



Forest Resources Act

Compliance and Enforcement Operational Policy and Procedures

February 2011

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Responsible Area: Client Services and Inspections Branch, Forest Management Branch

Replaces: All related operational compliance and enforcement policies and procedures previously issued in respect to Forest Management under the *Territorial Lands (Yukon) Act, Territorial Timber Regulation and Yukon Lands Act.*

Staff Affected: All branch staff engaged in compliance and/or enforcement activities of the *Forest Resources Act and Regulations.*

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Approved By:



Director of Forest Management Branch

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Introduction

A principle objective of Energy Mines and Resources (EMR) is ensuring compliance in carrying out its mandate. This is achieved through education, prevention, and enforcement; all of which are considered compliance tools. Consideration will be given to using the most appropriate tool necessary to obtain compliance and promote general deterrence. Prosecution is an essential compliance tool to be applied judicially when necessary, but is reserved for those situations where previous compliance efforts of education and prevention are unable to achieve the desired outcomes; or, it has been otherwise determined that a prosecution response is appropriate given the circumstance and gravity of the specific offense.

By guiding the selection of appropriate tools to respond to non-compliance, the Compliance and Enforcement Operational Policy and Procedures will provide fairness, consistency and structure to the assessment of, and response to, regulatory non-compliance. The establishment of a prosecution (case file) investigation review process ensures that, where necessary, communications will occur between Forest Management Branch, Client Services and Inspection Branch and the Department of Justice. These measures further the Department's aim of providing greater consistency, increased clarity and predictability regarding the consequences of non-compliance, as well as assurance that resources are directed to the highest priorities. The balanced and principled use of education, prevention and enforcement will demonstrate the Department's commitment to ensuring compliance while building public confidence through fair, accountable and transparent application of all legislation under its mandate.

Definitions

For the purposes of this policy:

Amendment or Cancellation of Orders - where an order has been issued, a Forest Officer or the Director (whichever is appropriate in the circumstances) may amend, suspend, add or delete a term or condition in an order.

Branch Staff - means staff within the branches of Forest Management and/or Client Services and Inspections.

Charge Approval - the decision process where Legal Counsel reviews all the information and evidence submitted to them by way of a Report to Crown Counsel, in order to determine if charges are approved for prosecution (have merit and meet the public interest standard).

Charges - laying of charges by way of a Summary Convictions Ticket or an Information sworn before a Justice of the Peace.

Closing of an Activity - is an Order given by the Director to a license or permittee. The Director may, by order directed to the licensee or permittee, suspend or cancel a harvesting licence, a cutting permit, or a forest resources permit; and, order the cessation of an activity authorized by the licence or permit. Reasonable notice and opportunity to make representation must be given.

Compliance - means conformity with guidelines and regulatory requirements established by government to protect the environment, human health and safety. This policy addresses the use of tools used to secure compliance with regulatory requirements.

Compliance Tool - is an action or initiative taken by the Department to promote compliance and to resolve non-compliance. This includes education (advisories, brochures, notices and personal and oral communication with clients and the public), prevention (inspections, compliance checks, patrols, etc), and enforcement (notice of non-compliance, protection order, court orders closing an activity, verbal or written warnings, tickets and charges compelling mandatory court appearance).

Court Order for Compliance - where a person fails to comply with a Protection Order or an Order Closing of an Activity the Director may apply to the Supreme Court for an injunction ordering that person to comply with the order under any terms and conditions the Supreme Court may determine.

Due Diligence - taking all reasonable precautions to prevent or avoid a non-compliant occurrence. This defense requires that a person take all the care to which a reasonable person might have been expected to take in the circumstance.

Enforcement - is one response in the array of tools that may be used to achieve compliance; it includes notices of non-compliance, protection orders, tickets and formal charges involving mandatory court appearance.

Forest Management Compliance Team - includes: Director, Client Service and Inspections; Manager, Sustainable Resources Services; Director, Forest Management Branch; Manager, Forest Management Operations, and Government of Yukon Legal Counsel.

Forest Officer - a person or class of persons, duly designated by the Director, Forest Management Branch pursuant to Section 37(1) of the *Forest Resources Act*.

Inspections - activities undertaken to verify compliance with a regulatory requirement.

Investigations - activities involved in the gathering of information and evidence relevant to a suspected non-compliance, where the purpose is establishing the factual basis of an occurrence.

Legal Counsel - a prosecutor employed by, or on contract to, the Yukon's Department of Justice.

Legislative Requirements - requirements established through acts, regulations, authorizations and other legal means.

Non-Compliance - failure by a regulated party to meet regulatory requirements, or by a person or activity under that party's control (who is deemed to be not in compliance with the act).

Non-Compliance Decision Matrix - a table that guides a response to non-compliance, considering the environmental, human health and safety impacts, and the regulated party's likelihood of achieving compliance.

Notice of Non-Compliance - is a document that notifies a party that they **are not** in compliance with a specific regulatory requirement. The Notice will include specific instructions and dates to remedy the non-compliance; and warns of escalating response should non-compliance continue.

Notice of Voluntary Compliance - a document (Inspection Report) notifying a party that they are in compliance with a specific regulatory requirement; identifies areas where minor improvements in operations are required; generally this information is recorded in an Inspection Report as satisfactory or unsatisfactory.

Protection Order - is an order that notifies the person conducting an activity to cease the activity causing harm to the natural environment, or human health and safety; or, to take any other action necessary to prevent, remedy or mitigate the harm.

Reasonable and Probable Grounds - a set of facts or circumstances that leads one to arrive at a conclusion (based upon an informed opinion) beyond that of mere suspicion.

Report to Legal Counsel - a completed case file submitted to Crown Counsel containing all the information and evidence necessary for Legal Counsel to make an informed decision on whether a charge meets the Department of Justice charging standard.

Summary Conviction Ticket - a legal instrument which may be used instead of an Information Form. Generally, a ticket prescribes a voluntary monetary penalty to be paid, but also provides the option of a court appearance, in the event a voluntary penalty is not considered appropriate.

Abbreviations

CS&I	Client Service and Inspections
FMB	Forest Management Branch
IRP	Investigation Review Process
FO	Forest Officer
FMCT	Forest Management Compliance Team
FRA	<i>Forest Resources Act</i>

Chapter 1: Responding to Regulatory Non-Compliance

Scope

This policy applies to any person(s) who are designated as a Forest Officer engaged in regulatory enforcement of the *Forest Resources Act* or associated regulations.

Purpose

The purpose of this chapter is to:

1. Emphasize the commitment of Forest Management Branch and Client Service and Inspections Branch in enforcing compliance.
2. Guide staff in ensuring consistent compliance and enforcement of the *Forest Resources Act/Regulations*, and guide branch staff in their consideration of factors relating to regulatory non-compliance.

Policy

It is Forest Management Branch policy that:

1.0 Regulatory Context

Regulatory requirements administered by FMB and CS&I are dealt within a social regulatory context. This is important for the development of compliance and enforcement policies that allows FMB and CS&I to be consultative in determining the most appropriate response to non-compliance.

1.1 Position on Compliance and Enforcement

One of the FMB's principal objectives is to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence.

Prosecution is an essential compliance tool to be applied judiciously when necessary, but reserved for those situations where alternative compliance efforts are unable to achieve the desired outcomes, or it has been otherwise determined that a prosecution response is appropriate.

