

Excerpt from Final Rule in Docket RM12-11 (Paragraphs 51-79 of the Final Rule)

1. Burden of Section 2.55's Right-of-Way Requirement

1. INGAA argues that we erred by not including the “additional time and burden” of blanket or case-specific section 7 procedures that will now be necessary for facilities that cannot meet section 2.55(a) siting requirements.¹ This objection presumes the section 2.55(a) right-of-way/work space constraint constitutes a new burden imposed by this rule. As previously discussed, this not the case, because section 2.55 activities have always been restricted to an authorized right-of-way or facility site and prescribed work spaces. Activities that exceed these limits are not covered under section 2.55, and thus no additional time and burden is being imposed – they remain subject to the same time and burden that they were before. Consequently, we do not include activities that did not and will not qualify under section 2.55(a) in our estimate of the additional time and burden imposed by this rule.

2. INGAA asserts the “NOPR would convert all auxiliary installations outside of existing rights of way and historical work spaces into Natural Gas Act jurisdictional facility construction that would require certificate authorization and formal agency consultation.”² We concur, but as noted, we will not compel companies to seek blanket or case-specific authorization for facilities installed in erroneous reliance on section 2.55(a) unless we find reason to suspect such facilities are a cause of significant adverse

¹ INGAA's March 2013 Comments at p. 5.

² INGAA's March 2013 Comments at p. 22.

environmental impact. Where facilities already in place present no such issues, we find no reason to subject them to further review.

3. In any event, the NOPR and this Final Rule do no more than clarify the source of our authority over certain types of facilities. Therefore, we reject INGAA's claim that we include an estimate of the burden on companies of filing certificate applications and consulting with environmental agencies for facilities allegedly 'converted' to blanket or case-specific status.

A. Landowner Notification

4. This Final Rule adopts regulations to provide for advance landowner notification for auxiliary and replacement projects under section 2.55 and for maintenance activities under section 380.15. As previously discussed, we consider it appropriate to give landowners prior notice to the extent practicable before intruding onto their property as a courtesy and to avoid potential conflict between landowners and gas companies.

Commentors do not dispute the virtues of informing landowners of company activities, but insist the notice procedures described in the NOPR are impractical.

5. In response to commentors' concerns, we will revise the proposed notification obligations to (1) specify the types of maintenance activities that merit individual notice; (2) limit notice to landowners whose property is crossed or used for section 2.55 and section 380.15 activities; and (3) reduce the prior notice period from 10 days to five days. These modifications should significantly diminish the burden of complying with the new requirements for prior notice to landowners.

6. Instead of mandating notice to landowners for all section 380.15 maintenance activities, as proposed in the NOPR, we will only require prior notice of those more substantial activities that will result in ground disturbance. In addition, we are reducing the scope of notification proposed in the NOPR, which would have required that notice be provided not only to directly affected landowners, but also to adjacent landowners and to landowners with a residence within 50 feet of a proposed work area.³ Commentors assert this is overly broad and request that we remove abutting landowners and landowners with a residence within 50 feet of the proposed work area from the definition of “affected landowners.” Although the NOPR would have required the same scope of notice that companies are required to provide for projects under the Part 157 blanket certificate regulations, the commentors have convinced us that more limited landowner notification requirements are appropriate for companies’ activities under section 2.55 and 380.15, since such projects are likely to be smaller, take a shorter period of time to accomplish, and be less disruptive than blanket certificate projects.

7. Finally, while the NOPR stipulated a 10-day prior notice, we accept commentors’ claim that some activities, particularly unanticipated maintenance, are not scheduled far

³ The NOPR defined “affected landowners” for purposes of companies’ activities under sections 2.55 and 380.15 as “owners of property interests, as noted in the most recent tax notice, whose property (1) is directly affected (i.e., crossed or used) by the proposed activity, including all rights-of-way, facility sites, access roads, pipe and contractor yards, and temporary work space; or (2) abuts either side of an existing right-of-way or facility site, or abuts the edge or a proposed right-of-way or facility site which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area.” 78 FR at 683, NOPR, FERC Stats. & Regs. ¶ 32,696 at P 30 (cross-referenced at 141 FERC ¶ 61,228).

enough in advance to allow for a 10-day prior notice.⁴ In view of this, we will only require that landowners receive notice five days in advance of initiating certain activity under section 2.55 or 380.15, which we anticipate will still allow time for landowners and a company to discuss any concerns landowners may have regarding companies' planned activities.

