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**Submitted via [phmsaenforcement@dot.gov](mailto:phmsaenforcement@dot.gov)**

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**Re: Comments on Section 4 of the Pipeline Safety Enforcement Procedures**

Dear Ms. Wong:

The American Petroleum Institute (API),<sup>1</sup> GPA Midstream Association (GPA),<sup>2</sup> and the American Fuel & Petrochemical Manufacturers (AFPM),<sup>3</sup> collectively, the Associations, submit this letter in response to PHMSA's request for comments on section 4 of its Pipeline Safety Enforcement

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<sup>1</sup> API represents all segments of America's natural gas and oil industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our approximately 600 members produce, process and distribute the majority of the nation's energy, and participate in [API Energy Excellence®](#), which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency and sustainability.

<sup>2</sup> GPA Midstream has served the U.S. energy industry since 1921 and represents more than 50 domestic corporate members that directly employ 57,000 employees engaged in the gathering, transporting, processing, treating, storage, and marketing of natural gas, natural gas liquids, crude oil and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 470,000 jobs across the U.S. economy. In 2024, GPA Midstream members had an economic impact of \$191 billion through operating 502,900 miles of gas gathering pipelines, gathering more than 91 billion cubic feet per day of natural gas, and operating more than 342 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

<sup>3</sup> AFPM is the leading trade association representing the makers of the fuels that keep Americans moving and the petrochemicals that are the essential building blocks for modern life. To produce these essential goods, AFPM members depend on all modes of transportation to move their products to and from refineries and petrochemical facilities and have made significant infrastructure investments to support and improve the safety and efficiency of the transportation system. AFPM member companies depend upon an uninterrupted, affordable supply of crude oil and natural gas as feedstocks for the transportation fuels and petrochemicals they manufacture. Pipelines are the primary mode for transporting crude oil and natural gas to refiners and petrochemical facilities and refined products from those same facilities to distribution terminals serving consumer markets.

Procedures (the Procedures).<sup>4</sup> API, the Liquid Energy Pipeline Association (LEPA), and GPA previously included many of these topics in its comments filed on August 4, 2025 (the Deregulatory Comments).<sup>5</sup> The Associations have cross-referenced those comments here, where applicable. For administrative ease and recognizing that LEPA has already submitted redlines to the Procedures, the Associations have focused these comments on specific issues that would improve transparency and efficiencies in the inspection and enforcement process. The Associations appreciate the opportunity to submit these comments.

Sincerely,



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<sup>4</sup> <https://www.phmsa.dot.gov/news/phmsa-seeks-public-input-enforcement-procedures> (last accessed on April 13, 2026).

<sup>5</sup> Comment from LEPA, API, and GPA Midstream, PHMSA-2025-0050-0058 (Aug. 4, 2025).

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## **I. Introduction**

On March 24, 2026, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) announced on its website that it would accept comments on section 4 of its Administrative Enforcement Processes.<sup>6</sup> PHMSA explained that this document details each decision point and step in the enforcement process from initiation of a case to closure.<sup>7</sup> API, GPA, and AFPM appreciate this opportunity to improve these procedures and provide their members' collective feedback for the Agency's review. These comments are divided into five key topics: (1) Improving Inspection and Enforcement Communications; (2) Handling Certain Enforcement Cases and Filings; (3) Providing Clearer Guidance to Presiding Officials; (4) Incorporating Section 601117(b) of the Pipeline Safety Act; and (5) Miscellaneous Topics.

## **II. Improving Inspection and Enforcement Communications**

The Associations have identified three areas that would increase transparency and improve efficiencies within the inspection and enforcement processes.

### **A. Distribution of Inspection Schedules**

The Associations support the communication of planned inspection schedules on an annual basis. Recently, PHMSA announced its intention to move to a fiscal year for inspections. PHMSA should notify operators of the Agency's inspection plan each October for the subsequent fiscal year. This approach would help operators allocate resources, ensure personnel are available, and facilitate more efficient inspections. The Associations also request that PHMSA coordinate with its certified state authorities to determine if an operator's shared safety program (*i.e.*, Integrity Management, Control Room Management, etc.) has been reviewed and inspected within the same inspection cycle. Eliminating redundant inspections would improve inspection efficiencies and allow PHMSA to implement a risk-based focus to inspection planning.

### **B. Post-Inspection Communications**

#### **1. Notice of Termination**

The Associations support PHMSA's inclusion of a Notice of Termination process in section 4.1.1.3 of the Procedures<sup>8</sup> and recommend adding this process to Figures 4.1 and 4.2.<sup>9</sup> If the Agency determines that a Notice of Probable Violation, Notice of Amendment, or Warning Letter is not appropriate, then a Notice of Termination should be drafted and distributed.