Accordingly, formal charges may be recommended depending upon circumstances.

The following should be considered:

1. the severity of actual or potential impact to the environment;

2. human health and safety;
3. the factual circumstances of the alleged offence; or,
4. the compliance history of the offender.

Formal charges are a last option when other compliance tools are deemed to be ineffective and prosecution may provide the most effective way to achieve compliance. Formal charges may also provide the benefit of general deterrence.

Additionally, the integrity and effectiveness of the established regulatory regime (to protect the environment, human health and safety) is highly dependent on compliance with administrative requirements such as the provision of data or licensing information. Failure to comply with such regulatory requirements, even in the absence of environmental harm, may threaten the regulatory regime. Forest Officers will consider appropriate responses, including the recommendation of charges.

Ultimately the decision of whether a file should be investigated, and whether it should be forwarded to Legal Counsel for consideration of prosecution, rests with the Forest Officer as the law enforcement arm of the FMB. This policy ensures that the best information available within FMB will inform the Forest Officer's decision on whether any given file needs to be investigated and which compliance tool is most appropriate. When a file is forwarded to the Department of Justice, the ultimate decision to prefer a charge is the responsibility of Legal Counsel. This policy ensures that the best information available within FMB and CS&I will be provided to Legal Counsel to assist them in their decision.

1.2 Factors for Consideration

In responding to regulatory non-compliance, it is necessary to examine the available information to determine the full extent of the non-compliance and any related regulatory history. The following factors provide guidance in developing an appropriate response:

1.2.1 Effectiveness in Achieving the Desired Result

While each case will be different in relation to non-compliance, the most important factor in determining an appropriate response is the effectiveness of the tool in achieving compliance as quickly as possible, with no reoccurrence.

Factors to be considered include:

1. any related history of non-compliance;
2. the person's willingness to co-operate with officials;
3. evidence of corrective action already taken;
4. the existence of enforcement actions taken under federal or other territorial statutes; and,
5. compliance history on past "contracts" or licences.

1.2.2 Nature of the Non-Compliance

This includes consideration of:

1. the seriousness of the actual or potential impact to the environment, human health and safety;
2. the standard of care exercised by the person (diligence);
3. whether the non-compliance was intentional;
4. whether monetary gain resulted from the commission of the non-compliance;
5. whether this is a repeat occurrence;
6. whether there are attempts to conceal information or otherwise obstruct regulatory officials in their investigation; and,
7. whether there is a need for general deterrence.

1.3 Consistency of Enforcement

CS&I and FMB compliance efforts should strive for consistency in response to non-compliance. Accordingly, where feasible, staff may consider how similar situations have been addressed; recognizing that each case of non-compliance will have different circumstances that may result in a different response.

Chapter 2: Inspections and Investigations

Scope

This policy applies to all appointed staff undertaking inspections and/or investigations of regulatory requirements administered, or enforced, under the *FRA*.

Purpose

The purpose of this chapter is to:

1. Ensure a common understanding of the terms inspection and investigation.
2. Provide information with respect to the roles and responsibilities of staff authorized to conduct inspections and investigations.

Policy

2.0 Inspections

Inspections are a type of compliance verification activity used to assess conformity with regulatory requirements. They are generally done on a risk-based priority and are undertaken by CS&I designated Forest Officers.

Inspections include site and facility visits, field checks, and reviewing/monitoring data or other materials supplied by the regulated party. They are both scheduled (based on the compliance planning process), and unscheduled; operation-specific, or sector based.

Unscheduled or additional inspections may occur by a Forest Officer in response to information or complaints that come to the attention of FMB or CS&I. Inspections may also be used to determine compliance, or to assess risks and gain technical understanding of new operations, equipment, or processes associated with regulated activities. The promotion of compliance is often achieved by the exchange of information and education.

Compliance monitoring is another type of verification activity used to assess compliance with regulatory requirements; as well as adherence to, and the application of, guidelines, standards, and best management practices. Activities associated with both inspections and compliance monitoring may serve to identify the need for investigations of non-compliance with regulatory requirements.

2.0.1 Staff Authorized to Conduct Inspections

Staff are designated as Forest Officers by legislation pursuant to the *FRA* and its Regulations. While conducting inspections, Forest Officers are authorized to undertake activities such as entering upon land, and the examining of records, works and materials.

2.1 Investigations

Investigations involve a systematic process of collecting facts, evidence and information relevant to a suspected non-compliance of the Act and Regulations for the purposes of establishing the factual basis for an occurrence.

The need for an investigation may arise as a result of:

1. non-compliance detected through compliance verification activities (monitoring, auditing or inspecting);
2. information gathered from sources or informants;
3. public reports of suspected offences; and,
4. referrals from other agencies.

Investigative activities include:

1. gathering physical evidence and ensuring its continuity and integrity when collecting and documenting facts and observations including photographing evidence;
2. taking statements from suspects and witnesses;
3. conducting surveillance;
4. obtaining and executing search warrants; and,
5. preparing briefs for Crown Counsel or the Director, FMB.

2.1.1 Staff Authorized to Conduct Investigations

Forest Officers are authorized to conduct investigations. While conducting investigations, Forest Officers are authorized to conduct specific activities such as executing search warrants and performing search and seizures. When requested, FMB program staff can contribute technical expertise in support of an investigation.

2.1.2 Transition from Inspection to Investigation

A transition from inspection to investigation may take place when non-compliance is determined during an inspection, and the purpose shifts from verifying compliance to collecting information and evidence that may be required to support potential enforcement action. Generally, this transition brings with it certain legal implications with respect to the continued process of investigation. When field activity is being conducted by staff that are not authorized to conduct an investigation, and a violation is detected, staff will request the services of a designated Forest Officer.

2.1.3 Communications With a Regulated Party During an Investigation

During the investigative process, it is important to ensure that communications between FMB, CS&I staff and the regulated party do not compromise the investigation. Ongoing communication with the permitted party is often necessary to mitigate environmental,

human health and safety impacts, or seek solutions to rectify the non-compliance. Therefore, FMB and CS&I staff responsible for ongoing administration related to the regulated party under investigation are to ensure that there is dialogue between the investigating officer regarding roles and responsibilities prior to engaging in discussions with the regulated party.

Where an alternative approach to proceeding with charges is being considered, the investigating officer and program staff must discuss the options and reach consensus with an alternative approach prior to discussing the alternative approach with the party under investigation.

2.1.4 Review of Investigations

Certain investigations are subject to review by the Forest Management Compliance Team. Investigations subject to the Investigation Review Process (IRP) are those where collaboration between FMCT and Forest Officers may be required in order to determine an appropriate compliance approach (Chapter 5: Investigation/Case File Review Process).

Chapter 3: Tools for Addressing Non-Compliance

Scope

This policy applies to all Forest Officers using the tools listed in this chapter to promote and secure compliance with regulatory requirements.

Purpose

The purpose of this chapter is to:

1. Ensure a common understanding of the purpose and use of compliance tools available to program staff.
2. Specify the criteria that should be considered when selecting the most appropriate compliance tool.

Policy

It is Forest Management Branch policy that the following compliance tools may be applied by authorized staff when addressing non-compliance with regulatory requirements.

