. The Corrective Action Order is sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the Corrective Action Order in its case files (e.g., the US Postal Service return receipt signed by the operator).

The Office of Chief Counsel also sends the Corrective Action Order to the Region. Refer to Section 5.1 for formatting requirements. Additional recipients of the Corrective Action Order are listed in Table 4-B.

4.3.1.6 Send Corrective Action Order Data Report to Office of Chief Counsel

Input: Corrective Action Order Data Report.

Output: Signed Corrective Action Order Data Report, SMART Inspection updated to reflect CAO and case created in SMART Enforcement.

Responsibility: Region Director.

Description: The Region Director reviews and approves the Corrective Action Order Data Report. After any review comments are resolved with Region, the Region Director signs the report and sends it to the attorney assigned to prepare the Corrective Action Order (typically the Region Attorney). The Corrective Action Order Data Report is also sent to the Compliance Registry so that the case file in SMART can be updated. Additional recipients of the Corrective Action Order Data Report are listed in Table 4-B.

The Region Director assures that Region staff:

- Create a Region case file;
- Enter case information into SMART Inspection, which documents the inspection/investigation results and Corrective Action Order or Notice of Proposed Corrective Action Order enforcement action. The Region also assigns the Compliance Progress File (CPF) number according to the nomenclature provided in Section 5.2. (For more information or detail relating to this topic see the SMART Inspection Policy.)
- Submit the Compliance data to the Compliance Registry in SMART.

This step is **crucial** to the prompt and accurate creation of an enforcement case record in the Compliance Registry. As soon as possible, but no later than one day, Region personnel submit the case data from SMART Inspection to the Compliance Registry.

When a new Corrective Action Order Compliance Progress File (CPF) is entered into SMART Enforcement, the Compliance Registry Coordinator:

- Uploads case files into SMART, and
- Performs SMART case data quality check.

4.3.2 Issue Notice of Proposed Corrective Action Order

Sheet 2 of Figure 4.3 “Issue Notice of Proposed Corrective Action Order” illustrates the various steps involved in issuing a Notice of Proposed Corrective Action Order. The Notice of Proposed Corrective Action order communicates PHMSA’s preliminary findings to the operator and proposes corrective actions to be taken. Specifically, it:

- Identifies the legal basis for issuing the notice;
- Describes PHMSA’s preliminary findings and summarizes the background information supporting those findings;

- Alleges a presence of a hazardous facility and that continued operation of the facility without corrective measures would be hazardous to life, property, or the environment;
- Provides an opportunity for a hearing prior to issuance of the Corrective Action Order;
- Identifies the facilities to which the proposed corrective actions apply.
- Delineates the proposed corrective actions that to be included in the Corrective Action Order and the time frames in which they are to be completed.

The Notice of Proposed Corrective Action Order must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) Use whatever method of research necessary or contact the pipeline operating company to determine and verify who is the most senior company official. SMART is set up to assign a case to only one operator and one OPID. If there is a need to address the letter to multiple entities (e.g. the pipeline owner as well as the operator), the Region Director and staff consults with the Office of Chief Counsel Attorney.

The Office of Chief Counsel sends a copy of the order and the confirmation of receipt by the operator to the Compliance Registry to update the SMART case file. Additional recipients of the Corrective Action Order are listed in Table 4-B.

4.3.3 *Operator Response to Corrective Action Order*

Upon service of a Corrective Action Order, the operator must begin implementation of the corrective measures as specified in the order. Following a pipeline accident or incident, this may mean that the operator must either shut down the facility or operate at a reduced operating pressure. Most Corrective Action Orders also specify additional diagnostic activities to help understand the cause of the pipeline failure and the current condition of the line. The operator may request a hearing to contest the Corrective Action Order, or it may request an expedited review without a hearing. The operator is provided 10 days after receipt of the Order to request a hearing or an expedited review. If the operator does not request a hearing, the Corrective Action Order stays in force and the operator must comply with the order, unless the operator challenges it in court and finds relief.

If the operator requests a hearing, the request is usually sent to the Associate Administrator. The Associate Administrator or Deputy Associate Administrator provides the operator's written request to the Office of Chief Counsel. The Presiding Official is in charge of scheduling and conducting the hearing. The Presiding Official sends the operator's letter requesting a hearing to the Compliance Registry. The Compliance Registry Coordinator updates the SMART case file to include the operator's hearing request. Copies of the operator hearing request are also sent to the Region Director, Region staff and the Office of Chief Counsel Attorney assigned to the case. Figure 4.3, Sheet 3, "Operator Response to Corrective Action Order," illustrates the steps described above.

4.3.4 *Conduct Hearing Following Corrective Action Order*

Figure 4.3, Sheet 4 “Conduct Hearing Following Corrective Action Order,” illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.3.4.1 Schedule Hearing

Input: Operator letter requesting hearing.

Output: Letter scheduling hearing.

Responsibility: Presiding Official.

Description: After receiving the operator’s letter requesting a hearing, the Presiding Official sets a hearing date and location. The operator may request that a hearing be held, and an order be issued, on an expedited basis. These arrangements are documented in a letter and sent to the operator, the Region Director, the Office of Chief Counsel Attorney, and the Compliance Registry. Per 190.233(c)(4), the Presiding Official attempts to schedule the hearing within 15 days after receiving the hearing request from the operator.

4.3.4.2 Conduct Hearing

Input: Corrective Action Order, Corrective Action Order Data Report, information and evidence collected by the Region’s investigating Region staff, the operator’s letter requesting a hearing, and any material provided by the operator in advance of the hearing.

Output: A fair hearing in which both sides have had the opportunity to present their positions. Any documents and other evidence presented at the hearing become part of the case file. A written notification that the hearing was held is provided to the Compliance Registry.

Responsibility: The Presiding Official conducts the hearing. The Region Director, Region staff, and the Office of Chief Counsel Attorney assigned to the case represent PHMSA in this proceeding.

Description: During the hearing, the operator is typically represented by staff members knowledgeable with the alleged violations, its regulatory compliance personnel, and perhaps company management. Operators may also rely on outside consultants for technical support, and in-house or outside counsel for legal support. The Region is represented by the Region Director, Region staff, and the Office of Chief Counsel Attorney assigned to the case.

All PHMSA hearings are considered “informal adjudications,” meaning that they do not adhere to the formal procedures used by courts or strict rules of evidence. However, they must still meet all statutory, regulatory, and constitutional requirements for informal hearings. Both the operator and Region are provided an opportunity to present evidence supporting their respective positions. The operator may

present facts, statements, explanations, documents, testimony, or other items relevant to the issues under consideration. Each side is allowed to respond to information the other party presents.

If an operator desires to submit additional material supporting its position prior to the hearing, the Presiding Official may allow a pre-hearing submission. However, the Presiding Official may delay the conduct of the hearing until the Presiding Official, the Region, and the Office of Chief Counsel Attorney have had an opportunity to review this material as part of their hearing preparation.

If the operator desires to submit additional material supporting its position after a hearing, the Presiding Official may allow a post-hearing submission. This would likely delay the rendering of a decision in the case.

After the hearing is finished, the Presiding Official provides written notification that the hearing has been held to the Compliance Registry so the SMART case file can be updated. An e-mail message indicating the hearing date and a list of the participants or a copy of the sign-up sheet is satisfactory documentation of the event. If the operator has provided additional evidence at the hearing, these documents are also provided to the Compliance Registry to update the SMART case file.

There are no transcripts or official minutes of the hearing, unless an operator elects to transcribe a hearing. In these situations, the operator must notify the Presiding Official in advance of its intent, and it must arrange for a court reporter to transcribe the session at its own cost. The operator must provide copies of the transcript to PHMSA for the case file.

Pursuant to 190.210(b)'s prohibition on ex parte communications, Region staff and the Region Director cannot discuss the case with the Presiding Official outside of the hearing, including furnishing ex parte advice or factual materials. This assures that the Presiding Official is not influenced by information that is not presented at the hearing. Only procedural and scheduling questions can be addressed to the Presiding Official. The Office of Chief Counsel Attorney should be consulted if there are any questions about communication with the Presiding Official prior to the hearing.

4.3.4.3 Withdraw Corrective Action Order?

Input: Corrective Action Order, Corrective Action Order Data Report, operator response to the Corrective Action Order, and evidence provided by the operator at the hearing.

Output: Draft decision to affirm or withdraw the Corrective Action Order, in a fully edited proof-read and signature-ready format.

Responsibility: Presiding Official.

Description: The Presiding Official reviews the information and evidence presented at the hearing and determines if the facility is hazardous. The Presiding Official may seek impartial technical advice as necessary. In rendering a decision on the need for a Corrective Action Order, time is of the essence. Per 190.233(c)(5), the Presiding Official should provide a recommended decision to the Associate Administrator within 5 business days after the hearing if practical.

If the Presiding Official believes the Corrective Action Order should remain in effect, a draft Decision on Corrective Action Order affirming the need for the order is prepared and sent to the Associate Administrator.¹⁸ The Presiding Official may also determine that the order should remain in effect but be amended. In these instances, the decision recommends that appropriate changes to the order. If the Presiding Official believes the facility is not hazardous, then a draft Decision on Corrective Action Order withdrawing the order is prepared and sent to the Associate Administrator.

If after the hearing, the Region Director now believes the facility is no longer hazardous, the Director may submit a Recommendation to the Presiding Official describing its current understanding. The Presiding Official may consider, but is not bound by this Recommendation.

4.3.4.4 Review and Approve Letter Withdrawing Corrective Action Order

Input: Draft Decision on Corrective Action Order withdrawing the order.

Output: Approved and signed Decision on Corrective Action Order withdrawing the order.

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the Presiding Official's draft Decision on Corrective Action Order to withdraw the case. If the Associate Administrator or Deputy Associate Administrator agrees with the decision to withdraw the Corrective Action Order, the letter is signed and returned to the Office of Chief Counsel for delivery to the operator. Any concerns regarding the Order are resolved informally.

4.3.4.5 Review and Approve Letter Affirming Corrective Action Order

Input: Draft Decision on Corrective Action Order affirming need for the order.

Output: Signed Decision on Corrective Action Order affirming need for the order.

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the Presiding Official's draft Decision on Corrective Action Order affirming the need for the order. If the Associate Administrator or Deputy Associate Administrator agrees with the decision, the letter is signed and returned to the Office of Chief Counsel for delivery to the operator. Any concerns regarding the Order are resolved informally.

190.219(a) does allow for the execution of a Consent Agreement and Order for Corrective Action Order cases. Prior to the execution of a Consent Agreement and Order, the Office of Chief Counsel will inform the Associate Administrator of the need to notify any appropriate State officials. Upon execution, the Consent Order is the Final Order for the case.

¹⁸ Preparation of the decision to affirm or withdraw a Corrective Action Order is shown as separate steps on Sheet 4 of Figure 4.3.

4.3.5 *Conduct Hearing Following Notice of Proposed Corrective Action Order*

The hearing process following a Notice of Proposed Corrective Action Order is very similar to the process for a hearing subsequent to a Corrective Action Order. A primary difference is that the outcome of a hearing following a Notice of Proposed Corrective Action Order is to decide whether or not to proceed with issuing a Corrective Action Order. (In a hearing after Corrective Action Order, the decision is whether or not to keep the Corrective Action Order in force.) Another outcome could be a Consent Agreement and Order.

4.3.6 *Close Case*

Sheet 6 of Figure 4.3 “Close Case” illustrates the steps involved after a Corrective Action Order has been issued through the closure of the case. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.3.6.1 Confirm Operator Complies with Corrective Action Order

Input: Evidence that Operator has completed corrective measures required in the Corrective Action Order.

Output: Documents indicating whether corrective measures have been completed are sent to Compliance Registry.

Responsibility: Region Staff.¹⁹

Description: Region staff assigned to follow the case monitor the operator’s completion of the required actions in the Corrective Action Order. Depending on the nature of the required actions, this may involve reviewing procedures, records, integrity testing or assessment results, metallurgical and laboratory failure analyses, and engineering or technical studies. On-site inspections may be required to verify satisfactory completion of some activities. To assure a complete case file, all relevant operator submissions (e.g., correspondence, revised procedures, test results, etc.) are scanned (if necessary) and sent to the Compliance Registry so the SMART case file can be updated. Likewise, any Region-developed documentation (e.g., correspondence, requests for information, review comments on operator provided material, etc.) is also sent to the Compliance Registry. Additional recipients of operator provided, and Region-generated documents are listed in Table 4-B.

Sometimes the order will require the development of a work plan to address the underlying causes of a hazardous facility. These work plans are developed by the operator and approved by the Region Director. The work plan itself, and documentation related to its development is also sent to the Compliance Registry. Operator-provided documents related to the work plan activities are also part of the case file and are sent to the Compliance Registry, as are any PHMSA-generated documents related

¹⁹ Typically, the Region Director is actively involved in monitoring operator responses to Corrective Action Order requirements. Although not shown on the cross functional diagram, there is typically significant collaboration between Region staff and the Director in monitoring and approving operator responses to activities required in Corrective Action Orders.

to oversight of the work plan activities. Additional recipients of the work plan, operator generated documents responsive to the plan, and Region documentation related to plan oversight are listed in Table 4-B.