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<sup>6</sup> <https://www.phmsa.dot.gov/news/phmsa-seeks-public-input-enforcement-procedures> (last accessed on April 13, 2026).

<sup>7</sup> *Id.*

<sup>8</sup> Procedures, at 18-19.

<sup>9</sup> Procedures, at 5 and 59.

In section 4.1.1.3, PHMSA should eliminate the statement that “A Termination of Inspection/Investigation letter is not necessary if the 90-day written preliminary findings report did not identify any potential violations.”<sup>10</sup> The operator should be notified that the inspection is complete in all situations.

## 2. Timely Distribution of Post-Inspection Documentation

The Associations recommend updating section 4.1.1.3 to discuss the deadlines for providing three important post-inspection documents: (1) the statutorily-required 30-day post-inspection briefing; (2) the 90-day written preliminary findings; and (3) the Inspection Output Report.<sup>11</sup> Operators often report that it is not clear when the post-inspection briefing has taken place (it is often verbal and not in writing) or they do not receive the Written Preliminary Findings within 90 days. The source of confusion is often related to uncertainties of knowing when an inspection is complete. In 2023, DOT’s Office of Inspector General reviewed PHMSA’s compliance with this statutory requirement and in doing so, confirmed that PHMSA “has 30 days from the *last day of the site visit* to brief the operator on inspection results and 90 days to provide the operator with written preliminary findings.”<sup>12</sup> The Associations recommend explicitly stating in the Procedures that the inspection is considered complete on the last day of the site visit.

In contrast, in section 4.1.1.3, PHMSA states that “An inspection/investigation is complete only after all Requests for Specific information have been received and appropriately reviewed.”<sup>13</sup> This approach will extend the duration of inspections. PHMSA inspectors should request documents during the onsite inspection and reduce their reliance on the request for information process at the end of an inspection.

PHMSA should also provide each operator with the Inspection Output Report (IOR). PHMSA explains in section 4.1.1.1 that this report serves as documentation of “all the issues and/or potential non-compliances observed during the inspection.”<sup>14</sup> PHMSA currently provides the IOR to operators during an enforcement case (upon receipt of a request for the case file). This is a critical document and PHMSA should provide it to the operator earlier in the process, *i.e.*, at the end of every inspection. Even if PHMSA chooses not to pursue enforcement, the IOR would offer operators valuable information to implement potential improvements.

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<sup>10</sup> Section 4.1.1.3 (page 18).

<sup>11</sup> See 49 U.S.C. § 60108(e)(1); See also, Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016, Pub. L. 114-183, § 7(a) (June 22, 2016). In 2016, Congress added a requirement to the Pipeline Safety Act directing PHMSA and certified state authorities to produce two key documents upon completion of the inspection: (1) a briefing within 30 days and (2) written preliminary findings within 90 days.

<sup>12</sup> “PHMSA Established an Effective Integrated Inspections Program but Needs to Strengthen the Guidelines to Mitigate Risks,” Report ST2023032 [https://www.oig.dot.gov/sites/default/files/PHMSA%20Integrated%20Inspections%20Final%20Report\\_5.31.23.pdf](https://www.oig.dot.gov/sites/default/files/PHMSA%20Integrated%20Inspections%20Final%20Report_5.31.23.pdf) (May 31, 2023) at 5.

<sup>13</sup> Section 4.1.1.3 (page 20).

<sup>14</sup> Section 4.1.1.1 (page 16 of the Procedures).

In summary, the Associations recommend the following 150-day schedule for post-inspection events:

- Completion of inspection: last day of onsite visit
- Post-Inspection Briefing: 30 days following completion of inspection
- Written Preliminary Findings Report: 90 days following completion of inspection
- Decision to Pursue Enforcement: 60 days following Written Preliminary Findings Report

### **3. Opportunity for Post-Inspection Meetings**

In 2020, Congress directed PHMSA to allow an operator and the region to convene one or more meetings for settlement or to simplify the issues.<sup>15</sup> The Associations' members value these opportunities. It has been a positive change to the enforcement process. Given this feedback, the Associations also support the ability for operators to have additional discussion with the regions upon receipt of the Written Preliminary Findings. Many operators file written responses, but it might be more efficient to schedule a meeting to discuss any misunderstandings. The Associations recommend the following additions to section 4.1.1.3 for this purpose:

Where practicable, the Region may engage in informal, pre-enforcement discussions with the operator to clarify technical issues, obtain additional context, or resolve factual questions prior to initiating formal enforcement action. Such engagement does not limit PHMSA's authority to proceed with enforcement and does not constitute a determination regarding the existence or disposition of any alleged violation.