3.0 Voluntary Compliance (Self Monitoring)

Permits/licences issued under the *FRA* require the holder to comply with the terms and conditions listed; or may require the permit/licence (clients) holder to collect data, submit returns or submit applicable dues to the government on a regular basis. Failing to comply with terms and conditions or submit the required information or dues in the prescribed manner constitutes non-compliance with the permit/license and may be deemed to be a violation under the *Act*.

Forest Officers, in conjunction with a site inspection, will issue an Inspection Report notifying a party that they are in compliance with a specific regulatory requirement and where applicable, identify areas where minor improvements in the operation are required. Generally, this information is recorded in an Inspection Report as satisfactory or unsatisfactory. A copy of the inspection report must be given to the client and a copy must be placed on the client's file.

3.1 Notice of Non-Compliance

A Notice of Non-compliance, as authorized under Section 41(1) of the *Act*, may be an initial response for a minor violation of the *FRA*, Regulations, or a permit/licence, that notifies the party in writing, that they are not in compliance with a specific regulatory requirement. A notice of non-compliance warns of the possibility of an escalating response; should non-compliance continue. Notices are generally used when it is determined that a verbal exchange of information alone would not be deemed sufficient

in achieving compliance. A copy of the Notice of Non-Compliance must be given to the client and a copy must be placed on the client's file.

When issuing a Notice of Non-compliance, Forest Officers are expected to have sufficient information to satisfy themselves that a client's activity is non-compliant.

A Notice of Non-Compliance will be in writing and must give the non-compliant party the following information:

1. the nature of the non-compliance;
2. a request for voluntary compliance;
3. the steps to be taken to achieve compliance; and
4. the date by which compliance is to be achieved.

Note that if there is non-compliance with the requirements of the Notice, further action will be taken by the Forest Officer.

A Notice of Non-Compliance may:

1. require an inspection prior to issuing the notice, in order to gather sufficient information regarding the non-compliance (a follow-up inspection will also be undertaken in order to verify compliance); and,
2. request a written confirmation from the client that compliance has been achieved, or receive verbal confirmation of the work being completed (verbal confirmation must be documented and placed on the applicable file).

The Director may establish a public registry of notices of non-compliance and, where a register is established, a copy of all non-compliance notices should be placed on the register (§ 41.3 *FRA*). Accordingly when the respective non-compliance is addressed, the notice will be removed from the registry.

3.2 Protection Order

A Protection Order as per § 42 of the *FRA* is a written order issued by a Forest Officer or the Director to shut down or cease an activity. The order may be issued for the following prescribed criteria:

1. that an activity involving forest resources is causing, or is likely to cause, irreparable damage to the natural environment; or,
2. that an activity is causing actual or imminent harm to human health and safety.

The order may:

1. create a legal requirement to undertake specific, time bound actions or cessation of specific activities; and,
2. outline the consequences of failing to comply with the requirements (may require

the person responsible for the permit to take measures to prevent or reduce the damage by closing an operation or stopping a harmful activity).

3.3 Closing of an Activity

The Director may, after giving a licensee/permittee reasonable notice (in writing) and an opportunity to make representations to the Director, by order suspend or cancel a harvesting licence, cutting permit or a forest resources permit as per § 43 of the *FRA* .

An inspection may be required prior to issuing the orders under § 42 or 43 of the *FRA*, to gather sufficient information. Subsequent inspections may be required to confirm compliance with the order. An order and an investigation may be initiated concurrently. An order may result in an investigation, and vice versa.

3.4 Administrative

As authorized by § 25(1) of the *FRA*, the Director of Forest Management Branch has the authority to impose an administrative remedy. This can include termination or amendment of a Timber Resource Licence, Fuel Wood Licence or Woodlot Licence, that authorizes timber harvesting. A harvest licence may be terminated or amended when, in the opinion of the Director of Forest Management Branch, the authorized party:

1. fails to initiate harvesting operations within one year of signing of the licence;
2. does not honor commitments and obligations of the licence documents; or,
3. operates in a manner inconsistent with the *Act* or Regulations.

The remedy can vary from reducing the amount of forest resources that may be harvested to termination of the harvesting license.

3.5 Tickets

Tickets are a formal sanction issued under the *Summary Convictions Act* as a means of dealing effectively with certain offences. Sanctions, by way of a ticket, may be initiated by a Forest Officer. In deciding whether to issue a ticket, officers should determine:

1. that the contravention is an offence under the *FRA* or Regulations, is a ticketable offence under the *Summary Convictions Act*, and that sufficient evidence exists to prove the offense; and,
2. that issuance of a ticket is the most appropriate enforcement option for the circumstance.

The same standard of proof is required for the issuance of violation tickets as is required for Information charges. If a ticket is disputed, the Crown is required to prove the offence at trial. The offender who pays the prescribed penalty is deemed to have pleaded guilty to the offence.

Tickets may be issued when:

1. there has been a non-compliance associated with a listed offense in the FRA;
2. an advisory or warning is not appropriate;
3. the evidence supports a reasonable likelihood of a conviction;
4. the prescribed penalty is adequate for the offence; and,
5. there is no substantial harm to the environment, human health and safety.

A ticket provides the alleged offender with a period of time in which to choose one of the following options:

1. to plead guilty by paying a prescribed penalty;
2. to appear in court (plead guilty) and to provide an explanation and to petition the court to consider a reduced penalty; or,
3. to appear in court (plead not guilty) and proceed to trial.

If one of these options is not chosen within the stated time frame, and the alleged offender does not appear in court to answer the charge, the offender may be convicted of the offence in absentia (*via trial ex parte*), and become liable for the penalty ordered by the court.

3.5.1 Formal Charges by Way of an Information

These are legal proceedings in court that are initiated by alleging that a person(s) (including a corporation) has committed an offence(s). The alleged offender is compelled to attend court to address the charges by way of an appearance notice or summons. These charges may be recommended by Forest Officers or the Director, but are initiated by Legal Counsel at their discretion.

A recommendation to the Department of Justice of a charge is appropriate where, in the opinion of the investigator, there is sufficient evidence to prove the commission of the alleged offence, and one or more of the following apply:

1. other methods of enforcement have in the past proven ineffective or there is reason to believe that other enforcement methods will not be effective;
2. the alleged offender is a repeat offender;
3. the action of the offender was willful, or fell significantly below the defense of due diligence;
4. there is substantial harm to the environment or human health and safety, or there was substantial potential for harm to the environment or human health and safety;
5. the lives or safety of persons were endangered, or there was substantial potential for the lives or safety of persons to be endangered;
6. there is a significant non-compliance with regulatory requirements; or,
7. the public interest, in the maintenance of environmental values, requires prosecution.

3.5.2 Legal Actions

Generally, mandatory court appearances are the response where the following criteria apply:

1. the non-compliance results, or could likely result in, serious harm or risk to human health and safety or the environment;
2. the alleged offender deliberately provided false or misleading information to an authority under the *Act*;
3. the alleged offender hindered or obstructed a Forestry Officer in their duties;
4. the alleged offender concealed or attempted to conceal information regarding an offence; or
5. the alleged offender failed to take all reasonable measures to comply with a Direction or Order under the *FRA*.