If the operator fails to comply with the Corrective Action Order, Region staff inform the Region Director for consideration of additional enforcement action. Options for addressing non-compliance with the terms of the Correction Action Order should be discussed with the Region Attorney or Office of Chief Counsel Attorney.

Although not depicted on the cross functional diagram, Corrective Action Orders are sometimes amended by PHMSA after additional information about the hazardous facility is revealed. In such cases, amendments to the Corrective Action Order are sent to the operator and to the Compliance Registry so the SMART case file can be updated. Additional recipients of Amendments to Corrective Action Orders are listed in Table 4-B. Amendments must be accompanied by a revised data report setting out the justification for the Amendments. Amendments are made through the same process as issuance of a Corrective Action Order or Proposed Corrective Action Order.

4.3.6.2 Prepare Draft Letter to Close Case

Input: Evidence provided by the operator and Region staff observations.

Output: Draft letter recommending the case be closed.

Responsibility: Region staff.

Description: After region is satisfied the operator has completed all required actions in the Corrective Action Order, including any Amendments to the order, Region staff documents the basis for recommending the case be closed and prepares a draft letter to close the case.

4.3.6.3 Send Closure Letter to Operator

Input: Draft letter to close case.

Output: Approved and signed letter to close case sent to operator.

Responsibility: Region Director.

Description: The Region Director reviews Region staff's determination that the operator has complied with all requirements in the Corrective Action Order and the basis for recommending the Corrective Action Order be closed. The Region Director reviews the draft closure letter and discusses any comments, changes, or corrections with Region staff. If required Region staff revises the draft closure letter. When it is satisfactory, the Region Director signs the letter closing the case and sends it to the operator. The closure letter is also sent to the Compliance Registry to update the SMART case file. Additional recipients of the closure letter are listed in Table 4-B. The case is now closed.

4.4 Safety Orders

The cross functional diagram for the Safety Order process is provided in Figure 4.4. The diagram is organized into eight major activities with a separate sheet for each activity, as follows:

1. Issue Notice of Proposed Safety Order (Fig. 4.4, Sheet 1 – page 99)
2. Operator Response to Notice of Proposed Safety Order (Fig. 4.4, Sheet 2 – page 100)
3. Conduct Informal Consultation (Fig. 4.4, Sheet 3 – page 101)
4. Issue Consent Order (Fig. 4.4, Sheet 4 – page 102)
5. Conduct Hearing (Fig. 4.4, Sheet 5 – page 103)
6. Issue Safety Order or Withdraw the Notice (Fig. 4.4, Sheet 6 – page 104)
7. Close Case for Safety Orders and Consent Orders (Fig. 4.4, Sheet 7 – page 105)
8. Petition for Reconsideration (Fig. 4.4, Sheet 8 – page 106)

The following diagram and accompanying process descriptions identify the Region Director as responsible for certain steps in the enforcement process. Many of these responsibilities can be delegated to Region staff at the Region Director's discretion. However, the Region Director is ultimately responsible for the correct and timely completion of these steps.

Figure 4.4
Safety Order Process
Cross Functional Diagram

Figure 4.4 Safety Order Process

Sheet 1 of 8 Issue Notice of Proposed Safety Order

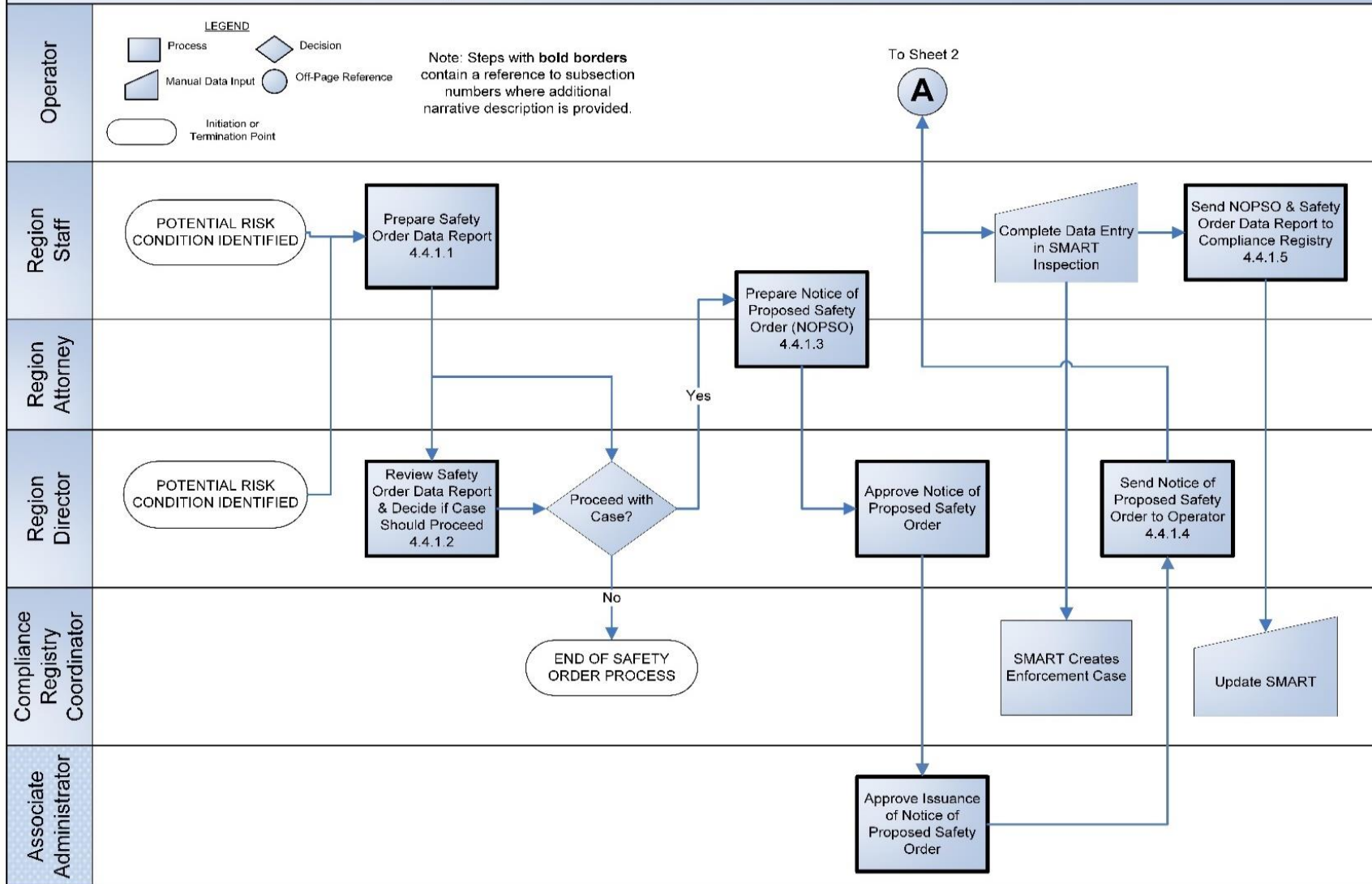
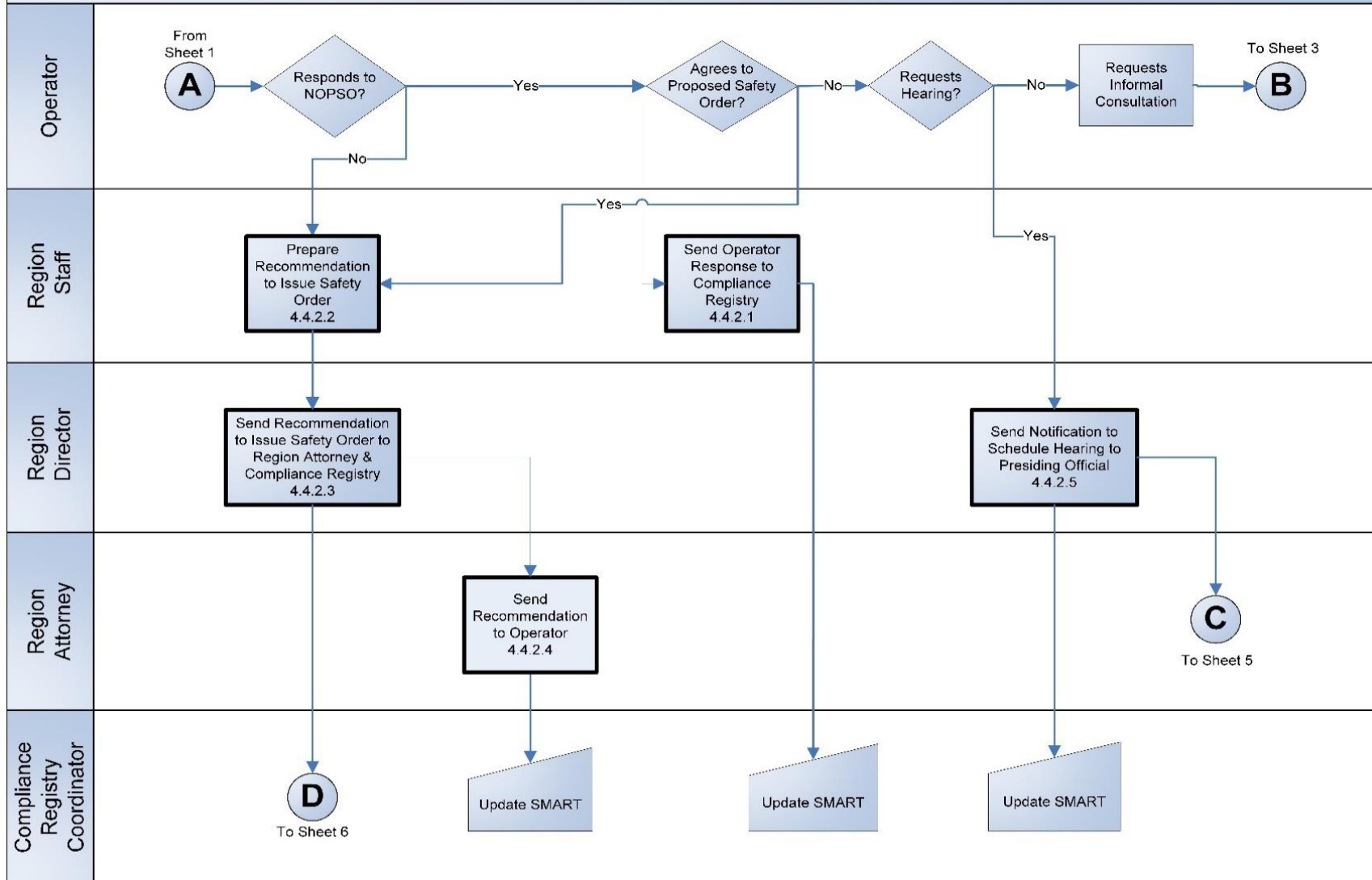


Figure 4.4 Safety Order Process

Sheet 2 of 8 Operator Response to Notice of Proposed Safety Order



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Figure 4.4 Safety Order Process