1. Jurisdictional Basis and Need for Landowner Notification

8. INGAA asserts that the Commission has no jurisdictional basis to impose landowner notification requirements for companies' installations of auxiliary facilities and replacement projects under section 2.55 or their maintenance activities under section 380.15;⁵ therefore, INGAA argues that the NOPR's proposed landowner notification requirements for these activities should not be adopted. However, if the Final Rule does adopt landowner notification requirements, INGAA asks the Commission to explain what circumstances changed since the promulgation of Order

⁴ Additionally, commentors state that the 10-day prior notice period prevents companies from adjusting maintenance schedules due to weather, equipment availability, permitting processes, etc.

⁵ INGAA's March 2013 Comments at p. 7. INGAA cites to *Californians for Renewable Energy, Inc.*, 133 FERC ¶ 61,194, at P 26 (2010), to support its statement that "[t]hus far, the Commission properly has refrained from exercising jurisdiction over easement or right-of-way agreements, and has appropriately deferred the formal resolution of disputes in such matters to the courts." We agree that formal resolution of disputes over the terms of easements and right-of-way agreements belong in the courts and we are not claiming jurisdiction over these matters by imposing landowner notification requirements for Commission-authorized activities.

No. 609⁶ to merit mandatory prior notification to landowners before a company commences construction under section 2.55 or maintenance under section 380.15.

9. INGAA points out⁷ that in Order No. 609 the Commission determined that there was no need for landowner notification because section 2.55(b) replacements occur within an “existing right-of-way and subject to an existing easement agreement, which dictates the pipeline’s right to obtain access to maintain the facilities.”⁸ However, Order No. 609 also stated that “prudence would dictate that the pipeline should give the landowner as much advance warning as possible to avoid misunderstandings and ill-will.”⁹

10. Our proposal in the NOPR in this proceeding to adopt landowner notification requirements for companies’ activities under section 2.55 and section 380.15 was prompted by landowners’ expressions of concern to Commission staff during phone inquiries, scoping meetings, and in other forums due to companies’ personnel appearing unannounced on or near their property. The types of concerns expressed by landowners arise from construction and maintenance crews arriving unexpectedly to engage in

⁶ Order No. 609, 64 FR 57374 (October 25, 1999), FERC Stats. & Regs. ¶ 31,082 (1999).

⁷ INGAA’s March 2013 Comments at pp. 6-7. INGAA also notes that “[a] pipeline must own the property or have an easement to perform maintenance, and the same is true for a pipeline to install, modify, replace, improve, alter, operate, maintain, access, inspect, patrol, protect, abandon, etc. auxiliary installations and replacement facilities.” *Id.* at p. 12.

⁸ Order No. 609, 64 FR 57374 at 57382, FERC Stats. & Regs. ¶ 31,082.

⁹ *Id.*

activities that disrupt, or could disrupt, landowners use of their property, or damage their property as a result of replacing facilities; re-grading or replacing access roads; lowering pipelines; performing anomaly digs; or preventing and controlling erosion. We view providing prior notice, which some companies avow is routine practice, as the least burdensome and most practical way to ensure courtesy and preclude conflicts with landowners. Whenever a company conducts an activity subject to our jurisdiction and under authority provided by our regulations,¹⁰ we have a right and responsibility to impose appropriate and reasonable conditions on that activity.¹¹ Our responsibility includes ensuring that, to the extent practicable, landowners are informed in advance