Forest Officers will normally recommend mandatory court appearances for violations of the *FRA* unless they determine that:

1. a Notice of Non-Compliance is a more appropriate measure;
2. an Order by the Director or a Forest Officer would be a more effective response; or,
3. a court order for compliance would be more effective.

Where continuing harm to the environment or human health and safety exists, it may be necessary to pursue abatement action (Order, or a Direction) to minimize environmental harm, while at the same time pursuing prosecution.

3.5.3 Penalties and Court Orders upon Conviction

The *FRA* provides the Court with broad powers to impose penalties once an alleged offender has been convicted of an offence. The range of penalties available includes fines, imprisonment and court orders. The Director and Forest Officers will consider the following criteria when making sentencing recommendations:

1. how serious was the offence? What was the harm or potential harm to the forest, environment, or human health and safety?
2. what is the compliance history of the offender? Are there previous *FRA* convictions?
3. has the offender taken responsibility for the offence? What has been the offender's level of cooperation and willingness to mitigate the effects of the offence?
4. how effective would the recommended penalty be in achieving compliance with the *FRA*? and,
5. how much deterrence value is there in the penalty?

3.5.4 Court Orders

If an offence involves harm to the environment, the court sentencing the offender may make any, or all, of the following Orders in addition to a fine or imprisonment:

1. to take measures to prevent further harm to the environment or human health and safety;
2. to take corrective measures to restore, or rehabilitate, the natural environment to its natural state; or,
3. to pay restitution or compensate any person that has been affected/harmed by the offence.

3.6 Civil Actions Initiated by the Government

3.6.1 Injunctions for Violations

The Director, FMB, may apply to the court for an injunction to stop ongoing violations of the *FRA*, or to take steps to prevent an anticipated violation of the *FRA*. Generally, an injunction will be sought in circumstances where the violation may cause imminent and serious environmental harm.

Where violations have occurred, the Director may, in addition to obtaining the injunction to stop the further harm, pursue other enforcement responses such as prosecution, or civil action to recover costs.

3.6.2 Injunction for Non-Compliance with a Protection Order

Where there is non-compliance with a Protection Order, and/or other enforcement measures have proven to be ineffective, the Director may apply to the courts for an injunction to order compliance. Injunctions may be available even where the offender has been convicted of an offence for the same activity.

Where a person disobeys an injunction, the Director, FMB, may return to court to seek a contempt of court ruling, further instruction from the court, or additional penalties.

3.7 Use of More Than One Tool at a Time

In some circumstances, it is appropriate to consider multiple approaches to non-compliance. For example, a Notice of Non-Compliance or a Protective Order issued to address the immediacy of a situation may be followed by an investigation and the recommendation of formal charges, as appropriate. In another example, a harvesting licence may be terminated following a prosecution. The specific sections of the *FRA* and Regulations should be reviewed to determine the best available approach.

Chapter 4: Non-Compliance Decision Matrix

Scope

This policy applies to all FMB and CS&I staff engaged in compliance and enforcement activities related to regulatory requirements, administered by the Department. The principles of the Non-Compliance Decision Matrix apply to the *Forest Resources Act* and Regulations.

Purpose

The purpose of this chapter is to:

1. Ensure consistency and fairness in the assessment and resolution of non-compliance;
2. Reinforce FMB's commitment to compliance by ensuring the most appropriate measures are used to achieve compliance - taking into consideration the facts specific to the situation, as well as the need for general deterrence.

Policy

4.0 Application of the Non-Compliance Decision Matrix

The Non-Compliance Decision Matrix is a framework for assessing the variability and severity of factors influencing the selection of compliance tools. These factors include:

1. escalating levels of environmental, human health and safety impacts (actual or potential); and,
2. a diminishing likelihood of achieving compliance.

The Non-Compliance Decision Matrix is a **guidance tool**. It is to be used with discretion by Forest Officers when considering the context and specifics of individual cases of non-compliance.

Where use of the Non-Compliance Decision Matrix indicates that an advisory, notice of non-compliance, protection order, or termination of a harvesting licence is an appropriate response, Forest Officers will take the necessary measures to implement the response or refer the file to those who are authorized to do so. The Decision Matrix does not limit the Forest Officer's ability to issue a Summary Conviction Ticket as an initial, or future step, in achieving compliance. Officers should use discretion in determining the appropriate course of action

Where use of the Non-Compliance Decision Matrix indicates that an investigation may be warranted, Forest Officers will consult Chapter 5 to determine whether the investigation is subject to review by the Forest Management Compliance Team through the Investigation Review Process.

4.1 Regulators

The Non-Compliance Decision Matrix is a **guidance tool** and should be used as such; the purpose of which in no way removes from the forest officer the obligation to exercise professional judgment, discretion and autonomy under the *FRA* and Regulations.

4.2 Promotion of General Deterrence

Where Forest Officers encounter a non-compliance that does not warrant an investigation, but the cumulative impact of these non-compliances may require a response from FMB, Forest Officers are to consult with the Forest Management Compliance Team. The Forest Management Compliance Team is responsible for identifying emerging trends in non-compliance and developing a systematic and coordinated response, in order to promote general deterrence.

The Forest Management Compliance Team may be expanded to include other Departmental Directors/Managers who have compliance concerns with the activity under investigation.

4.3 Non-Compliance Decision Matrix

The principle objective of FMB is to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool to obtain compliance, and to promote general deterrence.

Non-Compliance Decision Matrix

		ESCALATING ENVIRONMENTAL, HUMAN HEALTH AND SAFETY IMPACTS (ACTUAL OR POTENTIAL)				
		LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
LIKELIHOOD OF COMPLIANCE (COMPLIANCE HISTORY/WILLINGNESS AND CAPACITY TO COMPLY)	CATEGORY A (HIGH)	VERBAL WARNING	VERBAL WARNING - NOTICE OF NON-COMPLIANCE	NOTICE OF NON-COMPLIANCE - PROTECTION ORDER - TERMINATION OR AMENDMENT OF LICENCE	PROTECTION ORDER - TERMINATION OR AMENDMENT OF LICENCE - INVESTIGATION	
	CATEGORY B	VERBAL WARNING - NOTICE OF NON-COMPLIANCE	NOTICE OF NON-COMPLIANCE	AMENDMENT OF LICENCE - INVESTIGATION		
	CATEGORY C	NOTICE OF NON-COMPLIANCE				
	CATEGORY D	NOTICE OF NON-COMPLIANCE - PROTECTION ORDER - TERMINATION OR AMENDMENT OF LICENCE	NOTICE OF NON-COMPLIANCE - PROTECTION ORDER - TERMINATION OR AMENDMENT OF LICENCE - INVESTIGATION			
	CATEGORY E (Low)	PROTECTION ORDER TERMINATION OR AMENDMENT OF LICENCE - INVESTIGATION				

4.3.1 Levels of Escalating Environmental, Human Health and Safety Impacts (Actual or Potential)

Section 3.01 LEVEL 1

- Non-compliance that does not result or is unlikely to result in any environmental, human health and safety impact; or,
- Minor administrative non-compliance.

Section 3.02 LEVEL 2

- Non-compliance resulting in a minor, temporary impact to the environment or minor, temporary threat to human health and safety; or,
- Significant administrative non-compliance.