Sheet 3 of 8 Conduct Informal Consultation

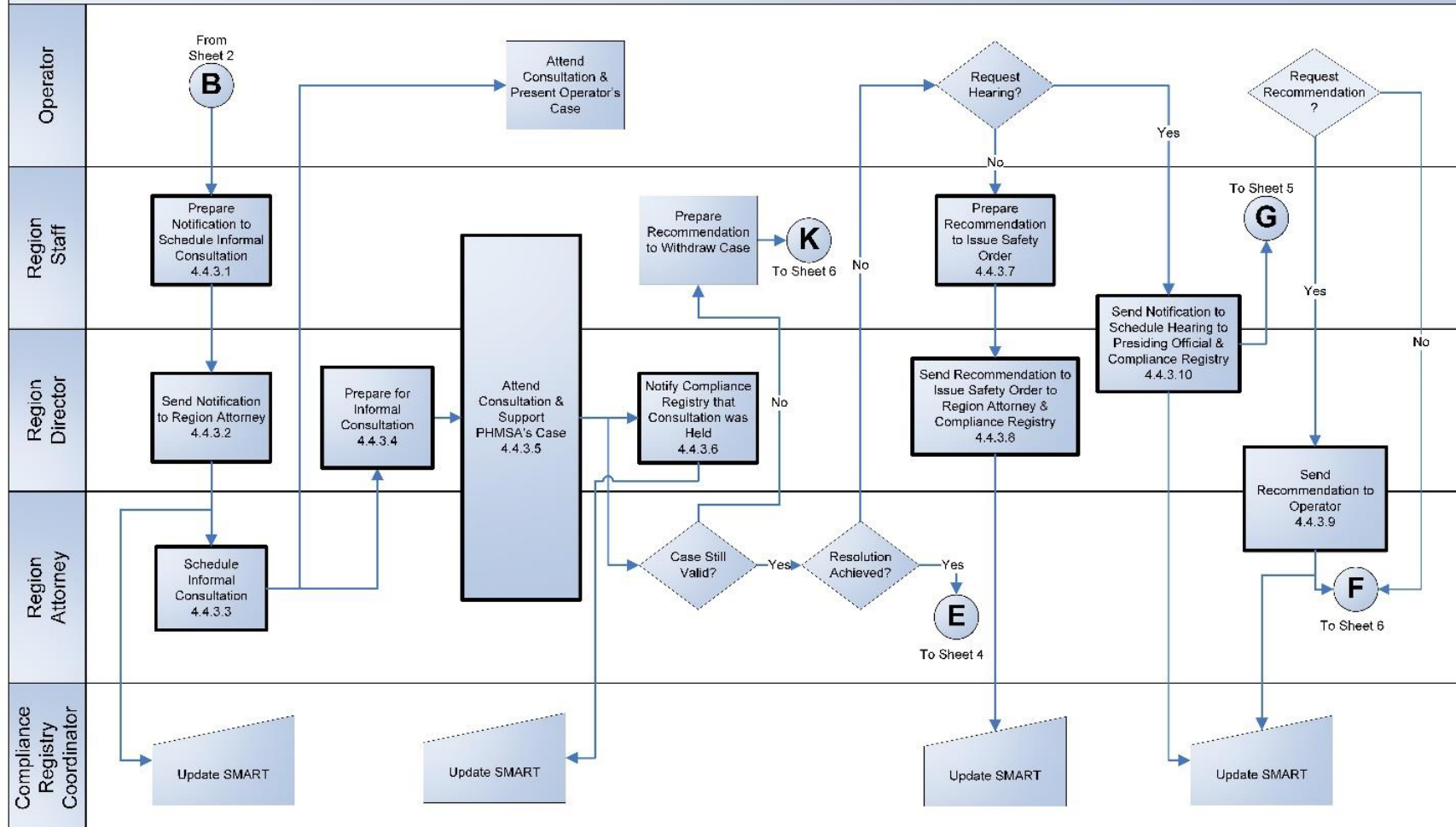
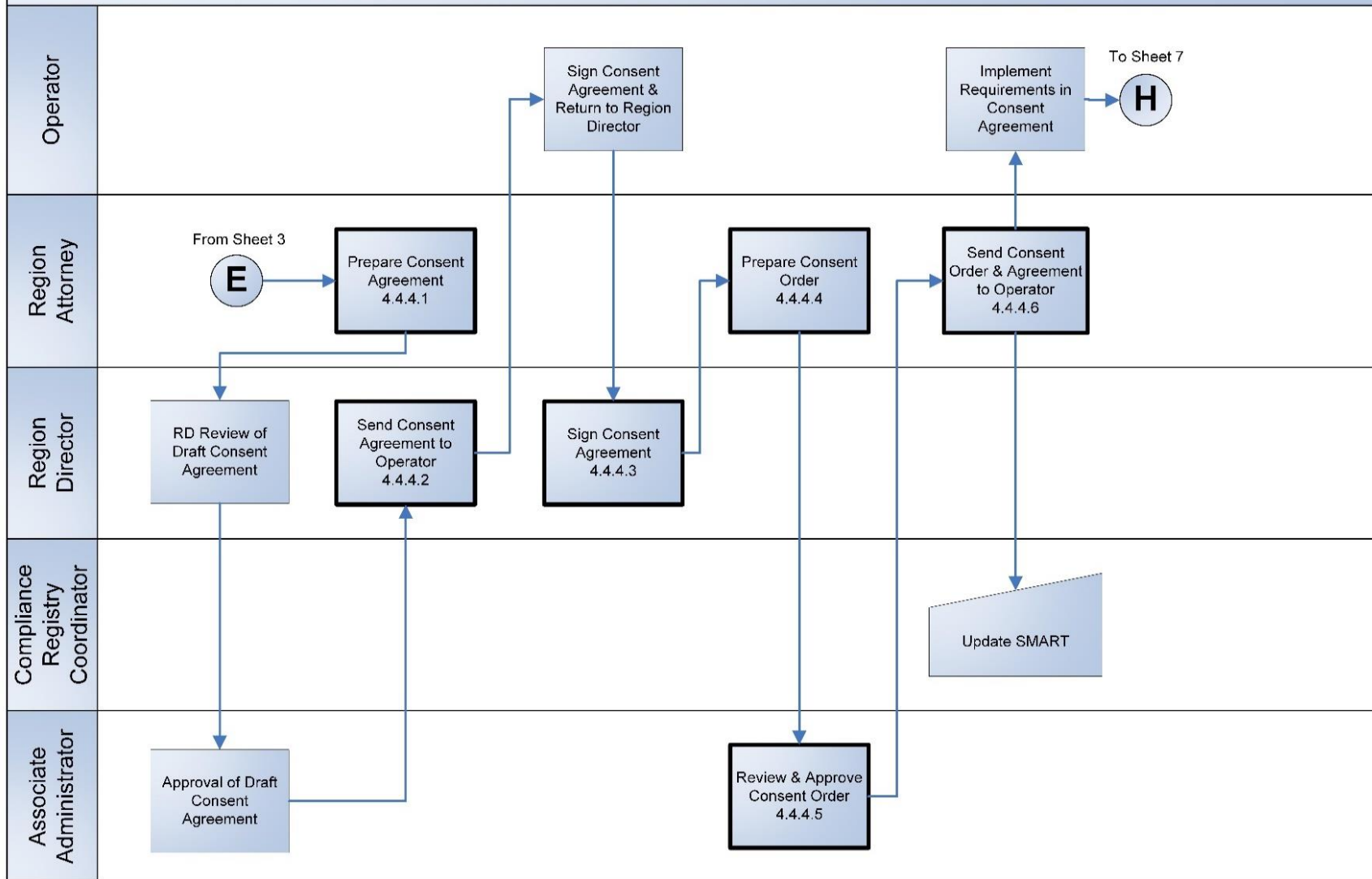


Figure 4.4 Safety Order Process

Sheet 4 of 8 Issue Consent Order

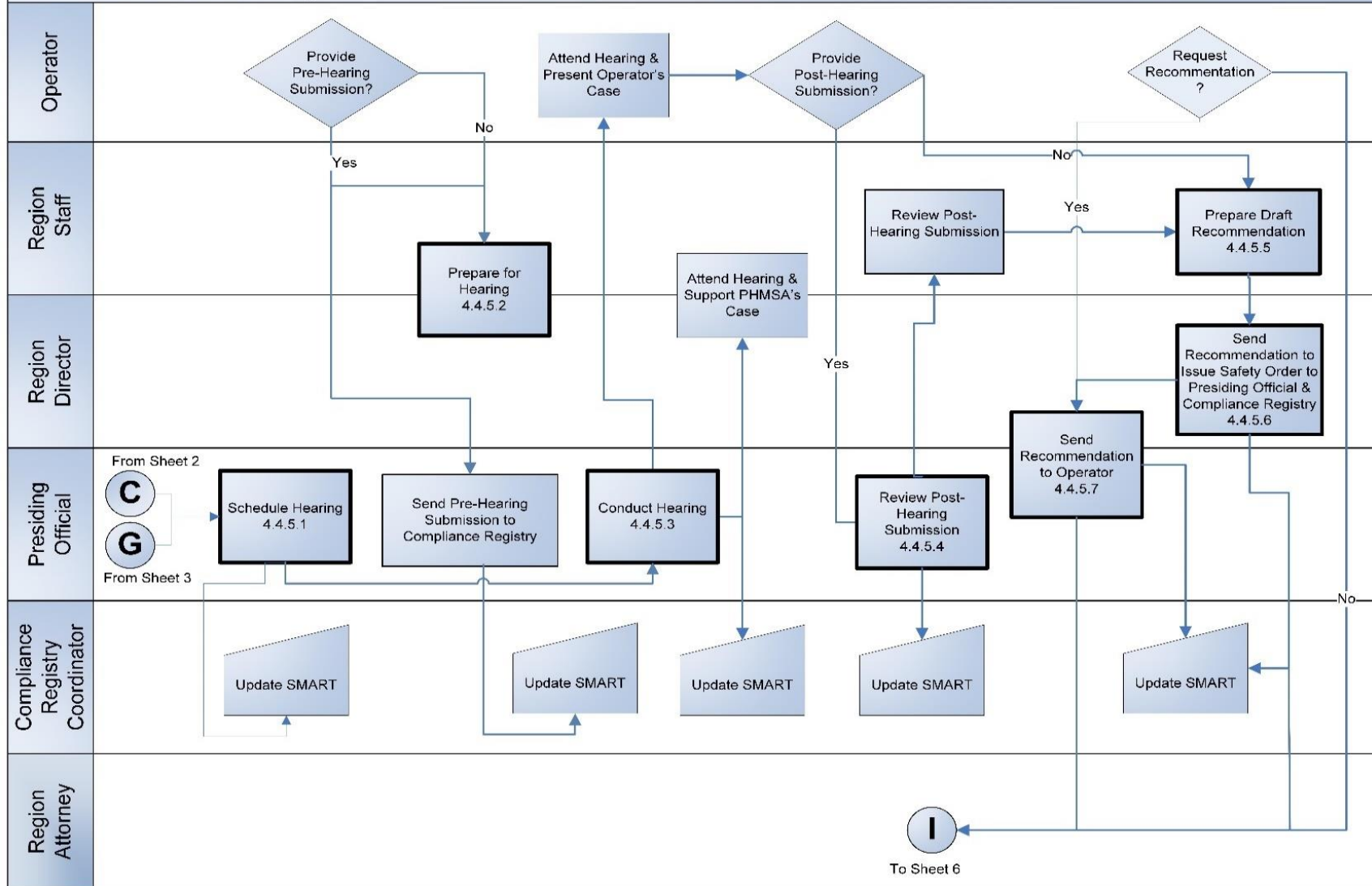


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Figure 4.4 Safety Order Process

Sheet 5 of 8 Conduct Hearing

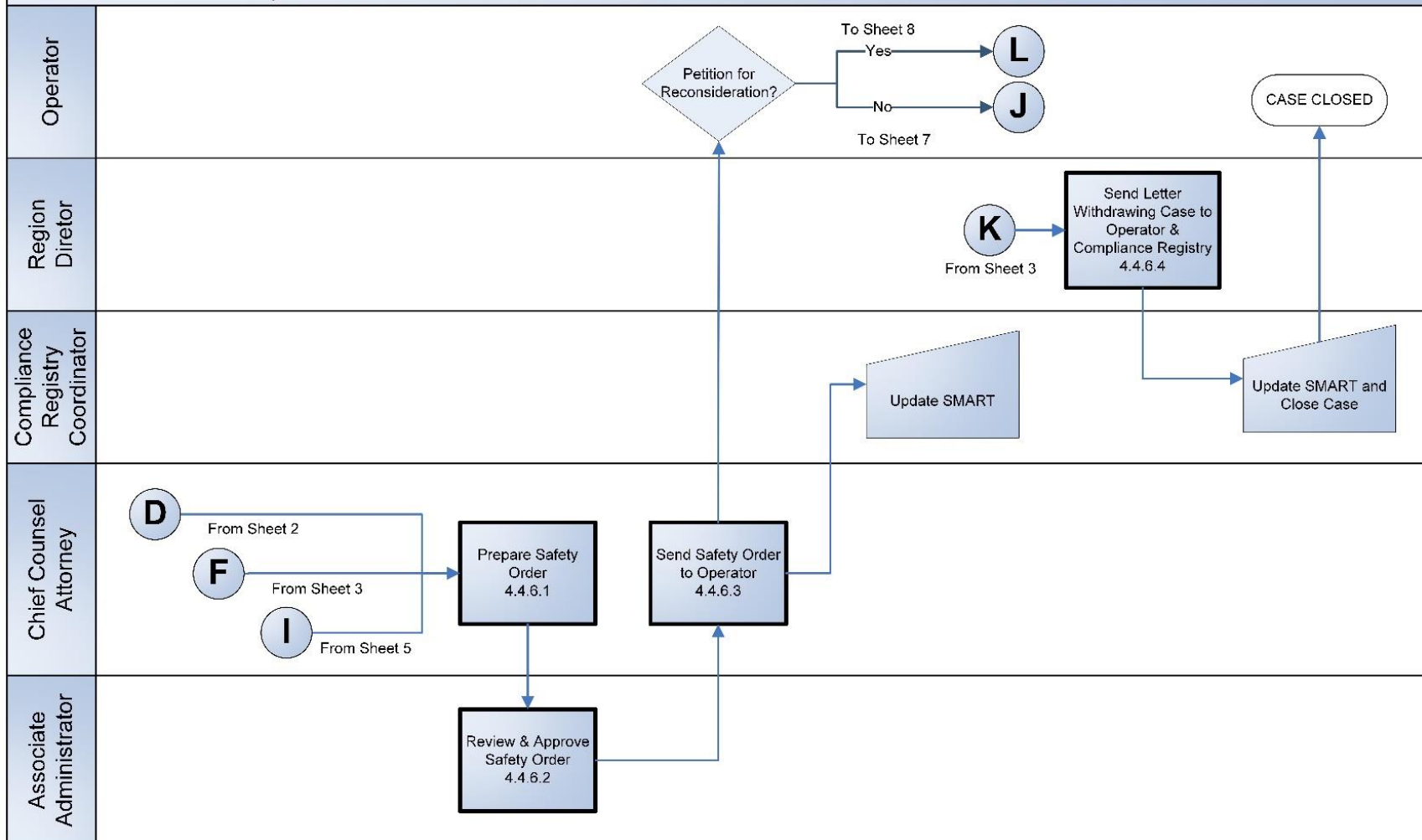


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Figure 4.4 Safety Order Process

