

designed to promote fair disclosure of information that may be necessary to appropriately price the Shares. Under Rule 5.2(j)(3)(v), the Exchange is required to obtain a representation from iShares, Inc. that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Exchange represents that the Web site disclosure of the information regarding the Shares and the portfolio composition of the Fund will be made available to all market participants at the same time. The Exchange further represents that MSCI has procedures in place that comply with the requirements of Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3), which relates to restricted access of information concerning changes and adjustments to the Index.

The Commission further believes that the trading rules and procedures to which the Shares would be subject pursuant to this proposal are consistent with the Act. The Shares would trade as equity securities and be subject to NYSE Arca's rules governing the trading of equity securities. The Commission also believes that the Exchange's trading halt rules under NYSE Arca Equities Rule 5.5(g)(2)(b) are reasonably designed to prevent trading in the Shares when transparency is impaired.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange would utilize its existing surveillance procedures applicable to ICUs to monitor trading of the Shares. The Exchange represents that such surveillance procedures are adequate to properly monitor the trading of the Shares. The Exchange may obtain trading information via the ISG from other exchanges that are members or affiliate members of ISG.<sup>22</sup>

2. Prior to the commencement of trading, the Exchange will inform its ETP Holders in the Bulletin of the special characteristics and risks (including the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly available) associated with trading the Shares. The Bulletin will discuss the procedures for purchases and redemptions of Shares, the Exchange's suitability requirements, information regarding the IOPV, and prospectus delivery requirements.

3. The Exchange represents that iShares, Inc. is required to comply with Rule 10A-3 under the Act<sup>23</sup> for the

initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that the Shares are currently listed on NYSE and trading on the Exchange pursuant to UTP. This proposal would move the listing from NYSE to NYSE Arca. Given that the Shares comply with all of NYSE Arca's initial generic listing standards for ICUs (except for narrowly missing two requirements of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3)) the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues. Therefore, the Commission finds that there is good cause to approve the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) under the Act,<sup>25</sup> that the proposed rule change (SR–NYSEArca–2007–127), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E7–25581 Filed 1–3–08; 8:45 am]

BILLING CODE 8011–01–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket Number PHMSA–2007–28119; Notice No. 07–9]

### Proposed Recommended Practices for Bulk Loading and Unloading of Hazardous Materials in Transportation

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA).

**ACTION:** Notice; request for comments.

**SUMMARY:** This notice solicits information and comments on proposed recommended practices for loading and unloading operations involving bulk

packagings used to transport hazardous materials. In this notice, we summarize incident data related to bulk loading and unloading operations; discuss recommendations issued by the National Transportation Safety Board and the Chemical and Safety Hazard Investigation Board; provide an overview of current Federal regulations applicable to bulk loading and unloading operations; summarize the results of a public workshop we hosted earlier this year; and set forth proposed recommended practices for bulk loading and unloading operations. Based on information and comments received, we plan to consider strategies for enhancing the safety of bulk loading and unloading operations, including whether additional regulatory requirements may be necessary. In addition, we are soliciting comments on whether there are existing gaps and/or overlaps in regulations promulgated by PHMSA, OSHA, EPA and the USCG that adversely affect the safety of these operations, and how any identified gaps and/or overlaps in Federal regulations should be addressed.

**DATES:** Submit comments by February 8, 2008.

**ADDRESSES:** You may submit comments identified by the docket number (PHMSA–2007–28119) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov>, or DOT's Docket Operations Office (see **ADDRESSES**).

**PRIVACY ACT:** Anyone is able to search the electronic form of any written

<sup>22</sup> See *supra* note 13.

<sup>23</sup> 17 CFR 240.10A–3.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30–3(a)(12).

communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rick Boyle, Office of Hazardous Materials Technology, (202) 366-4545 or Kurt Eichenlaub, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration.

#### SUPPLEMENTARY INFORMATION

##### I. Background

A recent PHMSA review of hazardous materials transportation incidents occurring over the past decade indicates that roughly one-quarter to one-half of all serious hazardous materials incidents may be associated with loading and unloading operations involving bulk packagings such as cargo tank motor vehicles (CTMV) and rail tank cars. In addition, the National Transportation Safety Board (NTSB) and the Chemical and Safety Hazard Investigation Board (CSB) have investigated a number of accidents associated with these loading and unloading operations. PHMSA's data review and the NTSB and CSB investigations suggest that there may be opportunities to enhance the safety of such operations.