Section 3.03 LEVEL 3

- Non-compliance resulting in a moderate, temporary impact to the environment or moderate, temporary threat to human health and safety.

Section 3.04 LEVEL 4

- Non-compliance resulting in a significant impact to the environment or significant threat to human health and safety (may be temporary or permanent).

Section 3.05 LEVEL 5

- Known or likely human health impact that is severe in effect, i.e. resulting in hospitalization and/or long term human health consequences.
- Offense committed intentionally including false or misleading information in any required document.

4.3.2 Categories of Likelihood of Compliance
(Compliance History/ Willingness and Capacity to Comply)

Section 3.06 Category A – Indications of future and ongoing compliance are very high.

- No previous occurrences of non-compliance;
- Good demonstrated awareness of and/or capacity to meet regulatory requirements; and/or,
- Offender has a reasonable and cooperative attitude.

Section 3.07 Category B – Indications of future and ongoing compliance are uncertain.

- Few previous occurrences of non-compliance; and/or,
- Questionable awareness of and/or capacity to meet regulatory requirement.

Section 3.08 Category C – Indications of future and ongoing compliance are unlikely.

- Numerous previous occurrences of non-compliance; and/or,
- Little or no awareness of and/or capacity to meet regulatory requirement.

Section 3.09 Category D – No indication of future and ongoing compliance.

- Willful violation of Department regulatory requirement; and/or,
- Little or no demonstrated willingness or capacity to meet regulatory requirement.

Section 3.10 Category E – No indication of future and ongoing compliance.

- Hindering or obstructing a Forest Officer;
- Refusing to furnish required information; and/or,
- Intentionally including false or misleading information in any required document.

Chapter 5: Investigation/Case File Review Process

Scope

This policy applies to all CS&I and FMB staff leading or assisting in investigations and subsequent case file reviews.

Purpose

The purpose of this chapter is to:

1. Ensure that decisions to undertake investigations are guided by existing legislation and the mandate of FMB.
2. Underscore the importance of consultation between CS&I and FMB in determining the need for an investigation, and the appropriateness of responses to non-compliance.
3. Ensure that during the course of an investigation and case file review, alternatives to charges continue to be considered as a possible means to achieving compliance.

Policy

It is Forest Management Branch policy that the following investigation/case file review process be applied by authorized staff when addressing the need for an investigation or undertaking compliance actions.

5.0 Application of the Investigation/Case File Review Process

Under the Investigation Review Process, the Forest Management Compliance Team is responsible for reviewing investigations and subsequent case files, where major compliance issues have arisen, or where cross-divisional collaboration may be required in order to determine an appropriate compliance approach.

Forest Management Compliance Team will be represented by (as required):

1. Director, Client Service and Inspections;
2. Manager, Sustainable Resources Services (CS&I);
3. Director, Forest Management Branch;
4. Manager, Forest Management Operations; and,
5. Legal Counsel

5.1 Investigation Review to Confirm Process to Deal with an Alleged Offence

Forest Officers may initiate an investigation based on informed opinion and the reasonable belief that an offence has been committed against the *FRA*, and Regulations. The initiating Forest Officer will immediately notify the Chief Inspector, Sustainable Resources, of all investigations initiated. Once evidence has been

secured, a pre-investigation review may be required to arrive at a strategy to best address a non-compliance.

The pre-investigation review applies to regulatory requirements that involve major noncompliance, closure of issuances or when prosecution is apparent. At the onset of an investigation, as initiated by a Forest Officer (subsequent to an alleged or suspected breach of the *FRA*), the Forest Officer will request a Review through the FMCT. At the investigation review, the FMCT will review the Forest Officer's preliminary investigation to ensure:

1. that there has been a careful and thorough consideration of the compliance history, and complete disclosure of the regulator's previous contact with the regulated party;
2. there is consistency with the priorities established by FMB/CS&I; and,
3. that the alleged offence falls within the scope of the *FRA* , it should be referred to another agency (Department of Environment, the RCMP or Department of Fisheries and Oceans).

If the FMCT declines to support a recommended investigation, their decision will be documented and communicated to the initiating Forest Officer. In these cases, it may be appropriate to develop an alternative compliance plan. Whenever feasible, Forest Officers initiating an investigation will be included in discussions with the FMCT.

5.2 Alternative Compliance Measures

It is recognized that during the course of an investigation, alternative measures to prosecutorial action should be sought at every opportunity as a first choice to achieving compliance. In assessing the results of an investigation, the Non-Compliance Decision Matrix (Section 4.3) provides guidance in considering the full range of compliance tools, in addition to considering potential charges. Staff are encouraged to consider alternative measures and may seek guidance from the FMCT where those measures involve considerable departmental oversight, i.e. extensive remediation or mitigation plans.

5.3 Post Investigation/Case File Review

The post investigation/case file review applies to investigations of regulatory requirements where an order, administrative penalty or charge(s) are being recommended as a result of an investigation. During post investigation review, the FMCT reviews the investigative findings and recommendation(s) made by the investigative team. The key role of the FMCT is to ensure the most effective approach is taken to achieve compliance, as well as to achieve general deterrence as appropriate.

The post investigative review can also be utilized to evaluate the compliance procedural process. Items for review should include, but are not limited to:

1. is the current training and certification of officers satisfactory?;

2. are current policies and procedures satisfactory?
3. were policies and procedures followed? or,
4. is there a need for alternative or specialized equipment to conduct investigations?

5.4 Description of Regulatory Requirements Subject to the Investigation/Case File Review Process

Pre and Post Investigation Review

Investigations into minor non-compliance of regulatory requirements are not subject to a pre-investigation review. Investigations into major non-compliance of regulatory requirements are subject to a pre-investigation review. A post investigation review is required where a directive, administrative penalty or charge is being recommended as a result of the investigation. Due to the complexity or sensitivity of an investigation, the FMCT may indicate at the pre-investigation review that a post investigative review is warranted, regardless of the compliance approach selected (Appendix A1 – A6).