### **4. Eliminating Parallel Inspections**

The Associations appreciate PHMSA's inclusion of language in section 4.1.4 advising region staff not to conduct a new inspection against the same operator at the same location while an enforcement action is ongoing.<sup>16</sup> Operators are often in a holding pattern waiting for a decision in an enforcement case when PHMSA re-inspects its pipeline assets for the same issue. However, PHMSA should remove the 'same location' language. As PHMSA is aware, pipeline operators often apply their procedures to entire systems or across subsidiaries through shared pipeline safety programs. If PHMSA has made an allegation that an operator's procedures are inadequate or its interpretation of a code requirement is incorrect, the same issue could be relevant at other locations. It would be more efficient for PHMSA to determine whether non-compliance truly exists prior to inspecting other assets for the same issue. The General Counsel's Memo on Enforcement Actions (OGC Memo) advises that agencies "should not initiate additional investigations of a party after commencing an enforcement action absent a showing of good cause (*e.g.*, new complaints, accidents, or incidents), except when the additional investigation is prompted by facts uncovered

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<sup>15</sup> 49 U.S.C. § 60117(b)(1)(B).

<sup>16</sup> Section 4.1.4 (page 34 of the Procedures).

in the initial investigation.”<sup>17</sup> Since the OGC Memo did not make a distinction between locations of the same operator, PHMSA should do the same and strike “at the same location” from section 4.1.4.

After commencing an enforcement action against an operator, PHMSA should not conduct a new inspection/investigation against the same operator (**including those with shared safety programs**) ~~at the same location~~ while the enforcement action is 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.

## **C. Streamlining Enforcement Communications**

### **1. Decision to Pursue Enforcement**

Pursuant to the OGC Memo, agency enforcement staff “must make a decision on pursuing an administrative action within 30 days of the completion of the inspection or investigation and commence an enforcement action as soon as possible thereafter.”<sup>18</sup> The Associations appreciate the recent addition of language in section 4.1.1.3 that directs the regions to make a decision on enforcement within “30 days of the completion of the review of all available information.”<sup>19</sup> However, PHMSA should run this timeframe from the distribution of the written preliminary findings report (due within 90 days of the onsite inspection). In order to allow operators to respond to the written preliminary findings, PHMSA should update section 4.1.1.3 by extending the deadline to make a decision on enforcement to 60 days from release of the written preliminary findings.

The Associations have reviewed enforcement cases issued within the last five years and have confirmed that enforcement notices are frequently issued 2-3 years after an inspection and sometimes the inspection itself takes years.<sup>20</sup> The Associations recognize that PHMSA has a five year statute of limitations pursuant to federal law to initiate an enforcement case.<sup>21</sup> However, adding an intermediate deadline of 60 days to determine whether enforcement is appropriate (running from the release of the written preliminary findings) is a commonsense approach that will allow PHMSA to expedite its process, especially if there is a safety concern. The Associations support making the following revision in section 4.1.1.3 to benefit the public, the operator, and the Agency.

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<sup>17</sup> Procedural Requirements for DOT Enforcement Actions (Mar. 11. 2025) at 9.

<sup>18</sup> *Id.*

<sup>19</sup> Section 4.1.1.3 (page 18 of the Procedures).

<sup>20</sup> <https://primis.phmsa.dot.gov/enforcement-data/> (last accessed on Apr. 14, 2026).

<sup>21</sup> 28 U.S.C. § 2462.

~~When all available information has been obtained and reviewed~~ Within 60 days of the issuance of the written preliminary findings report, 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 60 days of the completion of the ~~review of all available information written preliminary findings~~.

The Associations also request that PHMSA document this decision and share it with the operator.

## **2. Release of Violation Report, Civil Penalty Worksheet, and the Case File**

Both Part 190 and the Procedures direct region staff to provide the Violation Report and the Civil Penalty Worksheet to the operator within 5 days of the request.<sup>22</sup> As reflected in the Deregulatory Comments,<sup>23</sup> PHMSA should modify section 4.1.6.1 of the Procedures to allow for the distribution of these documents to the operator at the same time as the issuance of the Notice. The Violation Report and the Civil Penalty worksheet are key documents supporting PHMSA's case. The operator should not have to request those documents. Likewise, PHMSA should update sections 4.3 and 4.4 of the Procedures to direct region staff to distribute the Corrective Action Order (CAO) and Safety Order Data Reports to the operator when a CAO or a Notice of Proposed Safety Order is issued.