##### A. PHMSA Analysis of Bulk Loading and Unloading Incidents

On February 8, 2007, PHMSA issued, "A Summary Evaluation of Risk Associated with Bulk Loading/Unloading of Hazmat," a summary report of a risk assessment conducted to identify risks associated with bulk loading and unloading operations for highway and rail transportation. The report provides both a qualitative and quantitative analysis of incident reports involving loading and unloading of bulk packagings submitted to PHMSA in accordance with the reporting criteria specified in § 171.16 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). The report focuses on highway and rail transportation incidents because 89% of total incidents and 97% of all serious incidents occur during transportation operations in these two modes. Serious incidents in highway and rail transportation include any unintentional release that results in death, major injury, closure of a major

transportation artery, release of radioactive material from a Type B package, suspected release of certain infectious substances, or release of a bulk quantity of hazardous material. The data used for the report are from the Hazardous Materials Information System (HMIS), as of January 7, 2007. The results of the data analysis showed that:

- During the 2004-2006 period, 27% of all serious incidents occurred during bulk loading and unloading operations.
- During the 2004-2006 period, hazardous materials shipments transported by highway and rail in bulk packagings were involved in approximately 9 out of 10 high consequence events.
- The number of incidents occurring during the loading and unloading of bulk packagings has remained relatively unchanged over the last 10 years.
- Many of the identified causes of both en route and storage incidents can be attributed to loading and unloading operations (i.e., overfilled, overpressurized, loose closure, component or device, etc.).

PHMSA's summary report and analysis of bulk loading and unloading incident data is available for review in this docket.

##### B. NTSB Accident Investigations

NTSB has investigated several serious accidents related to bulk loading and unloading operations:

- On July 14, 2001, in Riverview, Michigan, during unloading from a rail tank car, a pipe attached to a fitting on the unloading line fractured and separated, causing the release of methyl mercaptan. The methyl mercaptan ignited, engulfing the tank car in flames. Fire damage to cargo transfer hoses on an adjacent tank car resulted in the release of chlorine. Three plant employees were killed in the accident, and about 2,000 people in the surrounding neighborhood were evacuated from their homes. The fractured piping used for the unloading operation exhibited significant corrosion damage. As a result of this investigation, NTSB issued the following recommendations to DOT:

- *I-02-1:* Develop, with the assistance of the Environmental Protection Agency and Occupational Safety and Health Administration, safety requirements that apply to the loading and unloading of railroad tank cars, highway cargo tanks, and other bulk containers that address the inspection and maintenance of cargo transfer equipment, emergency shutdown measures, and personal protection requirements.

- *I-02-2:* Implement, after the adoption of safety requirements developed in response to Safety Recommendation I-02-01, an oversight program to ensure compliance with these requirements.

- On September 13, 2002, in Freeport, Texas, a tank car containing about 6,500 gallons of hazardous waste ruptured at a transfer station. The car had been steam-heated to permit the transfer of the waste to a CTMV for subsequent disposal. As a result of the accident, 28 people received minor injuries, and residents living within one mile of the accident site had to shelter in place for 5½ hours. The tank car, highway cargo tank, and transfer station were destroyed. The force of the explosion propelled a 300-pound tank car dome housing about ⅓ mile away from the tank car. Two storage tanks near the transfer station were damaged; they released about 660 gallons of the hazardous material oleum (fuming sulfuric acid and sulfur trioxide). As a result of its investigation, NTSB issued the following recommendation to PHMSA:

- *R-04-10:* In cooperation with the Occupational Safety and Health Administration and the Environmental Protection Agency, develop regulations that require safe operating procedures to be established before hazardous materials are heated in a railroad tank car for unloading; at a minimum, the procedures should include the monitoring of internal tank pressure and cargo temperature.

NTSB has also issued previous recommendations I-88-1 and I-88-2 to the Department of Transportation, and R-02-16 to the Federal Railroad Administration related to loading and unloading safety requirements:

- *I-88-1:* Establish safety requirements for the movement and temporary storage of hazardous materials at intermodal transportation facilities.

- *I-88-2:* Strengthen minimum safety requirements for loading and unloading of hazardous materials to provide adequate, uniform safety in all modes of transportation.