5.5 Operational Considerations

5.5.1 Exigent Circumstances

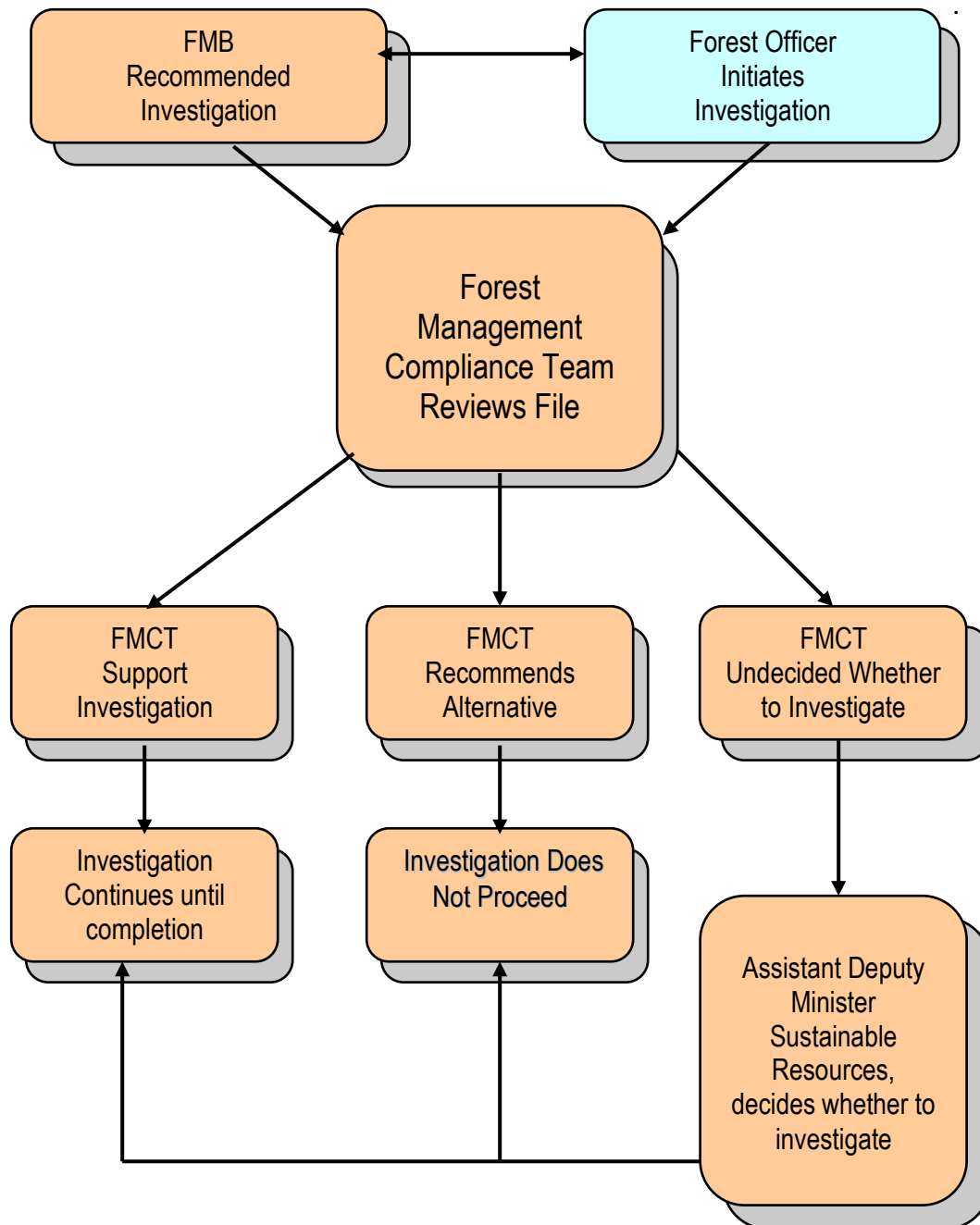
This policy is predicated upon discretion of Forest Officers to take immediate investigative action when necessary. In situations where there is a delay to obtain a review by the FMCT that would likely result in danger to the environment, human health and safety; or, the loss or destruction of evidence, Forest Officers may request the involvement of the Chief Inspector, Sustainable Resources, or commence the investigation immediately if they deem it necessary.

5.5.2 Collaboration between Departments & Branches – (IRM)

One of the purposes of the Investigative/Case File Review process is to ensure inter-branch collaboration when responding to non-compliance. Where an investigation does not involve a pre- or post-investigation review by the FMCT, it is still incumbent on FMB and CS&I staff to collaborate on a compliance approach, as appropriate (i.e. where an ongoing administrative relationship exists with the regulated party, and the party is still in non-compliance of their licence/permit).

5.6 Dispute Resolution

The same process applies to the recommendation of charges to Legal Counsel.

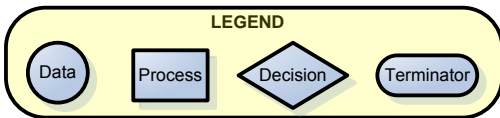
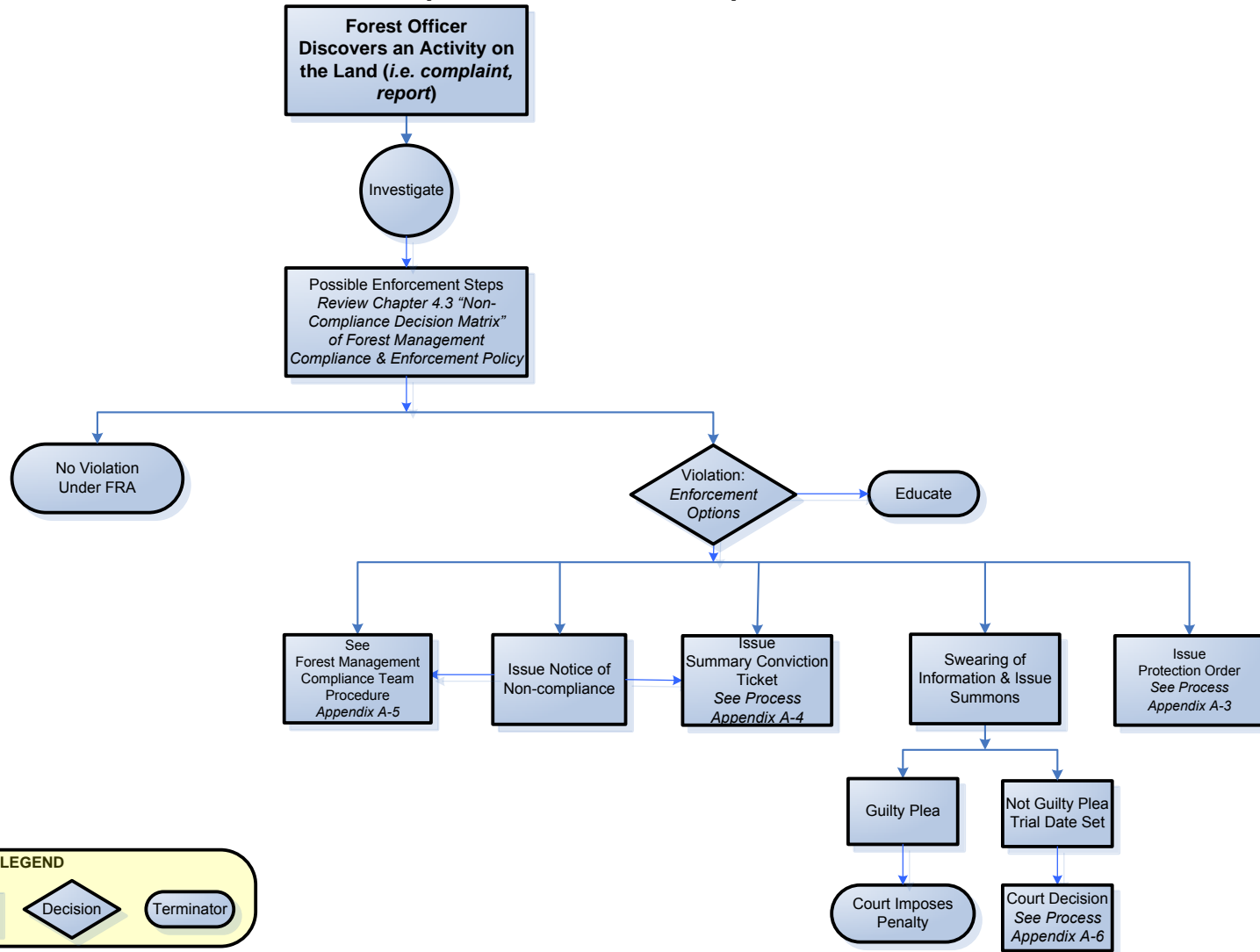


Note: At the review process the initiator of the investigation should be present to provide the information to the FMCT.