In terms of the case file, the Associations appreciate and support the Chief Counsel's memo dated May 29, 2025, referencing the statutory requirement to provide respondents in enforcement cases with "pertinent records."<sup>24</sup> PHMSA should review and update section 4.1.6.1 of the Procedures to reflect the direction from this memo.<sup>25</sup> The current text of the Procedures provides that if the operator seeks additional records *after* receiving the case file, the region staff will "search for agency records pertinent to the matters of fact and law asserted."<sup>26</sup> For instance, section 4.1.6.1 allows for region staff to search for photos taken during the inspection that were not already included in the case file.<sup>27</sup> These documents should be sent with the case file, as they are part of the case file. All records pertinent to the allegations should be included in the case file. Inspector notes and photos should be collected and indexed post-inspection. There should not be a need for the region to search files or to provide additional records after the case file is distributed.

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<sup>22</sup> 49 C.F.R. § 190.208; *See also*, section 4.1.6.1 (page 38 of the Procedures).

<sup>23</sup> Deregulatory Comments, at 32.

<sup>24</sup> <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2025-06/PHMSA%20Chief%20Counsel%20Memo%20-%20Revised%20Procedures%20for%20Determining%20the%20Contents%20of%20the%20Case%20File%20in%20Pipeline%20Safety%20Enforcement%20Proceedings%205.29.2025.pdf>

<sup>25</sup> Section 4.1.6 (page 39).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Finally, the Agency states in section 4.1.6.1 that “the Region should respond to the additional request for documents within 60 days, unless otherwise required by law.”<sup>28</sup> PHMSA should strike this sentence. Sixty days would create an unprecedented delay in processing an enforcement case. The operator cannot file a response without the benefit of these records and certainly cannot make a decision whether to pursue a hearing without the complete case file.

### III. Handling Certain Enforcement Cases and Filings

#### A. Warnings

##### 1. Adjudicating Warnings

As discussed in the Deregulatory Comments, PHMSA should adjudicate warnings.<sup>29</sup> The Associations appreciate PHMSA’s inclusion of language in section 4.1.5.1 of the Procedures that advises region staff that warning letters *can be* withdrawn.<sup>30</sup> However, it is confusing because PHMSA also states in the same section that the Agency “does not adjudicate Warning Items.”<sup>31</sup> Directing the region staff to review the operator’s response to “determine what, if any, action or reply the Region may elect to take...as a result of the operator’s response,” is effectively adjudicating the Warning *ex parte*, without the involvement of the operator or a neutral decisionmaker. This approach is inconsistent with the duty to review for legal sufficiency and the due process considerations in the OGC memo.<sup>32</sup>

The Associations previously raised concerns regarding the lack of process for warning letters in a 2013 rulemaking.<sup>33</sup> In response to those comments, the Agency modified 49 C.F.R. § 190.205 to explicitly allow an operator to submit a response to a warning, but maintained that it was under no obligation to adjudicate warnings to determine if they were supported by the facts and law.<sup>34</sup> PHMSA specifically stated that “Warnings are complete upon issuance and PHMSA does not make

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<sup>28</sup> Section 4.1.6.1 (page 39 of Procedures).

<sup>29</sup> Deregulatory Comments, at 24.

<sup>30</sup> See section 4.1.5.1 (page 37 of the Procedures). Historically, PHMSA has withdrawn warnings. See *In the Matter of Alyeska Pipeline Company*, CPF No. 5-2008-5001W (Feb. 27, 2008); *In the Matter of Gas Transmission Northwest LLC*, CPF No. 5-2012-1004W (Feb. 21, 2012); *In the Matter of Colorado Interstate Gas*, CPF No. 5-2015-1001W (Jan. 15, 2015); *In the Matter of Buckeye Partners*, CPF No. 4-2012-5015 (Oct. 18, 2012); *In the Matter of Conoco Phillips*, CPF No. 5-2004-5009 (Sep. 20, 2006); *In the Matter of Natural Gas Pipeline Co.*, CPF No. 23103 (Aug. 18, 1997); *In the Matter of ExxonMobil*, CPF No. 5-2005-5008 (Jan. 9, 2007); *In the Matter of Bridger Pipeline*, CPF No. 5-2009-5034 (Aug. 30, 2012); *In the Matter of Kinder Morgan, Inc.*, CPF No. 5-2007-1008 (Sep. 1, 2009).

<sup>31</sup> Section 4.1.5.1 (page 37 of the Procedures).

<sup>32</sup> [DOT General Counsel Enforcement Memo](#), at 5 (Duty to Review for Legal Sufficiency)(agency personnel should ensure that the basis for an enforcement action is legally sufficient before initiating it); See also, OGC Memo, at 2.