- *R-02-16:* Issue a hazardous materials bulletin to warn companies involved in tank car loading and unloading operations that tank car excess flow valves cannot be relied upon to stop leaks that occur during these operations.

##### C. CSB Accident Investigations

CSB has investigated two incidents in which chlorine was released during rail tank car unloading operations:

- On August 14, 2002, in Festus, Missouri, approximately 24 tons of chlorine was released during a three-hour period following the rupture of an unloading hose. The magnitude of the incident was exacerbated because the emergency shut down system failed to operate properly. Consequently, 48,000 pounds of chlorine was released, resulting in the evacuation or shelter-in-place of hundreds of residents. Three residents were admitted to the hospital.

- On August 11, 2005, in Baton Rouge, Louisiana, a chlorine transfer hose ruptured. However, the emergency shut down system operated properly, and the release ended in under a minute. The successful activation of the emergency shut-down system prevented a major release and off-site impact.

As a result of its investigations, CSB issued DOT the following recommendation:

- *2006-06-I-LA-RI*: Expand the scope of DOT regulatory coverage to include chlorine rail car unloading operations. Ensure the regulations specifically require remotely operated emergency isolation devices that will quickly isolate a leak in any of the flexible hoses (or piping components) used to unload a chlorine rail car. The shutdown system must be capable of stopping a chlorine release from both the rail car and the facility chlorine receiving equipment. Require the emergency isolation system be periodically maintained and operationally tested to ensure it will function in the event of an unloading system chlorine leak.

#### *D. OSHA/EPA/USCG Requirements*

Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate operations involving the handling of hazardous materials at fixed facilities. For example, OSHA's Process Safety Management (PSM) standard (29 CFR 1910.119) contains requirements for processes that use, store, manufacture, handle, or transport particular chemicals on-site. Bulk loading and unloading operations involving PSM-covered chemicals are subject to the requirements of the PSM standard. The OSHA standards also include requirements for the handling and storage of specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. Similarly, EPA regulations establish a general duty for facility owners or operators to identify hazards associated with the accidental releases of extremely hazardous substances,

design and maintain a safe facility as needed to prevent such releases, and minimize the consequences of releases. In addition, stationary sources with more than a threshold quantity of a regulated substance in a process are subject to EPA's accident prevention regulations, including the requirement to develop risk management plans (40 CFR Part 68).

The U.S. Coast Guard (USCG) maintains regulations that apply to hazardous materials directly loaded or unloaded to or from a hold or tank on a vessel without the use of containers or break-bulk packaging (46 CFR Parts 148–154). In addition, the USCG regulations establish requirements for the transfer of hazardous material to or from a portable tank while on a vessel; and, requirements for waterfront facilities engaged in the handling, storage, loading, discharging or transportation of packaged hazardous materials and solid bulk cargo (33 CFR Part 126).

## **II. PHMSA Regulations**

### *1. Requirements Applicable to Loading and Unloading Operations*

The HMR include requirements for loading and unloading railroad tank cars, CTMVs, and other bulk containers. Part 174 of the HMR, which applies to the transportation of hazardous materials by rail, establishes general loading and unloading requirements for hazardous materials and specific loading and handling requirements for shipments of Class 1 (Explosive), Class 2 (Non-flammable, Flammable, and Poison gases), Class 3 (Flammable liquid), Division 6.1 (Poison), and Class 7 (Radioactive) materials. Part 177 of the HMR, which applies to the transportation of hazardous materials by motor carrier, establishes general hazardous materials loading and unloading requirements and specific loading and unloading requirements applicable to Class 1 (Explosive), Class 2 (Non-flammable, Flammable, and Poison gases), Class 3 (Flammable liquid), Class 4 (Flammable solid, Spontaneously combustible, and Dangerous when wet), Class 5 (Oxidizer and Organic peroxide), Division 6.1 (Poison), Class 7 (Radioactive), and Class 8 (Corrosive) materials. The HMR also include additional loading requirements applicable to rail tank cars, portable tanks, cargo tanks, and intermodal bulk containers in §§ 171.31, 173.32, 173.33, and 173.35.

