

## Recommendations by the RFL Subcommittee

### Meeting Report Out – August 23, 2018

#### Preamble

The RFL subcommittee recognizes the need to establish a voluntary information sharing (“VIS”) system that encourages the exchange of pipeline safety information and enhances risk analysis as a critical element of Safety Management Systems that are now being implemented by pipeline operators. The RFL subcommittee further recognizes the need to protect safety-related, security-related, proprietary and other sensitive information in order to encourage and allow pipeline operators, employees and vendors to share this information with the industry, regulators and others.

Building upon lessons learned from voluntary information sharing systems established in the aviation and other industries, the RFL subcommittee believes that protecting voluntarily shared information from use in regulatory enforcement actions, litigation and employee disciplinary actions is a prerequisite to a successful VIS program, consistent with a Safety Management System philosophy.

The RFL subcommittee also believes that those fundamental protections for voluntarily shared information are best secured through self-executing statutes expressing the clear intent of Congress to protect that information for the ultimate purpose of improving pipeline safety in the U.S. Such self-executing statutory protections would be binding on all persons and entities as the law of the land, with no further action required, such as lengthy rulemaking proceedings.

The following recommendations are preliminary and, if approved by the committee, will be enhanced with specific language for proposed legislation.

#### **Recommendation #1 [Authority and Governance of VIS]**

Congress should enact legislation during the PHMSA reauthorization process in 2019 authorizing PHMSA to establish a secure, confidential Voluntary Information-Sharing System (VIS) for the purpose of encouraging the voluntary sharing of pipeline safety information by pipelines and distribution companies and their employees, labor unions, contractors, ILI vendors, and non-destructive evaluation experts, with PHMSA, representatives of state pipeline safety agencies, non-governmental organizations, and other pipeline stakeholders, for the purpose of improving pipeline safety for natural gas transmission, natural gas distribution and hazardous liquid pipelines. The proposed legislation should state clearly the intent of Congress with respect to the following:

- a) The VIS is intended to be an entirely new paradigm for analyzing pipeline safety issues that is separate and apart from, but complementary and additive to, existing PHMSA pipeline safety programs, in particular Safety Management Systems.

- b) The VIS should be established and implemented to the maximum extent possible under existing PHMSA authority, with the goal of avoiding unnecessary and time consuming rulemaking.
- c) The VIS is not intended to change current PHMSA enforcement, regulatory programs or other PHMSA initiatives.
- d) The VIS is intended to develop its own governance structure, and to create as many VIS programs as it deems necessary to address various areas of pipeline safety.
- e) The VIS is intended to allow PHMSA, all pipeline and distribution companies, and all pipeline stakeholders, to draw upon safety related information that is currently kept confidential and utilized by individual operators to improve pipeline safety, but which information is not otherwise shared due to confidentiality concerns.
- f) The VIS system is intended to enable all industry participants to share the rich source of safety information often held only by an individual operator, which information will enhance Safety Management Systems across the industry.
- g) The VIS system analysis of de-identified, voluntarily shared information is intended to deliver tangible, measurable safety benefits to industry participants, PHMSA, and other pipeline safety stakeholders.
- h) The VIS system's collaborative approach to collecting and analyzing safety related information is intended to enhance pipeline Safety Management Systems, delivering benefits to the public, including a reduction in pipeline releases and related personal injuries and damage to the environment.
- i) The VIS system is intended to be based solely on voluntary participation. The VIS system shall not be transformed into a mandatory program, in whole or in part.
- j) The VIS is intended to encourage the widest possible participation by industry. Such participation will only be achieved by providing confidentiality protection for all information submitted to the VIS. It is the intent of Congress to insure that those protections are in place. Without such assurance, operators will not voluntarily share information, thereby depriving the nation of associated improvements in pipeline safety and Safety Management Systems.

**Recommendation #2 [Unauthorized Disclosure of VIS Information Prohibited]**

Congress should enact legislation providing for the protection of safety, security-related, proprietary and other sensitive pipeline safety information provided to the VIS system, for the purpose of encouraging and allowing voluntary safety information sharing by industry. The proposed legislation should clearly state the intent of Congress with respect to the following:

- a) It is intended that neither PHMSA, nor any federal, state, local or tribal agency, nor any person having or obtaining access to the information voluntarily submitted to the VIS system, shall release or communicate that information to any person outside the VIS governing body, with the sole exception being the publication of reports by the VIS or PHMSA based on analysis of de-identified information and safety related findings that the VIS governing body in its sole discretion determines to publish or authorize PHMSA to publish.
- b) The intent of Congress is to encourage wide-scale industry participation in the VIS system by entities and individuals in order to further the goal of improving pipeline safety in the United States, and that goal can only be accomplished by creating strong confidentiality protections for information voluntarily submitted by those entities and individuals to the VIS system.

**Recommendation #3 [VIS Information Exempt from FOIA Release]**

Congress should enact legislation providing that PHMSA shall be exempt from releasing under the provisions of the Freedom of Information Act any information that was voluntarily disclosed by any company, organization or person to the VIS.

**Recommendation #4 [Enforcement and Punitive Action Prohibited]**

Congress should enact legislation providing that neither PHMSA nor any other federal, state, local or tribal agency, nor any entity or person shall initiate enforcement action, punitive action, or litigation against a pipeline operator on the basis of information voluntarily provided to the VIS.

**Recommendation #5 [Prohibition Against Use of VIS Information in Litigation]**

Congress should enact legislation providing that any information voluntarily submitted to the VIS shall not be subject to discovery or admitted into evidence in any federal, state, local, tribal, or private litigation or other proceedings.

**Recommendation #6 [Funding]**

Congress should authorize and appropriate funding beginning in 2019 for establishing and sustaining the VIS at levels adequate to achieve the goals of the VIS system, with the intention of getting the VIS system established and operating as soon as possible for the purpose of improving pipeline safety in the United States.

**Recommendation #7            [Funding]**

In the absence of a specific appropriation, the Secretary should redirect funding from within the Operations Program, Project and Activity (PPA) sufficient for implementation of the initial phases of the VIS.