

**Voluntary Information-sharing System
Federal Advisory Committee
Regulatory, Funding, and Legal**

Report Out Presentation

6/19/2018

Subcommittee Regulatory, Funding, and Legal Members

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**Subcommittee: Regulatory, Funding, and Legal
Meeting Report Out – June 19, 2018**

**Regulatory, Funding, and Legal
Barriers and Recommendations**

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #1 [Authority and Governance of VIS]

- It is not clear that PHMSA currently has the authority to establish and maintain a VIS.
- It is not clear that PHMSA has the authority to enter into MOUs and other contractual arrangements necessary to establish and operate a successful VIS.
- The fear by operators that the VIS program might be transformed into a mandatory program is a barrier to participation that should be addressed.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Recommendation #1 [Authority and Governance of VIS]

Congress should enact legislation and direct PHMSA to promulgate regulations authorizing PHMSA to establish a Voluntary Information-sharing System (VIS), to be formed and governed in cooperation with pipeline operators and in-line inspection (ILI) vendors, for the purpose of encouraging the voluntary sharing, collection and analysis of pipeline integrity inspection and risk assessment information and other appropriate data for the purpose of improving pipeline safety for gas transmission, gas distribution and hazardous liquid pipelines.

PHMSA would be authorized to enter into MOUs and other contractual arrangements with pipeline operators, ILI vendors, third party data management contractors, states and other entities or persons as necessary to establish, operate and maintain the VIS.

Neither PHMSA nor any other agency shall require participation by any pipeline operator or ILI vendor in the VIS.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #2 [Funding]

Lack of consistent, adequate funding to stand up and sustain the VIS program denies the public of the many benefits from improved pipeline safety and fewer incidents. Budget requests to Congress will require support from government and industry champions.

Recommendation #2 [Funding]

Congress should authorize and appropriate consistent funding for establishing and sustaining the VIS at levels adequate to achieve the goals of the VIS. Language should be added to the Pipeline Safety reauthorization that authorizes appropriations for VIS for the next five years. The VIS will provide high quality data that is needed to drive Safety Management Systems. An investment analysis that quantifies the safety benefit of the VIS would justify the budget request to Congress.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #3 [Disclosure of Information Prohibited]

Participation in the VIS is highly unlikely unless the participants are confident that information submitted to the VIS will be protected from disclosure, including personal confidential information, confidential proprietary business information, commercially sensitive information, sensitive pipeline security information, information that has not been properly de-identified, information that could be used by PHMSA or other agencies for enforcement action, and information that could be used in litigation.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Recommendation #3 [Disclosure of Information Prohibited]

Congress should enact legislation and direct PHMSA to promulgate regulations providing that neither PHMSA, nor any Federal or state agency, nor any person shall disclose information that was voluntarily provided to the VIS, expressing the intent of Congress to encourage industry participation in the VIS in order to further the goal of improving pipeline safety. PHMSA would be directed to issue regulations for the protection of confidential, proprietary, sensitive commercial information, and sensitive pipeline security information provided to the VIS. PHMSA would be directed to issue regulations governing the use or publication of summary reports or analysis based on de-identified VIS information.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #4 [FOIA Release Prohibited]

Lack of participation in the VIS due to the fear of potential FOIA release and potential negative consequences.

Recommendation #4 [FOIA Release Prohibited]

Congress should enact legislation and direct PHMSA to promulgate regulations providing that PHMSA shall not release under the provisions of the Freedom of Information Act any information that was voluntarily disclosed to the VIS.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #5 [Enforcement Action Prohibited]

Parties will not voluntarily share information due to the fear of potential PHMSA or other agency enforcement action or other potential punitive actions.

Recommendation #5 [Enforcement Action Prohibited]

Congress should enact legislation and direct PHMSA to promulgate regulations providing that neither PHMSA nor any other Federal, state, local or tribal agency shall take enforcement action or other punitive action against a pipeline operator on the basis of information voluntarily provided to the VIS. Notwithstanding this prohibition, PHMSA would be permitted to use information submitted to the VIS if that information is essential to the ability of PHMSA to address an imminent threat to public safety.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #6 [Prohibition Against Discovery and Admissibility]

Fear of litigation on the basis of voluntarily shared information.

Recommendation #6 [Prohibition Against Discovery and Admissibility]

Congress should enact legislation protecting any information voluntarily submitted to the VIS from disclosure in discovery or admissibility into evidence in any Federal or state litigation.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #7 [Voluntary Self-Audits]

Fear that PHMSA will take enforcement action on self-audit information voluntarily disclosed to the VIS.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Recommendation #7 [Voluntary Self-Audits]

Congress should enact legislation and direct PHMSA to promulgate regulations providing that, in order to encourage improvements in pipeline safety, a pipeline operator that conducts a voluntary self-audit of pipeline integrity and safety, and submits all the information produced during the self-audit to the VIS, shall receive immunity from enforcement action and penalties by any Federal or state agency, for violations discovered during the self-audit, disclosed to PHMSA in a confidential report, and corrected within a reasonable amount of time. Immunity does not apply, and enforcement action may be taken, if the Administrator finds that the violation was intentionally committed. The voluntary self-audit information shall be privileged and protected from release under FOIA, and from discovery and admission into evidence in any Federal and state litigation. This recommendation also encourages operators to voluntarily produce and share this valuable integrity information through the VIS process, furthering the goal of improvements to pipeline safety.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Barrier #8 [Near Misses]

Fear that near miss information might lead to enforcement and penalties by PHMSA or other Federal and state agencies.

Recommendations for the VIS WG Committee Meeting Report Out – June 19, 2018

Recommendation #8 [Near Misses]

Congress should enact legislation and direct PHMSA to promulgate regulations intended to improve pipeline safety, providing that a pipeline operator that voluntarily submits to the VIS information related to near misses shall receive immunity from Federal and state enforcement actions and penalties for any violations related to the near miss information that are disclosed to PHMSA in a confidential report, and corrected within a reasonable amount of time.

Immunity does not apply, and enforcement action may be taken, if the Administrator finds that the violation was intentionally committed, if an employee's action or failure to act was intended to damage the facilities, injure other employees, or purposely place the public in danger, if the near miss was caused by the prohibited use of alcohol or drugs, or if the near miss report contained knowingly falsified information. Near miss events eligible for immunity under this act are protected from disclosure, from release under FOIA, and from discovery and admissibility in Federal or state litigation. [Language to be refined]

Questions/Comments