

or is returned with the indication that the contract is known but that delivery cannot be made, a "buy-in order" in duplicate is sent to the defaulting member for execution.

NYSE Rule 284 sets forth a procedure by which an initiating member may close-out a contract that has not been completed by the defaulting member but that is not required to be closed-out. The initiating member must deliver a buy-in notice to the defaulting member prior to forty-five minutes after delivery time. Then the initiating member (buyer) must deliver a buy-in order to the defaulting member between 2:15 p.m. and 2:30 p.m. for execution after 2:35 p.m.

NYSE Rule 289 requires an initiating member to accept physical delivery of some or all of the securities that are the subject of a buy-in, thereby halting the mandatory buy-in execution for those securities if the defaulting member tenders the securities prior to the mandatory buy-in deadlines. NYSE Rule 290 permits a defaulting member to deliver securities subject to a notice of buy-in until 2:30 p.m. on the day of the execution of the buy-in.

The NYSE buy-in rules apply to transactions that are not subject to the rules of a qualified clearing agency such as The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"). In the event that a buy-in is sent to the NYSE floor for execution, then NYSE buy-in rules apply.

However, under the current NYSE rules, there are inherent conflicts of interest by permitting the defaulting member to execute the buy-in. For example, the defaulting member could manipulate the extent to which it has market exposure by timing its purchase of the necessary securities to benefit itself. The initiating member may receive negative customer reaction if the customer learns that its trade has not settled and their securities are unavailable because a buy-in has not been executed by the defaulting member or has not been executed in a timely manner.

Other self-regulatory organizations ("SROs") have recognized this potential conflict and have adopted buy-in rules that assign responsibility to the initiating member to execute the buy-in. By allowing initiating members to execute their own buy-ins, any potential conflict of interest involving the defaulting member is avoided and the process is expedited.

In the course of reviewing the operation of its buy-in rules, the NYSE and other regulators met with the Securities Industry Association's

Securities Operations Division Buy-In Committee ("Committee"), which is comprised of regulators, broker-dealers, and industry groups, to identify and standardize various buy-in rules and procedures regarding the close-out process related to street-side contracts. The Committee requested that the NYSE amend the buy-in rules to eliminate the "Notice" procedures described above and to allow the initiating member (buyer) to execute buy-ins to close out a contract.

#### *Amendments<sup>3</sup>*

The NYSE is effecting five amendments to its buy-in rules. First, the NYSE is amending Rule 282 to allow the initiating member to execute a mandatory buy-in and to reduce the waiting period to initiate a mandatory buy-in from thirty days to three days after delivery on the contract was due. The NYSE believes once the responsibility is shifted to the initiating member, the buy-in process will work more efficiently.

Second, the NYSE is eliminating the requirement for duplicate and triplicate paper notices and is permitting electronic notices, including notices from a computerized network facility or from the electronic functionality of a qualified clearing agency, such as DTC and NSCC. The NYSE is also amending existing time deadlines for delivering notices, securities, and executions and is using those used by other self-regulatory organizations (*i.e.*, DTC and NSCC).

Third, the NYSE is adding a section to Rule 282's Supplementary Material to ensure that members comply with the closeout requirements of Regulation SHO.<sup>4</sup> Members are obligated to comply with the marking, locate, and delivery requirements of Regulation SHO for short sales of equity securities. As a result, members should have policies and procedures in place to comply with these rules, including closeout procedures.

Fourth, the NYSE is rescinding Rule 284 and incorporating those "buy-in" procedures into Rule 282. The NYSE is also amending Rules 289 and 290 to clarify the requirements and timeframes upon which a defaulting member may deliver against a "buy-in" notice. Fifth, the NYSE is making certain technical amendments to Rules 282, 289, and 290

<sup>3</sup> The specific changes to NYSE rules are attached as an exhibit to its rule filing which can be found on the Commission's Web site and on NYSE's Web site.