<sup>33</sup> Comments from the LEPA and API in response to PHMSA’s Pipeline Safety: Administrative Procedures; Updates and Technical Corrections Notice of Proposed Rulemaking (Docket No. PHMSA-2012-0102), available at [PHMSA-2012-0102-0004 attachment 1.pdf](#).

<sup>34</sup> 78 Fed. Reg. 58,897, 58,900.

subsequent findings as to whether the factual allegations in the warning were proven by evidence in the record.”<sup>35</sup> The Agency relies on these statements in section 4.1.5 of the Procedures.

Warnings are impactful, not only because they are public documents, but PHMSA routinely informs recipients of warning letters to correct the issue “or be subject to potential enforcement action in the future.”<sup>36</sup> For these reasons, the Agency must determine whether a warning letter is supported by the facts and the law. PHMSA should include warnings, both in stand-alone letters or included in a Notice of Probable Violation, in its list of enforcement cases that either the Presiding Official or the Adjudicating Attorney can review.

## **2. Use of Violation Reports for Warnings**

The Associations support the use of Violation Reports to document probable violations alleged in all Warnings. In section 4.1.3.1, the Agency states that warning letters do not require Violation Reports.<sup>37</sup> In the same section, the Agency recommends, but does not require, that region staff support warning letters with evidence.<sup>38</sup> The Associations recommend modifications to this section. The Agency must produce supporting evidence for all alleged violations, including probable ones. Region staff routinely complete the Violation Report for those warnings that are included in a Notice of Probable Violation case, and the Agency should do the same for stand-alone Warning Letters. PHMSA has issued as many as 102 warning letters to operators in a single year.<sup>39</sup> Supporting those warning letters with documented evidence should not be optional.

### **B. Requests for Specific Information**

As discussed in the Deregulatory Comments,<sup>40</sup> the Associations have identified two ways the Request for Specific Information section should be modified: (1) the deadlines for responses and (2) the general use of this tool.

#### **1. Response Deadlines**

The Associations seek revisions to the response deadlines referenced in section 4.1.2.3. While Part 190 has a default response timeframe of 30 days, both section 190.203(c) and the Enforcement Manual allow the inspector to set a deadline of less than 30 days.<sup>41</sup> In the 2013 final rule decreasing the response timeframe from 45 days to 30 days, PHMSA acknowledged that the default response

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<sup>35</sup> *Id.*

<sup>36</sup> See text in various warning letters found at [https://primis.phmsa.dot.gov/enforcement-data/cases/WL?opened\\_yr=2026](https://primis.phmsa.dot.gov/enforcement-data/cases/WL?opened_yr=2026) (last accessed on April 14, 2026).

<sup>37</sup> See section 4.1.5 (“While Warning Letters do not require Violation Reports, these public allegations of non-compliance should be supported with evidence collected during inspections (where appropriate).”)

<sup>38</sup> *Id.*

<sup>39</sup> See <https://primis.phmsa.dot.gov/enforcement-data/actions/cases-initiated> (last accessed on Apr. 13, 2026).

<sup>40</sup> Deregulatory Comments, at 21-22.

<sup>41</sup> Section 4.1.2.3 (“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”).

time is 30 days.<sup>42</sup> Unfortunately, in practice, shorter timeframes have become the default. Agency inspectors frequently request that operators respond to lengthy information requests within 7-15 days. Pipeline facilities have become increasingly complex over time due to technological advancements. Responding to a request for information may require operators to identify, gather, review, and compile information and data that is complex in nature. Further, asset information can be quite voluminous and thus stored at offsite storage facilities. Responding to information requests, therefore, can be resource and time-intensive and may take operator staff away from executing normal and daily operational duties.

The Associations recommend that PHMSA provide additional clarity in the Procedures related to when a deadline shorter than 30 days is appropriate. To this end, the Associations' position is a deadline shorter than 30 days should only be used in the context of incident or accident investigations.

## **2. Appropriate Use of Requests for Information**

Requests for Information can be fairly broad in scope seeking records dating back to construction, which in some cases amounts to decades. In order to conserve resources, the Associations suggest the following revision to section 4.1.2.1 to require attorney review ensuring that requests for information are narrowly tailored.

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~~ **must** consult with the Region Attorney ~~to determine that the request is narrowly tailored, particularly if the request is related to a significant accident or incident, or where a large civil penalty may be anticipated.~~ Region staff **must** provide the draft request to the Region Director for review and approval.

Some regions are using the request for information tool to supplement the record in an enforcement case. The Associations suggest that PHMSA include additional language in section 4.1.2.1 to confirm that a request for information cannot be used during a pending enforcement proceeding.

### **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.

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<sup>42</sup> Pipeline Safety: Administrative Procedures; Updates and Technical Corrections, 78 Fed. Reg. 58,897, 58,899 (Sept. 25, 2013) (“PHMSA is further changing the proposed language to provide that, while the default response time is 30 days, an RSI may provide another response time. Thus, depending on the scope of the request, the RSI may provide a longer or, if reasonable, a shorter response time”).

Information requests cannot be used during an enforcement proceeding.

### **C. Letters of Concern**

PHMSA describes a letter of concern as a letter that “itemizes concerns and asks the operator to consider these issues in improving its safety management program.”<sup>43</sup> In section 3 of the Procedures, PHMSA explains further that “[a] letter of concern is used to notify a pipeline operator that an aspect of its pipeline safety program does not conform to sound safety management and engineering practices, *even though the operator may not be out of compliance.*”<sup>44</sup> The purpose of this document appears to be duplicative of other post-inspection documents such as the Inspection Output Report or the Written Preliminary Findings and therefore may be unnecessary. PHMSA should consider eliminating letters of concern from its list of enforcement actions.

### **D. Subpoenas**

The Associations seek changes to section 4.1.7.3 covering subpoenas. In that section, PHMSA states that “the Presiding Official may: deny the application [for a subpoena]; quash or modify the subpoena; or condition a grant or denial upon satisfaction of certain requirements. The denial may be summary.”<sup>45</sup> PHMSA should remove the “denial may be summary” language and replace it with “if denied, the Presiding Official will state the reason for the denial in writing.”

## **IV. Providing Clearer Guidance to Presiding Officials**

PHMSA has had several presiding officials in recent years. For training purposes, the Associations recommend that the Procedures include a stand-alone section, rather than widespread references, for presiding officials to follow. In building upon the Deregulatory Comments,<sup>46</sup> the Associations request that PHMSA clarify the following language in the Procedures.

### **A. Location of Hearings**

The Associations request that PHMSA revise section 4.1.7.2 to confirm that hearings should occur at the appropriate region or at a location mutually agreed upon by the Office of Pipeline Safety and the operator. PHMSA states in section 4.1.7.2 that “[t]he hearing is held in-person, by teleconference, or video conferencing *at the discretion of the Presiding Official.*”<sup>47</sup> Allowing the Presiding Official to select the location of a hearing is not supported by Part 190. Section 190.211(c) provides that “in-person hearings will normally be held at the office of the appropriate

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<sup>43</sup> Section 4.5.1 (page 142).

<sup>44</sup> Section 3 of Pipeline Safety Enforcement Procedures (Selection of Administrative Enforcement Actions), § 3.2.4.1 (Nov. 25, 2025)(emphasis added).

<sup>45</sup> Section 4.1.7.3 (page 52).

<sup>46</sup> Procedures, at 25-27.

<sup>47</sup> Section 4.1.7.2 (emphasis added).

OPS Region.”<sup>48</sup> For decades, PHMSA has scheduled hearings at its regional offices. Virtual hearings should be the exception, not the rule.

### **B. Deadlines for Pre-Hearing Submissions**

The Associations seek additional clarifying edits in section 4.1.7.3. In that section, PHMSA states that the pre-hearing submission for both the operator and the region are due “as soon as practicable, but at least 10 days prior to the hearing date, unless the Presiding Official specifies a different deadline.”<sup>49</sup> Pre-hearing submissions are not required and, if filed, are due 10 days prior to the hearing.<sup>50</sup> While the pipeline safety regulations allow presiding officials to assign a different deadline, historically that was used in unique situations such as the parties needing more time to potentially finalize a settlement. Recently, PHMSA has taken the approach that pre-hearing submissions are due weeks prior to the hearing. This approach is disruptive to settlement negotiations, which if successful, would ease the administrative burden on the agency. PHMSA should add a discussion in the Procedures explaining when a different deadline is appropriate.

### **C. Availability of Recommended Decisions**

Contrary to the informal adjudication process of other DOT operating modes and other Federal agencies,<sup>51</sup> PHMSA does not provide the recommended decision to the respondent. To allow for greater transparency in the adjudication process, the Associations urge PHMSA to require that the recommended decision be provided to the respondent at the same time it is forwarded to the Associate Administrator. The presiding official’s recommended decision is a result of his or her evaluation of the case file, including material evidence presented at the hearing.<sup>52</sup> Particularly, since the presiding official is tasked with assessing credibility of witnesses at the hearing, and the Associate Administrator does not attend hearings nor is a transcript required, it is important from a due process perspective that PHMSA provide the recommended decision to the respondent. Other agencies, including DOT modes, provide an initial decision to the Respondent.<sup>53</sup> The Associations request that PHMSA take the same approach.

