

# PIPELINE SAFETY ALERT

## Infrastructure Bill Includes Substantial New Pipeline Safety Grant Program for Upgrades to Gas Distribution Infrastructure

If enacted, the Senate Infrastructure Investment and Jobs Act of 2021<sup>1</sup> (Infrastructure Bill) would provide \$1 billion for the newly established Natural Gas Distribution Infrastructure Safety and Modernization Grant Program (Program) to be administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA). The program would offer \$200 million in grant funding each year for five years, starting in fiscal year 2022. The funding would be available only to municipal and community-owned utilities. Eligible projects would include the repair, rehabilitation, or replacement of natural gas distribution pipeline systems and the acquisition of equipment to improve pipeline safety and avoid economic losses. In choosing projects, PHMSA would consider: (1) the risk profile of applicant's current pipeline systems, including if they are prone to leaks; (2) whether a project may generate jobs; (3) whether a project may benefit disadvantaged communities; and (4) and how a project would impact economic growth.

If enacted, the \$1 billion Program would reflect a substantial expansion of PHMSA's current grant programs both in terms of the amount of funding available and because it would authorize spending on capital projects.

Given the scope of this program, if it is adopted into law, stakeholders may have practical questions on how PHMSA would implement it. For example, would capital projects funded through the Program trigger NEPA? Or would a Categorical Exclusion apply? Current DOT Categorical Exclusions may not cover projects and PHMSA does not have its own set of Categorical Exclusions.<sup>2</sup> Would PHMSA need to propose implementing regulations for the Program or could it adopt a less formal application process and criteria? How would PHMSA choose projects, given the broad criteria outlined in the Infrastructure Bill? And would PHMSA limit projects to only physical infrastructure or could projects also include technology, software, and cybersecurity improvements? Further, would PHMSA have sufficient current staffing to administer the Program?

The Infrastructure Bill is not yet enacted. It still requires passage in the House before it would move to President Biden's desk.

If you have any questions or would like further information regarding the proposed Natural Gas Distribution Infrastructure Safety and Modernization Grant Program, please contact Jim Curry at 202.853.3461 or [jcurry@babstcalland.com](mailto:jcurry@babstcalland.com).

<sup>1</sup> H.R.3684 - 117th Congress (2021-2022): Infrastructure Investment and Jobs Act, H.R.3684, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/3684>.

<sup>2</sup> U.S. DOT [Order 5610.1C](#): Procedures for Considering Environmental Impacts at Sect 4(C). In 2016, DOT proposed changes to Order 5610.1C to add categorical exclusions, which if adopted would not likely apply to the Program. U.S. DOT [Order 5610.1D](#): Procedures for Considering Environmental Impacts [Draft] at Sect. 10.



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Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have nearly 40 years of combined experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.



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