¹⁰ In addition, section 157.14(a)(9)(iv) of the Commission’s regulations requires an applicant for NGA section 7 certificate authority to certify that it will “maintain the facilities for which a certificate is requested in accordance with Federal safety standards.” 18 CFR 157.14(a)(9)(iv) (2013). Likewise, NGA section 7(h) gives the certificate holder eminent domain authority to acquire rights necessary to “construct, operate, and maintain a pipe line.” 15 U.S.C. 717f(h) (2012). *See Brian Hamilton*, 141 FERC ¶ 61,229, at PP 24-25 (2012) (*Hamilton*). Therefore, the Commission has jurisdiction over maintenance activities, and has the authority to require landowner notice as a condition of a company’s jurisdictional maintenance activities.

¹¹ Contrary to National Fuel’s assertion (*see National Fuel’s Comments* at p. 2), the Commission is not restricted to requiring landowner notification only for companies’ activities under their Part 157 blanket and case-specific certificates. As discussed *supra* PP 13-16 auxiliary and replacement facilities are NGA-jurisdictional facilities that can be constructed only with the requisite section 7 certificate authority, which the Commission provided when it adopted section 2.55 as a precursor to the Part 157 blanket certificate construction program. Further, the authorization to perform maintenance on gas facilities comes from the certificate authority under which the facilities were or will be constructed – whether it be self-implementing section 2.55 certificate authority, Part 157 blanket certificate authority, or case-specific certificate authority. As the Commission explained in *Hamilton*, 141 FERC ¶ 61,229, at P 24, “[i]t does not necessarily follow, however, that [a natural gas company] has no responsibilities merely because the activity neither falls within the replacement of facilities under section 2.55(b) nor under the blanket construction provisions. When the Commission authorizes a natural gas company to construct and operate pipeline facilities, the authority must necessarily include authority to maintain the pipeline.”

when they may be inconvenienced or the use of their property may be disrupted by companies' jurisdictional activities to construct auxiliary and replacement facilities under section 2.55 authority or conduct maintenance activities subject to section 380.15.

Landowners deserve an opportunity to express concerns, and we want the opportunity to act on those concerns if necessary.¹²

11. Commentors assert that easement agreements are the proper method for landowners to establish any requirements for prior notice of company activities on private property,¹³ and note that many of these agreements specify that no notice is required for maintenance activities. While we recognize that some landowners agree to forego prior notice, we nevertheless believe it is prudent for gas companies to provide such notice. Landowners may misunderstand the terms of an easement agreement or a subsequent owner may not be aware that the land is subject to an easement. Therefore, regardless of whether an easement agreement gives a company a right enforceable under state property law to enter on property without notice, we believe it is appropriate and reasonable for our regulations to require that to the extent practicable companies provide landowners

¹² National Fuel argues that the NOPR relied on NEPA as a basis for requiring landowner notification for maintenance activities. National Fuel's Comments at p. 3. It did not. The rationale for requiring notification is our belief that landowners should be informed in advance of any activity that will take place on their property as a consequence of our granting a company an NGA section 7(c) certificate. The jurisdictional basis for this requirement is as a condition to the certificate, which we impose to ensure company actions are consistent with the public interest. The NOPR, however, did rely on NEPA as a basis for restricting companies' activities to areas subject to an environmental review, and as a result thereof, authorized for a particular use.

¹³ See INGAA's March 2013 Comments at pp. 6 and 12, Southern Star's Comments at p. 6, Golden Triangle's Comments at p. 4, WBI Energy's Comments at p. 7, and National Fuel's Comments at pp. 2-3.

with prior notice before commencing certain activities under section 2.55 or section 380.15.

2. Exceptions to Landowner Notification Requirements

12. Commentors state that if the landowner notification proposals are adopted, the Final Rule should waive landowner notification to provide “for immediate access to emergency gas leaks, acts of God, investigations related to gas pressure or flow or SCADA signals, or to respond to One Call notifications on an emergency or routine basis.”¹⁴

13. Our regulations provide for a company to take immediate action in an emergency, as we pointed out in response to a similar concern regarding the imposition of a 30-day prior notice:

[This] rule does not override other Commission regulations which permit interstate pipelines to take prompt corrective actions to address conditions that constitute a safety hazard. Subpart I of Part 284 of the Commission's regulations exempts emergency situations from the provisions of section 7 of the Natural Gas Act and permits a pipeline to take immediate action to alleviate an emergency situation subject to a *subsequent* 48-hour reporting requirement. Section 284.262(a)(1)(iii) of Subpart I defines emergency as “Any situation in which . . . immediate action is required or is reasonably

anticipated to be required for the protection of life or health or for maintenance of physical property.”¹⁵

¹⁴ INGAA’s March 2013 Comments at p. 9 and National Fuel’s Comments at p. 5.

¹⁵ *Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities*, 52 FERC ¶ 61,252, at 61,877 (1990). See also section 157.203(d)(3)(i), which states that “no landowner notice is required” for any blanket program “replacement done for safety, DOT compliance, environmental, or unplanned maintenance reasons that are not foreseen and that require immediate attention by the certificate holder.”

Notwithstanding the foregoing, to assure there will be no hesitation by gas companies if immediate action is called for, we will specify in sections 2.55 and 380.15 that: “For an activity required to respond to an emergency, the five-day prior notice period does not apply.” Note that events that do not necessitate immediate access to system facilities would not trigger our section 284 emergency provisions, and therefore would still be subject to a five-day prior notice.

3. Part 157 Landowner Notification Exemption for Replacement Projects

14. Companies are required to provide landowner notice prior to initiating projects under the Part 157 blanket certificate regulations.¹⁶ However, section 157.203(d)(3)(i) of the regulations provides a notice exemption for replacement projects that would have been done under section 2.55(b), but for the fact that the replacement projects are not of the same capacity.¹⁷ To provide consistency with new the section 2.55 landowner notification requirements established in this Final Rule, we will amend section 157.203(d)(3)(i) to provide that replacement projects that would have been done under section 2.55(b), but for the fact that the project alters the designed delivery capacity of the original facility, remains exempt from the landowner notification requirements of Part 157, as long as the project does not involve ground disturbance. Because the revised section 2.55(b) notice requirements require landowner notice for a ground disturbing replacement project that substitutes in a new same-size facility, it would be inconsistent to retain the landowner notice exemption in section 157.203(d)(3)(i) for a ground disturbing replacement project that alters the capacity of the original facility.

¹⁶ 18 CFR 157.203(d)(1) (2013).

¹⁷ 18 CFR 157.203(d)(3)(i) (2013). To qualify under section 2.55(b) a replacement project must have a substantially equivalent designed delivery capacity as the original facility. 18 CFR 2.55(b)(1)(ii) (2013).

4. Requirement that Notification Inform Landowners of the Availability of the Commission's Dispute Resolution Division

15. WBI Energy states that any landowner notification requirements should not include a requirement that companies provide landowners with contact information or include a description of the Commission's Dispute Resolution Division (DRD) Helpline. WBI Energy asserts disputes concerning easements and right-of-ways for existing facilities are properly adjudicated in state courts, and not by the Commission. WBI Energy further argues that including information regarding the DRD in the notice likely would cause landowners to incorrectly believe that the Commission is the appropriate venue for resolving property disputes.¹⁸

16. We recognize that the DRD Helpline is not the appropriate venue for determining the respective rights of companies and landowners under state property law or for renegotiating the terms of easement agreements. However, there are instances in which it is appropriate and/or potentially helpful for landowners to contact Commission staff to seek informal resolution of a dispute. For example, while a court would be the appropriate forum to adjudicate a dispute regarding whether an easement agreement gives a natural gas company the right to allow another company to lay a fiber optic cable in the pipeline right-of-way, or to determine the amount of monetary damages caused to a landowner's property by a company's negligence during construction activities, it is appropriate for a landowner to contact the Commission if the landowner believes that a company's planned activities might not comply with the provisions of section 2.55 (e.g., may not be confined to the existing right-of-way) or section 380.15 and for the

¹⁸ WBI Energy's Comments at pp. 8-9.

