contract performance and recommending the appropriate fee.

(b) *Fee Determination Official.* Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

1516.404–273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed ''above satisfactory'' or ''excellent'' for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

1516.404–274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (c) of 1516.404–273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

3. Section 1516.405 is revised to read as follows:

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216–75, Base Fee and Award Fee Proposal (XXX 1994), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages in accordance with FAR 15.903(d).

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1552.216–70 is revised to read as follows:

1552.216–70 Award fee.

As prescribed in 1516.405(a), insert the following clause:

AWARD FEE (XXX 1994)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO) and are not subject to appeal under the Disputes clause.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of Clause)

5. Section 1552.216–75 is added to read as follows:

1552.216–75 Base fee and award fee proposal

As prescribed in 1516.405(b), insert the following clause:

BASE FEE AND AWARD FEE PROPOSAL (XXX 1994)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee within the maximum fee limitation of _____% as stated in FAR 15.903(d). Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than _____% of the total estimated cost, excluding fee. The combined percentage of base and award fee does not exceed _____% of the total estimated cost, excluding fee.

(End of Clause)

Dated: January 6, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–2334 Filed 1–30–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM–199; Notice No. 95–4]

RIN 2137–AB35

Enforcement of Motor Carrier Financial Responsibility; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: RSPA is withdrawing an advance notice of proposed rulemaking (ANPRM) issued under Docket HM–199, Enforcement of Motor Carrier Financial Responsibility. The ANPRM solicited comments on the merits of a petition requesting DOT to promulgate a regulation to require each person, offering a hazardous material for transportation in a cargo tank, to obtain proof of financial responsibility from the carrier. This notice removes this action from the regulatory agenda, because there is sufficient evidence that carriers are already complying with financial responsibility requirements in the Federal motor carrier safety regulations.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: In 1986, RSPA received a petition for rulemaking (P–0093) from the National Tank Truck Carriers, Inc. (NTTC) requesting amendment of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to require each person who offers a hazardous material for transportation by highway in a cargo tank to obtain documentary proof that the motor carrier possesses the minimum level of financial responsibility currently prescribed by 49 CFR part 387. Since 1980, all motor carriers have been required to provide financial responsibility in varying amounts and forms, usually by insurance and/or bonding. Federal Highway Administration (FHWA) regulations require all carriers to have appropriate evidence of financial responsibility available for public inspection at their principal place of business (49 CFR 387.31). The Interstate Commerce Commission (ICC) issued conforming regulations applicable to for-hire carriers of property which required use of a form to be maintained within the carrier's public docket at ICC (49 CFR 1043.7). These actions provided methods for carriers to document the status of their financial responsibility. However, NTTC believed that a shipper should have knowledge of financial responsibility at the time it offered its shipment. NTTC also referred to the lack of adequate enforcement staff to effectively determine carrier compliance. According to NTTC, a major benefit of the requested change in

the regulations would be the creation of a ready mechanism for a shipper to verify a carrier's compliance, without expenditure of any government resources.

ANPRM. On May 20, 1987, RSPA published an ANPRM, HM–199 [52 FR 19116], soliciting comments on a number of questions relating to the merits of the petition from NTTC, and whether DOT should proceed with rulemaking.

Comments to the ANPRM. Currently, there is no provision in the HMR requiring shippers to obtain proof from motor carriers that the financial responsibility requirements in 49 CFR part 397 are being met. A number of commenters to the ANPRM asserted that public safety would be enhanced by the shipper obtaining proof of carrier financial responsibility. Several commenters pointed out that some carriers are underinsured and that DOT can not effectively audit all carriers. Commenters opposed to the petition argued that it would require shippers to perform an unwarranted enforcement function. Some stated that verification of the appropriate level of carrier insurance would be difficult for small shippers. They maintained that the proposal would increase personnel training and operating costs and impose a recordkeeping burden, while doing nothing to ensure compliance or strengthen enforcement. One commenter concluded that the proposal fails to address carrier underinsurance and that it would involve increased enforcement against shippers and widen shipper liability.

RSPA believes that the concerns in the petition are sufficiently addressed by the following: (1) the existing certification and enforcement practices of the ICC and FHWA; (2) expansion of state motor carrier inspection programs; (3) improvements in the hazardous materials insurance market; and (4) development of new motor carrier registration and permitting requirements. Common and contract carriers entering hazardous materials service must show evidence of the appropriate financial responsibility levels, specified in part 387, to obtain operating authority from the ICC. In turn, proof of adequate financial responsibility is an essential function of FHWA's compliance review process, specified in part 385, involving on-site investigation of carrier operations. There is strong evidence that, for the most part, carriers are complying with part 387 requirements, and that non-compliance is not so widespread as to constitute a serious safety problem. For these reasons, RSPA believes that no action is required on this rulemaking action and NTTC's petition is denied.

In consideration of the foregoing, Docket HM–199 is hereby terminated.

Issued in Washington, DC on January 25, 1995, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–2286 Filed 1–30–95; 8:45 am]

BILLING CODE 4910–60–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1180

[Ex Parte No. 282 (Sub-No. 19)]

New Procedures in Rail Acquisitions, Mergers and Consolidations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its regulations in order to establish more timely procedures for major and significant rail acquisitions, mergers and consolidations. The proposed rules will also shorten the timeframes for minor transactions where appropriate.

DATES: Written comments must be filed with the Commission by March 2, 1995.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 282 (Sub-No. 19), Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In response to criticisms that this agency's consideration of applications by railroads to acquire other carriers or to merge or consolidate with each other is too slow, we have reviewed our existing procedures for major and significant transactions,[1] our practices in implementing them, and the applicable statutory provisions.[2] We have done so to determine whether these applications can be processed more quickly while preserving the opportunity for: (1) affected persons and the public at large to participate effectively in the process; (2) reasoned consideration of the arguments for and against an application; and (3) consideration of competing applications, proposed conditions, and amendments offered by the applicants to meet objections to proposed transactions.

Typically, we receive a proposed schedule from an applicant in a major or significant transaction, publish the schedule in the **Federal Register**, modify it based upon consideration of comments we receive, and adopt it. Most recently, for example, the applicants in *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company,* Finance Docket No. 32549, proposed a procedural schedule calling for the Commission to issue a decision in 430 days. We sought comments on the proposed schedule and adopted one calling for the issuance of a decision in 535 days.

We have not always crafted a time line based on schedules proposed by the parties to transactions but that has generally been the practice in recent years. We applied that practice in establishing a schedule and then deciding the application of Rio Grande Industries to acquire the Southern Pacific Transportation Company (SPTC) in 185 days. In that case, *Rio Grande Industries, et al.—Control—SPTC et al.,* 4 I.C.C.2d 834 (1988) (*Rio Grande-SP*), the Commission processed an application that involved a competing application filed by Kansas City Southern Industries (KCSI), several requested conditions and a number of embraced abandonments, leases, trackage rights requests, requests for authority to control and other related transactions. We afforded an opportunity for all interested persons to comment on the application and the inconsistent application of KCSI and to propose conditions. We gave the applicants an opportunity to reply to all comments on the application, to respond to the inconsistent application, and to propose any modifications to the merger in response to the comments filed.

We believe that the *Rio Grande-SP* case offers a useful model of a timely but fair process for rail mergers and consolidation proceedings. We propose

[1] A major transaction involves control or merger of two or more class I railroads. 49 CFR 1180.2(a). A significant transaction is defined at 49 CFR 1180.2(b).

[2] Minor transactions are defined at 49 CFR 1180.2(c). Although we believe that our current rules provide for timely handling of this type of transaction, we do propose including minor transactions under many of our proposed changes to enhance the consistency of our rules and to improve further our ability to handle minor transactions in a timely and efficient manner.