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<sup>48</sup> 49 C.F.R. § 190.211(c).

<sup>49</sup> Section 4.1.7.3.

<sup>50</sup> 49 C.F.R. § 190.211(d).

<sup>51</sup> 49 C.F.R. § 209.323 through 327 (FRA regulations consider an initial decision, finality of decision, and appeal process); 49 C.F.R. § 13.232 (FAA’s regulations outlining the requirements for the issuance of an initial decision at the conclusion of a hearing); 40 C.F.R. § 22.27(c) (EPA regulations contemplate an initial decision, a motion to reopen a hearing, and an appeal process); 29 C.F.R. § 38.112 (DOL regulations provide procedures for an initial decision and final decision); 21 C.F.R. Part 12, Subpart G (FDA’s procedures for initial and final decisions).

<sup>52</sup> The Presiding Official regulates the course of the hearing, including giving the parties an opportunity to offer material and relevant testimony. 49 C.F.R. § 190.211(e). The Presiding Official then prepares a recommended decision in the case based on a review of the case file. 49 C.F.R. § 190.211(h). This would include a review of any material, such a witness testimony, provided during the hearing. 49 C.F.R. § 190.209(b)(6).

<sup>53</sup> 49 C.F.R. § 209.323 through 327 (FRA regulations consider an initial decision, finality of decision, and appeal process); 49 C.F.R. § 13.232 (FAA’s regulations outlining the requirements for the issuance of an initial decision at the conclusion of a hearing); 40 C.F.R. § 22.27(c) (EPA regulations contemplate an initial decision, a motion to reopen a hearing, and an appeal process); 29 C.F.R. § 38.112 (DOL regulations provide procedures for an initial decision and final decision); 21 C.F.R. Part 12, Subpart G (FDA’s procedures for initial and final decisions).

## **V. Incorporating Section 60117(b) of the Pipeline Safety Act**

In 2020, Congress added section 60117(b)(Enforcement Procedures) to the Pipeline Safety Act.<sup>54</sup> The Associations have reviewed the revisions PHMSA has made on account of this statutory change and provide the following comments.

### **A. Settlement Meetings**

The Associations support the revisions to section 4.1.6.6 recognizing the option for settlement meetings to aid in the disposition of the issues.<sup>55</sup> However, that section only pertains to Notices of Probable Violation. The opportunity to request a meeting to aid in the disposition of issues is permissible for any PHMSA enforcement case, not just Notices of Probable Violation.<sup>56</sup> The Associations recommend that PHMSA update the other sections of the Procedures to allow for these meetings.

### **B. Use of Consent Agreements**

The Associations are also appreciative of PHMSA's revisions in section 4.1.6.6 to accommodate the use of consent agreements. As with settlement agreements, the statutory provision is not limited to Notices of Probable Violation.<sup>57</sup> PHMSA should update the Procedures to reflect that the Agency can enter into a consent agreement for any enforcement case type.

### **C. Replies to the Region's Post-Hearing Recommendation**

PHMSA recently amended section 4.1.7.5 to comply with section 60117, specifically, to allow for an operator's responses to the region's post-hearing recommendation.<sup>58</sup> The Associations appreciate this update. However, PHMSA should make further revisions to this section prohibiting a region response to the operator's reply. The Procedures currently allow the operator to file a post-hearing submission, the region then files its post-hearing region recommendation, and on account of the direction of Congress, the operator can respond to "any post-hearing submission by the Region."<sup>59</sup> The statute does not allow for Agency responses to the operator's reply<sup>60</sup> and given that the Agency has the burden of proof, the operator should have the final response. To provide clear direction to the Presiding Official, PHMSA should amend section 4.1.7.5 to prohibit further post-hearing responses from the region (after the region recommendation).

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<sup>54</sup> 49 U.S.C. § 60117(b)(1).

<sup>55</sup> Section 4.1.6.6 (page 43 of the Procedures).

<sup>56</sup> 49 U.S.C. § 60117(b)(1)(B) ("In implementing enforcement procedures under this chapter and part 190 of title 49, Code of Federal Regulations (or successor regulations), the Secretary shall allow the respondent and the agency to convene 1 or more meetings-(i) for settlement or simplification of the issues; or (ii) to aid in the disposition of issues").

<sup>57</sup> 49 U.S.C. § 60117(b)(1)(A).