Sheet 6 of 8 Issue Safety Order or Withdraw the Notice

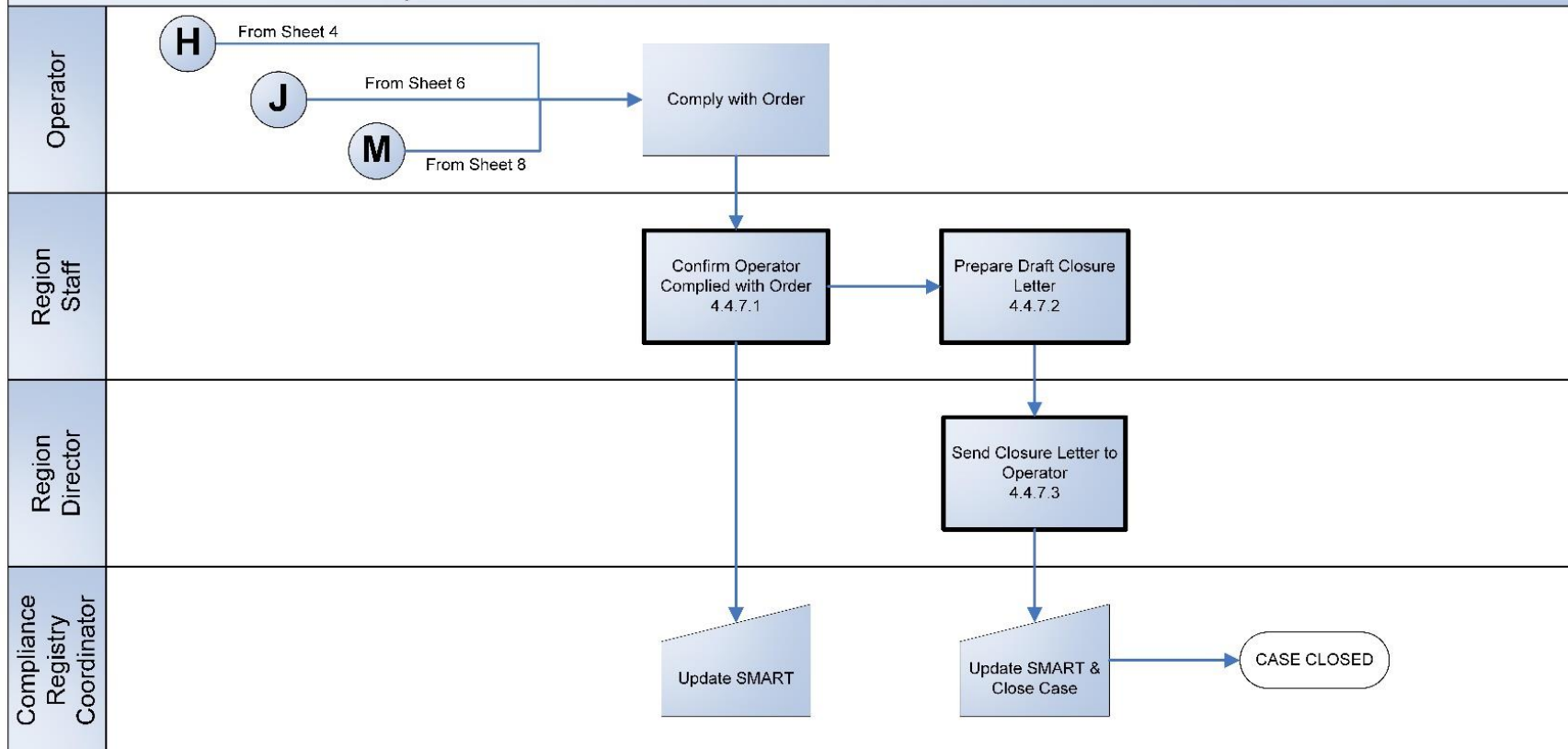


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Figure 4.4 Safety Order Process

Sheet 7 of 8 Close Case for Safety Orders and Consent Orders

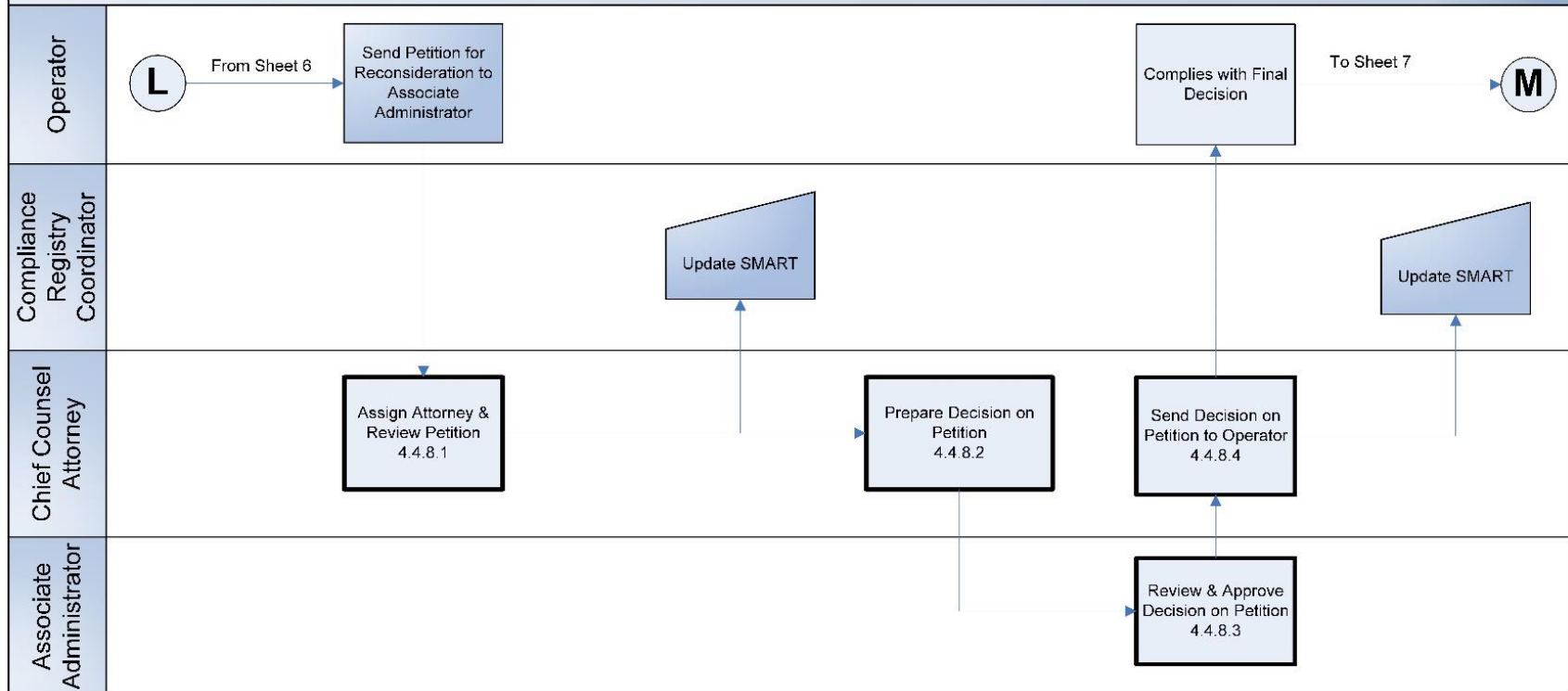


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Fig. 4.4 Safety Order Process

Sheet 8 of 8 Petition for Reconsideration



4.4.1 *Issue Notice of Proposed Safety Order*

Figure 4.4, Sheet 1, “Issue Notice of Proposed Safety Order,” illustrates the overall process steps and individual responsibilities in issuing a Notice of Proposed Safety Order. The following discussion provides further explanation of the key steps in this process. These key steps are identified by bold borders in the cross functional diagram and contain reference to the subsection number where the additional discussion is provided.

4.4.1.1 Prepare Safety Order Data Report

Input: Evidence indicating a condition posing a risk to people, property, or the environment.

Output: Completed Safety Order Data Report.

Responsibility: Region staff.

Description: If after using the criteria in Section 3, a Notice of Proposed Safety Order is under consideration, a Safety Order Data Report is prepared. The Safety Order Data Report provides the technical justification and supporting evidence behind the decision to proceed with a Notice of Proposed Safety Order. The Safety Order Data Report template is used to prepare the report. This template describes the content required for each section of the report. The evidence used to support the Safety Order Data Report content must be attached to the report. This evidence could include operator procedures, records, test results, photographs, maps, engineering drawings, accident investigation reports, Safety Related Condition Reports, or other evidence needed to support the case.

Depending on the situation, input and assistance in preparing the Safety Order Data Report may be provided by the Region Director, or the Director of Engineering and Research, or the Accident Investigation Division Director/staff, or other PHMSA organizations which have information required to fully characterize the risk and complete the report. Other Federal or state agencies may also provide useful information.

4.4.1.2 Review Safety Order Data Report and Decide if Case Should Proceed

Input: Safety Order Data Report.

Output: Region Director decision to proceed or not to proceed with Safety Order process.

Responsibility: Region Director.

Description: The Region Director reviews the information in the Safety Order Data Report and discusses the report’s content with staff members involved in its preparation. The Region Director may also consult with the Region Attorney or PHMSA leadership in making this decision. If the Region Director approves going forward with the Safety Order process, a Notice of Proposed Safety Order is prepared. If the Region Director does not believe the evidence warrants a Safety Order, the process is concluded. Although not shown on the Figure 4.4, Sheet 1, it is possible that the review of the Safety Order Data Report could identify probable violations or potentially hazardous conditions that were

previously unrecognized. In this case, the normal processes for addressing probable violations or developing a Corrective Action Order are followed.

4.4.1.3 Prepare Notice of Proposed Safety Order

Input: Safety Order Data Report and associated evidence.

Output: Draft Notice of Proposed Safety Order.

Responsibility: Region Attorney in collaboration with the Region staff.

Description: After the Region Director has decided that a Notice of Proposed Safety Order (NOPSO) should be prepared, Region staff provides the Safety Order Data Report to the Region Attorney and they work together to prepare the draft Notice of Proposed Safety Order in plain language. The Region Attorney ensures the draft Notice of Proposed Safety Order has a clear legal foundation and is legally sufficient.

The notice letter alleges the existence of a condition that poses a risk to public safety, property, or the environment, and states the facts and circumstances supporting the issuance of a Safety Order for the identified pipeline facility(s). The notice letter proposes testing, integrity assessment, evaluations, repairs, or other corrective actions to be taken by the operator. The letter may also request the operator submit a work plan and schedule to address the condition(s) identified in the notice. It also delineates the operator's response options, including the procedures for requesting an informal consultation and a hearing. The notice letter gives the operator 30 days to respond.

The draft Notice of Proposed Safety Order must be addressed to the most senior pipeline operating company official, such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) Use whatever method of research necessary or contact the pipeline operating company to determine and verify who is the most senior company official. SMART is set up to assign a case to only one operator and one OPID. If there is a need to address the letter to multiple entities (e.g. the pipeline owner as well as the operator), the Region staff consults with the Region Attorney.

A template is provided for preparing a Notice of Proposed Safety Order. An overview of the content for the major sections of a Notice of Proposed Safety Order follows.

Preliminary Findings

In this section of the letter, the facilities where the risk condition exists are identified. Depending on the situation, this could be a localized problem at a particular geographic location (such as a pump/compressor station, or a short segment of line pipe), a problem that affects assets with certain characteristics (e.g., pipe coating, or pipe joining method), or a systemic situation that affects an entire pipeline system or – in some cases - all of the operator's pipeline assets.

The specific risk condition is described along with how PHMSA became aware of this risk. Examples of conditions that could result in the need for a Safety Order are listed in Section 3.

The Notice of Proposed Safety Order template also lists several other conditions or characteristics that may be needed to fully describe the identified risk conditions. If the template item included in brackets “[]” is not relevant to the safety concerns of the case, it need not be addressed in the notice letter.

Proposed Corrective Measures

This section of the notice identifies the specific corrective actions being proposed to address the elevated risk condition. These are the requirements that could ultimately end up in a Consent Agreement to resolve the notice letter, or a Safety Order if the case progresses to that point. These corrective measures should include all testing, evaluation, repairs, remedial actions, surveillance, and programmatic improvements the operator is expected to implement. These measures could be very specific to a particular segment of pipe (e.g., run a crack detection ILI device on a particular segment, perform close interval surveys on a specific portion of the line, etc.), or they could be broad system wide improvements (e.g., develop and implement a stress corrosion control identification and management process for all pipelines). All of the proposed corrective actions must be directed toward reducing the elevated risk condition identified in the preliminary findings section of the notice.

