

An execution pursuant to (2) above may initiate a price change, contrary to the "go along" expectations of the customer. In most instances percentage orders represent a desire to trade along with, rather than ahead of, the market.

**Last Sale:** Investors entering last sale percentage orders also seek to trade along with the trend of the market. When a last sale percentage order is elected, it will typically receive an execution in one of three ways:

(1) There is sufficient additional liquidity at the price of the electing transaction for the elected portion to receive an immediate execution at the price of the electing transaction; or

(2) If the order cannot receive an immediate execution at the price of the electing transaction, it is sequenced with other limit orders at that price, and will receive an execution when there is sufficient contra side interest for trades to be effected at that price; or

(3) In the case of a last sale cumulative volume percentage order, the order's executable price can move to the level of prices of subsequent trades, but the order will receive an execution only when there is sufficient contra side interest for trades to be effected at those subsequently established prices.

Executions pursuant to (2) and (3) above may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed. Elected portions of the last sale percentage order may lag behind movement of the market, which defeats the investor's purpose in entering the order.

In response, the Exchange is proposing a new percentage order type called "immediate execution or cancel election." The Exchange believes that consistent with the underlying philosophy of the percentage order rules, any proposed approach to accommodating investors should limit the specialist's discretion in representing such orders, while still allowing a degree of flexibility to meet the needs of those entering the orders. The Exchange notes that "Immediate or Cancel" is a recognized order type under Exchange Rule 13. By placing this designation on the percentage order, the investor would require the specialist to treat an election as cancelled unless the elected portion can be executed immediately (in whole or in part) at the price of the electing transaction. If the order cannot be so executed, the election would be cancelled, and the unexecuted elected portion would revert to the percentage order, subject to subsequent election (and execution/cancellation as above) or conversion. The NYSE believes that this approach sets forth objective criteria to guide the

specialist's representation of the order, while ensuring that the elected portion does not lead the market by initiating any significant price change, thereby defeating the investor's objectives. The investor's instructions, not the specialist's discretion, would dictate how the order is handled. The Exchange notes that an investor seeking to have a percentage order executed under current rules would be free to continue to do so by simply designating the order as one of the three currently existing order types.

## 2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>3</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market to accommodate investors by requiring the specialist to treat an election as cancelled unless the elected portion can be executed immediately at the price of the electing transaction.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File Number SR-NYSE-97-38 and should be submitted by February 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.  
**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment

<sup>3</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

period soliciting comments on the following collection of information was published on October 29, 1996 [61 FR 55835-55836] and a Notice of Final Determination was published on July 22, 1997 [62 FR 39299].

**DATES:** Comments must be submitted on or before March 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claretta Duren, Office of Engineering, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 418-8567 or (202) 366-4636. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday thru Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Federal Highway Administration, DOT**

*Title:* Bid Price Data.

*OMB Number:* 2125-0010.

*Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Affected Public:* State highway agencies.

*Form(s):* FHWA-45.

*Abstract:* The form FHWA-45, "Bid Price Data," is needed to monitor changes in purchasing power of the Federal-Aid construction dollar. FHWA has found it necessary to follow these trends so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified. Form FHWA-45 is prepared for Federal-Aid highway construction contracts greater than \$0.5 million in the 50 States plus Washington, DC, and Puerto Rico. Data reported in the form FHWA-45 are six major items of highway construction, together with the total materials and labor costs of the project, taken from the bid tabulation of construction items submitted by the lowest or winning bidder to the State highway agency. The highway agencies furnish copies of the bid tabulation to the FHWA Division offices.

*Estimated Annual Burden Hours:* 484.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

OMB is required to make a decision concerning this collection of information between 30 and 60 days after publication of this document in the **Federal Register**. However, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

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 collection; 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.

Issued in Washington, DC, on January 28, 1998.

**Phillip A. Leach,**

*Clearance Officer, United States Department of Transportation.*

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary (OST)**

**Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on these collections of information was published on November 19, 1997 (61 FR 61859).

**DATES:** Comments must be submitted on or before March 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

**SUPPLEMENTARY INFORMATION:** Research and Special Programs Administration, DOT.

1. *Title:* Hazardous Materials Shipping Papers and Emergency Response Information (Former Title: Hazardous Materials Shipping Papers).

*OMB Control Number:* 2137-0034.

*Type Request:* Extension of a currently approved collection.

*Form(s):* N/A.

*Affected Public:* Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

*Abstract:* Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN identification number, packing group, and quantity of each hazardous material being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed. This information collection renewal includes new requirements for: shippers and carriers to retain shipping papers for one year as mandated by Section 5110(e) under the Federal hazardous material transportation law; compliance with the HMR by intrastate shippers and carriers, published under Docket HM-200, "Hazardous Materials in Intrastate Commerce: Final Rule", on January 8, 1997 (62 FR 1108); and the President's initiative to reduce the regulatory burdens imposed by the Federal government.

*Total Annual Burden Hours:* 6,500,000.

2. *Title:* Radioactive Materials (RAM) Transportation Requirements.

*OMB Control Number:* 2137-0510.

*Type Request:* Extension of a currently approved collection.

*Form(s):* N/A.

*Affected Public:* Shippers and carriers of radioactive materials.

*Abstract:* The requirements for transportation of RAM are provided in 49 CFR parts 171-180. Information collection requirements for RAM include shipper notification to consignees of the dates of shipment of RAM, expected arrival, special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority