

conducts on a routine basis. An operator would, of course, include these sites as "identified sites." However, there will be sites which are not likely to be known through routine operation and maintenance activities. RSPA/OPS believes that the best way for operators to locate sites they are unlikely to discover through routine activities is to consult the entities responsible for safety and emergency response in the vicinity of the pipeline.

Accordingly, RSPA/OPS will accept, as a good faith search in satisfaction of §192.761(f)(1)–(4), a search by an operator that discovers "identified sites" based on knowledge gained by routine operation and maintenance activities as well as sites identified through consultation with appropriate public officials. The appropriate public officials are those with safety or emergency response or planning responsibilities who indicate to the operator that they know the location of sites that meet the substantive description of §192.761(f)(5) or §192.761(f)(6). This could include officials on a local emergency planning commission or relevant Native American tribal officials.

Consultation with public officials having safety or emergency response or planning responsibilities may result in an end of the search for "identified sites". If, however, an operator consults public officials with safety or emergency response or planning responsibilities and these officials inform the operator that they do not have the needed information, then an operator must do more. However, the task of locating these sites is not endless. RSPA/OPS will accept as adequate the operator's use of one of the other means spelled out in paragraphs (1), (2), and (4) of §192.761(f) so long as the operator documents a rationale for the choice that demonstrates that the operator is truly trying to locate the "identified sites." For example, if public officials with safety or emergency response or planning responsibilities indicate that they believe that they know about all of the areas except for assisted-living facilities, an operator might decide that the most fruitful alternative source of information would be a county or State licensing authority. As another example, if public officials with safety or emergency response or planning responsibilities indicate little knowledge about the location of outside recreation facilities, the operator might decide that county and State websites that listed recreational activities in the county would be the best source. RSPA/OPS will not expect an operator to

conduct an endless iterative search of all possible sources.

A similar rule of reasonableness applies with regard to an operator's use of the means spelled out in 192.761(f)(4); namely, "Is on a list or map maintained by or available from a Federal, State, or local agency or a publicly or commercially available database." Although it is possible to read this language as requiring an operator to perform an exhaustive search of every on-line map or database, this is not what RSPA/OPS intends. RSPA/OPS expects an operator to consult those lists or maps that are readily known to the operator and readily available to the public at large. Good examples for information available about assisted-living, nursing, and elder care facilities and schools would be the Federal Government's official Web portal (<http://www.Firstgov.gov>) and telephone directories. Official State Web sites would also be appropriate. An operator might find sources such as Geographic Data Technology or MapQuest helpful in locating particular sites.

In the process of locating "identified sites" as HCAs, RSPA/OPS will require that an operator conduct a good faith search, not an exhaustive one.

II. Background

On August 6, 2002, RSPA/OPS published a final rule on how to identify the populated areas near a pipeline for which additional protections would be required (67 FR 50824). These HCAs include not only population areas already identified by pipeline operators through the longstanding Class location definitions, but also "identified sites", 49 CFR 192.761(f). Inclusion of "identified sites" is intended to pick up isolated population areas which are not picked up through the Class location process. These could include isolated nursing homes, schools, and campgrounds that may be close enough to the pipeline to be at risk should there be a pipeline failure.

Identification of HCAs is a necessary precondition to the establishment of integrity management plans. The Pipeline Safety Improvement Act of 2002 (PSIA) requires operators to begin conducting assessments by June 17, 2004, and to have integrity management programs in place by December 17, 2004. Trade associations representing pipeline companies transporting the majority of natural gas delivered to customers in the United States, state and public representatives, as well as the Federal advisory committee for pipeline safety regulations, have raised questions about how to implement the

identified sites aspect of the HCA definition.

RSPA/OPS initiated a related rulemaking with a notice of proposed rulemaking (NPRM) published January 28, 2003, (68 FR 4278), responsive to a mandate of the PSIA. The NPRM proposed substantive requirements to establish integrity management programs that would provide additional protections for HCAs. In addition, the NPRM proposed to modify the HCA definition to better identify population potentially impacted by a pipeline failure.

RSPA/OPS conducted four public meetings to discuss aspects of the NPRM, two of which focused on the need to clarify how to locate outdoor areas where people congregate and facilities which housed populations that were mobility impaired. Discussions mentioned the burdens of identifying these sites. The proposed definition of HCAs did not contain the term "identified site" (67 FR 1108, January 9, 2002). Instead, the proposed definition simply stated that operators would have to identify facilities containing persons of impaired mobility and buildings and areas occupied by at least 20 persons 50 days per year. Industry commenters frequently noted that an inflexible rule that required operators to identify these sites would be burdensome, and the term "identified site" became generally understood through these discussions. Operators could not get the information from public officials during the liaison already required by 49 CFR part 192 because public officials did not have the necessary information. Operators would have no choice but to change both the manner and the frequency of their patrols of the right-of-way, a very costly proposition.

At the four public meetings following publication of the NPRM, various other persons raised concerns about the clarity of the definition. A representative of Safe Bellingham, which represents citizens concerned about pipeline safety, stressed the need to cover areas where people congregate outdoors.

On May 26–28, the Technical Pipeline Safety Standards Committee considered the NPRM in this related rulemaking. The Committee urged that RSPA/OPS look for clarity over complexity, seek public understandability of the rule, and focus the greatest effort on the potential for greatest harm. Members of the Committee strongly urged the Committee to examine the clarity of the "identified site" definition. Industry representatives pointed to their petition for reconsideration of the HCA final rule for their concerns. (The petition is