Request for Operator Work Plan

Any work plan submitted by the operator must include specific requirements and schedules for accomplishing the various corrective actions. The Notice of Proposed Safety Order template provides a starting point for preparation of a work plan including provisions for establishing a schedule for completion of the corrective measures, providing PHMSA with periodic status reports, and revising the work plan.

4.4.1.4 Send Notice of Proposed Safety Order to Operator

Input: Draft Notice of Proposed Safety Order.

Output: Signed Notice of Proposed Safety Order.

Responsibility: Region Director.

Description: The Region Director reviews the draft Notice of Proposed Safety Order prepared by Region staff and the Region Attorney. Although not shown on the diagram, some review cycles may be needed to produce a notice letter satisfactory to the Region Director.

After approving the notice content, but prior to the Region Director signing the Notice of Proposed Safety Order and sending it to the operator, the Regional Director will send an e-mail to the Associate Administrator, Deputy Associate Administrator for Field Operations, and the Deputy Associated Administrator for Policy and Programs summarizing the issues. One of these individuals forwards the e-mail notification to PHMSA senior leadership, along with any requested clarification and background

information about the case. The Region Director will not send the Notice letter to the operator until the Regional Director is given clearance by the Associate Administrator, Deputy Associate Administrator for Field Operations, or the Deputy Associated Administrator for Policy and Programs. The Region assigns, according to the nomenclature provided in Section 5.2, a Compliance Progress File number to the case. The Region Director then signs the letter and sends it to the operator.

4.4.1.5 Send Notice of Proposed Safety Order and Safety Order Data Report to Compliance Registry

Input: Signed Notice of Proposed Safety Order and Safety Order Data Report with attachments at Region office.

Output: Electronic copies of signed Notice of Proposed Safety Order and Safety Order Data Report with attachments sent to Compliance Registry and SMART Inspection accurately reflects the Safety Order.

Responsibility: Region staff.

Description: Upon issuance of a Notice of Proposed Safety Order, the Region Director assigns Region staff to:

- Create a Region case file
- Enter case information into SMART Inspection, which documents the inspection/investigation results and Notice of Proposed Safety Order enforcement action. The Region also assigns the Compliance Progress File (CPF) number according to the nomenclature provided in Section 5.2. (For more information or detail relating to this topic see the SMART Inspection Policy.); and
- Send case data to the Compliance Registry

This step is crucial to the prompt and accurate creation of an enforcement case record in the Compliance Registry. Region personnel send the case data from SMART Inspection to the Compliance Registry (see illustration below) to create the case in SMART Enforcement. The Compliance Progress File number and date of the notice letter are needed before this action can be completed. This is also clarified in the SMART inspection policy.

1 of 1

Activity Detail	New Search	Modify Search	First	Previous	Activity List	Next	Last	Help	Print
Activity	Assignments(1)	LS Items(2)	Comments	Portion Insp.	Summary				
Activity Type : I01 Operator : 26041 KINDER MORGAN LIQUID TERMINALS, LLC Activity ID : 120445 Status : Complete From Date : 05/27/2008 To Date : 05/30/2008 AFO Total Days : 4.0 Activity Total Days : 4.0 Lead Person : ARCHULETTA, PHILLIP N Person Region : 3 - CENTRAL Added By : ARCHULETTA, PHIL Date Added : 01/09/2008 Updated By : ARCHULETTA, PHIL Date Updated : 12/03/2008 Unit : 70443 MIDWAY PIPELINE Compliance Registry									

click to open the "Send to CR" window

- Send the notice letter to individuals identified in Table 4-B. Refer to Section 5 for formatting requirements.
- Send one electronic copy of the Safety Order Data Report and accompanying evidence files to the PHMSA Pipeline Compliance Registry email distribution list that includes those identified in Table 4-B.
- Anything that the Region believes is needed to be documented in the case file should be sent to the Compliance Registry throughout the enforcement process.

When a new case transfers into SMART Enforcement and the case files are received from the Region, the Compliance Registry Coordinator:

- Uploads case files into SMART, and
- Performs SMART case data quality check.

4.4.2 Operator Response to Notice of Proposed Safety Order

Upon receipt of the Notice of Proposed Safety Order, the operator has several different response options. The operator can:

- Notify the Region Director that it agrees to take the actions in the Proposed Safety Order;
- Request an informal consultation to explain the circumstances associated with the risk condition(s) identified in the notice, and to present a proposal for addressing each condition; or
- Request a hearing to contest the issues in the Proposed Safety Order.

The operator has 30 days to respond to the notice letter. Figure 4.4, Sheet 2, “Operator Response to Notice of Proposed Safety Order,” illustrates PHMSA’s response to each of these options. The following discussion provides further explanation of the key steps in this process. These key steps are identified by bold borders in the cross functional diagram and contain reference to the subsection number where the additional discussion is provided.

4.4.2.1 Send Operator Response to Compliance Registry

Input: Operator response to Notice of Proposed Safety Order.

Output: Electronic files of full and redacted (if necessary) operator response.

Responsibility: Region staff.

Description: Region staff reviews the operator response letter and takes the appropriate action per the operator’s response. (See separate steps in the cross functional diagram to schedule an informal consultation or hearing, or to proceed with a Safety Order.) If the operator does not provide electronic

copies of its response, the documents are scanned to create these files.²⁰ The electronic files of the complete and redacted operator response (including attachments) are e-mailed to the Compliance Registry so the SMART case file can be updated. Additional recipients of the operator response material are listed in Table 4-B.

4.4.2.2 Prepare Recommendation to Issue Safety Order

Input: Letter from operator agreeing to take actions in Proposed Safety Order; or no operator response to the Notice of Proposed Safety Order.

Output: Draft Recommendation to issue Safety Order.

Responsibility: Region staff.

Description: Region staff assigned to the case prepare a Recommendation to the Office of Chief Counsel requesting that a Safety Order be prepared. The Recommendation letter template provides instructions for the content and organization of Recommendation.

4.4.2.3 Send Recommendation to Issue Safety Order to Region Attorney and Compliance Registry

Input: Draft Recommendation to issue Safety Order.

Output: Final Region Recommendation to issue Safety Order.

Responsibility: Region Director.

Description: The Region Director reviews the draft Recommendation to issue a Safety Order and discusses any comments, changes, or corrections with Region staff. When satisfactory, the Region Director sends electronic copies of the final Recommendation to the Region Attorney and Compliance Registry so the SMART case file can be updated. Additional recipients of the Recommendation are listed in Table 4-B.

If the Region has no additional information beyond that presented in the Notice of Proposed Safety Order, the Region Director can send an email saying the Region has no update in lieu of preparing a formal Recommendation.

4.4.2.4 Send Recommendation to Operator

Input: Operator Request for Recommendation.

Output: Recommendation to issue Safety Order sent to Operator.

Responsibility: Region Attorney

²⁰ In situations where operators provide voluminous responses such as manuals and procedures, these documents may be sent to the Compliance Registry for scanning. Difficult to scan items like large maps and drawings, should be retained in the Region case files.

Description: For non-hearing cases, the Recommendation is sent to the Operator where requested. If the operator requests a copy of the Region's Recommendation, the Region Attorney sends the Recommendation to the operator. The following documents are to be sent to the Compliance Registry Coordinator by the Region Attorney to ensure they are added to the case file: a copy of the operator's request for the Recommendation and record of the Recommendation being sent to the operator.

For hearing cases, the Recommendation is sent to the Operator by the Region Attorney when issued. To ensure these documents are added to the case file, the Region Attorney also sends record of the Recommendation being sent to the operator to the Compliance Registry Coordinator.

If an operator submits a rebuttal to the Region Recommendation, the Region will normally not provide anything further.

4.4.2.5 Send Notification to Schedule Hearing to Presiding Official

Input: Operator response requesting a hearing.

Output: Notification to schedule hearing.

Responsibility: Region Director.

Description: Upon receipt of a response to a Notice of Proposed Safety Order in which the operator requests a hearing, Region staff assigned to the case prepare an e-mail notification to schedule a hearing. The Region Director approves and sends the e-mail notification to the Presiding Official and the Compliance Registry so the SMART case file can be updated. Additional recipients of the notification to schedule a hearing are identified in Table 4-B.

Hearing scheduling notifications are created for SMART record-keeping purposes and to notify the Presiding Official of a hearing request. If an operator requests a hearing, one must be held, unless the case is withdrawn for other reasons.

4.4.3 *Conduct Informal Consultation*

The informal consultation is one of the options an operator may elect in responding to a Notice of Proposed Safety Order. Figure 4.4, Sheet 3 "Conduct Informal Consultation" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.4.3.1 Prepare Notification to Schedule Informal Consultation

Input: Operator request for informal consultation.

Output: Draft notification to schedule informal consultation.

Responsibility: Region staff.

Description: After receiving the operator's request to conduct an informal consultation, Region staff assigned to the case prepares a letter to the Region Attorney requesting that an informal consultation be scheduled. This draft notification is provided to the Region Director for review and signature.

4.4.3.2 Send Notification to Region Attorney

Input: Draft notification to schedule informal consultation.

Output: Final notification to schedule informal consultation.

Responsibility: Region Director.

Description: The Region Director reviews the draft notification and discusses any comments, changes, or corrections with Region. When satisfactory, the Region Director sends electronic copies of the final notification to the Region Attorney, and the Compliance Registry so the SMART case file can be updated. Additional recipients of the notification are listed in Table 4-B.

4.4.3.3 Schedule Informal Consultation

Input: Notification to schedule informal consultation.

Output: Letter scheduling informal consultation.

Responsibility: Region Attorney.

Description: After receiving the notification to schedule an informal consultation, the Region Attorney works with the Region Director and the operator to select a consultation date and location. These arrangements are documented in a letter and sent to the operator, Region Director, and Compliance Registry. If the informal consultation arrangements are made verbally through conversations with the operator, then the Region Attorney scheduling the Consultation sends an e-mail message to the Compliance Registry indicating the location, date, and other particulars of the meeting.

4.4.3.4 Prepare for Informal Consultation

Input: Letter scheduling informal consultation, Operator Response to Notice of Proposed Safety order, and any proposed terms from the Operator.

Output: Depending on the specifics of the case, additional materials, information, analysis, and evidence to identify safety concerns.

Responsibility: Region Director.

Description: After the informal consultation arrangements are made, the Region Director and Region staff review the operator response to Notice of Proposed Safety Order and any proposed terms from the operator. If there are any substantive terms proposed, the Region Director must review them with the Deputy Associate Administrator of Field Operations prior to any proposed settlement of terms is made by the Region Director to the operator.

4.4.3.5 Attend Consultation and Support PHMSA's Case

Input: Operator response to the Notice of Proposed Safety Order, Safety Order Data Report, Notice of Proposed Safety Order, and other evidence in Region case file.

Output: Terms of a Consent Agreement, determination that agreement cannot be reached, or a decision to withdraw the case.

Responsibility: Region Director, Region Attorney, and Region staff.

Description: The informal consultation is held within 30 days of receiving the operator's request for the consultation.²¹ The Region Director, the Region Attorney, and Region staff assigned to the case participate in the informal consultation with the operator. There are no official protocols for conducting an Informal Consultation. It is designed to be a flexible process that can adapt to the particular situation being addressed. The operator explains the circumstances associated with the risk conditions alleged in the notice, and, as appropriate, presents a plan for remedial action. The PHMSA participants review and discuss the operator's proposed actions to address the risk issues raised in the Notice of Proposed Safety Order. The Region Director may terminate the informal consultation at any time if the operator is not engaging in the discussions in good faith, or concludes that further consultation would not be productive or in the public interest.

If agreement on a set of corrective or preventive measures is reached, the Region Attorney proceeds to create a Consent Agreement reflecting this agreement. Per 190.239(b)(2), if the operator and the Region Director are unable to reach agreement on terms of a Consent Agreement within 30 days, the consultation may be discontinued, and the Region will prepare to issue a Safety Order. If agreement is not reached, the operator has 10 days in which to request a hearing. This period can be extended if approved by the Region Director.

It is also possible that information presented by the operator at the informal consultation could change the Region Director's understanding of the alleged risk condition. If the Region Director no longer believes the risk is as serious as originally understood and does not warrant corrective measures, the case can be withdrawn.

Statements and admissions made in the informal consultation do not prejudice an operator's position in any subsequent hearing.

4.4.3.6 Notify Compliance Registry that Consultation was Held

Input: Completion of informal consultation.

Output: E-mail notifying Compliance Registry.

Responsibility: Region Director.

²¹ This period can be extended for good cause.

Description: The Region Director provides written notification to the Compliance Registry that the informal consultation was held. An e-mail message noting the date of the session and the participants is satisfactory documentation.

4.4.3.7 Prepare Recommendation to Issue Safety Order

Input: Notice of Proposed Safety Order, operator response to notice, and information discussed at informal consultation.