### *2. Cargo Tank Motor Vehicles and Loading/Unloading Equipment*

The HMR include requirements for the inspection and maintenance of cargo transfer equipment, such as piping and transfer hoses, that is part of bulk packaging or carried on a vehicle used to transport a bulk packaging. The HMR require each operator of a CTMV to conduct periodic tests and inspections of the CTMV and its attachments and appurtenances, including piping and transfer hoses used for loading and unloading the CTMV. Each operator must conduct external visual inspections, internal visual inspections, leakage tests, and pressure tests in accordance with the schedule established in § 180.407(c). Section 180.407 also sets forth the specific procedures to be followed for each inspection or test. In addition, for CTMVs used to transport liquefied compressed gases, each operator must visually inspect each CTMV's cargo transfer equipment, including piping and hoses installed or carried on the CTMV, at least once each month (see § 180.416). These periodic inspections and tests help to ensure that each CTMV and its cargo transfer equipment are free of leaks or other defects that could adversely affect the safe operation of the CTMV, including the safety of loading and unloading operations.

### *3. Cargo Tank Motor Vehicle Emergency Shutdown Requirements*

The HMR require DOT specification CTMVs to be equipped with emergency discharge control systems. For example, an MC 330 or 331 CTMV used to transport liquefied compressed gases must be equipped with an emergency discharge control system activated automatically or by remote control in the event of an unloading emergency. In addition, each CTMV operator must carry on the vehicle written emergency discharge control procedures for all delivery operations. An MC 338 CTMV tank must be equipped with a remotely controlled self-closing shutoff valve with both a mechanical and thermal means of automatic closure. On DOT 406, 407, and 412 CTMVs, each loading/unloading outlet must be fitted with a self-closing system capable of closing the outlet(s) in an emergency within 30 seconds of actuation. On DOT 406, 407, and 412 CTMVs used to transport flammable, pyrophoric, oxidizing, or poisonous materials, the remote means of closure must be capable of thermal activation.

#### 4. Training Requirements

Each person who performs a function regulated under the HMR must be trained (see Subpart H of Part 172). This training must include general awareness, function-specific, safety, and security training. Thus, each person who performs a loading or unloading function regulated under the HMR must be trained concerning all aspects of that function, including emergency shutdown procedures. In addition, each person who performs a loading or unloading function regulated under the HMR must be trained concerning specific hazards associated with the materials handled and personal protection measures.

#### III. Consensus Standards

We are aware of a variety of existing national consensus standards that address bulk loading and unloading operations. For example, the Chlorine Institute has developed loading and unloading procedures for chlorine (e.g., Pamphlet 57, "Emergency Shut-off Systems for Bulk Transfers of Chlorine; Pamphlet 66, "Recommended Practices for Handling Chlorine Tank Cars; Pamphlet 91, "Checklist for Chlorine Packaging Plants, Chlorine Distributors and Tank Car Users of Chlorine"). The Association of American Railroads (AAR) has developed Pamphlet 34, "Recommended Methods for the Safe Loading and Unloading of Tank Cars." The American Chemistry Council has developed the Responsible Care® management system, which establishes an integrated, structured approach to drive results in seven key areas: community awareness and emergency response; security; distribution; employee health and safety; pollution prevention; process safety; and product stewardship. PHMSA reviewed some of these industry standards to ascertain if existing standards provide the necessary amplification of the basic loading and unloading practices proposed in this notice.

The industry standards address a number of topics related to the loading and unloading of hazardous materials and are different based upon the type of hazardous material, the physical form of the material, the mode of transportation, and the type of packaging used to transport the material. While the standards exhibit differences in specific detail, there are a number of common general safety topic areas, such as, risk evaluation, development of operational procedures, maintenance and testing of equipment, training, and emergency response.

The available industry standards clearly demonstrate industry's focus on safety issues associated with loading and unloading operations. Virtually all standards specifically require the use of personal protective equipment, often specifying in detail the equipment that should be used. In addition, most standards include considerable detail concerning activities that appear to be associated with the greatest personal risk (e.g., assuring evacuation of all hazardous material residues from tanks before required interior inspections). The wide variety of industry standards applicable to loading and unloading operations provide useful information on industry standard practices, which we considered in the development of the recommended practices proposed in this notice.

PHMSA recognizes that it reviewed only a sampling of guidelines and standards that are available to the bulk hazardous materials shipping industry. The documents are representative of what is available to industry and were submitted by those industry personnel who believe additional guidance would be useful.

