that process for consideration here. With that case in mind, the schedule we propose to adopt in all applications for merger and consolidation under 49 U.S.C. 11343–11345 is set out in Appendix A to this Notice. The proposed modifications to Parts 1105 and 1180 are set out below. The proposed schedule calls for the issuance of a decision by the agency in both major and significant transactions 180 days after an application is filed. In addition we propose to shorten the prefiling notification period from a minimum of 3 months for major transactions to 2 months, which we propose to apply to both major and significant transactions.

In considering the *Rio Grande-SP* proceeding as a model, it is important to note that the case was unique in one respect. There we asserted jurisdiction not only pursuant to our authority to consider mergers but also because the sale represented an effort by Santa Fe Southern Pacific Corporation (SFSP), as the beneficial owner of the SPTC, to comply with our orders directing it to divest itself of SPTC following our denial of SFSP's application to acquire control of the carrier.

We do not believe that factor precludes us from processing other applications for major and significant mergers and consolidations in a similar fashion. The issues that arose in that case are similar to those that would arise in any major merger. The only relevance of our divestiture jurisdiction in *Rio Grande-SP* is that we cited it as one of the bases for departing from the statutory procedures of 49 U.S.C. 11345 in order to establish a more expedited schedule than that set out in the statute and in our regulations at 49 CFR 1180. But that is not the only basis for our authority to depart from our procedures.

In proposing to modify the statutory schedule, we find authority in the exemption provisions of 49 U.S.C. 10505. We propose not only to modify our regulations at 49 CFR 1180.4 but also to grant an exemption for all major and significant acquisition, merger and consolidation proceedings from the procedural requirements of 49 U.S.C. 11344 and 11345, and in their stead adopt the schedule set out in Appendix A and the procedures set out below.³ We rely upon the criteria to exempt transactions set out at 49 U.S.C. 10505:

[T]he Commission shall exempt . . . a transaction . . . when the Commission finds that the application of a provision of this subtitle—

(1) is not necessary to carry out the transportation policy of section 10101a of this title; and

(2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this subtitle is not needed to protect shippers from the abuse of market power.

The rail transportation policy (RTP) would be fostered by establishing a more timely procedure for these proceedings. Specifically, 49 U.S.C. 10101a(2) states that it is the policy of the United States Government ". . . to require fair and expeditious regulatory decisions when regulation is required. "

We believe that the procedures we are modifying are of limited scope within the meaning of 49 U.S.C. 10505. Most of the statutory standards are deadlines that require actions to be taken within a certain period of time. Adopting more expedited procedures does not contravene those provisions. The chief effects of the proposed schedule on the procedures established in 49 U.S.C. 11345 are that written comments on the application would be due in 30 rather than 45 days, that the U.S. Department of Transportation and the U.S. Department of Justice would be subject to the same schedule as other Federal agencies and other parties, and that inconsistent applications would have to be filed in 75 days rather than 90 days. These are not major departures from the statutory procedures.

The new procedure would also represent a departure from our existing regulations, which we may modify without invoking 49 U.S.C. 10505. The existing regulations call for the completion of the evidentiary record within 24 months of accepting the application in major transactions and for the completion of the record within 180 days in significant transactions. To the extent that the statute sets maximum time limits of 24 months and 180 days, we may of course shorten those deadlines by rule. The proposed schedule calls for the completion of the record in 125 days of acceptance of an application. The proposed schedule gives the Commission 40 days to issue a decision after the close of the written record and 30 days after oral argument, if the Commission schedules an oral argument. That compares with the existing standards that provide that a final decision will be issued within 180 days after the conclusion of the

evidentiary proceeding in a major transaction and within 90 days after completion of the evidentiary phase in a significant transaction.

A vital element in carrying out the proposed procedures is strict compliance with the Commission's environmental rules at 49 CFR Part 1105. These rules ensure compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, the Coastal Zone Management Act, and other environmental statutes.

Section 1105.6(b)(4) provides that environmental assessments will normally be prepared in those mergers, consolidations, or acquisitions of control under 49 U.S.C. 11343 that involve significant changes in operation or rail line abandonments and constructions. Mergers that do not involve abandonments and constructions or major operational changes are generally exempt from environmental review. However, if a merger is likely to significantly affect the environment, NEPA requires that the Commission prepare an environmental impact statement. As a result, we will not be able to apply the proposed schedule to these mergers, and will establish an alternate schedule that will permit compliance with NEPA without creating undue delay.

To expedite the NEPA environmental review process, we are requiring that applicants consult with the Commission's Section of Environmental Analysis (SEA) with, or prior to, the filings of their prefiling notices for all mergers involving the preparation of environmental documentation. In the case of mergers requiring an environmental assessment, we are requiring that the applicant submit, with its application, a preliminary draft environmental assessment (PDEA). We encourage the use of independent third party contractors in preparing the PDEA. This document shall be based on consultations with SEA and the various agencies set forth in 49 CFR 1105.7(b) of our environmental rules. SEA will use the PDEA in preparing a draft environmental assessment for public comment.

An equally vital element in enabling the parties and the Commission to adhere to a more timely schedule is the avoidance of protracted disputes involving discovery. Under our proposed procedures any applicant must establish a depository or other facility for making documents supporting the application available promptly to all interested parties subject to the appropriate protective orders. Immediately upon each evidentiary

³The schedule set out in Appendix A will not apply to minor transactions. We are able to process those transactions more expeditiously using a more simplified schedule geared to the specific transaction. We will continue to establish procedural schedules for those transactions on a case-by-case basis. Our exemption, however, will extend to minor transactions for procedures set out below where applicable, except as noted below.