Output: Draft Recommendation to issue Safety Order.

Responsibility: Region staff.

Description: If the informal consultation does not result in both parties agreeing to develop a Consent Agreement, and the operator does not request a hearing within 10 days after the conclusion of the informal consultation, Region staff assigned to the case prepares a Recommendation to the Office of Chief Counsel requesting that a Safety Order be prepared. The Recommendation template provides instructions for the content and organization of Letter.

4.4.3.8 Send Recommendation to Issue Safety Order to Region Attorney and Compliance Registry

Input: Draft Recommendation to Issue Safety Order.

Output: Final Recommendation to Issue Safety Order.

Responsibility: Region Director.

Description: The Region Director reviews the draft Recommendation to Issue a Safety Order and discusses any comments, changes, or corrections with Region. When satisfactory, the Region Director sends electronic copies of the final Recommendation to the Region Attorney and the Compliance Registry Coordinator. Additional recipients of the Recommendation are listed in Table 4-B.

4.4.3.9 Send Recommendation to Operator

Input: Operator Request for Recommendation.

Output: Final Recommendation to Issue Safety Order sent to Operator

Responsibility: Region Director or Region Attorney.

Description: If the operator requests a copy of the Region's Recommendation, the recipient of this request – either the Region Director or the Region Attorney – sends the Recommendation to the operator. This individual also sends a copy of the operator's request for the Recommendation as well as the response to the operator to the Compliance Registry Coordinator so these documents can be added to the case file. If an operator submits a rebuttal to the Region Recommendation, the Region will normally not provide anything further.

4.4.3.10 Send Notification to Schedule Hearing to Presiding Official and Compliance Registry

Input: Operator letter requesting a hearing after informal consultation.

Output: Notification to schedule hearing.

Responsibility: Region Director.

Description: Upon receipt of the operator's request for a hearing, Region staff assigned to the case prepare an e-mail notification to schedule a hearing. The Region Director approves and sends the e-mail notification to the Presiding Official and the Compliance Registry so the SMART case file can be updated. The operator's letter requesting a hearing is also sent to the Compliance Registry. Additional recipients of the notification to schedule a hearing are identified in Table 4-B.

Hearing scheduling notifications are created for SMART record-keeping purposes and to notify the Presiding Official of a hearing request. If an operator requests a hearing, one must be held, unless the case is withdrawn for other reasons.

4.4.4 Issue Consent Order

If the informal consultation results in PHMSA and the operator agreeing on an appropriate set of measures to address the elevated risk condition, the next step is the development of the formal Consent Agreement and a Consent Order. Figure 4.4, Sheet 4 "Issue Consent Order," illustrates the steps and individual responsibilities in issuing Consent Orders. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.4.4.1 Prepare Consent Agreement

Input: Notice of Proposed Safety Order, operator response to Notice of Proposed Safety Order, and information presented or discussed at informal consultation.

Output: Draft Consent Agreement.

Responsibility: Region Attorney.

Description: Working collaboratively with the Region Director and Region staff assigned to the case, the Region Attorney prepares a draft Consent Agreement that reflects the informal consultation. Continued dialogue with the operator may be required to define any terms that were not fully developed in the informal consultation.

The terms of the Consent Agreement should be reached within 30 days of the informal consultation. If agreement is not reached in this time frame, the Region Director proceeds to a hearing (if the operator has requested one), or to recommend a Safety Order be issued if a hearing has not been requested. These alternatives are not shown on the cross functional diagram.

4.4.4.2 Send Consent Agreement to Operator

Input: Draft Consent Agreement.

Output: Final Consent Agreement sent to operator.

Responsibility: Region Director.

Description: Region Director reviews and approves the draft Consent Agreement and obtains approval by the Associate Administrator or Deputy Associate Administrator before sending the agreement to the operator for concurrence and signature.

4.4.4.3 Sign Consent Agreement

Input: Signed Consent Agreement from operator.

Output: Consent Agreement signed by both the operator and the Region Director.

Responsibility: Region Director.

Description: The Region Director signs the Consent Agreement after the operator has signed the document. The signed agreement is provided to the Region Attorney who prepares a Consent Order directing the operator to comply with the agreement's terms. After both the operator and the Region Director have signed the Consent Agreement, any pending hearing request is considered to be withdrawn.

4.4.4.4 Prepare Consent Order

Input: Consent Agreement signed by both the operator and the Region Director.

Output: Draft Consent Order and accompanying Consent Agreement.

Responsibility: Region Attorney.

Description: The Region Attorney prepares a Consent Order incorporating the terms of the Consent Agreement. The Region Attorney confirms that the company name, address, and company official to whom the Safety Order is addressed are correct and current. The Consent Order must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) When complete, the draft Consent Order and the signed Consent Agreement are sent to the Associate Administrator for review.

4.4.4.5 Review and Approve Consent Order

Input: Draft Consent Order and accompanying Consent Agreement.

Output: Signed Consent Order and accompanying Consent Agreement.

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the draft Consent Order and accompanying Consent Agreement that has been reached between the Region and the operator. The Associate Administrator or Deputy Associate Administrator approves and signs the Consent Order and returns the package to the Region Attorney.

4.4.4.6 Send Consent Order and Agreement to Operator

Input: Signed Consent Order and accompanying Consent Agreement from Associate Administrator.

Output: Signed Consent Order and accompanying Consent Agreement sent to operator and Compliance Registry.

Responsibility: Region Attorney.

Description: The Region Attorney sends the signed Consent Order and signed Consent Agreement to the operator. These documents are sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the Consent Order and Consent Agreement in its case files. Copies of the Consent Order and Agreement and the confirmation of receipt by the operator are also sent to the Compliance Registry to update the SMART case file. Refer to Section 5.1 for formatting requirements. Additional recipients of the Consent Order and Consent Agreement are listed in Table 4-B.

4.4.5 *Conduct Hearing*

There are two paths in the Safety Order process that could lead to a hearing. First, the operator may elect not to take advantage of the informal consultation option and request a hearing after receiving the Notice of Proposed Safety Order. Alternatively, the operator and PHMSA may proceed with the informal consultation process and not be able to come to an agreement on a plan of corrective measures. In this instance, the operator has 10 days following the informal consultation to request a hearing, unless a hearing has already been requested. Figure 4.4, Sheet 5 “Conduct Hearing” depicts the major steps and responsibilities associated with conducting a hearing. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.4.5.1 Schedule Hearing

Input: Notification to schedule hearing and operator letter requesting hearing.

Output: Letter scheduling hearing.

Responsibility: Presiding Official.

Description: After receiving a notification to schedule a hearing from the Region, the Presiding Official works with the Region and the operator to set a hearing date and location. These arrangements are documented in a letter and sent to the operator and the Region Director. The letter scheduling the

hearing is also sent to the Compliance Registry so the SMART case file can be updated. Additional recipients of the letters scheduling a hearing are listed in Table 4-B.

4.4.5.2 Prepare for Hearing

Input: Operator letter requesting hearing and other information in case file.

Output: Depending on the specifics of the case, additional materials, information, analysis, and evidence to successfully prosecute the case.

Responsibility: Region Director and Region staff.

Description: Upon receipt of the operator's letter requesting a hearing, the Region Director and staff evaluate the basis for the operator's position in contesting the proposed Safety Order. Region Director and staff put together evidence from the case file, as appropriate. If the Region intends to introduce new material that is not currently in the case file during the hearing, the Region provides this information to the operator and the Presiding Official at least 10 days prior to the hearing date. This gives the operator the opportunity to review and respond to the new materials. Examples of such material include any presentations, maps, or other information that the Region may want to use in rebutting an operator's arguments or explaining issues to the Presiding Official.

Likewise, if the operator intends to introduce materials at the hearing that are not already in the case file, the operator must provide this material to the Region Director and the Presiding Official at least 10 days prior to the hearing date. This provides the Region Director and Region staff an opportunity to review and prepare responses to this new material before the hearing.

If the operator or the Region is unable to provide its pre-hearing submissions 10 or more days before the hearing, the party must send a request for a waiver to the Presiding Official and the other party. This request must explain the reason for requesting the time extension.

Should the operator or the Region provide pre-hearing submissions or request waivers of the 10-day submission deadline, the Presiding Official sends the pre-hearing submissions and associated correspondence to the Compliance Registry so the SMART case file can be updated.

An operator's request for a hearing must be accompanied by a statement of the issues it intends to raise at the hearing. The issues may relate to the allegations in the notice, or the proposed corrective action. An operator's failure to specify an issue may result in waiver of the operator's right to raise that issue at the hearing.

The Region Attorney may be consulted by the Region Director or Region staff to provide guidance and assistance in preparing to present the case at the hearing. If the Region Attorney is present at the hearing, Region staff and Region Director assure that the Region Attorney is fully briefed and aware of the case issues, the basis for the enforcement, and evidence.

Pursuant to 190.210(b)'s prohibition on ex parte communications, the Region Director and Region staff assigned to the case cannot discuss the case with the Presiding Official outside of the hearing including furnishing ex parte advice or factual materials. This assures that the Presiding Official is not influenced by information that is not presented at the hearing. Only procedural and scheduling questions can be addressed to the Presiding Official. The Region Attorney should be consulted if there are any questions about communication with the Presiding Official prior to the hearing.

4.4.5.3 Conduct Hearing

Input: Notice of Proposed Safety Order, Safety Order Data Report, materials provided by the operator, and other evidence.

Output: A fair hearing in which both sides have had the opportunity to present their positions. Any documents and other evidence presented at the hearing become part of the case file. A written notification that the hearing was held is provided to the Compliance Registry.

Responsibility: The Presiding Official conducts the hearing. The Region Director, Region staff assigned to the case and the Region Attorney represent PHMSA in this proceeding.

Description: During the hearing, the operator is typically represented by staff members knowledgeable with the alleged risks, its regulatory compliance personnel, and perhaps company management. Operators may also rely on outside consultants for technical support, and in-house or outside counsel for legal support. The Region is represented by the Region Director and Region staff assigned to the case. In most cases, the Region Attorney is also present in person or by phone to help explain and present the Region's case as necessary.

All PHMSA hearings are considered "informal adjudications," meaning that they do not adhere to the formal procedures used by courts or strict rules of evidence. However, they must still meet all statutory, regulatory, and constitutional requirements for informal hearings. Both the operator and Region are provided an opportunity to present evidence supporting their respective positions. The operator may present facts, statements, explanations, documents, testimony, or other items relevant to the issues under consideration. Each side is allowed to respond to information the other party presents.

After the hearing is finished, the Presiding Official provides written notification that the hearing has been held to the Compliance Registry so the SMART case file can be updated. An e-mail message indicating the hearing date and a list of the participants or a copy of the sign-up sheet is satisfactory documentation of the event. If the operator has provided additional evidence at the hearing, these documents are also provided to the Compliance Registry to update the SMART case file. Additional recipients of this material are listed in Table 4-B.

There are no transcripts or official minutes of the hearing, unless an operator elects to transcribe a hearing. In these situations, the operator must notify the Presiding Official in advance of its intent, and

it must arrange for a court reporter to transcribe the session at its own cost. The operator must provide copies of the transcript to PHMSA for the case file.

4.4.5.4 Review Post-Hearing Submission

Input: Additional evidence submitted by the operator after the hearing.

Output: Updated case file with additional information and evidence.

Responsibility: Presiding Official.

Description: If requested, the Presiding Official allows the operator to submit additional evidence supporting its case following the conclusion of the hearing. The operator sends this post-hearing submission to the Presiding Official for review. Unless otherwise noted by the Presiding Official, the operator sends its post-hearing submission within 30 days of the conclusion of the hearing. If the operator does not provide additional material within the time frame set by the Presiding Official, the case may proceed without this information

The Presiding Official sends a copy of this material to the Region for review and possible use in preparing its Recommendation. The Presiding Official also sends the post-hearing submission to the Compliance Registry so the SMART case file can be updated. If the contents of the post-hearing submission are not in electronic format, the Presiding Official may send the documents to the Compliance Registry for scanning. Oversize drawings and documents are sent to the Region for retention in its case files. Additional recipients of operator post-hearing submissions are listed in Table 4-B.

The Region is required to file any post-hearing recommendation no later than 30 days after the deadline for any post-hearing submission by an operator. The operator may reply to any post-hearing submission by the Region. The Presiding Official will set any deadlines with respect to post-hearing submissions.

4.4.5.5 Prepare Draft Recommendation

Input: Notice of Proposed Safety Order, Safety Order Data Report, operator response(s) to the Notice of Proposed Safety Order, and the information and evidence provided by the operator at and subsequent to the hearing.

Output: Draft Recommendation.

Responsibility: Region staff.

Description: Region staff assigned to the case review the information provided by the operator at the hearing, and in any post-hearing submissions. This information is evaluated along with the facts and evidence of the case previously documented in the Safety Order Data Report. Region staff determine if the risk condition that originally motivated the Notice of Proposed Safety Order is still present and still merits corrective measures. Region staff then review each of the corrective measures identified in the Notice of Proposed Safety Order and determine whether or not they are still valid and necessary to reduce the identified risk. If the operator has proposed modification of the corrective measures in the

Notice of Proposed Safety Order, Region staff determine whether such changes are warranted or not. Region staff may consult with the Region Director and Region Attorney in arriving at these decisions.