#### IV. Public Workshop

On June 14, 2007, PHMSA hosted a public workshop to bring stakeholders together for conceptual discussions on the risks associated with loading and unloading bulk hazardous materials and the range of actions that could be taken by the government and industry to address those risks. In the May 11, 2007 public notice advertising this workshop (72 FR 26864), we invited interested persons to submit comments related to the issues discussed at the workshop. Representatives from industry, federal agencies, state and local government, standards organizations, the emergency response community, employee groups, environmental and public interest organizations, and the public participated in the meeting.

The workshop consisted of a series of panel presentations on specific topics followed by discussions of the issues presented. Issues covered at the workshop included: (1) Incident data analysis and evaluation; (2) NTSB and CSB accident reports; (3) loading and unloading procedures and recommended practices; (4) whether there are gaps in the safety and regulatory programs; (5) training; and (6) emergency response.

Many workshop participants voiced strong support for the development of loading and unloading procedures, suggesting that development and adoption of such "recommended practices" or consensus standards could

significantly improve the safety of loading and unloading operations. A working group of shippers, carriers, and industrial package organizations (Interested Parties Working Group) developed, and presented for consideration, a draft operating procedures document for the loading, unloading, and incidental storage of hazardous materials in bulk packagings having a capacity of greater than 3,000 liters.

The draft operating procedures document specifies information and processes that the Interested Parties Working Group recommends offerors, consignees, or transloading facility operators address in their operating procedures. Some key elements include recommendations applicable to pre-transfer operations (e.g., securing of the transport unit, and inspection of the transfer equipment and attachments), transfer operations (e.g., monitoring the temperature of the lading and the pressure of the containment vessel), post-transfer operations (e.g., evacuation of the transfer system and depressurization of the containment vessel), storage (e.g., monitoring for leaks and releases), and emergency procedures (e.g., use of emergency shutdown systems). The Interested Parties Working Group recommends that operators and facilities engaged in loading, unloading and incidental storage activities develop and implement written operating procedures inclusive of the elements outlined in the draft operating procedures document, which are based on a safety and security analysis of the functions performed at the particular loading, unloading, or storage location or facility. The complete draft operating procedures document presented by the working group is available for review in this docket. This docket also includes a transcript of the public workshop, presentations made by panel participants, comments presented at the workshop or during the comment period, and a petition for rulemaking submitted by the Dangerous Goods Advisory Council on November 19, 2007 requesting the adoption of operational procedures in the HMR applicable to loading, unloading and incidental storage of hazardous materials in bulk packagings.

Prior to publication, a copy of this notice was provided for review to OSHA, EPA, NTSB, CSB, the International Association of Fire Chiefs, the National Association of State Fire Marshals, DGAC, and the Chlorine Institute. Comments we received from these agencies and organizations are posted on the Docket.

## V. Proposed Recommended Practices for Bulk Loading and Unloading Operations

As a result of the collaborative effort between PHMSA and our stakeholders, we are proposing a set of recommended practices that would apply to loading and unloading operations involving hazardous materials in many different types of packagings and a number of different operational and modal contexts. These proposed recommended practices build on the submission from the Interested Parties Working Group, the NTSB and CSB recommendations related to loading and unloading of bulk packagings, and our analysis of bulk loading and unloading incidents. Note that these proposed recommended practices would supplement current HMR requirements applicable to loading and unloading operations. For example, the recommendations applicable to training would not replace the current requirements for general awareness, function specific, safety, and security training established in Subpart H of Part 172, but would be considered as additions to current training requirements and programs.

### Proposed Recommended Practices for Loading and Unloading Bulk Quantities of Hazardous Materials

#### 1. Loading/Unloading Safety Analysis

A shipper, carrier, or facility operator should conduct a thorough, orderly, systematic analysis to identify, evaluate and control the hazards associated with specific loading and unloading operations. The analysis should be appropriate to the complexity of the process and the materials involved in the operation. For example, the analysis should consider the hazards of the material to be loaded or unloaded, including any temperature or pressure controls necessary to ensure safe handling of the material, and conditions that could affect the safety of the process, such as access control, lighting, ignition sources, and physical obstructions. The analysis should also assess current procedures utilized to ensure the safety of loading and unloading operations and identify any areas where those procedures could be improved.