Commission's staff to contact the company regarding the matter. It also is appropriate for a landowner to seek the Commission's assistance in obtaining a company's voluntary agreement to reasonable accommodation requested by the landowner (e.g., to reschedule backhoe digging planned by the company for the same day as a back-yard wedding reception). In this regard, we emphasize that section 380.15(b), *Landowner consideration*, states that "[t]he desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property."

17. While only a court can determine the respective rights of a company and landowner under the terms of an easement agreement, the terms of an easement in no way diminish the Commission's NGA authority over companies' activities to construct or maintain jurisdictional facilities. Thus, we are adopting our proposal to require that companies include the DRD Helpline number to facilitate landowners being able to contact and seek assistance from Commission staff. We encourage companies to describe the DRD Helpline as a way for landowners to inform the Commission of concerns regarding a company's planned activities. We anticipate companies, in providing the DRD Helpline number, will be able to explain this without implying, as WBI Energy worries, that a company is acting unlawfully.¹⁹

¹⁹ *Id.* In Order No. 609, in response to similar apprehensions regarding a requirement for companies to include information in landowner notices on how to contact the Commission's Enforcement Hotline, we stated we did not believe "that including a reference to the Enforcement Hotline implies the company is doing something unlawful," and added that we expected companies "will be able to present it as merely being a means to contact the Commission, which is in fact what it is." 64 FR 57374, 57384.

5. Landowner Notification for Maintenance Activities

18. Commentors state that the Commission’s proposed prior notice requirements for maintenance activities may be unnecessary in view of existing U.S. Department of Transportation (DOT) regulations. DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA) requires pipelines to develop a continuing public education program,²⁰ which follows guidance provided by the American Petroleum Institute’s (API) Recommended Practice 1162.²¹ API’s Recommended Practice 1162 requires that “[w]hen planning pipeline maintenance-related construction activities,” gas companies “should communicate to the audience affected by the specific activity in a timely manner appropriate to the nature and extent of activity,”²² and must also notify landowners in writing biennially of all “planned major maintenance/construction activity.”²³

19. We accept that the PHMSA requirements will be sufficient to alert landowners to many maintenance activities. We will therefore modify the prior notice requirement for section 380.15 maintenance activities proposed in the NOPR in this proceeding by limiting notice to maintenance activities that will cause ground disturbance.²⁴ Given the potential disruption and impact level of maintenance activities that will cause ground disturbance, we find such activities merit separate written notice to affected landowners.

²⁰ See 49 CFR 192.616 (2013).

²¹ See <http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf>.

²² See <http://mycommittees.api.org/standards/pipeline/1162%20Links/1162nonprintable.pdf>, sections 4.10 and C.10.

²³ *Id.* See Table 2-1, *Summary of Public Awareness Communications for Hazardous Liquids and Natural Gas Transmission Pipeline Operators*.

²⁴ However, if in the future, we receive objections indicating that landowners are not adequately informed of particular maintenance activities, we may consider applying a separate prior notice requirement specific to such activities.

20. While some of these activities will be included in the PHMSA-mandated biennial report distributed to landowners, we have no assurance that all such activities will be. Further, while the PHMSA report of planned major maintenance can provide a broad overview of a company's future operations, because the company only issues this report every other year, it does not give landowners a sufficiently precise description of when a particular activity will commence and conclude. We believe that if landowners have notice five days before a ground disturbing project begins, this will enable companies and landowners time to confer, coordinate, and avoid simultaneously undertaking incompatible actions. Finally, we note that PHMSA is focused on the safe operation of existing facilities, whereas the Commission purview of the public interest covers a broader set of concerns. Thus, while PHMSA may find no cause to take into account a company's activity that inconveniences a landowner but does not compromise the safe operation of gas facilities, the Commission may find such an activity to be within the scope of its authority to ensure the activity is consistent with the public convenience and necessity.