After completing this evaluation, Region staff prepare a draft Recommendation. If Region staff conclude that the understanding of the risk has changed and there is no longer a need for corrective measures, the Recommendation recommends that the case be withdrawn. If Region staff conclude that corrective measures are still required, the Recommendation clearly documents these corrective measures and recommends that a Safety Order be issued with these requirements. If the operator has contested any of the corrective measures originally set forth in the Notice of Proposed Safety Order, then an analysis of each contested item is provided in the Recommendation. This analysis provides the Presiding Official with background information as to why the Region agrees or disagrees with the arguments put forth by the operator during or after the hearing.

After completing the draft Recommendation, Region staff provides it to the Region Director for review.

4.4.5.6 Approve Recommendation and Send to Presiding Official and Compliance Registry

Input: Draft Recommendation.

Output: Region Recommendation for Safety Order.

Responsibility: Region Director.

Description: The Region Director reviews the draft Recommendation and discusses any comments, changes, or corrections with Region staff. After the Region Director is satisfied with the Recommendation, it is signed and sent to the Presiding Official and the Compliance Registry. Additional recipients of the Recommendation are provided in Table 4-B.

4.4.5.7 Send Recommendation to Operator

Input: Operator Request for Recommendation.

Output: Recommendation for Safety Order sent to Operator.

Responsibility: Region Director or Presiding Official.

Description: If the operator requests a copy of the Region's Recommendation, the recipient of this request – either the Region Director or the Presiding Official – sends the Recommendation to the operator. This individual also sends a copy of the operator's request for the Recommendation as well as the response to the operator to the Compliance Registry Coordinator so these documents can be added to the case file. If an operator submits a rebuttal to the Region Recommendation, the Region will normally not provide anything further.

4.4.6 *Issue Safety Order or Withdraw the Notice*

If a Consent Agreement with the operator is not achieved, then the Safety Order is the enforcement tool used to identify the corrective measures the operator must take to address the elevated risk condition.

Sheet 6 of Figure 4.4 “Issue Safety Order” illustrates the steps and responsibilities in preparing a safety order or withdrawing the notice. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.4.6.1 Prepare Safety Order

Input: Notice of Proposed Safety Order, Safety Order Data Report, operator response(s) to the Notice of Proposed Safety Order, information and evidence provided by the operator at and subsequent to any hearing, and the Region Recommendation.

Output: Draft Safety Order.

Responsibility: Chief Counsel Attorney²².

Description: The Chief Counsel Attorney reviews the information provided in the case file, the information presented at the hearing (if held), and the Region’s Recommendation. After this review, the Chief Counsel Attorney prepares a draft Safety Order that is sent to the Associate Administrator for review and approval.

The Chief Counsel Attorney confirms that the company name, address, and company official to whom the Safety Order is addressed are correct and current. The Safety Order must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.)

If the Chief Counsel Attorney’s review determines that a Safety Order is not warranted, then a letter to the operator withdrawing the case is prepared and sent to the Associate Administrator. (This process flow is not shown on the Safety Order cross functional diagram.)

Although not shown on the cross functional diagram, PHMSA and the operator could reach a settlement on the terms of a Consent Agreement at any time prior to issuance of the Safety Order.

4.4.6.2 Review and Approve Safety Order

Input: Draft Safety Order.

Output: Approved and signed Safety Order.

Responsibility: Associate Administrator.

Description: The Associate Administrator or Deputy Associate Administrator reviews the draft Safety Order. When the Associate Administrator, or Deputy Associate Administrator, determines the Safety Order to be satisfactory, the Associate Administrator or Deputy Associate Administrator approves and signs the order.

²² In cases where a hearing is held, the Presiding Official prepares the Safety Order.

4.4.6.3 Send Safety Order to Operator

Input: Approved and signed Safety Order.

Output: Safety Order sent to operator and Compliance Registry.

Responsibility: Office of Chief Counsel.

Description: The Chief Counsel's office sends the approved and signed Safety Order to the operator. The Safety Order is sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the Safety Order in its case files.

The Chief Counsel's office also sends electronic copies of the final Safety Order and the confirmation of receipt by the operator to the Compliance Registry. Refer to Section 5.1 for formatting requirements applicable. Additional recipients of the Safety Order are listed in Table 4-B.

4.4.6.4 Send Letter Withdrawing Notice to Operator and Compliance Registry

Input: Statements and evidence presented by the operator at the informal consultation.

Output: Letter Withdrawing Notice sent to the operator and the Compliance Registry.

Responsibility: Region Director.

Description: After or during the informal consultation, the Region Director may conclude that the risk condition is not as serious as originally understood and described in the Safety Order Data Report. After consulting with the Region Attorney and the Region staff assigned to the case, the Region Director may conclude that the proposed corrective measures are not warranted, and the case should be withdrawn. Following this decision, the Region staff, with assistance from the Region Attorney, prepare a draft letter to withdraw the case for the Region Director's signature. After reviewing the draft letter and resolving any comments with the Region staff and Region Attorney, the Region Director signs the letter and sends it to the operator and the Compliance Registry so the SMART case file can be updated and the case closed.

4.4.7 *Close Case for Safety Orders and Consent Orders*

Figure 4.4, Sheet 7 "Close Case" shows the steps necessary to close a case which resulted in either a Consent Agreement/Consent Order or a Safety Order. The process steps are the same in both cases. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.4.7.1 Confirm Operator Complied with Order

Input: Evidence that operator has performed corrective measures required in Safety or Consent Order.

Output: All evidence documents sent to Compliance Registry.

Responsibility: Region staff.

Description: Region staff assigned to follow the case monitor operator compliance with the terms in either the Consent Agreement or the Safety Order. Depending on the nature of the activities, this may involve reviewing procedures, records, integrity testing or assessment results, laboratory analysis, and engineering analysis or technical studies. On-site inspections may be required to verify satisfactory completion of some activities. To assure a complete case file, all operator submissions (e.g., correspondence, revised procedures, test results, etc.) are scanned (if necessary) and sent to the Compliance Registry so the SMART case file can be updated. Additional recipients of this material are listed in Table 4-B. Likewise, any Region-developed documentation (e.g., correspondence, requests for information, review comments on operator provided material, etc.) is also sent to the same distribution and the Compliance Registry.

4.4.7.2 Prepare Draft Closure Letter

Input: Evidence provided by the operator and Region staff observations.

Output: Draft letter to close case.

Responsibility: Region staff.

Description: After Region staff are satisfied the operator has completed all required actions, a draft letter to the operator closing the case is prepared. A template is provided for this letter.

4.4.7.3 Send Closure Letter to Operator

Input: Draft letter to close case.

Output: Signed letter to close case sent to operator.

Responsibility: Region Director.

Description: The Region Director reviews the operator actions with Region assigned to the case to confirm the operator has complied with all the requirements in the Consent Agreement or the Safety Order. The Region Director signs the letter closing the case and sends it to the operator. A copy of the closure letter is sent to the Compliance Registry so the SMART case file can be updated. Additional recipients of the closure letter are listed in Table 4-B. The case is now closed.

4.4.8 *Petition for Reconsideration*

After receipt of a Safety Order, operators have the right to petition the Associate Administrator to reconsider the ruling. A Petition for Reconsideration must be received by PHMSA no later than 20 days after the operator's receipt of the Safety Order. The petition must contain a brief explanation of the operator's objection and an explanation why the Order should be modified. Figure 4.4, Sheet 8, "Petition for Reconsideration" illustrates the overall process steps and individual responsibilities. The following discussion provides further explanation of the key steps in this process identified by bold borders in the cross functional diagram.

4.4.8.1 Assign Attorney and Review Petition

Input: Petition for Reconsideration submitted by the operator.

Output: Updated case file.

Responsibility: Office of Chief Counsel Attorney.

Description: Operators may petition the Associate Administrator for reconsideration of a Safety Order. This petition must be received no more than 20 days after the operator receives the Safety Order. Upon receipt of a Petition for Reconsideration, the Office of Chief Counsel assigns an attorney to the case to review the petition. The attorney reviews the operator's petition and determines the appropriate initial course of action on the petition.

The Chief Counsel attorney also sends a copy of the petition to the Compliance Registry to update the SMART case file. Additional copies of the petition are sent to the individuals listed in Table 4-B.

4.4.8.2 Prepare Decision on Petition

Input: Petition for Reconsideration.

Output: Draft Decision on Petition for Reconsideration in a fully edited proof-read and signature-ready format.

Responsibility: Office of Chief Counsel Attorney.

Description: The Office of Chief Counsel attorney assigned to the case prepares a draft Decision on Petition for Reconsideration. The attorney may consult with impartial technical resources at headquarters or in the Regions, as long as those individuals have had no previous involvement in prosecuting this case. In such proceedings, PHMSA personnel must abide by separation of functions and ex parte restrictions in 49 CFR 190.210 (discussed above).

4.4.8.3 Review and Approve Decision on Petition

Input: Draft Decision on Petition for Reconsideration.

Output: Approved and signed Decision on Petition for Reconsideration.

Responsibility: Associate Administrator.

Description: The Associate Administrator, or Deputy Associate Administrator, reviews the draft Decision on Petition for Reconsideration. When the Associate Administrator, or Deputy Associate Administrator, finds the draft Decision on Petition for Reconsideration to be acceptable, the Associate Administrator or Deputy Associate Administrator approves and signs the decision.

4.4.8.4 Send Decision on Petition to Operator

Input: Approved and signed Decision on Petition for Reconsideration.

Output: Decision on Petition for Reconsideration sent to operator.

Responsibility: Office of Chief Counsel.

Description: The Office of Chief Counsel sends the approved and signed Decision on Petition for Reconsideration to the operator. The decision is sent by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt. The Office of Chief Counsel retains a copy of the acknowledgement of operator receipt of the decision (e.g., the US Postal Service return receipt signed by the operator).

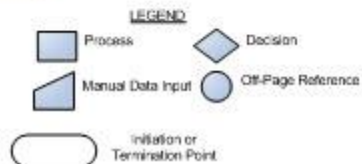
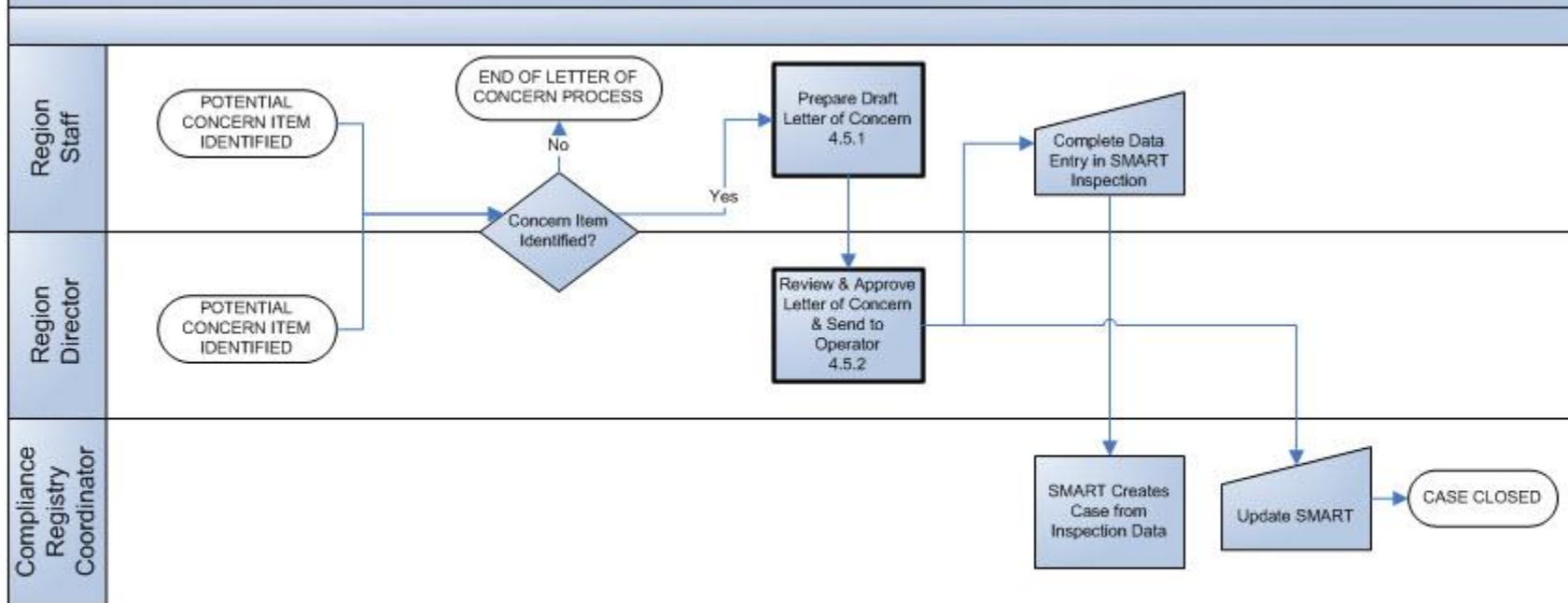
The Office of Chief Counsel sends a copy of the decision and the confirmation of receipt by the operator to the Compliance Registry to update the SMART case file. Additional copies of the decision are sent to individuals identified in Table 4-B.