#### 2. Loading/Unloading Operational Procedures

Based on the safety analysis, the shipper, carrier, or facility operator should develop a step-by-step guide to loading and unloading that is clear, concise, and appropriate to the level of training and knowledge of its employees. The written guide should

address pre-loading/pre-unloading procedures, loading/unloading procedures, and post-loading/post-unloading procedures.

##### (a) *Pre-loading/Pre-unloading procedures should include:*

(1) Inspection of the transport unit and transfer area. For example, shippers should ensure that a DOT specification packaging is marked to indicate that it has been designed, manufactured and maintained (including periodic inspection and testing) in accordance with specification requirements.

(2) Securing the transport unit against movement.

(3) Grounding and bonding of the transport unit, as warranted.

(4) Inspection of transfer equipment and connections, including hoses and valves, to ensure that they are free of defects, leaks, or other problems that could result in an unsafe condition.

(5) Identification and verification of piping path, equipment lineups and operational sequencing and procedures for connecting piping, hoses, or other transfer connections.

(6) Identification and verification that the materials that are being loaded or unloaded are being transferred into the appropriate packagings, temporary storage facilities, or production containment vessels and that the compatibility of the material to be transferred is appropriate, authorized and consistent with applicable procedures.

##### (b) *Loading/Unloading procedures should include:*

(1) Measures for initiating and controlling the lading flow. For example, if the material is to be heated prior to its transfer, the facility operator should analyze a sample of the material to ascertain the heat input to be applied, if warranted. The maximum heat input to be applied and the rate at which the heat input will be applied must not result in pressurization to a level that exceeds the packaging's test pressure.

(2) Measures for monitoring the temperature of the lading and pressure of the containment vessel (e.g., cargo tank or rail tank car) and receiving vessel (e.g., storage tank). For example, for loading or unloading operations involving heating of the material to be transferred, during the heating process, the facility operator should monitor the heat input applied to the containment vessel and the pressure inside the containment vessel to ensure that the heating process does not result in over-pressurization or an uncontrolled exothermic reaction.

(3) Measures for monitoring filling limits and ensuring that the quantity to

be transferred is appropriate for the receiving vessel.

(4) Measures for terminating lading flow. For example, personnel responsible for monitoring a loading or unloading process should be familiar with shut-off equipment and procedures, and should be trained to take necessary actions to stop the lading flow as efficiently as possible.

##### (c) *Post-loading/Post-unloading procedures should include:*

(1) Measures for evacuation of the transfer system and depressurization of the containment vessel, as warranted.

(2) Measures for disconnecting the transfer system.

(3) Inspection and securement of transport unit fittings and closures.

##### (d) *Review and Revision of Procedures:*

The operating procedures should be reviewed as often as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and equipment. To guard against outdated or inaccurate operating procedures, the hazmat employer should consider revalidating the operating procedures annually.

### 3. Emergency Management

Appropriate emergency procedures should be identified and implemented, including identification of emergency response equipment and individuals authorized in its use; incident response procedures and clearly identified personnel responsibilities; personnel protection guidance and use of emergency shut-down systems; and, emergency communication and spill reporting. Emergency instrumentation and equipment appropriate to the loading or unloading operation should be identified, available, and in working order. Emergency procedures should be clear, concise, and available to workers. Emergency training, including the need for drills, should also be provided.

Loading and unloading facilities may want to consider:

(a) Instrumentation to monitor for leaks and releases.

(b) Equipment to isolate leaks and releases and to take other appropriate emergency shutdown measures, remotely if necessary.

(c) Training in the use of emergency response equipment.

(d) Procedures for incident response.

(e) Procedures for use of emergency shut-down systems and the assignment of shut down responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

(f) Procedures for emergency communication and spill reporting.

(g) Procedures of safe startup after an emergency shut down.

(h) Procedures and schedules for conducting drills and exercises necessary to demonstrate the efficacy of the plan, and to ensure a timely and efficient emergency response.

(i) Emergency procedures should be reviewed and updated as often as necessary to ensure that they reflect current operating practices, materials, technology, personnel responsibilities, and emergency response information.

#### *4. Maintenance and Testing of Equipment*

Loading and unloading equipment and systems need to be properly maintained and tested. Shippers and carriers should develop and implement a periodic maintenance schedule to prevent deterioration of equipment and conduct periodic operational tests to ensure that the equipment functions as intended. Equipment and system repairs should be completed promptly.