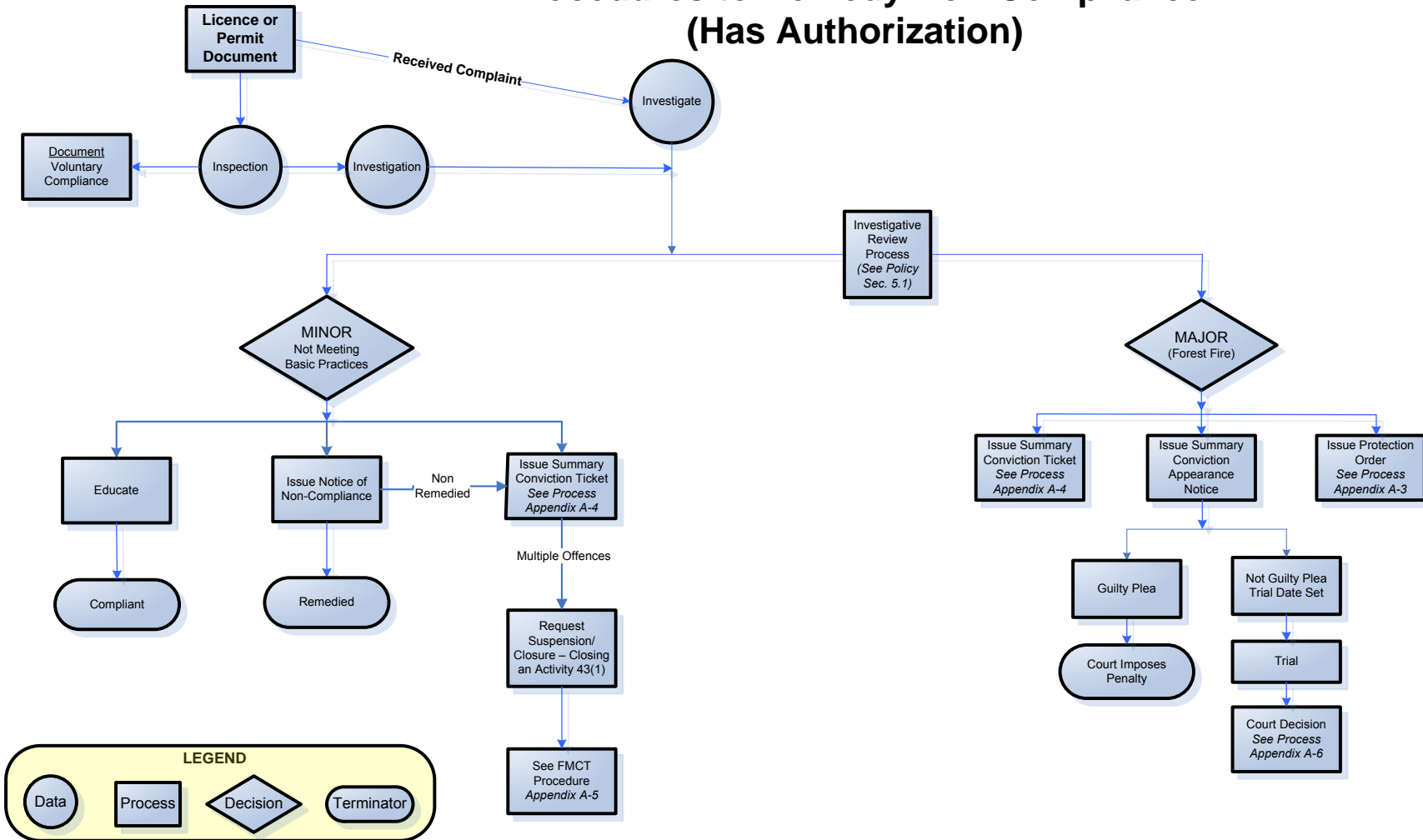
The FMCT will also act as a dispute resolution mechanism if there is disagreement between FMB program staff and Forest Officers as to the appropriate compliance approach (this applies to all possible compliance approaches such as the issuance of warnings, tickets, referrals, or taking no action).

APPENDIX A-1	Procedures to Remedy Non-Compliance (No Authorization)
APPENDIX A-2	Procedures to Remedy Non-Compliance (Has Authorization)
APPENDIX A-3	Protection Order Process
APPENDIX A-4	Summary Conviction Ticket
APPENDIX A-5	Forest Management Compliance Team Procedure (FMCT)
APPENDIX A-6	Court Decision

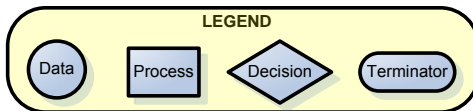
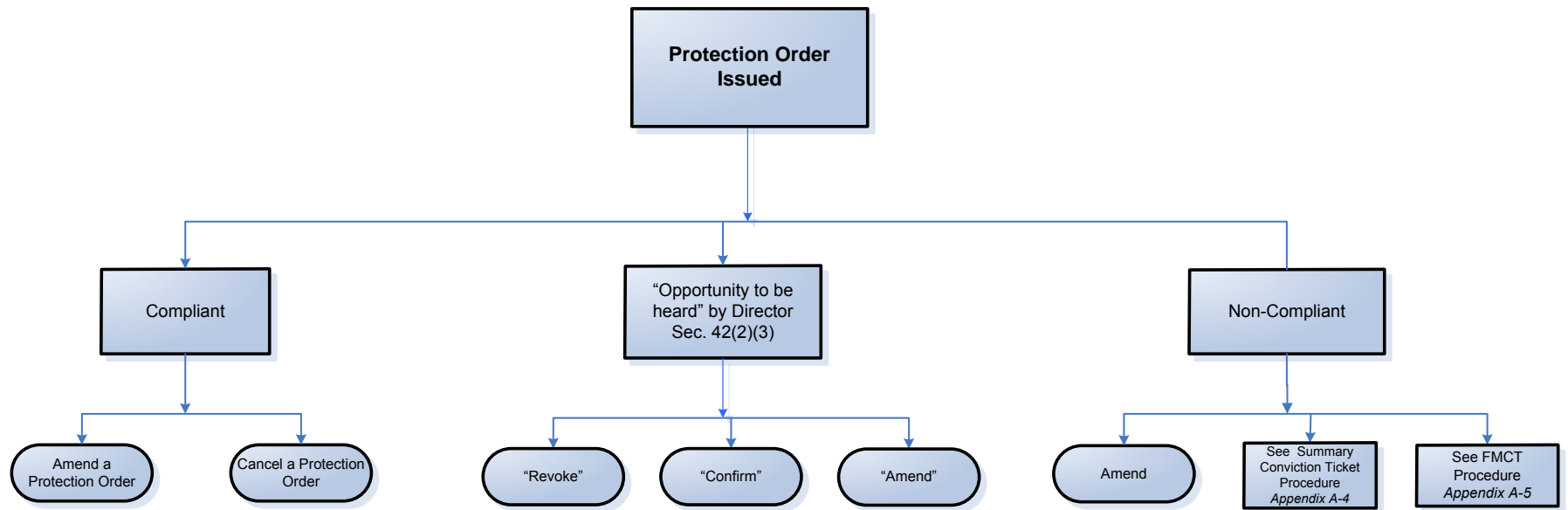
Appendix A-1 Procedures to Remedy Non-Compliance (No Authorization)