<sup>4</sup> Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7-23-03] (adoption of Regulation SHO).

to better coordinate the rules with industry practice.

### III. Discussion

Section 6(b)(5) of the Act requires that rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>5</sup> The Commission finds that the NYSE's proposed amendments to its buy-in rules should aid members in the clearance and settlement of their transactions by improving and making consistent with other self-regulatory organizations' rules its buy-in procedures.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2005-50) be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**

*Secretary.*

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## DEPARTMENT OF STATE

[Public Notice 5216]

### Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Thursday, December 15, 2005, from approximately 9 a.m. to 3:30 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. At this meeting the Committee will conduct its ongoing

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

review function with respect to the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Material from the Colonial and Republican Periods of Bolivia. This meeting is for the Committee to satisfy its ongoing review responsibility of the effectiveness of agreements pursuant to the Act and will focus its attention on Article II of the MOU. This is not a meeting to consider extension of the MOU. Such a meeting will be scheduled at the appropriate time in 2006 at which time a public session will be held.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The U.S.-Bolivia MOU, the designated list of restricted categories, the text of the Act, and related information may be found at <http://exchanges.state.gov/culprop>.

The meeting on December 15 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: November 21, 2005.

**Dina Habib Powell,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket: PHMSA-98-4957]

#### Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137-0589)

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

**SUMMARY:** This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing PHMSA collection of information for response plans for onshore oil pipelines. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995. With this notice, PHMSA invites the public to submit comments over the next 60 days on ways to minimize the burden associated with collection of

information related to response plans for onshore oil pipelines.

**DATES:** Comments must be submitted on or before January 31, 2006.

**ADDRESSES:** Comments should reference Docket No. PHMSA-98-4957 and may be submitted in the following ways:

- DOT Web site: <http://dms.dot.gov>.

To submit comments on the DOT electronic docket site, click "Comment/Submissions," click "Continue," fill in the requested information, click "Continue," enter your comment, then click "Submit."

- Fax: 1-202-493-2251.

- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: DOT Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- E-Gov Web site: <http://www.Regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

**Instructions:** You should identify the docket number, PHMSA-98-4957, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>, and may access all comments received by DOT at <http://dms.dot.gov> by performing a simple search for the docket number. **Note:** All comments will be posted without changes or edits to <http://dms.dot.gov> including any personal information provided.

**Privacy Act Statement:** Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

William Fuentesvilla at (202) 366-6199, or by e-mail at [William.Fuentesvilla@dot.gov](mailto:William.Fuentesvilla@dot.gov).

**SUPPLEMENTARY INFORMATION:** Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including

whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

This information collection request pertains to 49 CFR part 194, Response Plans for Onshore Oil Pipelines. This rule requires an operator of an onshore oil pipeline facility to prepare and submit an oil spill response plan to PHMSA for review and approval when, because of its location, the facility could reasonably be expected to cause substantial harm to the environment if it were to discharge oil into navigable waters or adjoining shorelines. The rule established the planning requirements for oil spill response plans to reduce the environmental impact of oil discharged from onshore oil pipelines, as mandated by the Oil Pollution Act of 1990 (OPA 90). The rule provides greater specificity and guidance to facilities than is provided in OPA 90's statutory language in order to enhance private sector planning capabilities to minimize the impacts of oil spills from pipelines.

The information collection required by the rule is the submission of response plans to PHMSA by affected pipeline operators. Additionally, operators must review and resubmit their response plans at least every 5 years, or in response to new or different operating conditions. Operators must submit any change or update to response plans within 30 days of making such a change. This information collection supports the DOT strategic goal of environmental stewardship by reducing pollution and other adverse environmental effects of transportation and transportation facilities.

As used in this notice, "information collection" includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

*Type of Information Collection Request:* Renewal of Existing Collection.

*Title of Information Collection:* Response Plans for Onshore Oil Pipelines.

*Respondents:* 367 hazardous liquid pipeline facilities.

*Estimated Total Annual Burden on Respondents:* 50,186 hours.