

previous violations, and the violations at issue are not the product of willful or criminal conduct, have not caused loss of life or injury to persons, damage to property or the environment or endangered persons, property or the environment. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. An eligible small entity that cannot meet the criteria for waiver of a civil penalty may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

(b) Notwithstanding paragraph (a) of this section, the Commission reserves the right to waive or reduce civil penalties in appropriate individual circumstances where it determines that a waiver or reduction is warranted by the public interest.

[Order 594, 62 FR 15830, Apr. 3, 1997]

APPENDIX A TO PART 2—GUIDANCE FOR DETERMINING THE ACCEPTABLE CONSTRUCTION AREA FOR REPLACEMENTS

These guidelines shall be followed to determine what area may be used to construct the replacement facility. Specifically, they address what areas, in addition to the permanent right-of-way, may be used.

Pipeline replacement must be within the existing right-of-way as specified by §2.55(b)(1)(ii). Construction activities for the replacement can extend outside the current permanent right-of-way if they are within the temporary and permanent right-of-way and associated work spaces used in the original installation.

If documentation is not available on the location and width of the temporary and permanent rights-of-way and associated work space that was used to construct the original facility, the company may use the following guidance in replacing its facility, provided

the appropriate easements have been obtained:

a. Construction should be limited to no more than a 75-foot-wide right-of-way including the existing permanent right-of-way for large diameter pipeline (pipe greater than 12 inches in diameter) to carry out routine construction. Pipeline 12 inches in diameter and smaller should use no more than a 50-foot-wide right-of-way.

b. The temporary right-of-way (working side) should be on the same side that was used in constructing the original pipeline.

c. A reasonable amount of additional temporary work space on both sides of roads and interstate highways, railroads, and significant stream crossings and in side-slope areas is allowed. The size should be dependent upon site-specific conditions. Typical work spaces are:

Item	Typical extra area (width/length)
Two lane road (bored) .....	25–50 by 100 feet.
Four lane road (bored) .....	50 by 100 feet.
Major river (wet cut) .....	100 by 200 feet.
Intermediate stream (wet cut) .....	50 by 100 feet.
Single railroad track .....	25–50 by 100 feet.

d. The replacement facility must be located within the permanent right-of-way or, in the case of nonlinear facilities, the cleared building site. In the case of pipelines this is assumed to be 50-foot-wide and centered over the pipeline unless otherwise legally specified.

However, use of the above guidelines for work space size is constrained by the physical evidence in the area. Areas obviously not cleared during the original construction, as evidenced by stands of mature trees, structures, or other features that exceed the age of the facility being replaced, should not be used for construction of the replacement facility.

If these guidelines cannot be met, the company should consult with the Commission's staff to determine if the exemption afforded by §2.55 may be used. If the exemption may not be used, construction authorization must be obtained pursuant to another regulation under the Natural Gas Act.

[Order 603, 64 FR 26603, May 14, 1999]

APPENDIX B TO PART 2 [RESERVED]