21. MidAmerican Energy and Golden Triangle request that the Commission provide a definition of maintenance under section 380.15 of the regulations.²⁵ Golden Triangle states that any time its personnel enter the right-of-way for periodic routine activities (e.g., pipe-to-soil readings, leak patrols, surveillance patrols, meter station inspections,

²⁵ MidAmerican Energy's Comments at p. 5 and Golden Triangle's Comments at p. 9.

and walking the pipeline right-of-way), a landowner will construe that entrance as a maintenance activity.²⁶

22. We see no need to craft a definition describing all maintenance activities, although we can say that we do not share Golden Triangle's apparent view that an intrusion by company personnel onto a landowner's property for monitoring purposes is not "maintenance" so long as the monitoring does not lead to any additional activity during the same intrusion. We consider *all* of the activities identified by Golden Triangle to be maintenance. However, as stated above, we are scaling back the NOPR's proposal so that prior notice to landowners will only be required for ground disturbing maintenance activities. Thus, while we believe Golden Triangle's examples are maintenance activities, as long as these minor activities do not cause ground disturbance, they will not trigger any Commission requirement for advance notice to landowners.

6. Burden Resulting from Notification Requirement

23. Commentors argue that the NOPR did not fully analyze the expense and burden associated with requiring landowner notification for auxiliary, replacement, and maintenance activities.²⁷ INGAA stresses that maintenance alone entails hundreds of thousands of property visits per year, and that to track these activities company personnel would have to write descriptions of each activity, visit the site to determine if new

²⁶ Golden Triangle's Comments at pp. 9-10.

²⁷ INGAA's March 2013 Comments at pp. 21-25, Southern Star's Comments at p. 5-6, and National Fuel's Comments at p. 2.

residences were installed since the last patrol, hire a land agent to identify all affected and abutting landowners, and craft and mail formal letters.²⁸

24. Golden Triangle asserts that the expense of complying with the proposed landowner notification requirements will have a significant impact on small entities.²⁹

Golden Triangle states that compliance with the landowner notification requirements will include increased costs to hire either a contractor or full-time employee, to create a database or purchase specialty software, and to mail out letters to all of its right-of-way easement holders.³⁰

25. WBI Energy and National Fuel argue that the Commission underestimated the amount of time it will take companies to prepare the notices.³¹ WBI Energy and INGAA state that the NOPR's estimate that there will be three times as many maintenance projects as section 2.55 projects is a gross underestimation.³² National Fuel insists that the NOPR's estimate that the entire industry will spend 39,000 hours to satisfy the notification requirement is low. National Fuel predicts that it will be required to spend approximately six hours to prepare and deliver notices to all affected landowners for each

²⁸ INGAA's March 2013 Comments at p. 10.

²⁹ Golden Triangle claims it is a small entity, which the Small Business Administration (SBA) Office of Size Standards defines a natural gas company transporting natural gas as small if its annual receipts are less than \$25.5 million. *See* 13 CFR § 121.201 (2013), Subsector 486 and SBA's Table of Small Business Size Standards, effective March 26, 2012, *available at*: http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

³⁰ Golden Triangle's Comments at pp. 7-8.

³¹ WBI Energy's Comments at p. 11 and National Fuel's Comments at p. 4.

³² WBI Energy's Comments at p. 11.

maintenance activity.³³ Golden Triangle asserts it will spend at least 16 hours on 250 letters for mowing or noxious weed control, in addition to the eight hours it estimates will be required to research, update, and prepare separate letters for abutting landowners.³⁴ In addition, MidAmerican Energy states that the landowner notification requirement will impose varying burdens on individual pipelines based on the activity undertaken. For example, it estimates that farm tap installation and maintenance will require 5,400 letters per year; check, operate, and lubricate maintenance will require 30,000 letters per year; and leak detection surveys will require 7,700 letters per year.³⁵

26. We acknowledge that given the wide range of maintenance activities described by commentors, we may have underestimated the burden of providing prior notice to landowners that would have resulted from the NOPR's proposal to require that companies notify landowners, including abutting landowners, prior to commencing any activities under section 2.55 or section 380.15. However, as discussed above, we are limiting the requirement for prior notice to activities that will involve ground disturbance. In addition, we are eliminating the proposed requirement that companies give prior notice to abutting landowners and to landowners with a residence within 50 feet of a proposed work area.