<sup>58</sup> Section 4.1.7.5; 49 U.S.C. 60117(b)(1)(D) ("In implementing enforcement procedures under this chapter and part 190 of title 49, Code of Federal Regulations (or successor regulations), the Secretary shall allow the respondent to reply to each post-hearing submission of the agency").

<sup>59</sup> Section 4.1.7.5.

<sup>60</sup> 49 U.S.C. 60117(b)(1)(D).

## D. Petitions for Declaratory Order

As discussed in the Deregulatory Comments,<sup>61</sup> the Associations seek the removal of footnote 15 in the Procedures. Section 60117(b)(1)(J) requires the Agency to “allow an operator to request that an issue of controversy or uncertainty be addressed through a declaratory order in accordance with section 554(e) of title 5.”<sup>62</sup> Declaratory orders are considered final agency action and are a useful and necessary tool for enforcement agencies. Yet, PHMSA states in the Procedures that “if an operator requests a declaratory order under 5 U.S.C. § 554(e), PHMSA will refer the operator to submit a request for written interpretation.”<sup>63</sup> PHMSA then references section 190.11(b).<sup>64</sup> A declaratory order is final agency action. It is not an interpretation. Since the PIPES Act of 2020 became law, PHMSA has received petitions for declaratory orders and posted them for notice and comment.<sup>65</sup> PHMSA should remove footnote 15 in the Procedures and replace it with a process for handling these types of filings.

## VI. Miscellaneous Topics

### A. Reliance on Guidance Documents

In both the inspection and enforcement contexts, inspectors often rely on guidance documents to support their position. The Associations recognize that PHMSA has included limitations on the use of guidance in section 4.1.3.1 of the Procedures.<sup>66</sup> The Associations recommend expanding this text to include the following:

~~Guidance documents do not create binding requirements that are not otherwise required by statute or regulation. See General Counsel Enforcement Memo. Guidance documents ~~can~~ should only be used to provide context for 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~~ ~~acceptable~~ guidance documents that may be used to ~~support an~~ provide context for an allegation of violation ~~include~~ are:

- OPS published “Enforcement Guidance” on various technical subjects, such topics as corrosion, integrity management, operations and maintenance, and operator qualification.

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<sup>61</sup> Deregulatory Comments, at 34-35.

<sup>62</sup> 49 U.S.C. § 60117(b)(1)(J).

<sup>63</sup> Procedures at 77, fn. 15.

<sup>64</sup> *Id.*

<sup>65</sup> See *Pipeline Safety: Mifflin Energy Corporation’s Petition for Declaratory Order Concerning Part 192 Jurisdiction and Operator Responsibility over Customer-Owned Piping*, <https://www.regulations.gov/document/PHMSA-2023-0080-0002> (Nov. 9, 2023).

<sup>66</sup> Section 4.1.3.1 (page 24).

- The preamble of final rules.
- Advisory bulletins, ~~FAQs~~, and similar notices published in the Federal Register ~~or on the PHMSA website~~.

## **B. Supervisor and Attorney Review**

The Associations continue to support the use of supervisors and attorneys to review and approve key documents including written preliminary findings, notices initiating enforcement, and requests for information. Attorney review could eliminate unnecessary amendments and improve consistency across regions, particularly when the same regulation is cited. The Associations appreciate the text in section 4.1.3.1 confirming that “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.”<sup>67</sup> Expanding attorney review will further assist PHMSA in meeting these obligations.

## **C. Addressing Enforcement Documents**

In various sections of the Procedures, PHMSA advises its region staff to address enforcement letters to the most senior pipeline operating company official, not the Vice President or the compliance manager.<sup>68</sup> The Agency further directs region staff to use “whatever method of research necessary” to determine the correct point of contact for the operator.<sup>69</sup> This is inefficient and unnecessary. Instead, the Associations recommend using the contact information that is supplied by the operator in the PHMSA Portal to address the enforcement letter with a copy to either the vice president or compliance manager.

## **VII. Conclusion**

The Associations appreciate the opportunity to provide recommended revisions to section 4 of the Pipeline Safety Enforcement Procedures and look forward to continued discussions on these topics.

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<sup>67</sup> *Id.* at page 21.

<sup>68</sup> Sections 4.1.3.1, 4.2.3.1, 4.1.8.1, 4.2.7.1, 4.3.1.3, 4.3.2, 4.4.1.3, 4.4.4.3, 4.4.6.1, 4.5.1 (Pages 22, 50, 72, 85, 99, 102, 119, 129, 135, 142).

<sup>69</sup> Section 4.1.3.1 at page 22.