4.5 Letters of Concern

This section describes the steps involved in processing a Letter of Concern. Figure 4.5 on the following page provides a cross functional diagram illustrating this process.

The following cross functional diagram and accompanying process descriptions identify the Region Director as responsible for certain steps in the enforcement process. Many of these responsibilities can be delegated to Region staff at the Region Director's discretion. However, the Region Director is ultimately responsible for the correct and timely completion of these steps.

Figure 4.5 Letter of Concern Process



Note: Steps with **bold borders** contain a reference to subsection numbers where additional narrative description is provided.

4.5.1 *Prepare Draft Letter of Concern*

Input: Identification of a potential concern item.

Output: Draft Letter of Concern.

Responsibility: Region staff.

Description: If the criteria in Section 3 lead to a potential “concern item,” Region staff prepare a draft Letter of Concern. A template is provided for preparing a Letter of Concern. The letter simply identifies the inspection where the concerns were identified, itemizes the concerns, and asks the operator to consider these issues in improving its safety management program. It also informs the company that no response to the letter is required.

The Letter of Concern is a separate letter; concern items are not included in Notices of Probable Violation or Notices of Amendment. It is possible that a single inspection could result in probable violations and/or inadequate procedures, and concern items. In these situations, a separate letter must be prepared for the probable violations, the inadequate procedures, and the concern items. Each of these letters receives a unique Compliance Progress File number.

The Letter of Concern must be addressed to the most senior pipeline operating company official such as the President or Chief Executive Officer; not the Vice President or a compliance manager. (The letter should not be addressed or copied to the larger parent company or holding company that is not the pipeline operating company.) Use whatever method of research necessary or contact the pipeline operating company to determine and verify who is the most senior company official. SMART is set up to assign a case to only one operator and one OPID. If there is a need to address the letter to multiple entities (e.g. the pipeline owner as well as the operator), the Region staff consults with the Region Attorney.

4.5.2 *Review and Approve Letter of Concern and Send to Operator*

Input: Draft Letter of Concern.

Output: Final Letter of Concern.

Responsibility: Region Director.

Description: The Region Director reviews the draft Letter of Concern with Region staff and discusses any comments, changes, or corrections with Region staff. If required, Region staff revise the draft Letter of Concern. When the Letter of Concern is satisfactory, the Region staff assigns a Compliance Progress File number according to the nomenclature provided in Section 5.2. The Region Director signs the letter and sends it to the operator using the method described in Section 5.1.

Upon issuance, the Region Director assigns Region staff to:

- Create a Region case file
- Enter case information into SMART, which documents the inspection results and proposed enforcement actions.

- Send case data to the Compliance Registry

This step is crucial to the prompt and accurate creation of an enforcement case record in the Compliance Registry. Region staff send the case data from SMART Inspection to the Compliance Registry (see illustration below); this creates the case in SMART Enforcement. The Compliance Progress File number and date of the notice letter are needed before this action can be completed.

The screenshot displays the 'Activity Detail' window in the SMART Enforcement system. The window has a top navigation bar with tabs: 'Activity Detail', 'New Search', 'Modify Search', 'First', 'Previous', 'Activity List', 'Next', 'Last', 'Help', and 'Print'. Below this is a sub-navigation bar with tabs: 'Activity', 'Assignments(1)', 'LS Items(2)', 'Comments', 'Portion Insp.', and 'Summary'. The main content area shows details for Activity ID 120445, Operator 26041 KINDER MORGAN LIQUID TERMINALS, LLC, and Unit 70443 MIDWAY PIPELINE. A callout box with the text 'click to open the "Send to CR" window' points to a 'Compliance Registry' button. Other fields include Activity Type 101, Status Complete, From Date 05/27/2008, To Date 05/30/2008, AFO Total Days 4.0, Activity Total Days 4.0, Lead Person ARCHULETTA, PHILLIP N, Person Region 3 - CENTRAL, Added By ARCHULETTA, PHIL, Date Added 01/09/2008, Updated By ARCHULETTA, PHIL, and Date Updated 12/03/2008. The bottom right corner shows '1 of 1' and navigation buttons: 'First', 'Previous', 'Next', and 'Last'.

- Send the Letter of Concern to the Compliance Officer and Compliance Registry. Refer to Section 5 for formatting requirements.
- Anything that the Region believes is needed to be documented in the case file should be sent to the Compliance Registry throughout the enforcement process.

When a new case transfers into SMART Enforcement and the case files are received from the Region, the Compliance Registry Coordinator:

- Uploads case files into SMART, and
- Performs SMART case data quality check.

Letters of Concern cases close immediately after the letter is issued. Operators are not required to respond to Letters of Concern and rarely do respond. In the event that an operator does respond to a Letter of Concern, this document should be scanned and sent to the Compliance Registry. This step is not shown on the cross functional diagram.

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Table 4-A Selection of Enforcement Documents

Selected Action	Is a Compliance Order (CO) proposed?	Is a Civil Penalty (CP) proposed?	Does each proposed PV have a CP or CO?	Example Letter/Form ^A	Attachment ^A	Violation Report required? ^A
Probable Violation ^B (PV)	Yes	Yes	Yes	NOPV (Civil Penalty/ Compliance Order) with “warning item” paragraph deleted	• Compliance Order • Response Options for Pipeline Operators in Compliance Proceedings	Yes
			No	NOPV (Civil Penalty/ Compliance Order) with “warning item” paragraph	• Compliance Order • Response Options for Pipeline Operators in Compliance Proceedings	
		No	Yes	NOPV (Compliance Order) with “warning item” paragraph deleted	• Compliance Order • Response Options for Pipeline Operators in compliance Proceedings	
			No	NOPV (Compliance Order), with “warning item” paragraph	• Compliance Order • Response Options for Pipeline Operators in compliance Proceedings	
	No	Yes	Yes	NOPV (Civil Penalty) with “warning item” paragraph deleted	Response Options for Pipeline Operators in Compliance Proceedings	No
			No	NOPV (Civil Penalty) with “warning item” paragraph	Response Options for Pipeline Operators in Compliance Proceedings	
		No		Warning Letter (WL)	none	
Amend Procedures ^C				Notice of Amendment (NOA)	Response Options for Pipeline Operators in Compliance Proceedings	
Concern ^C				Letter of Concern (LOC)	none	
Corrective Action ^C				CAO Data Report	as needed	
Safety Order ^C				Safety Order Data Report	as needed	

Notes

A - The example letters/forms reside on the PHMSA/PHP-60 Share Point site.

B - The notification to the operator of a probable violation must be a single letter and not combined with any other letter (e.g., an NOPV will not be combined with an NOA or LOC and then be re-titled as, for example, a NOPV-CP-NOA, NOPV-CP-LOC).

C - These notifications to an operator require an individual letter for each type of selected action.

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Table 4-B Distribution of Enforcement Documents

Notes:

- An “O” designates the originator (and who is responsible for ensuring proper distribution) of the document, an “●●” indicates responsibility for distributing a document originating from the operator, and “●” indicates the minimum parties to whom the document must be sent.
- Documents distributed within PHMSA should be electronic files.
- The originator/distributor is responsible for assigning a document file name and for following the special requirements for those documents that will be sent to the enforcement transparency web site. See Section 5

Document		Management			Enforcement Division		Operator	FAA	Office of Chief Counsel			Field Operations			
		Associate Administrator	Deputy Associate Administrator of Policy & Programs	Deputy Associate Administrator for Field Operations	Enforcement Director	PHMSA Pipeline Compliance Registry	Operator	Federal Aviation Agency	Presiding Official	Region Attorney	Region Attorney – other Regions	Region Director	Directors – other Regions	Assigned Region Staff	Accident Investigation Division
Notice Letters	Letter of Concern, Warning Letter or Notice of Amendment					•	•					O		•	
	Withdrawal of Letter of Concern, Warning Letter or Notice of Amendment			•		•	•					O		•	
	Notice of Probable Violation letter without a proposed civil penalty					•	•			•		O		•	
	Withdrawal of Notice of Probable Violation letter without a proposed civil penalty			•		•	•			•		O		•	
	Notice of Probable Violation letter with a proposed civil penalty					•	•	•		•		O		•	
	Withdrawal of Notice of Probable Violation letter with a proposed civil penalty			•	•	•	•	•		•		O		•	
	Violation Report (including all evidence documents such as maps, drawings, operator record forms, etc.)					•				•		O		•	
	Notice of Proposed Safety Order letter	•	•	•		•	•			•	•	O		•	•
	Notice of Proposed Corrective Action Order letter	•	•	•		•	•			•	•	O		•	•
	Withdrawal of Notice of Proposed Safety Order letter	•	•	•		•	•			•	•	O		•	•
	Withdrawal of Notice of Proposed Corrective Action Order letter	•	•	•		•	•			•	•	O		•	•
	Bankruptcy letter				•	•	•			•		O	•	•	
	Vandalism letter			•	•	•	•			•		O	•	•	•

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	Associate Administrator	Deputy Associate Administrator of Policy & Programs	Deputy Associate Administrator for Field Operations	Enforcement Director	PHMSA Pipeline Compliance Registry	Operator	Federal Aviation Agency	Presiding Official	Region Attorney	Region Attorney – other Regions	Region Director	Directors – other Regions	Assigned Region Staff	Accident Investigation Division
Region Letters	Region Request for Specific Information letter associated with an enforcement case				•	•					O		•	
	Region Response to request for time extension				•	•					O		•	
	Region Notification to schedule a hearing				•			•	•		O		•	
	Region Recommendation after a hearing has been held				•	•		•	•		O		•	
	Region Recommendation for a case with no hearing				•	• ²³			•		O		•	
Operator Responses	Operator Request for time extension				•	O					••		•	
	Operator's revised procedures				•	O					••		•	
	Operator Request for hearing				•	O		•	•		••		•	
	Operator Response to Request for Specific Information letter				•	O					••		•	
	Operator Response to a Warning Letter				•	O					••		•	
	Operator Response to a Letter of Concern				•	O					••		•	
	Operator Response to a Notice of Probable Violation letter				•	O			•		••		•	
	Operator Response to a Notice of Proposed Safety Order or Safety Order				•	O			•		••		•	
	Operator Response to a Final Order				•	O		•	•		••		•	
	Operator Response to a Consent Agreement				•	O			•		••		•	
	Operator post-hearing submissions				•	O		••	•		•		•	
	Operator Response to an Order Directing Amendment				•	O			•		••		•	
	Operator Response to a Notice of Proposed Corrective Action Order or a Corrective Action Order				•	O			•		••		•	
	Operator Petition for Reconsideration for a case without a civil penalty	•	•	•	•	O		••	••		•		•	
	Operator Petition for Reconsideration for a case with a civil penalty	•	•	•	•	O	•	••	••		•		•	

²³ See Subsection 4.1.6.5 for applicability to send the Region Recommendation to the operator when requested.

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		Associate Administrator	Deputy Associate Administrator of Policy & Programs	Deputy Associate Administrator for Field Operations	Enforcement Director	PHMSA Pipeline Compliance Registry	Operator	Federal Aviation Agency	Presiding Official	Region Attorney	Region Attorney – other Regions	Region Director	Directors – other Regions	Assigned Region Staff	Accident Investigation Division
Final Orders	Final Order (and Amendments) with civil penalty	•	•	•	•	•	•	•	O	O	•	•	•	•	
	Final Order (and Amendments) without a civil penalty	•	•	•	•	•	•		O	O	•	•	•	•	
	Decision on Petition for Reconsideration for a case without a civil penalty	•	•	•	•	•	•		O	O		•	•	•	
	Decision on Petition for Reconsideration for a case with a civil penalty	•	•	•	•	•	•	•	O	O		•	•	•	
	Consent Order without a civil penalty	•	•	•	•	•	•		O	O	•	•	•	•	
	Consent Order with a civil penalty	•	•	•	•	•	•	•	O	O	•	•	•	•	
	Order Directing Amendment (and Amendments)	•	•	•	•	•	•		O	O	•	•	•	•	
	Proof-of-Payment of civil penalty					•		O							
	Closure letter					•	•			•		O		•	
	Closure letter for a case with a civil penalty					•	•	•		•		O		•	
CAOs	Corrective Action Order (and Amendments)	•	•	•	•	•	•			O	•	•	•	•	•
	Corrective Action Order Data Report					•				•		O		•	•
	Decision on Corrective Action Order	•	•	•	•	•	•		O	•	•	•		•	•
	Closure Letter					•	•			•		O		•	•
Safety Orders	Safety Order (and Amendments)	•	•	•	•	•	•		O	O	•	•		•	•
	Safety Order Data Report					•				•		O		•	•
	Closure Letter					•	•			•		O		•	•