³³ National Fuel's Comments at pp. 4-5.

³⁴ Golden Triangle's Comments at p. 9.

³⁵ For maintenance activities on their systems, WBI Energy estimated it would have to send 19,500 letters, Northern Natural estimated 45,000 letters, and National Fuel estimated 220,000 letters.

27. We believe these modifications to the NOPR's proposed notice requirements will alleviate the concerns for the majority of the activities cited by commentors. As a result, we will use a multiplier of two times the number of all regulated companies' estimated annual auxiliary installations under section 2.55(a)³⁶ as a reasonable estimate of the total annual number of auxiliary installations, replacement projects, and maintenance activities that will require prior notice to landowners because the activities will result in ground disturbance. We acknowledge that basing the estimated total number of activities requiring prior notice on regulated companies' estimates of the number of section 2.55(a) auxiliary installations undertaken annually is not going to yield the same number as basing our estimate on on-site surveys or other verifiable data; nevertheless, we believe our estimate is reasonable and is as accurate an estimate as can be readily established for purposes of calculating the anticipated burden.

28. As discussed herein, we are also responding to companies' concerns that it is often impractical to notify landowners at least 10 days prior to the start of any section 2.55 or section 380.15 activity, as the NOPR's proposal would have required. By requiring that notice be received five days and not 10 days prior to undertaking any activity, and limiting notice to only ground disturbing rather than all section 2.55 and section 380.15 activities, we believe companies will be subject to the minimal inconvenience necessary to ensure that landowners receive adequate advance notice of activities on their property that could adversely affect them.

³⁶ Based on a survey of nine jurisdictional companies, we estimate that approximately 7,605 auxiliary installation projects occur each year.

29. Further, while Golden Triangle indicates that compliance with the landowner notification requirements may require companies to create a database or purchase specialty software, we do not believe it is unreasonable or burdensome if the new notice requirements necessitate that some companies update their databases. All gas companies (regardless of size) need to know, both to enhance, replace, and maintain their facilities and to be able to respond to emergencies, precisely where their rights-of-way lie, how to get to their facilities, and how to contact the owners of the properties their facilities sit upon.³⁷ The new notice requirements require companies to do little more than access this existing information and update it as needed.³⁸ Preparation of a notice using information a company already needs to have on hand should not be burdensome or delay the commencement or progress of activities under section 2.55 or section 380.15.

³⁷ Companies should already have such information on file, given that gas facilities generally were constructed under case-specific certificates obtained in proceedings in which the companies were required to give affected landowners notice in accordance with section 157.6(d), or were constructed under the blanket certificate regulations which require in section 157.203(d) that companies give landowners notice of all projects subject to those regulations' prior notice provisions. In addition, companies need to periodically update such information to be able to comply with the PHMSA biennial reporting requirement. Further, since some of the major maintenance projects included in the PHMSA report will also qualify for prior notice under our new regulations, companies should be able to use the same project description to satisfy both PHMSA and Commission requirements.

³⁸ Golden Triangle argues that it does not have a database of its easement holders. Golden Triangle's Comments at pp. 7-8. We expect gas companies to have documented the metes and bounds, terms of, and parties to all existing easements. While we recognize that this is not a static data set, we expect companies to conduct systematic reviews to keep this information current. We note Golden Triangle acknowledges, as discussed above, that its personnel need to enter its rights-of-way for periodic routine activities including pipe-to-soil readings, leak patrols, surveillance patrols, meter station inspections, and walking the pipeline right-of-way. Golden Triangle's Comments at pp. 9-10. If Golden Triangle does not have a database that identifies the precise location of and owners of the properties on which it has its rights-of-way, it should.