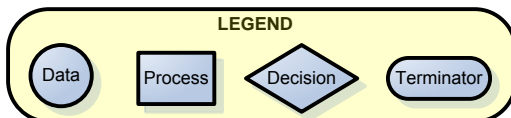
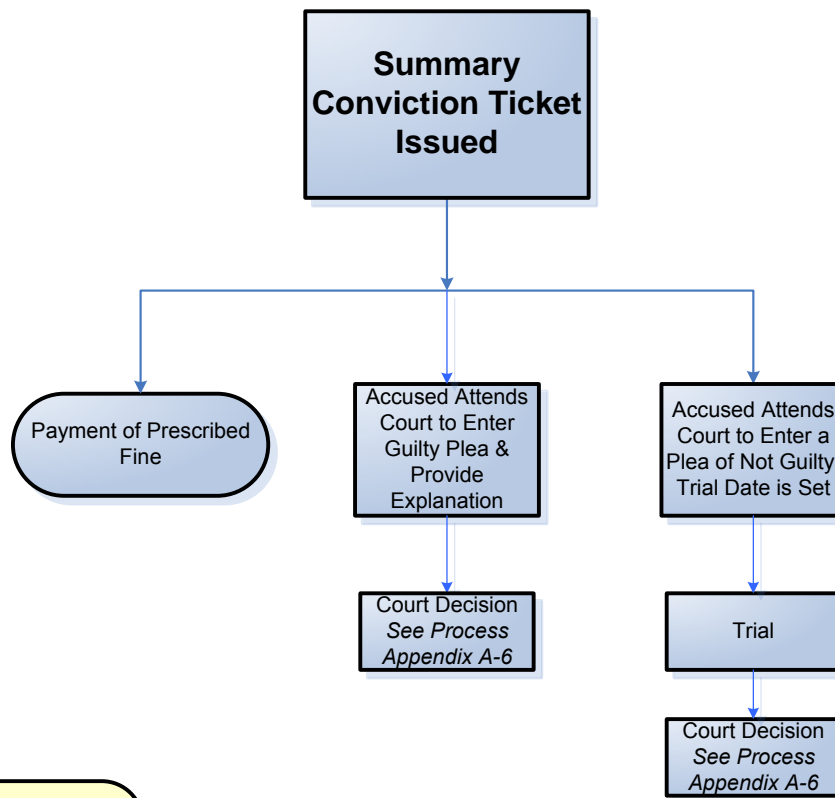
Appendix A-2 Procedures to Remedy Non-Compliance (Has Authorization)



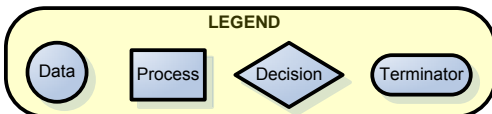
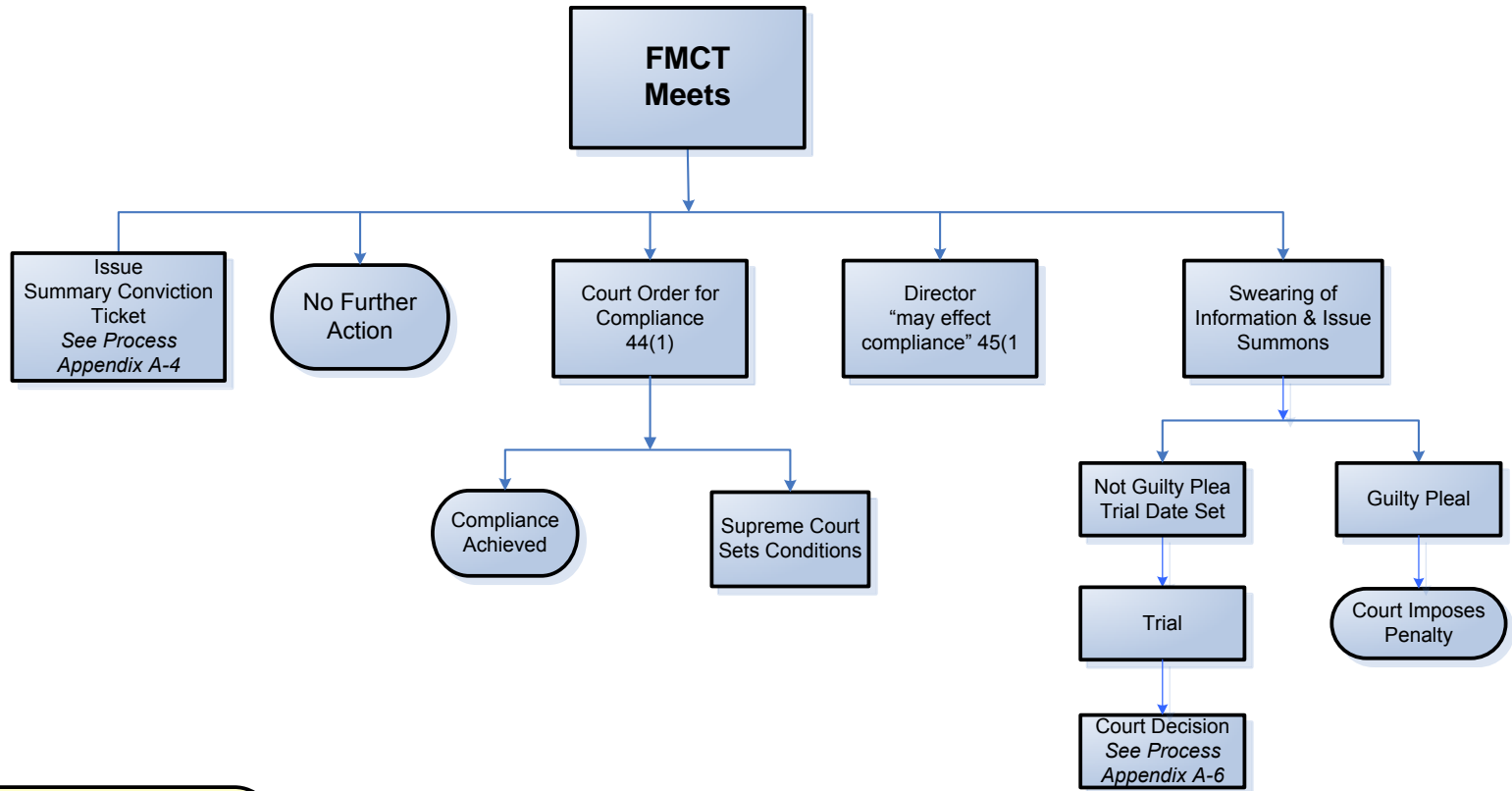
Appendix A-3 Protection Order Process



Appendix A-4 Summary Conviction Ticket



Appendix A-5 Forest Management Compliance Team Procedure



Appendix A-6 Court Decision