#### *5. Training*

Personnel involved in loading and unloading and emergency response operations need to know and understand their specific responsibilities during loading and unloading operations, including attendance or monitoring responsibilities. Consider training in the following areas:

(a) Overview of the loading/unloading process and, specifically, the portions of the process for which the employee is responsible;

(b) Safety systems and their functions;

(c) Emergency operations and procedures, including shutdown procedures;

(d) Additional safe work practices.

(e) Recurrent training as necessary to address changes to the procedures or personnel responsibilities.

### **VI. Request for Comments**

Based on our analysis of incident data, the NTSB and CSB recommendations, and information and recommendations presented at the June 14 public workshop, we are considering strategies for enhancing the safety of bulk loading and unloading operations, including whether additional regulatory requirements may be necessary. To assist us in developing such strategies, we invite interested persons to submit comments on the issues and questions listed below:

#### *1. PHMSA Proposed Recommended Practices*

As summarized above, the HMR include a number of requirements

applicable to loading and unloading operations. We invite commenters to address whether the proposed recommended practices adequately address the safety concerns discussed in this notice and to suggest how the proposed recommended practices should be revised and strengthened. We are particularly interested in comments concerning whether our proposed recommended practices are consistent with Federal regulations and guidance or industry consensus standards applicable to bulk loading and unloading operations. We also welcome comments concerning the potential costs that may be incurred to implement our proposed recommended practices. Based on comments received, we will revise the recommended practices and may issue them as a guidance document for hazardous materials shippers and carriers that conduct bulk loading and unloading operations.

In addition, we are considering whether additional regulatory requirements, similar to the measures in our proposed recommended practices, are necessary. We invite comments to address whether the recommended practices proposed in this notice should be incorporated into the HMR and, if so, how that could best be accomplished. Should the recommended practices apply to all bulk loading and unloading operations, or should the scope of the recommended practices be dependant upon the volume and/or type of bulk packaging being loaded or unloaded? Should the recommended practices apply to the shipper, carrier, and loading/unloading facility; or, should the recommended practices apply only to the facilities at which loading/unloading operations take place? What costs, if any, would be imposed on the regulated community if we choose to adopt regulations similar to these proposed recommended practices in the HMR?

#### *2. PHMSA Regulations*

As described above, the HMR currently include a number of requirements applicable to bulk loading and unloading operations. In addition, the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA) and the U.S. Coast Guard regulate operations involving the handling of certain hazardous materials at fixed facilities. We invite commenters to address whether the existing loading and unloading requirements in the HMR adequately address the risks associated with bulk loading and unloading operations. Are there gaps or overlaps in the standards and regulations

promulgated by PHMSA, OSHA, EPA and the USCG that adversely affect the safety of these operations? If so, how should these gaps or overlaps be addressed?

#### *3. National Consensus Standards*

We invite commenters to compare national consensus standards with which they are familiar to current Federal standards and regulations applicable to bulk loading and unloading operations and to the recommended practices proposed in this notice. Commenters should indicate whether and to what extent the national consensus standards are consistent with current Federal standards and regulations and the proposed recommended practices. Should we consider incorporating consensus standards applicable to bulk loading and unloading operations into the HMR? If so, how could this be accomplished, and which standards are appropriate?

#### *4. Accident and Incident Information*

As indicated above, PHMSA conducted an analysis of bulk loading and unloading accidents submitted to the agency in accordance with the reporting criteria specified in § 171.16 of the HMR. This analysis did not consider accidents that may have occurred outside of transportation, as that term is defined for purposes of the HMR. We plan to work with the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) to fill that data gap by including incident data on bulk loading and unloading accidents that may have occurred outside of transportation, and therefore, were not reported to PHMSA in accordance with § 171.16. We invite commenters to submit any information on safety problems or incidents that may not have been reported, but that could help us to refine our assessment of the safety risks associated with loading and unloading operations and develop appropriate strategies for addressing those risks. We also ask commenters to suggest other data sources that could support this effort.

Issued in Washington, DC on December 27, 2007.

**Theodore L. Willke,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 07-6300 Filed 1-3-07; 8:45 am]

**BILLING CODE 4910-60-P**