

final rule, RSPA/OPS announced that it intended to immediately initiate a related rulemaking that would describe the substantive requirements for integrity management programs to add further protections for HCAs.

#### Petition for Reconsideration

On September 5, 2002, the American Gas Association (AGA), the American Public Gas Association (APGA), the Interstate Natural Gas Association of America (INGAA) and the New York Gas Group (NYGAS) (called collectively, "Petitioners") filed a petition for reconsideration of the final rule. When the petition was received, RSPA/OPS was in the final stages of developing an NPRM in the related rulemaking on the substantive requirements for integrity management programs. In addition to the substantive requirements, the draft NPRM proposed an expanded definition of HCAs and described how an operator would determine whether failure of a pipeline segment could impact the HCA and thus be subject to the assessment requirements. RSPA/OPS decided that it would be appropriate to address many aspects of the petition in the NPRM. On January 28, 2003, RSPA/OPS published the NPRM for the substantive requirements. (68 FR 4278) The preamble to the NPRM addressed the petition at 68 FR 4295–4296 and indicated RSPA/OPS's belief that the proposal, and the final rule to follow, would address the more significant of the issues of the petition. This document discusses the remainder of items raised by petitioners but not explicitly addressed in the NPRM.

#### Response to Remaining Issues

First, Petitioners asked for a stay of the HCA definition pending resolution of the petition. The HCA definition imposes no requirement on any operator to do anything until program requirements in the related rulemaking are made final. Thus a stay is not appropriate in this case. However, the Pipeline Safety Improvement Act of 2003 requires operators to begin conducting baseline integrity assessments of facilities that could affect HCAs by June 17, 2004, and to have integrity management programs in place by December 17, 2004, whether or not RSPA/OPS issues regulations on the matter. This statutory requirement means that operators need to immediately begin identifying HCAs. The guidance provided by Advisory Bulletin ADB–03–03, published in today's **Federal Register**, provides the assurance needed by operators to meet the statutory deadline. With the guidance in the advisory bulletin,

operators can identify sites in preparation for required integrity management programs and the public will receive the assurance that the search for "identified sites" for inclusion in integrity management programs is clearly understood.

Petitioners' second and third requests—to clarify that the definition applies only to segments of transmission lines and to define potential impact zones—are addressed by language in the proposed integrity management rule. Petitioners' fourth request—that isolated and infrequently occupied buildings be included only to the extent that they would be included under the Class 3 definition—is denied in the preamble to the proposed rule. However, RSPA/OPS requested comment on possible modifications with respect to buildings that are in the category of "rural churches" that might alleviate some of the concern. Further response will be made in the final rule. Petitioners' last two requests—for clarification of specified points and for clarification of the HCA definition itself—have been largely addressed in the proposed rule. In addition to points already discussed, the proposed rule addressed concerns about the breadth of the term "public officials" by seeking comment on whether the term should be limited to safety or emergency response officials as the ones most likely to have relevant information. To address these concerns, RSPA/OPS is publishing separately in today's **Federal Register**, an advisory bulletin providing guidance for operators in conducting a good faith search. In addition, RSPA/OPS has asked the TPSSC to discuss and vote on recommended guidance on how to clarify, in the final rule, the process of identifying certain sites as high consequence areas.

We now discuss the remaining points on clarification:

1. Petitioners question the inclusion in the HCA definition of two slightly different methods to identify outside areas as HCAs. The first method is by use of the Class 3 location language in 49 CFR 192.5, which uses the concept of a "well-defined" area used by at least 20 persons 5 days per week for 10 weeks per year. This method would include a playground used during the week by a day care facility as well as a summer camp, but would not include weekend recreational areas. The second method of identifying outside areas to be protected as HCAs is through the identified sites definition which looks to evidence of the area's use by at least 20 persons on 50 days a year. This second method was intended to identify weekend recreational areas. It is not

inconsistent with the first method, but merely adds to the outside areas to be protected. The guidance contained in Advisory Bulletin ADB 03–03 will simplify the process of identifying the additional areas.

2. Petitioners question whether, in identifying an HCA, the building or the pipeline is the reference point for applying the distances. Because an HCA is determined by calculating the radius of potential concern, based on the diameter and pressure of the pipeline, the reference point is not critical to identifying the HCA. Rather, what is important is the distance between the center line of the pipeline and the closest corner of an identified site. The HCA definition uses threshold radii of 300, 660, or 1000 feet, depending on the diameter and pressure of the pipeline, which can be calculated using either the centerline of the pipeline or the closest corner of a building. The proposed integrity management rule would expand the definition to include calculated radii to greater than 100 feet for certain large-diameter, high pressure pipelines, but the method of calculation would not change. As discussed at the advisory committee, RSPA is considering using calculated potential impact radii instead of the threshold distances. But again, the calculated distance would be the same whether the measurement is made from the centerline or from the corner of the building.

3. Petitioners argue that the requirement for identifying as an HCA a building occupied by persons of impaired mobility could raise "privacy and discrimination concerns" because it would require "an invasive procedure" to determine the occupancy of these buildings. There is no requirement for an operator to conduct an invasive search to identify buildings housing people of limited ability. The means provided in the rule—visible marking, licensing, consultation with public officials, and official lists—are external and do not involve any invasion of privacy.

4. Petitioners note that it would be difficult to determine if licensed facilities would meet the definition. As an example, petitioners argue that it would be difficult to determine if a registered home day care facility has more than 20 persons in residence. This is not the best example since such a facility would be included as a facility with persons of limited mobility. A more appropriate example would be a licensed bingo hall. Even though the facility is licensed, an operator is not required to include it as an identified site unless there is evidence of use by